

**STATE OF FLORIDA
SITING BOARD**

**IN RE: FLORIDA POWER & LIGHT)
COMPANY TURKEY POINT UNITS 6 & 7)
POWER PLANT SITING APPLICATION NO.)
PA 03-45A3)**

**OGC CASE NO. 09-3107
DOAH CASE NO. 09-3575EPP**

FINAL ORDER ON CERTIFICATION

This proceeding arose under the Florida Electrical Power Plant Siting Act ("PPSA")¹ and requires the Siting Board to determine whether to approve, approve with modifications or conditions, or deny Florida Power & Light's ("FPL") application to locate, construct and operate Turkey Point Units 6 and 7 (two new nuclear generating units) and supporting facilities on a site within FPL's existing Turkey Point plant property, as well as new electrical transmission lines and other off-site associated linear and nonlinear facilities ("Project"). FPL proposed approximately 88.7 miles of transmission line corridors, including 52 miles in the West Preferred Corridor and 36.7 miles in the East Preferred Corridor to deliver the additional electricity generated at the plant site in unincorporated southeastern Miami-Dade County to electrical substations in the urban areas. All proposed facilities will be located in Miami-Dade County.

BRIEF SUMMARY

An Administrative Law Judge ("ALJ") from the Division of Administrative Hearings ("DOAH"), conducted an eight-week certification hearing and, on December 5, 2013, issued a 332-page Recommended Order ("RO") with extensive findings of fact and

¹ Sections 403.501 *et seq.*, Florida Statutes.

conclusions of law and 485 pages of attachments, including conditions of certification that incorporated the stipulations between FPL and various parties.² In reviewing the RO, the Siting Board may not overturn findings of fact made by the ALJ if they are supported by competent substantial evidence in the record. In addition the Siting Board may not overturn the ALJ's conclusions of law in areas outside the Board's substantive jurisdiction. See § 120.57(1)(l), Fla. Stat. (2013). Accordingly, the Siting Board hereby adopts the ALJ's RO as modified herein, including the conclusion that, based on the evidence presented at the hearing, FPL proved entitlement to the site certification under the PPSA for the Project, including the plant and transmission line facilities.

In enacting the PPSA, the Florida Legislature provided one, unified procedure for the certification of power plants and associated facilities. See § 403.502, Fla. Stat. (2013). The procedure is a comprehensive, coordinated review for obtaining *state and local permits* and approvals to build or modify power plants and power lines. The Department has the responsibility under the PPSA to coordinate participation by a multitude of state agencies and the local governments impacted by the proposed

² There were 23 parties to the certification hearing: FPL; Department of Environmental Protection ("Department" or "DEP"); Board of Trustees of the Internal Improvement Trust Fund ("BOT"); Department of Transportation ("DOT"); Miami-Dade County Expressway Authority ("MDX"); Florida Fish & Wildlife Conservation Commission ("FWC"); South Florida Water Management District ("SFWMD"); South Florida Regional Planning Council ("SFRPC"); Miami-Dade County ("MDC"); Monroe County; Coral Gables; Doral; City of Miami ("Miami"); South Miami; Medley; Pinecrest; Coconut Grove Village Council; Kendale Homeowners' Association; Miami-Dade Limestone Products Association ("MDLPA"); National Parks Conservation Association ("NPCA"); Limonar Development, Inc., and Wonderly Holding, Inc. (collectively "Limonar"); White Rock Quarries; and Kendall Federation of Homeowners Associations, Inc.

project. There is extensive opportunity for the agencies/local governments to ask questions related to the application and provide input.³

When issued, the PPSA certification becomes the sole authorization, and all local and state permits are rolled into a single license as part of the site certification. See § 403.511, Fla. Stat. (2013). This singular, state-lead process prevents each local jurisdiction from imposing differing, inconsistent requirements that could result in the inability of utilities to deliver needed electricity from generating facilities to the local consumer, particularly with respect to linear facilities like power lines. See *Fla. Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla 1991).

While all applicable state and local requirements are considered and included in a PPSA certification, any necessary federal permits are not a part of the site certification. Most notably, the FPL Project will require a license from the United States Nuclear Regulatory Commission ("NRC"), which has exclusive jurisdiction over the subject of nuclear safety. The NRC not the Siting Board, oversees the construction, safety, and operation of all nuclear units in the United States. The NRC is currently reviewing FPL's application for Turkey Point Units 6 and 7, and the process for

³ With respect to the subject FPL Project, DEP coordinated review with: South Florida Water Management District, Florida Fish and Wildlife Conservation Commission, Florida Department of Transportation, Florida Department of Economic Opportunity, Florida Department of State, Miami-Dade County, City of Coral Gables, City of Miami, Village of Pinecrest, City of Doral, City of South Miami, City of Homestead, Town of Medley, Coconut Grove Village, and South Florida Regional Planning Council. At the conclusion of that coordinated review, DEP issued a Project Analysis Report ("PAR") recommending certification of FPL's proposed transmission lines in August of 2012, and a PAR recommending certification of the plant and non-transmission portion of the Project in March 2013, both subject to certain conditions of certification that ensure compliance with applicable state and local requirements.

obtaining the state site certification under the PPSA is separate from the NRC approval process. The ALJ found, and the Siting Board agrees, that certification under the PPSA is not dependent on prior NRC approval; moreover, neither the Siting Board nor any other state agency has any jurisdiction to regulate nuclear safety matters. (RO ¶ 16).

However, FPL voluntarily stipulated that it would not commence construction of the Davis-Miami portion of the eastern transmission line prior to the NRC approval.⁴ FPL's stipulation is part of the evidence in the certification hearing; and the Siting Board grants certification of the Project "as described in the Site Certification Application and in the evidence presented at the certification hearing." (RO at page 326). Thus, FPL cannot build its proposed Davis-Miami transmission line, or any portion of it, under this PPSA certification, unless the NRC license for the Turkey Point Units 6 and 7 is issued.

Additionally, the determination whether there is the need for the additional power in a particular market area – a predicate to the initiation of the entire power plant siting process – is wholly outside the jurisdiction of the Siting Board. It is a decision made by the Florida Public Service Commission ("PSC"). On April 11, 2008, the PSC issued its affirmative need determination for the FPL Project, which found that South Florida had the "need for electric system reliability and integrity; the need for fuel diversity and supply reliability; the need for base load generating capacity; the need for adequate electricity at a reasonable cost . . . In making its determination of need, the PSC also found that there are no renewable energy sources and technologies or conservation measures reasonably available to FPL which might mitigate the need for Units 6 and 7." (RO ¶ 6).

⁴ See Hearing Transcript Volume XIV, pages 1938-1939.

Under the PPSA, the Governor and Cabinet as the Siting Board are required to consider the criteria in section 403.509(3), Florida Statutes ("F.S."), in determining whether an application should be approved in whole, approved with modifications or conditions, or denied.⁵ To the extent more than one transmission line corridor is proper for certification under section 403.503(11), F.S., and meets the certification criteria (as is the case here), the Siting Board is to "certify the transmission line corridor that has the least adverse impacts regarding the criteria in section (3) of [403.509 F.S.], including costs." § 403.509(4)(a), Fla. Stat. (2013). If the Siting Board finds that two or more of the corridors have the least adverse impacts the Siting Board shall certify the corridor preferred by the applicant if the corridor is proper for certification under section 403.503(11). See § 403.509(4)(c), Fla. Stat. (2013).

The primary focus of the parties to this proceeding (reflected by more than seven weeks of the eight-week certification hearing) was on the location of the proposed transmission line corridors and the associated conditions of certification. The plant and non-transmission portions of the Project were not contested by any of the agency

⁵ The Siting Board 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 section 403.519, F.S., 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; and (g) serve and protect the broad interests of the public." § 403.509(3), Fla. Stat. (2013).

parties, which have expertise in the relevant issues, and only accounted for approximately three days of the hearing. In considering the proposed transmission corridors, the ALJ made extensive findings of fact regarding any impact that the transmission lines could potentially have on the local communities and the environment. These findings of fact cannot be overturned by the Siting Board under existing statutory authority and court precedent, as long as there is evidence in the record to support the ALJ's conclusion. Indeed, ample evidence supports the ALJ's findings.

With respect to the FPL Eastern Preferred Corridor that was selected by the ALJ for certification, the ALJ considered a myriad of factors. The ALJ found that aesthetics in the affected communities would not be unduly impacted given that the "transmission lines will be just one of many necessary urban features visible to the eye in the current urban landscape, such as street and traffic lights," and that "[n]umerous similar visible linear features exist in the U.S. Highway 1 multi-modal transportation corridor." (RO ¶ 375). As to property values along the Davis-Miami portion of the Eastern Preferred Corridor, the ALJ found that the new transmission lines "will have no quantifiable effect on property values of adjacent properties." (RO ¶ 454). In fact, the ALJ found that the entire contested portion of the Davis-Miami portion of the Eastern Preferred Corridor that the capability of "co-locating" the new proposed transmission lines with existing "linear facilities" such as existing transmission lines, ROW along U.S. Highway 1 and other roadways, and the Metrorail along U.S. Highway 1. (RO ¶¶ 396-399). As stated previously, the Siting Board is prohibited by law from overturning these ALJ findings of fact if they are supported by competent substantial evidence in the record.

Much consideration was also given to an alternate corridor proposed by the Village of Pinecrest and the City of Coral Gables (the “PAC”), which the ALJ ultimately rejected for multiple reasons. The ALJ found, among other things, that the PAC impacted “dense, older neighborhoods [where] residential home setbacks are shallower and the ROWs include sidewalks, parking spaces, and driveway access areas, which limit room for additional facilities. In addition, underground utilities likely exist within the ROWs.” The PAC also may have required “demolition of a residence,” and impacted single and multi-family residences and schools. (RO ¶¶ 415,416). For the reasons found in the RO, the Siting Board adopts the ALJ’s conclusions that the FPL East Preferred Corridor has the least adverse impact considering the criteria of section 403.509(3), F.S., including costs.

The local governments affected by the Davis-Miami portion of the transmission lines also argued that if the East Preferred Corridor was selected, the ALJ (and the Siting Board) should require undergrounding of the transmission lines to address aesthetic concerns. The local governments argued that their local land use and zoning regulations related to constructing the transmission lines (e.g., underground instead of overhead, tree protection, ROW maintenance, etc.) should apply to the transmission lines. The ALJ concluded as a matter of law, that the PPSA preempts a local government’s authority to regulate transmission lines that extend through several local government jurisdictions. The Siting Board adopts the ALJ’s conclusion.

The Florida Supreme Court⁶ has determined that a local government's unilateral attempt to require undergrounding at the utility's cost, would infringe upon the PSC's exclusive authority to determine when underground distribution and transmission facilities is cost-effective. Additionally, the Siting Board highlights the ALJ's finding of fact that undergrounding "would be roughly nine times more expensive than overhead construction" with a cost of approximately \$13.3 to \$18.5 million per mile versus \$1.5 to \$2.5 million per mile for overhead facilities." (RO ¶¶ 431). Beyond the additional cost, the ALJ found underground lines may not perform better than overhead lines in extreme weather events since it "could take weeks or months to repair a fault on an underground transmission line." (RO ¶¶ 302, 303).

The PSC has found that those entities requesting undergrounding should be responsible for any increased costs.⁷ Nonetheless, the Siting Board authorizes and strongly encourages FPL and the PSC to accommodate any local government's request to underground transmission lines with respect to this project if that local government is willing to bear the financial responsibility of the increased costs in any legally appropriate manner acceptable to the parties.

With respect to selection of a western corridor, the ALJ considered potential impacts to wetlands, wildlife, the Everglades National Park, the Pennsuco Wetlands,

⁶ See *Fla. Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla. 1991)(ruling that the PSC's regulatory authority to determine when underground distribution and transmission facilities is cost-effective could not be infringed by local governments even when they have home rule authority); and RO ¶¶ 848-850.

⁷ See *In re: Petition by City of Parker*, PSC-003-0598-DS-EU (May 12, 2003); and RO ¶¶ 848-850.

industrial property uses (such as rock mining), other private property, and the Comprehensive Everglades Restoration Plan (“CERP”). Given these considerations, the ALJ found that the FPL West Preferred Corridor and West Consensus Corridor⁸ were “roughly equivalent and both represent, on balance, the corridors with the least adverse impacts . . .” but that the West Consensus Corridor has slightly fewer impacts to natural resources. (RO ¶ 721).

The West Consensus Corridor is wide enough to allow FPL to further minimize potential impacts by placing transmission facilities on lands owned by lime rock mining interests, east of the L-31N canal outside Everglades National Park. In fact, the ALJ found the West Consensus “includes enough real estate east of the L-31N canal to potentially accommodate the full ROW where that proves to be a practical option for FPL and the rock mining companies.” (RO ¶¶ 506, 534).

The Siting Board in this Final Order, directs FPL, the rock mining companies, and SFWMD to pursue the option of fully accommodating the ROW to the east of the L-31N canal to avoid siting any transmission lines in Everglades National Park, consistent with the additional condition of certification included in this Final Order.

Accordingly, the Siting Board adopts the ALJ’s conclusion to certify the West Consensus Corridor, with the FPL West Preferred Corridor as the second choice if a ROW within the West Consensus Corridor cannot be secured in a timely manner and at a reasonable cost.

Therefore, the Siting Board adopts all the ALJ’s recommendations including that:

⁸ Also known as “West Consensus Corridor/MDLPA No. 2.”

- A. The Siting Board grant final certification to FPL under the PPSA for the Project as described in the Site Certification Application and in the evidence presented at the certification hearing, and subject to the proposed Conditions of Certification.⁹
- B. The Siting Board certify FPL's location, construction, and operation of Turkey Point Units 6 and 7 (2,200 MW nuclear generating facility), and supporting facilities on a site within FPL's existing Turkey Point plant property, and other off-site associated linear and nonlinear facilities.
- C. The Siting Board certify the following transmission line corridors pursuant to section 403.509:

East Preferred Corridor (Clear Sky, Turkey Point, Davis, and Miami substations: including U.S. 1/Busway right-of-way, U.S. 1/Metrorail right-of-way – South Miami, Coral Gables, Miami, Coconut Grove, Miami river crossings);

West Consensus Corridor/MDLPA No. 2 (Clear Sky substation west and north to Levee substation; Clear Sky substation west and north to

⁹ Other primary recommendations of the ALJ include that the Siting Board direct the BOT to grant to FPL three separate easements over state-owned lands, including: (1) submerged lands owned by the State of Florida located within Biscayne Bay for the installation of the laterals associated with a radial collector well system to supply back-up cooling water; (2) submerged lands owned by the State of Florida located within the Miami River for the installation of a subaqueous 230-kV electrical transmission line; and (3) an approximate four-acre parcel of state-owned uplands along the western certified corridor to allow the construction of a 230-kV electrical transmission line. Also the Siting Board grants FPL a variance from section 24-43.1(6), Miami-Dade County Code ("MDCC"), to allow use of the on-site package sanitary treatment plant and other on-site cooling water and wastewater treatment and disposal, in lieu of connecting the Project to a public sanitary sewer line for treatment and disposal of these waters by MDC.

Pennsuco substation); and West Preferred Corridor as a back-up if an adequate right-of-way within the West Consensus Corridor/MDLPA No. 2 cannot be secured in a timely manner and at a reasonable cost.

SUMMARY OF RULINGS ON EXCEPTIONS TO THE RO¹⁰

The majority of the factual and legal issues addressed by the parties' exceptions and responses surround interpretation and application of the Siting Board's authority and jurisdiction under the PPSA. See § 403.501, *et. seq.*, Fla. Stat. A main issue is whether and to what extent the PPSA preempts a local government's authority to regulate transmission lines that extend through several local government jurisdictions. Under this main issue, the local governments contend that certain of their local nonprocedural requirements (e.g., local land use and zoning regulations) should apply to the transmission lines. These include requirements related to constructing the transmission lines underground instead of overhead; costs of undergrounding; aesthetics; tree protection; ROW maintenance; and wetlands and wildlife impacts.

The local governments point to the PPSA criteria in section 403.509(3)(b) and (c), F.S., requiring the Siting Board to consider whether and the extent to which the electrical power plant, including the proposed transmission lines, will "[c]omply with applicable nonprocedural requirements of agencies" and "[b]e consistent with applicable local government comprehensive plans and land development regulations," as well as the PPSA definition of "nonprocedural requirements of agencies." The Final Order adopts the ALJ's conclusion that demonstration of compliance with these regulations is

¹⁰ This summary is meant for the convenience of the reader and not as a substitute for the rulings in this Final Order, which are controlling.

not required for electrical transmission lines because local government land use plans and zoning ordinances are not “applicable” nonprocedural requirements for those facilities. The ALJ properly concluded that the Legislature enacted the PPSA to empower the Siting Board to decide on a “state position with respect to each proposed [power plant] site and its associated facilities.” (RO ¶ 822). The PPSA clearly and unambiguously states the Legislature’s intent that the PPSA’s provisions preempt any provision of law that attempts to regulate and certify power plants and associated facilities.

The local governments contend that the PPSA includes the requirement for local government review for land use and zoning impacts throughout the statute. See § 403.50665, Fla. Stat. The Final Order adopts the ALJ’s conclusion that the PPSA excludes certain facilities, including electrical transmission lines, from those facilities that the Siting Board will consider for purposes of applying land use and zoning requirements. The PPSA excludes from consideration those facilities that are not defined as “development” under chapters 163 and 380, F.S., and thus are otherwise excluded from regulation by local land use plans and zoning requirements. § 403.50665(1), (2)(a), Fla. Stat. (“The applicant shall include in the application a statement on the consistency of the site and any associated facilities that constitute a ‘development’ as defined in s. 380.04, with existing land use plans and zoning ordinances . . . ; “each local government shall file a determination . . . on the consistency of the site, and any associated facilities that are not exempt from the requirements of land use plans and zoning ordinances under chapter 163 and s. 380.04(3) . . .”).

One or more of the local governments also assert that their undergrounding requirement is not preempted by the PSC's jurisdiction to regulate and supervise public utilities with respect to rates and service. The Final Order adopts the ALJ's reasoning and reliance on longstanding precedent, where Florida courts and the PSC concluded that local ordinances encroaching upon the exclusive and superior jurisdiction of the PSC over electric services are invalid and unenforceable. (RO ¶ 821).

One or more local governments assert that the PSC's April 2008 need determination is a rebuttable presumption and not a binding determination. As such these local governments argue that the ALJ should have reviewed and updated the need determination based on current facts and circumstances. The Final Order adopts the ALJ's conclusion that the PPSA and relevant case law holds the PSC's need determination as final agency action that is binding on all future hearings and parties. (RO ¶¶ 6, 795). The Siting Board, however, is not required to grant the proposed site certification simply because the PSC issued a determination of need. The Siting Board must utilize the PSC's need determination as part of a balancing of the public's need for the electrical power plant with its impact on the public and environment.

One or more local governments contend that the federal NRC proceeding needs to be completed prior to the issuance of state site certification under the PPSA. The local governments also argue that the ALJ's contrary conclusion in paragraph 794 of the RO is "inconsistent with FPL's representations that they would not proceed without NRC approval." The Final Order adopts the ALJ's conclusions that, under the PPSA, the Florida Legislature did not require that the federal NRC approval process be completed prior to issuance of the state certification.

One or more local governments contend that the ALJ's adoption of FPL's corridor selection methodology and criteria used for comparing corridors constitutes "illegal" or "improper rulemaking." The Final Order concludes that this issue was not properly raised before the ALJ. The ALJ did not find that FPL's methodology or criteria is an unadopted rule that must be followed for all certification proceedings. In addition, the local government parties' methodologies for selecting alternate corridors were not rejected as inconsistent with FPL's chosen methodology.

One or more local governments contend in their exceptions that certain findings of fact are infused with policy determinations, determinable only by the Siting Board and therefore not proper subjects for the ALJ to address in the RO. For example, the City of Miami contends that "[d]eterminations as to whether a project comports with the public interest are not determinations for a hearing officer [ALJ] to make. It is a policy judgment for the Siting Board under section 403.509(3)." The PPSA vests "extensive discretion in the Siting Board." *Fla. Power & Light, Co. v. State*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997). Notwithstanding the significant discretion vested in the Siting Board, however, the local governments' exceptions misunderstand the role of the ALJ in a proceeding under the PPSA and Chapter 120, F.S., the Florida Administrative Procedure Act (APA). The ALJ is required to issue the RO with findings of facts, conclusions of law, and a recommended disposition. See § 120.57(1)(k), Fla. Stat. ("The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition . . ."); and § 403.5065(2), Fla. Stat. ("The administrative law

judge shall have all powers and duties granted to administrative law judges by chapter 120 and by the laws and rules of the department.”)

One or more local governments assert that the ALJ, and/or the PPSA process, did not afford them due process to participate fully in the PPSA proceeding, and that the PPSA is unconstitutional. The Final Order adopts the ALJ’s conclusion that the PPSA proceeding is governed both by time periods in the PPSA and time periods in the APA. The Final Order acknowledges that the procedural conduct of the certification hearing is within the ALJ’s discretion. In addition, neither the ALJ nor the Siting Board have authority to adjudicate constitutional claims.

The City of Miami argues that it was prejudiced by the ALJ’s failure to grant it a “consistency determination” under section 403.508(1), F.S. The Final Order adopts the ALJ’s conclusion that electrical transmission lines are exempted by Florida law from regulation under local land use plans and zoning ordinances. Under section 403.508, F.S., “[t]he sole issue for determination at the land use hearing shall be whether or not the proposed site or nonexempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances.” (Emphasis added). Thus, a “consistency determination” in a separate land use hearing was properly denied.

One or more local governments assert that the Siting Board’s final order should incorporate “commitments and stipulations.” The Final Order concludes that all legally relevant commitments and stipulations are addressed by the RO and its attachments.

One or more local governments contend that FPL has failed to show that the “no practicable alternative” of section 337.401(b), F.S. was met with regard to placing the Davis-Miami 230-kV transmission line along US-1, a state highway. The Final Order

adopts the ALJ's conclusion that the "no practicable alternative" applies only to "limited access facilities," and that US-1 is not a limited access facility.

Miami contends that the BOT should not grant to FPL certain upland and sovereign submerged lands easements. The Final Order adopts the ALJ's conclusion that the competent substantial record evidence shows that the easement requests meet applicable BOT criteria.

PROCEDURAL HISTORY AND POST-HEARING FILINGS

FPL filed its Site Certification Application ("SCA") on June 30, 2009, with the Department. On September 13, 2011, the Department found the plant and non-transmission portions of the application complete. On August 7, 2012, the Department issued a Project Analysis Report ("PAR") on the transmission line portion of the project, recommending certification of FPL's proposed transmission lines, subject to conditions of certification. A PAR was issued on March 4, 2013, recommending certification of the plant and non-transmission portion of the Project, subject to conditions of certification.

In accordance with Section 403.509(6), F.S., FPL also requested that the Siting Board direct the BOT to issue a public easement on sovereign submerged lands in the Biscayne Bay Aquatic Preserve for a series of radial collector well laterals beneath the bottom of Biscayne Bay, a public easement for a subaqueous transmission line crossing of the Miami River, and an easement over an approximately four-acre upland easement in the western transmission corridors.

The PSC, on April 11, 2008, issued its affirmative need determination for the Project in Final Order No. PSC-08-0237-FOF-EI. The Order was not appealed and is now final. In the Order, the PSC found that there is a need for the Project taking into

account the need for electric system reliability and integrity; the need for fuel diversity and supply reliability; the need for base load generating capacity; the need for adequate electricity at a reasonable cost; and whether the Project is the most cost-effective alternative available. In making its determination of need, the PSC also found that there are no renewable energy sources and technologies or conservation measures reasonably available to FPL which might mitigate the need for Units 6 and 7.

DOAH Proceeding

When filing its application, FPL exercised its option under Section 403.5064(1)(b), F.S., to allow the filing of alternate transmission line corridors. Pinecrest and Coral Gables jointly filed a notice of an alternate 21.35-mile corridor to FPL's proposed eastern transmission line corridor, and the MDLPA and the NPCA filed alternate corridors for FPL's proposed western transmission lines. MDLPA later filed a notice of two additional alternate corridors for FPL's proposed western transmission lines. Together with the transmission line corridors proposed by FPL, the alternate corridors proposed by Coral Gables/Pinecrest, MDLPA, and NPCA are "corridors proper for certification" as that term is used in Sections 403.503(11) and 403.522(10), F.S. (RO at page 7). The Department issued Supplemental PARs on the alternate transmission line corridors, including proposed conditions of certification.

Under Section 403.50665(2), F.S., MDC issued its "Determination Regarding Land Use and Zoning Consistency of Proposed Turkey Point Units 6 & 7 and Associated Facilities." The determination was publicly noticed, however, no person challenged the determination within the specified time period.

All notices required by law were timely published by FPL, the Department, and the proponents of alternate corridors in accordance with Section 403.5115, F.S., and Florida Administrative Code Rule 62-17.281. All direct written notices required by law were timely mailed in accordance with Section 403.5115, F.S. All statutory precedents to the certification hearing in this proceeding were completed.

Prior to, during, and after the certification hearing, FPL and several agencies and parties entered into stipulations that resolved certain issues between those parties, and in most cases, agreed to various conditions of certification. FPL entered into bilateral stipulations with the following agencies and/or parties: the Department, Department of Economic Opportunity, DOT, FWC, SFWMD, SFRPC, Village of Palmetto Bay, MDC, MDX, Coral Gables, City of Homestead, City of Florida City, Miami, and MDLPA. See FPL Ex. 20.

The certification hearing was held over several weeks in July through October 2013. In addition, under Section 403.508(4)(b), F.S., public testimony and comment were also received during the hearing. Under a stipulation with the MDLPA, FPL sought certification of the "West Consensus Corridor" as its preferred western corridor -- a corridor that combines portions of FPL's West Preferred Corridor with portions of one of the alternate corridors proposed by the MDLPA. In addition, FPL withdrew its request to certify an alternate western transmission line corridor -- the West Secondary Corridor. The primary focus of the parties to this certification proceeding was on the location of the proposed transmission line corridors and conditions of certification, except for Miami, which opposed all aspects of the Project,

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 and the ALJ subsequently issued the RO on December 5, 2013.

Post-hearing proceeding

The RO submitted by the ALJ on December 5, 2013, indicates that copies were served on counsel for all parties. A copy of the RO is attached hereto as Exhibit A.

Miami filed on December 9, 2013, a Motion for Extension of Time to File Exceptions to the Recommended Order ("Motion"). The Motion was denied without prejudice, on December 13, 2013, for failure to comply with the requirement to consult with all other parties of record. Coral Gables, MDC, Pinecrest, South Miami, and NPCA ("the Moving Parties"), filed on December 12, 2013, a Joint Motion for Extension of Time to File Exceptions to the Recommended Order ("Joint Motion"). On December 17, 2013, FPL filed its "Response to Joint Motion for Extension of Time," stating that it did not object to the extension, if the response time was also extended. FPL also represented that as the applicant, it waived the Section 403.509, F.S., 60-day statutory deadline for final agency action by the Siting Board. The Joint Motion was granted on December 19, 2013, giving the parties until January 6, 2014, to file Exceptions to the Recommended Order; and until January 27, 2014, to file responses to Exceptions.

On January 6, 2014, FPL and DEP filed Joint Exceptions; MDC and NPCA filed Joint Exceptions; Coral Gables and Pinecrest filed Joint Exceptions; Miami filed Exceptions; and SFWMD filed Exceptions. South Miami filed its Exceptions on January

7, 2014. South Miami's Exceptions are hereby accepted as timely filed.¹¹ On January 27, 2014, the parties filed responses to Exceptions, as follows: FPL filed Responses to the Exceptions of All Parties; DEP filed Responses to Miami, South Miami, Coral Gables/Pinecrest, MDC/NPCA Exceptions; Miami filed Responses to DEP/FPL, Coral Gables/Pinecrest, MDC/NPCA, SFWMD Exceptions; South Miami filed Responses to Miami's Exceptions; Coral Gables/Pinecrest filed Responses to Miami's Exceptions; and Limonar filed Responses to MDC/NPCA Exceptions, and filed a separate Joinder in FPL's Responses to Exceptions of All Parties. On February 21, 2014, FPL as the applicant, again waived the deadline until May 20, 2014, for final agency action by the Siting Board.

Unauthorized filings

On March 10, 2014, Coral Gables filed a "Notice of Pending Civil Suit in Miami-Dade Circuit Court for Declaratory and Injunctive Relief Against Florida Power & Light Pursuant To Its Franchise Agreement with the City of Coral Gables;" and FPL filed a "Response to Notice of Filing Notice of Pending Civil Suit," on March 18, 2014. On April 11, 2014, Coral Gables filed a "Motion to Stay or Continue Siting Board Hearing on Florida Power & Light Co. Eastern Transmission Corridor." FPL and DEP filed separate responses to Coral Gables' motion on April 18, 2014. Some of these filings also contain information and have attachments that are not part of the evidentiary record in this certification proceeding.

¹¹ South Miami inadvertently filed its Exceptions on January 6, 2014, with DOAH; and followed up on January 7, 2014, by filing with the Department's Agency Clerk. See Fla. Admin. Code R. 62-110.106 and *Hamilton County v. Dep't of Env'tl. Regulation*, 587 So. 2d 1378 (Fla. 1st DCA 1991).

Under Section 120.57(1)(l), F.S., the Siting Board's review of a recommended order and hearing record is in the nature of an appellate review. Therefore, any attempts to supplement the hearing record with extra-record information is inappropriate. *See, e.g., Agency for Health Care Admin. v. Orlando Reg'l Healthcare Sys., Inc.*, 617 So. 2d 385, 389 (Fla. 1st DCA 1993)(stating that it is a basic tenet of the appellate process that an appeal is based only on evidence presented to the lower tribunal); *Pedroni v. Pedroni*, 788 So. 2d 1138, 1139 n. 1 (Fla. 5th DCA 2001)(stating that where documents not part of the record are attached to an appellate brief, they will not be considered by the appellate court); *see also Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025 (Fla. 1st DCA 1997)(State Siting Board is administrative agency bound by the Administrative Procedure Act, chapter 120, Florida Statutes).

Florida law only authorizes the filing of written exceptions to a DOAH recommended order and responses to exceptions. *See* § 120.57(1)(k), Fla. Stat. (2013); Fla. Admin. Code R. 28-106.217. Coral Gables' Motion to Stay does not cite any authority for the motion and attempts to supplement the same arguments made in its exceptions. The pleadings filed after the responses to exceptions are unauthorized and will not be considered in the preparation of this Final Order.

To the extent that it is necessary for the Siting Board to provide a ruling on these filings, they are stricken as: (1) unauthorized by any statute or rule, and (2) improper extra-record information. To the extent it is necessary for the Siting Board to rule on Coral Gables' Motion To Stay, it is denied as: (1) unauthorized by any statute or rule, and (2) an improper attempt to supplement already filed exceptions.

This matter is now before the Governor and Cabinet, sitting as the Siting Board, for final agency action under the PPSA, Sections 403.501 *et seq.*, F.S.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Siting Board enter a Final Order granting final certification to FPL under the PPSA for the Project as described in the Site Certification Application and in the evidence presented at the certification hearing, and subject to the proposed Conditions of Certification attached to the RO. (RO pages 326-328). The ALJ found that FPL met its burden of proving entitlement to final certification by providing reasonable assurance that construction and operation of the Project will comply with the provisions of the PPSA. (RO ¶¶ 31, 69, 116, 127, 139, 162-164, 171, 183, 233, 248-249, 319-320, 326, 336, 361, 479, 490, 584, , 586, 588, 609-611, 646, 651, 677, 721-722, 797-799). The ALJ concluded that the Project met the PPSA criteria for certification subject to the Conditions of Certification in Attachments 1 and 2 to the RO. (RO ¶¶ 797-799 and page 326).

Plant and Non-Transmission Line Portion

The ALJ found that, based on the evidence presented at the hearing, FPL demonstrated that the plant and non-transmission line portion of the Project meets the criteria for certification set forth in Section 403.509(3), F.S. (RO ¶ 800). With regard to satisfying the operational safeguards criteria in Section 403.509(3)(a), F.S., the ALJ found the following: that the radial collector wells will use an established design and their use will be limited by conditions of certification in order to protect the resources of Biscayne Bay (RO ¶¶ 50-55, 801); that the cooling towers will utilize proven technology to limit air emissions to the most stringent levels (RO ¶¶ 126, 801); that Project

roadways will be designed to meet local and state standards, and will be removed following construction of the Project (RO ¶¶ 144-152, 801); that stormwater associated with the Project will be treated and routed to the onsite wastewater treatment facility or to appropriate treatment basins or facilities, thereby protecting local waters (RO ¶¶ 112-114, 801); that the use of reclaimed water as the primary source of cooling tower makeup water will meet Department standards to protect the public, while avoiding the need to use other, more valuable sources of water for cooling (RO ¶¶ 41-49, 801). The ALJ further found the following: that Project wastewaters will be disposed via underground injection wells similar to ones used elsewhere in Florida or to the existing industrial wastewater treatment system (RO ¶¶ 90-91, 95-108, 801); that the Project's sanitary wastewater treatment facility will replace other existing sanitary treatment facilities and eliminate the existing disposal of sanitary wastewaters in the surficial aquifer (RO ¶¶ 117-121, 801); that FPL's wetland mitigation plan can be implemented, assuring the protection of the public welfare in preserving wetland functions in the state (RO ¶¶ 170-173, 801); and that wildlife protection measures will be implemented in the design of the Project, including Project roadways, to minimize impacts to native wildlife species (RO ¶¶ 177-182, 801).

The ALJ concluded that in accordance with Section 403.509(3)(b), F.S., FPL provided reasonable assurance that the location, construction, operation, and maintenance of the plant and non-transmission line portion of the Project will comply with all applicable non-procedural requirements of the Department, SFWMD, FWC, DOT, DHR, DACS, MDC (with the exception of the variance noted below), and the City of Homestead. (RO ¶ 803). The plant and non-transmission line portion of the Project

was found to be consistent with the Comprehensive Everglades Restoration Plan ("CERP"), and in compliance with all applicable non-procedural requirements of the Department and other agencies. (RO ¶¶ 43, 49, 55, 63, 114, 119, 121, 135, 138, 148, 206, 210, 225, 237, 243, 803-806, 808).

The ALJ concluded that FPL should be granted a variance from section 24-43.1(6), Miami-Dade County Code, to allow use of the on-site package sanitary treatment plant and other on-site cooling water and wastewater treatment and disposal in lieu of connecting the Project to a public sanitary sewer line for treatment and disposal of these wastewaters by MDC. (RO ¶¶ 119, 807). He further concluded that granting the variance will not be detrimental to the public health, welfare, and safety; will not create a nuisance; and will not materially increase the levels of pollution in MDC. (RO ¶ 807).

With regard to the criteria in Section 403.509(3)(c), F.S., the ALJ found the following: that FPL provided reasonable assurance that the plant and non-transmission line portion of the Project is consistent with the CDMP, Miami-Dade County's Land Development Regulations ("LDRs"), and the City of Homestead's comprehensive plan and code (RO ¶¶ 164, 810); that FPL provided reasonable assurance that the plant and non-transmission line portion of the Project is consistent with the SFRPC Strategic Regional Policy Plan and the State Comprehensive Plan. (RO ¶¶ 164, 811).

The ALJ found that in accordance with Section 403.509(3)(d), F.S., the PSC determined that there is a need for the Project (RO ¶¶ 6, 249, 812); and that the evidence presented demonstrates that the Project will meet that need in an orderly, timely, and reliable fashion. (RO ¶¶ 31, 248, 249, 812).

With regard to effecting a reasonable balance between the need for the facility and its impacts, under Section 403.509(3)(e), F.S., the ALJ found the following: that the plant and non-transmission line portion of the Project will not cause or contribute to any unmitigated adverse environmental impacts to air, water, and natural resources or local community facilities (RO ¶¶ 170, 217, 249, 813); that the Project will provide extensive public benefits, including significant use of reclaimed water, and substantial economic and fiscal benefits. (RO ¶¶ 45, 244-245, 248, 813).

The ALJ concluded that in accordance with Section 403.509(3)(f), F.S., the plant and non-transmission line portion of 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 ¶¶ 47, 74, 180, 193, 206, 210, 225, 226, 814). The ALJ concluded that in accordance with Section 403.509(3)(g), F.S., certification of the Project will serve and protect the broad interests of the public. (RO ¶¶ 248, 249, 815).

Transmission Lines

The ALJ noted that in determining whether a PPSA application should be approved in whole, approved with modifications or conditions, or denied, the Siting Board must consider, among other things, whether, and the extent to which, the location, construction, operation, and maintenance of the electrical power plant will: (1) comply with applicable non-procedural requirements of agencies, and (2) be consistent with applicable local government comprehensive plans and LDRs. See § 403.509(3)(b) and (c), Fla. Stat. (2013). (RO ¶ 818). The ALJ concluded, however, that under the PPSA there are no local government comprehensive plans or LDRs that are

“applicable” to the proposed transmission lines and pipelines in this case. See §§ 403.509(3)(b), 403.509(3)(c), Fla. Stat. (2013). (RO ¶¶ 820-832).

The ALJ concluded that Florida courts have determined that local government comprehensive plans and LDRs do not apply to regulate the location and siting of linear facilities such as electrical transmission lines and pipelines. *Fla. Power Corp. v. Seminole County*, 579 So. 2d 105, 107 (Fla. 1991). (RO ¶¶ 820, 824). The PSC and Siting Board’s authority to regulate FPL’s proposed electrical transmission lines and corridors, including the access roads to facilitate construction and maintenance of such lines and the pipelines for reclaimed water and potable water, preempts the authority of MDC and other local governments to regulate them. (RO ¶¶ 821-823). The ALJ also concluded that MDC and other local governments lack any authority to regulate same under Chapter 163, Florida Statutes, or under their independent home rule authority. (RO ¶¶ 824-832).

MDC has a zoning overlay district known as the East Everglades Area of Critical Environmental Concern (“EEACEC”), which is approximately 242 square miles and contiguous with the Everglades National Park. The ALJ concluded that the EEACEC is a non-procedural requirement that is not applicable to transmission lines within the meaning of chapter 403 for the reasons given above. (RO ¶ 833-834). Nonetheless, the ALJ found that FPL, demonstrated that, notwithstanding their inapplicability, the location, construction, operation, and maintenance of the western transmission lines would not conflict with MDC’s zoning regulations governing the EEACEC. (RO ¶¶ 645-646, 835). Specifically, the ALJ found the following: that existing flows and water quality will be maintained and there will not be an adverse impact on natural flow of

water or a change in water quality or quantity in the adjacent Everglades National Park (RO ¶¶ 645-646); that the proposed transmission lines would not conflict with MDC's Aesthetics Master Plan and would not cause visual clutter or blight (RO ¶ 835); and that FPL has voluntarily stipulated to comply with certain local requirements as conditions of certification found in Attachment 1 to the RO. The ALJ concluded, however, that FPL's stipulation does not change the conclusion of law that there are no local government comprehensive plans, zoning regulations, or LDRs, including zoning regulations, applicable to transmission lines (RO ¶¶ 835-836).

The ALJ found the following with regard to transmission line siting: that it involves identifying a route for the transmission lines; selecting a corridor that encompasses that route; and ultimately acquiring the right-of-way ("ROW") within the corridor in which the transmission lines will be built, operated, and maintained (RO ¶¶ 264-267). The ALJ found that a corridor must be wide enough to accommodate a ROW that in turn is wide enough for the planned transmission facilities; and once the ROW is acquired, the corridor boundaries narrow to include only the ROW (RO ¶¶ 266 and 840). The ALJ found that there are a total of two corridors proper for certification in the east study area and five corridors proper for certification in the west study area, including the alternate transmission line corridors proposed by other parties. (RO ¶¶ 268, 841, 844).

To the extent that more than one transmission line corridor is proper for certification and meets the certification criteria, the ALJ concluded that the Siting Board shall certify the transmission line corridor that has the least adverse impacts regarding the criteria in Section 403.509(3), F.S., including costs. See § 403.509(4)(a), Fla. Stat. (2013). The ALJ further concluded that if the Siting Board finds that two or more of the

corridors that comply with subsection (3) have the least adverse impacts regarding the criteria in subsection (3), including costs, and that the corridors are substantially equal in adverse impacts regarding the criteria in subsection (3), including costs, the Siting Board shall certify the corridor preferred by the applicant. (RO ¶¶ 838, 856).

FPL's Siting and Corridor Selection Process

The ALJ found the following with regard to FPL's corridor selection process: that FPL utilized a multidisciplinary transmission line siting team consisting of experts in land use, engineering, the environment, and public outreach to select its preferred corridors for both the eastern and western transmission lines (RO ¶ 269); that the corridor selection process used by FPL was reasonable, was consistent with the methodology, guidelines, and criteria used in prior corridor projects throughout the State, and therefore was appropriate for use in this proceeding (RO ¶¶ 269-290); and that the fact that population data and/or density information, house-by-house or parcel-by-parcel, were not specifically used by FPL, did not detract from the validity of the selection process (RO ¶ 269).

ROW Selection and Delineation

The ALJ found that once a corridor has been selected for a transmission line and certified, FPL establishes a ROW through multiple means, including (1) purchasing easement rights over the affected parcels; (2) purchasing the property in fee simple if necessary; and/or (3) acquiring longitudinal use permits and licenses for public lands, where transmission lines cross or are longitudinally located within public properties or public ROWs. (RO ¶ 291). FPL cannot construct transmission lines on ROWs for which it has not acquired the necessary property rights, and a combination of these three

methods can take place over the length of a transmission line in order to establish a ROW for that line. (RO ¶¶ 291-292). Unless the transmission line is located on available public ROW, based on a review of recently completed projects, the ALJ found that it costs FPL approximately four times the market value of land to actually acquire and assemble a ROW within a certified corridor. This is called the “acquisition factor.” (RO ¶ 293).

With regard to post-certification activities, the ALJ found the following: that FPL will be required to submit its proposed transmission line ROW alignments to the Department, with copies to DOT, SFWMD, SFRPC, MDC, and the affected municipalities delineating the proposed ROW for the areas within each agency’s jurisdiction; that each agency will then have the opportunity to notify the Department of any apparent conflict with the requirements of the Conditions of Certification (RO ¶ 294); that the final transmission line alignment will take into account approved development to be constructed in the area and FPL is willing to comply with a condition of certification to accommodate approved but not yet constructed development in the design of the transmission line (RO ¶ 295). The ALJ also found that selection of a ROW within a corridor and optimal placement of structures within the ROW can also avoid potential obstructions and minimize wetland impacts. (RO ¶ 296).

Eastern Transmission Lines

With regard to the FPL East Preferred Corridor and Pinecrest/Coral Gables Alternate Corridor (“PAC”), the ALJ made the following findings: that they are corridors proper for certification under Section 403.503(11), F.S. (RO ¶¶ 383, 384, 841); that the proposed eastern transmission lines in the FPL East Preferred Corridor or the PAC

meet the criteria for certification set forth in Section 403.509(3), F.S. (RO ¶¶ 384, 842, 858-878); and that the FPL East Preferred Corridor has the least adverse impact considering the criteria of subsection (3), including costs (RO ¶¶ 469-490, 843, 869, 872, 877, 879).

The ALJ concluded that, as previously discussed, the municipalities cannot require FPL to underground the proposed Davis-Miami transmission line based upon application of their local comprehensive plans or LDRs or their independent home rule authority. (RO ¶¶ 848). With regard to undergrounding, the ALJ found the following: that undergrounding of the Davis-Miami transmission line would impose far greater costs on FPL and its ratepayers throughout Florida than the planned overhead construction of the line (RO ¶¶ 431, 850); that the incremental costs of undergrounding transmission lines, where overhead transmission lines are feasible but undergrounding has been requested for aesthetic reasons, is typically absorbed by the requesting entity (RO ¶¶ 304, 850-851); and that in this proceeding no local government has agreed to undertake this financial responsibility (RO ¶ 851).

With regard to the criteria in Section 403.509(3)(a) and (b), F.S., the ALJ concluded the following: that FPL provided reasonable assurances that the location, construction, operation, and maintenance of the proposed transmission lines¹² – in compliance with the attached conditions of certification – in any of the corridors proper for certification will:

¹² The Order will hereafter refer to “transmission line siting” to include “location, construction, operation, and maintenance.”

1. Comply with the agreed-upon conditions of certification and will have sufficient safeguards to protect the public welfare (RO ¶¶ 297-304, 339, 342, 348-350, 353, 566, 858);
2. Comply with the non-procedural requirements of state agencies and local governments (RO ¶¶ 318-357, 459-468, 566, 582-670, 859-863);
3. Not be inconsistent with the CERP and will be consistent and in compliance with all applicable non-procedural requirements related to surface and groundwater quality, including applicable surface water and groundwater quality standards, storage and treatment of stormwater, flood protection, water conservation, wetland protection and mitigation,
4. Not be inconsistent with disposal of construction debris, air quality, air space, EMF, open burning, noise, lighting, protection of historic and archaeological resources, maintenance of vegetation in proximity to electric facilities, and traffic impacts.
5. Not be inconsistent with the protection of fish and wildlife, including avian and threatened and endangered species, protection of native trees and plants (including listed plants and their preservation), protection of natural forest communities (RO ¶¶ 318-357, 459-468, 566, 582-670, 860-863).

The ALJ found that the PSC determined that the Project was required for the protection of the health and safety of the public, and was the most cost-effective alternative for providing needed electric generating capacity to FPL's customers (RO ¶¶ 6, 248-249, 795, 862). Therefore, the ALJ concluded that the Project is in the public interest, and there is a "public necessity" for the Project as that term is defined in Rule

18-18.004(22), F.A.C., such that the Project benefits the public within the meaning of applicable Board of Trustees rules (RO ¶ 862).

The ALJ noted that some parties argued that the proposed Davis-Miami transmission line violates local government requirements because it uses higher or wider poles than currently exist in those local governments today. The ALJ found, however, that the evidence established that the proposed transmission line pole heights and widths are in accordance with FPL's customary practice for transmission lines within its service territory, including MDC, and will be consistent with transmission lines currently in existence in other parts of its service area (RO ¶¶ 369-374, 864).

The ALJ found that in accordance with Section 403.509(3)(c), F.S., zoning "unusual use" approvals have been obtained from MDC for construction of the Clear Sky substation (as part of the current zoning approval for the Site) and expansion of the Levee substation (RO ¶¶ 368, 492, 867). For the reasons set forth above, there are no local government comprehensive plans and LDRs applicable to the transmission lines, other than those with which FPL may have agreed to comply with in the Conditions of Certification (RO ¶ 866).

With regard to the criteria in Section 403.509(3)(d), F.S., and as determined by the PSC, FPL provided reasonable assurances that the location, construction, operation, and maintenance of the transmission lines in any of the corridors proper for certification will help the Project meet the electrical needs of the state in an orderly, reliable, and timely fashion (RO ¶¶ 6, 31, 248, 249, 868). The ALJ concluded that FPL provided reasonable assurances that the location, construction, operation, and maintenance of the Davis-Miami transmission line in the FPL East Preferred Corridor

will better meet the electrical needs of the state by allowing for more orderly and less expensive construction of the transmission line with few constructability issues (RO ¶ 869).

Regarding the criteria in Section 403.509(3)(e), F.S., the ALJ made the following findings: that FPL provided reasonable assurances that the transmission line siting as proposed in any of the corridors proper for certification, effects a reasonable balance between the need for the facilities as established pursuant to Section 403.519, F.S., and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from construction and operation of the facility (RO ¶¶ 249, 813, 871); specifically as to the FPL East Preferred Corridor, the ALJ found it balanced the statutory factors more effectively than the PAC; and that while the environmental impacts of the corridors are virtually identical, the engineering constraints and costs associated with the PAC make location, construction, operation, and maintenance in the FPL East Preferred Corridor a more reasonable accommodation of the need for the facilities (RO ¶¶ 427-428, 474-479, 490, 872).

With regard to the criteria in Section 403.509(3)(f), F.S., the ALJ found the following: that FPL provided reasonable assurances that the proposed transmission lines can be constructed, operated, and maintained in any of the corridors proper for certification so as to 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 ¶¶ 349-350, 662, 781, 874); that there was no credible evidence of risk to public health from transmission lines (RO ¶¶ 349-350, 874); that collocation of the transmission line corridors within or

adjacent to existing linear features provides the opportunity to reduce the amount of new access road construction, impacts to wildlife habitat and existing and future development patterns, and other impacts (RO ¶¶ 271, 319, 875); and that collocation of transmission lines enables construction of lines in a more timely and efficient manner, minimizes the need for new access roads, structure pads, and new clearing, and minimizes intrusions into surrounding areas (RO ¶¶ 271, 319, 875).

The ALJ made the following findings with regard to the criteria in Section 403.509(3)(g), F.S.: that FPL provided reasonable assurances that construction of the Davis-Miami transmission line in the FPL East Preferred Corridor will better serve and protect the broad interests of the public than construction in the PAC, given the fewer residences, schools, and other buildings in close proximity to the transmission line in the FPL East Preferred Corridor, the difficulty of constructing the line in the narrow ROWs along the residential roads of the PAC, and the cost of construction in the PAC compared to the FPL East Preferred Corridor. (RO ¶¶ 412-413, 415-417, 475-479, 876, 877).

Western Transmission Lines

The ALJ made the following findings with regard to the western transmission line corridors: that the FPL West Preferred, West Consensus Corridor, MDLPA No. 1, MDLPA No. 2, MDLPA No. 3, and NPCA Corridor are corridors proper for certification under Section 403.503(11), F.S. (RO ¶¶ 268, 513, 844); that the proposed western transmission lines in the FPL West Preferred Corridor, the West Consensus Corridor/MDLPA No. 2, MDLPA No. 1, MDLPA No. 3, or NPCA Corridor meet the criteria for certification in Section 403.509(3), F.S. (RO ¶¶ 679, 845, 858-878); that of

the five western corridors proper for certification, West Consensus Corridor/MDLPA No. 2 has the least adverse impact considering the criteria in subsection (3), including costs, only if a ROW within that corridor can be acquired in a timely manner and at reasonable cost; that if a ROW within the West Consensus Corridor/MDLPA No. 2 cannot be secured in a timely manner and at a reasonable cost, then the FPL West Preferred Corridor has the least adverse impact considering the criteria in subsection (3), including costs (RO ¶¶ 721, 846-847, 857, 880).

The ALJ concluded that MDC and the municipalities cannot require FPL to avoid all siting of a corridor based solely on wetland impacts or proximity of the Everglades National Park for at least two reasons (RO ¶ 852). First, as already discussed above, MDC and the municipalities cannot require FPL to avoid the Everglades National Park based upon application of their local comprehensive plans or local zoning regulations or their independent home rule authority (RO ¶ 853). The ALJ reiterated the conclusion that the Legislature has explicitly preempted these local governments' regulatory authority over the transmission lines pursuant to chapter 163, F.S., and their independent home rule authority in favor of the PSC and the Siting Board (RO ¶ 853). Second, the existence of federal or international laws governing the Everglades National Park or funding restoration plans to improve it does not outweigh other factors identified in Section 403.509(3), F.S. (RO ¶ 854).

The express language of Section 403.509(3), F.S., requires a reasonable and balanced weighing of all the statutory factors when determining which corridor has the least adverse impacts, including costs (RO ¶ 854). The fact that one corridor may require more wetland impacts than another corridor is not dispositive, since other

factors, such as land use considerations, including proximity to residences and other structures, engineering constraints, and costs must also be balanced (RO ¶ 855). The ALJ concluded that where several alternate corridors all represent the least adverse impacts, including costs, the statute requires certification of the corridor preferred by the applicant (RO ¶ 856). In this case the ALJ made the following findings: that the evidence demonstrated that on balance, including costs, the FPL West Preferred and West Consensus Corridor/MDLPA No. 2 represent the corridors with the least adverse impacts, including costs (RO ¶¶ 721, 846-847, 857, 880); that FPL recommended certification of both corridors, first utilizing the West Consensus Corridor/MDLPA No. 2 if an adequate ROW can be secured in a timely manner and at reasonable cost, and if not, utilizing the FPL West Preferred Corridor; and that since the impacts of these two corridors are equivalent, and on balance, less than the impacts associated with the other corridors, both of these corridors should be certified (RO ¶ 857).

The ALJ found that FPL provided reasonable assurances that the location, construction, operation, and maintenance of the western transmission lines in the West Consensus Corridor/MDLPA No. 2, if a ROW can be obtained in a timely manner at a reasonable cost, or the FPL West Preferred Corridor, if a ROW within the West Consensus Corridor/MDLPA No. 2 cannot be so obtained, will, (1) better meet the electrical needs of the state by allowing for more orderly, timely, and less expensive construction of the transmission line, as compared to the other western alternate corridors (RO ¶¶ 719, 721, 870); (2) have the fewest adverse impacts relative to air and water quality, fish and wildlife, water resources, and other natural resources of the state; and (3) both represent a reasonable balance between the need for the facilities as

established pursuant to Section 403.519, F.S., and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from construction and operation of the facility (RO ¶¶ 681, 711, 721, 873).

If a ROW within the West Consensus Corridor/MDLPA No. 2 can be timely obtained at a reasonable cost, the ALJ found that it would have slightly fewer impacts to natural resources than would construction in the FPL West Preferred Corridor, given its substantial lesser proximity to wetlands west of the L-31N levee and greater minimization of impacts to the Pennsuco Wetlands (RO ¶¶ 681, 711, 721, 873). Both the West Consensus Corridor/MDLPA No. 2 and FPL West Preferred Corridor lie predominantly on a seam between land uses (RO ¶¶ 704-707, 873). In addition, the West Consensus Corridor/MDLPA No. 2 is wide enough to allow FPL to further minimize potential impacts by the potential placement of facilities on lands owned by limerock mining interests (RO ¶¶ 709, 710, 873).

The ALJ concluded that FPL provided reasonable assurances that construction of the western transmission lines in either the West Consensus/MDLPA No. 2 or the FPL West Preferred Corridor will better serve and protect the broad interests of the public than construction in the MDLPA No. 1, MDLPA No. 3, or the NPCA Corridor (RO ¶¶ 721-722, 878). The ALJ also concluded that the location, construction, operation, and maintenance of the western transmission lines in the West Consensus Corridor/MDLPA No. 2 or the FPL West Preferred Corridor, effects a more reasonable balance between the need for the Project, impacts on natural resources, impacts on more developed urban areas, and costs, compared to the other western alternate corridors (RO ¶¶ 721, 873, 878).

Board of Trustees Easements

The ALJ concluded that the requested public easement over sovereignty submerged lands in the Biscayne Bay Aquatic Preserve for a series of radial collector well laterals beneath the bottom of Biscayne Bay met all applicable Board of Trustees requirements in Section 258.397, F.S., Chapters 18-18 and 18-21, F.A.C. (RO ¶¶ 11, 791, 56-61, 886). In addition, all applicable Board of Trustees requirements in Section 258.397, F.S., and Chapters 18-18 and 18-21, F.A.C., were satisfied by the requested public easement for the transmission line crossing of the Miami River within the boundaries of the Biscayne Bay Aquatic Preserve (RO ¶¶ 11, 791, 437-451, 887).

The ALJ concluded that the requested upland easement in the western corridors met all applicable Board of Trustees requirements in subsections 253.02(2)(b) and (c), F.S., and Chapter 18-2, F.A.C. (RO ¶¶ 665-670, 888).

The ALJ also concluded the following: that for purposes of the requested easements within the Biscayne Bay Aquatic Preserve for the radial collector wells and the Miami River crossing, “extreme hardship,” as used and defined in Section 258.397, F.S., and Rules 18-18.004(11) and 18-18.006(3)(b), F.A.C., is inherent in the Project because it is a “public project” and also a “public necessity.” (RO ¶ 889); that the Project is a “public project” because it is being undertaken by FPL, a public utility (RO ¶ 889); that the Project is in the public interest based on the PSC need determination, and there is a “public necessity” for the Project as that term is defined in Rule 18-18.004(22), F.A.C. (RO ¶ 889). The ALJ further concluded that Miami River crossing and proposed radial collector wells are “structures required for the installation or expansion of public utilities” and “reasonable improvement[s] for public utility expansion,” and are therefore

specifically allowed by the Act that created the Biscayne Bay Aquatic Preserve. See § 258.397, Fla. Stat. (2013). (RO ¶ 889).

In addition, the ALJ concluded that because the environmental, social, and economic benefits accruing to the public at large from the development of the Project outweigh the environmental, social, and economic costs of developing the Project, it is therefore, in the public interest, as defined in Rules 18-21.003(51) and 18-18.004(20), F.A.C. (RO ¶¶ 890-893). The ALJ finally concluded that neither the development of the Project nor any of the three requested easements will have any unacceptable adverse cumulative impact on the Biscayne Bay Aquatic Preserve or on state-owned uplands (RO ¶ 894).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), F.S., prescribes that an agency reviewing a recommended order (here the Governor and Cabinet sitting as the Siting Board) 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 Reg'l Water Supply Auth. 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). Therefore, if the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. See, e.g., *Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. V. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). In addition, an agency has no authority to make independent or supplemental findings of fact. See, e.g., *Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997); *North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

Section 120.57(1)(l), F.S., 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). The agency should not label what is essentially an ultimate factual determination as a "conclusion of law," however, 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). Deference should be accorded to an agency's interpretation of statutes and rules within its regulatory jurisdiction, and such agency interpretation should not be overturned unless "clearly erroneous." See, e.g., *Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Dep't of Env'tl. Regulation v. Goldring*, 477 So. 2d 532, 534 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. See, e.g., *Suddath Van Lines, Inc. v. Dep't of Env'tl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

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). 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.*

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. 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. Coal. of Fla., Inc. v. Broward*

County, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); see also *Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). Even when exceptions are not filed, however, 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. (2013); *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).

General Exceptions

Coral Gables/Pinecrest and South Miami's Exceptions contain "General Exceptions" to all the findings of fact and conclusions of law in the RO. Miami's Exceptions contain several general statements, such as in paragraph 7, related to its exceptions without identifying specific portions of the RO. These general or global exceptions do not comply with the requirements of Section 120.57(1)(k), F.S. Under Section 120.57(1)(k), F.S., an "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." § 120.57(1)(k), Fla. Stat. (2013).

Therefore, Coral Gables/Pinecrest and South Miami's "General Exceptions," are denied. Miami's general exception statements in paragraph 7, are denied.

Remand Request

MDC/NPCA's requests, at the end of their Exceptions to the RO, that the Siting Board remand this matter to the ALJ to revise his recommendations to address

MDC/NPCA's exceptions. Remand is only available in exceptional circumstances. See, e.g., *Henderson Signs v. Dep't of Transp.*, 397 So. 2d 769, 772 (Fla. 1st DCA 1981); *Dep't of Prof'l Regulation v. Wise*, 575 So. 2d 713 (Fla. 1st DCA 1991). If the agency head concludes that the ALJ "failed to perform" his function as a fact finder, the appropriate remedy is to remand the case back to the ALJ because the agency head cannot make findings of fact. See e.g., *Cohn v. Dep't of Prof'l Regulation*, 477 So. 2d 1039 (Fla. 3d DCA 1985). Remand may be appropriate when the agency head (here the Siting Board) concludes that additional findings of fact and related conclusions of law are critical to the issuance of a coherent final order. *Id.*

Based on the below rulings on MDC/NPCA's Exceptions and the cited case law, the remand request is denied.

Due Process

Miami Exception Nos. 71 and 72

Miami takes exception to paragraphs 790 and 792-79[3] on the basis that "the ALJ did not afford the parties due process to participate fully and meaningfully in the entire proceeding." Miami argues that the ALJ erred by not granting its motion for continuance because it did not have adequate time to prepare for hearing or conduct discovery. Miami also argues that the ALJ erred in failing to rule on its requests for a separate consistency determination hearing.

The ALJ denied the requested continuance for noncompliance with Rule 28-106.210, F.A.C., which requires motions for continuance to be filed no later than five days prior to the commencement of the hearing absent a showing of an emergency. (RO ¶ 792). The ALJ also found that Miami did not establish that it was unable to engage in

meaningful pre-hearing discovery. (RO ¶ 793). These procedural rulings by the ALJ are not conclusions of law over which the Siting Board has “substantive jurisdiction.” See § 120.57(1)(l), Fla. Stat. (2013); *Malave v. Dep’t of Health*, 881 So. 2d 682, 684 (Fla. 5th DCA 2004)(“The decision to grant or deny a continuance in an administrative proceeding is a matter in the sound discretion of the administrative law judge.”).

Miami argues that it was prejudiced by the ALJ’s failure to grant it a separate consistency determination hearing under Section 403.508(1), F.S. Miami’s alleged request for a land use and zoning consistency hearing was untimely made at the commencement of the final hearing in a document titled “Memorandum of Law Regarding Land Use and Zoning Consistency.” The ALJ found that:

Pursuant to section 403.50665(2), the County issued its “Determination Regarding Land Use and Zoning Consistency of Proposed Turkey Point Units 6 & 7 and Associated Facilities.” Following public notice, no person challenged that determination.

RO page 7.

Thus, if Miami presented such a request for a land use and zoning consistency hearing to the ALJ during the certification hearing, it was untimely. The competent substantial record evidence shows that FPL and DEP published notices on February 21, 2013, of MDC’s January 31, 2013, land use and zoning consistency determination for the Project. (See Exhibit FPL 14, Land Use Determination). Under Section 403.50665(4), F.S., substantially affected persons had 21 days from that notice to challenge the land use and zoning consistency determination. The ALJ found that no person challenged the determination. (RO page 7).

Even if it had been timely raised, Miami was not entitled to a land use and

zoning consistency hearing on FPL's proposed electrical transmission lines. Under Section 403.508, F.S., "[t]he sole issue for determination at the land use hearing shall be whether or not the proposed site or nonexempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances." (Emphasis added). The ALJ's findings and conclusions in paragraphs 358-361, 458, and 818-836, and the ruling on Coral Gables/Pinecrest Exception No. 14 below, conclude that electrical transmission lines are exempted by Florida law from regulation under local land use plans and zoning ordinances.

Therefore based on the foregoing reasons, Miami's Exception Nos. 71 and 72 are denied.

Coral Gables/Pinecrest and South Miami Exceptions at pages 3-5

Coral Gables/Pinecrest and South Miami argue that the ALJ, the DOAH rules of procedure, and the PPSA statutory procedure did not afford them due process to fully participate in the certification proceeding. Essentially, these parties argue that the certification proceeding was unfair and unconstitutional even though the statutory procedures and timelines were followed.

The ALJ found in paragraph 790 that "[t]he evidence demonstrates compliance with the procedural requirements of the PPSA." This finding is supported by competent substantial record evidence. (Mulkey, Vol. 40 at 5729-36; DEP's Exs. 3 and 5).

The Siting Board and the ALJ do not have jurisdiction to adjudicate the facial or as-applied constitutionality of a rule or statute. *See, e.g., Chrysler Corp. v. Fla. Dep't of Highway Safety & Motor Vehicles*, 720 So. 2d 563, 567-68 (Fla. 1st DCA 1998) ("The facial constitutionality of a statute cannot be decided in an administrative proceeding.");

Key Haven v. Bd. of Trustees of the Internal Improvement Trust Fund, 427 So. 2d 153, 157 (Fla. 1982). It should be noted, however, that Florida courts have found that the APA is designed to afford interested parties due process of law; and that the Siting Board's statutory certification procedure does not violate due process. *See, e.g., Machules v. Dep't of Admin.*, 523 So. 2d 1132, 1136-37 (Fla. 1998); *Fla. Sugar Cane League v. State*, 580 So. 2d 846, 851 (Fla. 1st DCA 1991).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest and South Miami's due process arguments on pages 3-5 of their Exceptions, are denied.

*Franchise Agreements*¹³

Coral Gables Exception Nos. 6.b, 20, and 48

Coral Gables¹⁴ takes exception to the RO's Preliminary Statement and to paragraphs 342, 365, 370-375, 677, 776, 864, and 865, of the RO. Coral Gables argues that the Preliminary Statement does not include the ALJ's ruling during the hearing that he would not address the merits of a circuit court action brought by Coral Gables against FPL for alleged breach of a franchise agreement. Coral Gables argues that paragraphs 342, 365, 370-375, 677, 776, 864, and 865, include findings that

¹³ This Final Order of the Siting Board, including the findings of fact and conclusions of law stated in the Final Order and the Recommended Order, shall not be construed to interpret or affect any rights Coral Gables has in its Lawsuit against FPL on the Franchise Agreement filed in the Circuit Court of the 11th Judicial Circuit, in and for Miami-Dade County. As the rulings in this section make clear, the ALJ and the Siting Board are without jurisdiction to adjudicate breach of contract claims, or to determine the appropriateness of different contractual remedies. Indeed, the Final Order, including the findings of fact and conclusions of law stated in the Final Order and Recommended Order, are not intended to be considered *res judicata* as to the City of Coral Gables' Franchise lawsuit.

¹⁴ Pinecrest did not join with Coral Gables' exception regarding the separate franchise agreement lawsuit. *See* Coral Gables/Pinecrest Exceptions at page 1.

relate only to the franchise agreement. Coral Gables further argues that the ALJ has usurped the authority of the circuit court to interpret and apply the franchise agreement thereby denying Coral Gables procedural and substantive due process.

Coral Gables filed a notice with DOAH on July 5, 2013, advising the ALJ that it had filed a declaratory action in Miami-Dade circuit court alleging FPL's breach of its franchise agreement. The ALJ ruled at the hearing, that he would not address in his RO, the issue before the circuit court, i.e., the alleged breach of the franchise agreement. (T. Vol. 11, pp. 1653-1654; T. Vol. 12, pp. 1684-1686). The RO paragraphs challenged by Coral Gables do not mention the franchise agreement or its alleged breach by FPL. Instead, the paragraphs make findings regarding whether the proposed transmission line pole heights and widths are in accordance with FPL's customary practice for transmission lines within its service territory, including MDC, and will be consistent with transmission lines currently in existence in other parts of its service area. See RO ¶¶ 342, 365, 370-375, 677, 776, 864, and 865. The findings are supported by competent substantial record evidence. (T. Vol. 2, p. 276; T. Vol. 11, p. 1531, 1571-73, 1586-87, 1592-94; FPL Ex. 6, p. W9-108 to p. W9-110, p. W9-119 to p. W9-121, p. E9-106 to p. E9-114, and p. E9-122 to p. E9-123). In addition, the challenged paragraphs address the disputed issues that Coral Gables and FPL stipulated were properly before the ALJ at the hearing. See ¶3, page 4 of 16, "*Partial Stipulation Between [FPL] and City of Coral Gables Regarding Proposed 230-kV Transmission Line to be Located within City of Coral Gables*," dated July 2, 2013 (FPL Ex. 20). Thus, Coral Gables' assertion that the paragraphs relate only to the franchise agreement is not supported by the record.

Coral Gables also argues that the ALJ has usurped the authority of the circuit court, impaired Coral Gables' contract rights and FPL's obligations, and violated the "Contracts Clause of the U.S. Constitution." It is well settled that a DOAH ALJ does not have subject matter jurisdiction to adjudicate contract claims. *See, e.g., Point Mgmt., Inc. v. Dep't of Bus. and Prof'l Regulation*, 449 So. 2d 306, 307 (Fla. 4th DCA 1984) (reflecting that DOAH exceeded its jurisdiction by reviewing and ruling on a settlement agreement, noting that "courts rather than administrative bodies construe contracts."); *Fasano v. Sch. Bd. of Palm Beach County*, 436 So. 2d 201, 202-203 (Fla. 4th DCA 1983) (reflecting that agency had no jurisdiction to administratively adjudicate contract claim); *see also Peck Plaza Condo. v. Div. of Fla. Land Sales and Condo., Dep't of Bus. Regulation*, 371 So. 2d 152 (Fla. 1st DCA 1979). It is also well settled that a DOAH ALJ does not have subject matter jurisdiction to adjudicate constitutional claims. *See Gulf Pines Mem'l Park, Inc. v. Oaklawn Mem'l Park, Inc.*, 361 So. 2d 695, 699 (Fla. 1978); *Key Haven v. Bd. of Trustees of the Internal Improvement Trust Fund*, 427 So. 2d 153 (Fla. 1982).

Coral Gables/Pinecrest, in footnote 13, of their Exception No. 20, fail to provide any citation to record evidence to support this de facto finding of fact on approvals for similar transmission lines. Coral Gables/Pinecrest renews their objection to rebuttal testimony provided by FPL's expert landscape architect regarding poles in the MDC service area and argues that any findings made in reliance on her testimony should be deleted including paragraph 375 of the RO. 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); *Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1028 (Fla. 1st DCA 1997). In addition, an agency has no authority to reweigh the evidence and make independent or supplemental findings of fact. *Id.*

Therefore, based on the foregoing reasons, Coral Gables’ exceptions to the RO’s Preliminary Statement and to paragraphs 342, 365, 370-375, 677, 776, 864, and 865, are denied.

Miami Exception No. 83

Miami takes exception to paragraphs 370 and 372 of the RO. Miami argues that the ALJ fails “to adequately address arguments and facts in the record regarding the Franchise Agreement entered into between FPL and Miami in 2010,” and that paragraphs 320 and 372 “contradict admissions of FPL’s witnesses about whether the size and type of poles FPL proposes to use in the project are what FPL customarily uses in densely populated urban areas.” Miami does not argue that the challenged paragraphs 370 and 372 are not supported by competent substantial record evidence. In fact, these findings are supported by competent substantial record evidence. (T. Vol. 11, p. 1591; T. Vol. 12, pp. 1779-1780; T. Vol. 59, pp. 8176-8177; FPL Exhibit 428). Instead, Miami argues that the Siting Board should reweigh the evidence and make findings contrary to those of the ALJ. The Siting Board, however, is not authorized to do so. See, e.g., *Wills v. Fla. Elections Comm’n*, 955 So. 2d 61, 62 (Fla. 1st DCA 2007)(Agency impermissibly reweighed the evidence and made inferences contrary to those reached by the ALJ.)

Miami also argues that the ALJ has unnecessarily and impermissibly altered the contract rights of the City of Miami under that franchise agreement.” It is well settled, however, that a DOAH ALJ does not have subject matter jurisdiction to adjudicate contract claims. *See, e.g., Point Mgmt., Inc. v. Dep’t of Bus. and Prof’l Regulation*, 449 So. 2d 306, 307 (Fla. 4th DCA 1984) (reflecting that DOAH exceeded its jurisdiction by reviewing and ruling on a settlement agreement, noting that “courts rather than administrative bodies construe contracts.”); *Fasano v. Sch. Bd. of Palm Beach County*, 436 So. 2d 201, 202-203 (Fla. 4th DCA 1983) (reflecting that agency had no jurisdiction to administratively adjudicate contract claim); *see also Peck Plaza Condo. v. Div. of Fla. Land Sales and Condo., Dep’t of Bus. Regulation*, 371 So. 2d 152 (Fla. 1st DCA 1979).

Therefore, based on the foregoing reasons, Miami’s Exception No. 83 is denied.

Stipulations and Conditions of Certification

Coral Gables/Pinecrest Exception Nos. 7, 11, 28, 44 and 46; South Miami Exception Nos. 6, 10, 26, 42, and 44.

Coral Gables/Pinecrest and South Miami take exception to paragraphs 295, 723-725, 858, and 860, on the basis that the Siting Board should modify these paragraphs to include stipulations made by FPL during the course of the hearing. These stipulations relate to commencement of construction of the Davis-Miami portion of the transmission lines, accommodation of approved but not yet constructed development in the design of the electrical transmission lines, and other “commitments and stipulations FPL has made in the instant application.”

Contrary to these arguments, the RO contains Recommended Condition of Certification C. VII, O.2 (at page 156 of Attachment 1 to the RO), which requires that within the unincorporated area of the County along the eastern transmission line

corridor that, upon request, MDC will identify approved but not constructed development within that corridor so that, "FPL can plan to avoid or minimize conflicts with any approved but not-yet built development within the transmission line alignment." In Attachment 2 to the RO, Recommended Condition IV, Incorporated Areas of Miami-Dade County, similarly provides that, for incorporated areas, "[u]pon request by FPL, the local government shall identify for FPL the location of approved but not-yet constructed development within the local government's jurisdiction, so FPL can plan to avoid or minimize conflicts with any approved but not-yet built development within the transmission line alignment; if no information is provided within 60 days of request by FPL, FPL shall proceed with preliminary design of the transmission line." See *also* RO Attachment 1, Recommended Conditions A.I.C (p. 2) and A.VI (pp. 8-9).

In addition, at page 326 of the RO, the ALJ recommends that "the Siting Board grant final certification . . . for the location, construction, and operation of the Turkey Point Units 6 and 7 Project, representing a 2,200 MW nuclear generating facility, and including associated electrical transmission lines and other associated linear facilities, as described in the Site Certification Application [SCA] and in the evidence presented at the certification hearing, and subject to the Conditions of Certification appended hereto." (Emphasis added.) The RO, therefore, already addresses any "commitments and stipulations" as part of the SCA and the evidence presented in this proceeding. See *Gunn Plumbing, Inc. v. Dania Bank*, 252 So. 2d 1, 4 (Fla. 1971)(reflecting that where appropriately made, stipulations are binding not only upon the parties but also upon the tribunal).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest Exception Nos. 7, 11, 28, 44 and 46; and South Miami Exception Nos. 6, 10, 26, 42, and 44, are denied.

Miami Exception Nos. 1, 70, and 73

Miami takes exception to paragraphs 2, 6, 295, 785, and 794, for the same reasons outlined above. See Coral Gables/Pinecrest Exception Nos. 7, 11, 28, 44 and 46; and South Miami Exception Nos. 6, 10, 26, 42, and 44. For the reasons explained in the above ruling Miami's Exception Nos. 1, 70, and 73, are denied.

Miami Exception No. 70; Coral Gables/Pinecrest Exception No. 39; South Miami Exception No. 37.

Miami, Coral Gables/Pinecrest, and South Miami take exception to paragraphs 785 and 794, where the ALJ concluded that "the NRC proceeding need not be completed prior to the issuance of the site certification under the PPSA." The parties assert that this conclusion is inconsistent with FPL's stipulation that it would not proceed without NRC approval. Contrary to the parties' assertion, paragraphs 785 and 794 relate to whether the NRC proceeding must be completed prior to issuance of the certification under the PPSA, and not to the timing of construction of portions of the Project. Stipulations as to whether and in what manner FPL would proceed with all or portions of the Project prior to obtaining federal regulatory approvals are irrelevant to the legal issue of whether the Siting Board can issue a state certification under the PPSA prior to the conclusion of the NRC proceeding.

As the ALJ concluded, the Florida Legislature set forth a specific statutory process and timeline for processing site certification applications under the PPSA. The PPSA is intended to provide an "efficient, simplified, centrally coordinated, one-

stop licensing process.” See § 403.510(3), Fla. Stat. (2013). The Legislature did not provide alternate timeframes when a federal approval for an electrical power plant is also pending. An effective abeyance of the certification proceeding in such circumstances would be contrary to the Legislature’s expressly stated intent that the PPSA provide an “efficient” and “simplified” process. See § 403.510(3), Fla. Stat. (2013). As the ALJ concluded in paragraph 794, there is Siting Board precedent for issuance of the site certification while an application for approval is pending before the NRC. See, e.g., *In re: Progress Energy Florida Levy Nuclear Project Units 1 and 2*, PPSA No. PA08-51, Case No. 08-2727EPP (Fla. DOAH May 15, 2009; Fla. Siting Bd. Aug. 26, 2009).

Therefore, based on the foregoing reasons, Miami Exception No. 70, Coral Gables/Pinecrest Exception No. 39, and South Miami Exception No. 37, are denied.

Miami Exception Nos. 60 and 61

Miami takes exception to paragraphs 723-750 on the basis that the ALJ erred by not including all stipulations by Miami in the RO’s attached conditions. Miami’s arguments seem to suggest that the RO does not adopt all of the conditions in Attachments 1 and 2. The ALJ’s recommendation to approve certification is expressly “subject to the Conditions of Certification appended hereto.” See RO, p. 326, and ¶ 725 (recommending conditions in Attachment 1), ¶¶ 295, 746, 750, and 762 (recommending conditions in Attachment 2). Those conditions are found in Attachments 1 and 2, and incorporate all of the written conditions of certification agreed between FPL and Miami, as well as others offered by FPL in its Proposed Recommended Order and accepted by the ALJ. See, e.g., RO Attachment 1,

Recommended Conditions C.X; RO Attachment 2, Recommended Conditions II.A and II.B; Exhibit FPL 20, City of Miami Stipulation.

Further, certification is predicated upon the evidence and information presented in FPL's application and in the evidentiary record. *See, e.g.*, RO Attachment 1, Condition A.VI:

Certification, including these [Conditions of Certification], is predicated upon preliminary designs, concepts, and performance criteria described in the Application or in testimony and exhibits in support of certification. Final engineering design will be consistent and in substantial compliance with the preliminary information described in the Application or as explained at the certification hearing. Conformance to those criteria, unless specifically modified in accordance with Section 403.516, 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.

The certification scope is limited by the testimony and exhibits in the record at the certification hearing (including the SCA), whether or not each item is explicitly addressed in the conditions of certification.

Therefore, based on the foregoing reasons, Miami's Exception Nos. 60 and 61 are denied. (Miami's exceptions relating to tree preservation is addressed in the ruling on Miami's Exception No. 14. Miami's exceptions relating to archaeological and historical resources are addressed in the ruling on Miami's Exception No. 51).

Miami Exception Nos. 25, 51, and 64

Miami takes exception to paragraphs 356, 489, and 750 of the RO, where the ALJ makes findings regarding archaeological and historic resource preservation. Miami argues that the ALJ's findings should expressly include the certification conditions that are already set forth in Attachments 1 and 2 to the RO. As previously

discussed however, the ALJ's final recommendation in favor of certification is "subject to the Conditions of Certification appended hereto." See RO, pg. 326, and ¶ 725 (recommending conditions in Attachment 1), ¶¶ 295, 746, 750, and 762 (recommending conditions in Attachment 2). Those conditions are found in RO Attachments 1 and 2, and incorporate all of the conditions of certification agreed between FPL and Miami, as well as others offered by FPL in its Proposed Recommended Order and accepted by the ALJ. See, e.g., RO Attachment 2, Recommended Conditions II.A and II.B.

Miami also argues that the ALJ's findings are not supported by competent substantial evidence. FPL has committed to comply with conditions of certification to address historical and archaeological resource preservation. See RO Attachment 1, Recommended Conditions C.IV and C.X.A; and Attachment 2, Recommended Condition II.B). There is competent substantial record evidence supporting the ALJ's findings in paragraphs 356, 489, and 750. (T. Vol. 25, pp. 3442, 3451, 3456-58, 3461-62; FPL Exs. 382, 379, 380, 381, 386).

In addition, as FPL points out in its response, the recommended conditions of certification require FPL to avoid and minimize impacts to historic and archaeological sites and resources, to the extent practicable. See RO Attachment 1, Recommended Conditions C.IV and C.X.A; Attachment 2, Condition II.B. The recommended conditions in Attachment 1 for archaeological resources were dictated by stipulation. FPL offered the recommended conditions in Attachment 2 due to its inability to reach agreement with Miami regarding condition language for historical resources. See FPL Ex. 20, City of Miami Stipulation. The requirements of the stipulation for archaeological

resources are reflected in the recommended conditions of certification attached to the RO. See RO Attachment 1 at Section C.X.A. The requirements for historical resources are reflected in the recommended conditions of certification attached to the RO. See RO Attachment 2 at Section II.B. Compliance with those recommended conditions, in both Attachments 1 and 2, can be enforced in the same manner as any other conditions. See § 403.514, Fla. Stat. (2013).

Therefore, based on the foregoing reason, Miami's Exception Nos. 25, 51, and 64, are denied.

Coral Gables/Pinecrest Exception No. 29

Coral Gables/Pinecrest take exception to paragraphs 751-759 of the RO, where the ALJ made findings regarding Coral Gables' Agency Report and disputed conditions of certification. The arguments in this exception show Coral Gables/Pinecrest's disagreement with the ALJ's legal conclusion that comprehensive plans and zoning regulations are not applicable to the transmission lines. The rulings on Coral Gables/Pinecrest's Exception Nos. 14, 18, and 41, *infra*, are incorporated herein.

Coral Gables/Pinecrest explain that in challenged paragraph 752, the ALJ did not recognize that the partial stipulations between FPL and Coral Gables addressed proposed conditions A.1, A.2, A.3, A.4 and Q so long as the conditions in Attachment 1 to the RO are adopted. The ALJ has recommended approval of all of the conditions of certification included in Attachments 1 and 2 to the RO in this Final Order. (RO, ¶ 725 (Attachment 1), ¶¶ 296, 746, 750, and 762 (Attachment 2), and p. 326). Coral Gables states that its proposed conditions A.1, A.2, and A.4 are adequately addressed through recommended Conditions C(VIII)(B)(1)-(6), its proposed condition A.3 is adequately

addressed through recommended Conditions C(VIII)(C)(1)-(6), and its proposed condition Q is adequately addressed through recommended Condition C(VIII)(P).

Thus, the ALJ's findings in paragraph 752 are modified in this Final Order to reflect that FPL and Coral Gables entered partial stipulations that addressed proposed conditions A.1, A.2, A.3, and A.4, and a full stipulation that addressed proposed condition Q.

Coral Gables takes exception to paragraph 754, where the ALJ found that DEP rejected the Coral Gables-proposed conditions that were not agreed to by FPL because they were not consistent with the PPSA's requirement to identify a specific ordinance authorizing the proposed conditions. The DEP witnesses (Ms. Mulkey and Ms. Seiler) provided competent substantial evidence in the form of testimony explaining what conditions were rejected in the DEP Project Analysis Reports and the basis for DEP's decision to do so. (T. Vol. 40, pp. 5732-5734, 5741-5742; T. Vol. 40, pp. 5798-5801).

Coral Gables/Pinecrest take exception to paragraphs 755 and 758, based on their disagreement with the ALJ's conclusions that comprehensive plans and zoning regulations are not applicable to the transmission lines, and accordingly are not a proper basis for certain of the proposed conditions of certification.

Coral Gables/Pinecrest take exception to paragraph 756. Coral Gables/Pinecrest disagree with the finding that there is no applicable ordinance to support a condition of certification requiring FPL to compensate Coral Gables for alleged economic impacts of the East Preferred Corridor. There is competent substantial evidence to support the ALJ's finding that the "East Preferred Corridor will not cause negative impact to Coral

Gables or properties within the City.” (T. Vol. 29, pp. 3991-3992; FPL Ex. 391). The ruling on Coral Gables/Pinecrest’s Exception No. 19, *infra*, is incorporated herein.

Coral Gables/Pinecrest take exception to paragraph 759, but Coral Gables explains that its concerns with respect to indemnification are resolved by the adoption of recommended Condition C.VIII.P in Attachment 1 to the RO. The ALJ recommended that condition. (RO ¶ 725). Coral Gables/Pinecrest does not cite any legal basis to modify paragraph 759. *See* § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception No. 29 is granted in part as to paragraph 752, otherwise this exception is denied.

Errors regarding exhibits

Coral Gables/Pinecrest Exception No. 6.a.; South Miami Exception No. 5.a.

Coral Gables/Pinecrest and South Miami (“the cities”) take exception to that portion of the Preliminary Statement of the RO where the ALJ lists the exhibits that were accepted into evidence. The cities correctly point out that while Coral Gables/Pinecrest’s Joint Exhibits 11, 17, 44 and 71 were admitted into evidence at the hearing, they do not appear on the list of admitted Coral Gables/Pinecrest exhibits included in the Preliminary Statement portion of the RO. The cities further argue that this failure to list exhibits “undermines the FOF’s and COL’s and the Final Recommended Order” and “prevents the Siting Board from considering all of the evidence.”

Contrary to the cities’ argument, inadvertent scrivener errors in the descriptive list of exhibits in the RO’s Preliminary Statement is not a legal basis to assert that the Siting Board will be prevented from reviewing the entire record. A review of the entire record shows that competent substantial evidence supports a conclusion that the ALJ

clearly included these four exhibits in the on-the-record identification of all exhibits admitted into evidence on the second-to-last day of the hearing (“ALJ’s exhibit recitation”), (T. Vol. 59, p. 8318-35). The Joint Exhibits were submitted with the Coral Gables and Coral Gables/Pinecrest Admitted Joint Hearing Exhibits filed with DOAH on October 29, 2013, and they are included in the record transmitted from the ALJ to the DEP Agency Clerk.

The cities also correctly state that the RO erroneously listed Coral Gables/Pinecrest’s Joint Exhibit 23 as admitted, but this exhibit was not admitted. The hearing transcript shows that counsel raised this exhibit for admission but ultimately did not offer it. (T. Vol. 37, p. 5396). Further, the ALJ explicitly stated the exhibit was neither offered nor received (T. Vol. 59, p. 8324-25), and it was not included in the Coral Gables and Coral Gables/Pinecrest Admitted Joint Hearing Exhibits filed October 29, 2013.

In addition, the cities assert that the ALJ included Coral Gables Exhibit 23, which was not admitted, in the list of admitted exhibits in the Preliminary Statement portion of the RO. A review of the RO’s Preliminary Statement, however, shows that Coral Gables Exhibit 23 is not listed. Thus, the cities’ assertion regarding Coral Gables Exhibit 23 is entirely without basis, and is denied.

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception No. 6.a. and South Miami’s Exception No. 5.a. regarding errors in the listed exhibits are granted in part and denied in part. In addition, the cities’ assertion that the Siting Board is prevented from reviewing all the evidence is denied.

PSC need determination and jurisdiction

Miami Exception Nos. 2 and 74

Miami takes exception to paragraph 6 of the RO, where the ALJ found that the PSC issued an affirmative need determination in 2008, which “remains in legal effect and requires annual monitoring of the feasibility of construction of the Project.” (RO ¶ 6). Miami argues that the last sentence of paragraph 6, where the ALJ states that “[r]econsideration of that determination is neither permissible nor appropriate in this proceeding[.]” is actually a legal conclusion, which along with paragraph 795, should not exclude the ALJ’s ability to take into consideration updated information.

The ALJ’s findings in paragraph 6 are supported by competent substantial record evidence. (T. Vol. 1, p. 117-19; FPL Ex. 15, p. 29; FPL Ex. 16). While not mentioned in this exception by Miami, the ALJ further found in paragraph 7 of the RO that the PSC’s annual review of the Project includes a “detailed analysis of the long-term feasibility of completing the power plant.” (RO ¶ 7). This finding is supported by competent substantial record evidence in the form of cost recovery orders (FPL Ex. 16) and the testimony of FPL witness, Steven Scroggs that subsequent to obtaining the need determination, FPL has “filed for and received approval for the continued cost recovery to support the pursuit of the [P]roject.” (T. Vol. 1, p. 118). The same record evidence that supports the findings in paragraphs 6 and 7, supports the findings in paragraph 770, where the ALJ addressed concerns raised during public testimony that the PSC’s need determination is out of date.

Miami also takes exception to paragraph 795 of the RO, where the ALJ concludes that relevant statutes and case law precedent precludes reconsideration of

the need for the Project in this proceeding. Miami acknowledges that established case law, *Fla. Chapter of the Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383 (Fla. 5th DCA 1983), states that a PSC need determination is a condition precedent to the conduct of the certification hearing. Miami disagrees, however, with the Fifth District Court of Appeal's conclusion that the legislative history of the PPSA shows "an intention on the part of the legislature that the PSC was to be the sole determiner of need and that need was not a proper topic for examination at the subsequent certification hearing." *Id.* at 387. Miami makes essentially the same arguments as did the Sierra Club that the hearing officer (now ALJ) should consider and weigh additional evidence regarding a need determination. In addressing this argument the Court concluded:

The determination of need is solely within the jurisdiction of the PSC, and any reevaluation of need at the certification hearing would be wasteful and improper. The purpose of that hearing is to judge the impact of the plant, *after* a need for the plant has been determined, on the surrounding environment. This determination does not require a weighing of the need beyond that done by the PSC, and the hearing officer and Board in this case were correct in so holding.

Id. at 388.

The First District Court of Appeal has subsequently upheld the Fifth District's analysis of the PPSA's statutory scheme. See, e.g., *Fla. Power Corp. v. State*, 513 So. 2d 1341, 1344 (Fla. 1st DCA 1987) and *Fla. Sugar Cane League v. State*, 580 So. 2d 846, 851 (Fla. 1st DCA 1991).

Therefore, based on the foregoing reasons, Miami's Exception Nos. 2 and 74 are denied.

Miami Exception No. 11

Miami takes exception to paragraph 258 of the RO, where the ALJ found that,

The proposed transmission lines are necessary to safely and reliably connect the new power generation from the Project to FPL's existing electrical transmission network. Certification of the eastern and western transmission lines, as conditioned, serves the broad interests of the public by ensuring reliable electric service at a reasonable cost.

Miami argues that the paragraph should be labeled as conclusions of law based on its arguments in Exception No. 74. Miami's arguments in Exception No. 74, however, were denied as contrary to longstanding case law interpreting the relevant statutory scheme.

Miami also argues that if paragraph 258 contains statements of fact, they are not supported by competent substantial record evidence. Contrary to Miami's argument, the findings in paragraph 258 are supported by competent substantial evidence. (T. Vol. 1, pp. 102-103; 140-142; T. Vol. 11, p. 1616; T. Vol. 27, p. 3753-54, p. 3764, p. 3822-23).

Therefore, based on the foregoing reasons, Miami's Exception No. 11 is denied.

Public outreach

Miami Exception No. 3

Miami takes exception to the findings in paragraph 10 regarding FPL's extensive public outreach. (RO ¶ 10). Miami asserts that the ALJ's characterization of FPL's outreach as "extensive" is not supported by competent substantial evidence.

Paragraph 10 is supported by competent substantial record evidence in the form of the testimony of FPL witness Steven Scroggs who detailed FPL's public outreach efforts, and FPL Exhibit 14 summarizing FPL's outreach efforts. (T. Vol. 1, p. 105-116; FPL Ex. 14). Therefore, Miami's Exception No. 3 is denied.

Plant and Non-Transmission Line Associated Facilities

Miami Exception No. 9

Miami takes exception to paragraph 175 of the RO, where the ALJ finds that the “plant and non-transmission line portion of the Project is not contrary to the public interest.” (RO ¶ 175). Miami argues that the paragraph is a conclusion of law, that the ALJ did not set forth a standard for reaching this conclusion, and that public interest determinations are policy considerations for the reviewing agency and not the ALJ.

Paragraph 175 is a mixed finding of fact and conclusion of law that flows from the ALJ’s underlying factual findings in paragraphs 165 through 174 regarding the DEP’s applicable nonprocedural requirements for regulating wetland impacts. See § 373.414, Fla. Stat. (2013)(DEP shall require the applicant to provide reasonable assurance that its activity in wetlands is not contrary to the public interest). The Siting Board, as agency head in this proceeding, has the authority to ultimately determine whether a project is not contrary to the public interest using a regulatory public interest balancing test. *Id. see also Save Anna Maria, Inc. v. Dep’t of Transp.*, 700 So. 2d 113, 116-117 (Fla. 2d DCA 1997). The determination is based, however, on the applicable underlying factual findings of the ALJ, which in the particular circumstances of this case are supported by competent substantial record evidence. (T. Vol. 6, p. 803-04; T. Vol. 6, pp. 722-766; DEP Ex. 3, pp. 17-18, 26; FPL Exs. 169 and 170). In this case paragraph 175 is adopted in this final order as consistent with the applicable underlying factual findings of the ALJ. *See Kramer v. Dep’t of Env’tl. Prot.*, DOAH Case No. 00-2873, 2002 WL 1774316 (Fla. Dept. of Env. Prot. April 29, 2002).

Therefore, based on the foregoing reasons, Miami's Exception No. 9 is granted to the extent that paragraph 175 is a legal conclusion that is ultimately within the agency head's substantive jurisdiction, otherwise it is denied.

Safety issues, e.g. sea level rise

Miami Exception Nos. 4 and 81

Miami takes exception to paragraphs 26, 28, and 772 of the RO, where the ALJ found that FPL considered reasonable sea level rise and storm surge projections in the design of Units 6 and 7. (RO ¶¶ 26, 28, 772). Miami asserts that the ALJ did not properly consider sea level rise and storm surge. Miami does not assert, however, that any of the ALJ's factual findings in these paragraphs are not supported by competent substantial record evidence.

Contrary to Miami's assertion, paragraphs 26 and 28 are supported by competent substantial evidence in the form of testimony from Mr. Paul Jacobs and Dr. George Maul. (T. Vol. 3, p. 334-336; T. Vol. 55, p. 7737-7747). Paragraph 772 addresses public concerns related to sea level rise and storm surge, stating: "FPL considered reasonable sea level rise and storm surge projections in the design of the proposed nuclear units." This finding is supported by Dr. Maul's testimony. (T. Vol. 55, p. 7746-7747).

Miami also argues that the ALJ did not consider applicable Federal Emergency Management Agency ("FEMA") regulations. In paragraph 29, however, the ALJ found that "[t]he plant and non-transmission line portion of the Project will be built above the 100-year flood level, and will not increase erosion or create a flood hazard to others. The Project will be constructed outside of the coastal high hazard area and comply with

applicable flood protection requirements.” (RO ¶ 29). This finding is supported by competent substantial record evidence. Dr. Gregory Powell, an expert in hydrology, testified that the Project would comply with MDC’s flood protection standards. Dr. Powell testified that the Plant site would be constructed at 25.5 feet, which is 10 feet above FEMA’s 100-year flood elevation of 14 feet. Dr. Powell further testified that the reclaimed water treatment facility would be constructed at 14 feet, which is 4 feet above the FEMA 100-year flood elevation for that location. (T. Vol. 4, p. 440, 442, 454-57). Mr. Rob Curtis, an expert in land use planning and zoning, testified that the Project is allowed in the FEMA hurricane vulnerability zone in which it will be located. (T. Vol. 7, p. 1008, 1029-1030). There is competent, substantial evidence in the record to support the ALJ’s finding that the Project will meet applicable flood protection standards.

Miami further asserts that the ALJ should have considered issues related to radiological safety at a nuclear power plant, the ALJ correctly concluded that “[i]ssues related to radiological safety are preempted by federal regulation under the Supremacy Clause of the United States Constitution and the Atomic Energy Act, 42 U.S.C. § 2011, et seq.” (RO ¶ 802). The United States Supreme Court has made clear that issues of radiological safety are reserved exclusively for the federal government. *See Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 211-12 (1983). Paragraph 802 is supported by the case cited therein, as well as precedent from the Siting Board. *See In re: Progress Energy Florida Levy Nuclear Project Units 1 and 2*, No. PA08-51, DOAH Case No. 08-2727EPP, 2010 ER FALR 12, p. 10 (Siting Bd. Aug. 26, 2009)(“Issues related to radiological safety are not considered under the [PPSA] because they have been preempted by federal regulation under the Supremacy

Clause of the United States Constitution.”).

Finally, Miami asserts that the ALJ should have “more adequately considered” potential risks to the transmission lines and public welfare from extreme weather. Miami does not assert that any particular findings are not supported by competent substantial evidence. Instead, without citing to any record evidence, Miami essentially requests that the Siting Board make improper supplemental factual findings as to alleged risks to the transmission lines. When reviewing an ALJ’s recommended order, an agency has no authority to make independent and supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994). In paragraphs 301 and 342, the ALJ found that FPL’s proposed transmission lines are engineered to withstand extreme wind events and have sufficient safety standards to protect the public. These findings are supported by competent substantial evidence. (T. Vol. 11, p. 1585-1588; T. Vol. 38, p. 5508-5512, 5537-5539). The PSC, moreover, has “exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities” and has adopted the NESC as the applicable safety standards. *See* § 366.04(6), Fla. Stat. (2013); Fla. Admin. Code R. 26-6.034. The ALJ made findings that the proposed transmission lines will comply with those applicable safety requirements. (RO ¶¶ 297, 301, 457, 781).

Therefore, for the foregoing reasons, Miami’s Exception Nos. 4 and 81 are denied.

Miami Exception No. 85

Miami takes exception to paragraphs 781, 814, 874, and 875, on the basis that the ALJ failed to adequately consider the human health impacts of the Project. Miami

also argues that it was not afforded adequate due process because of “procedural defects in the proceedings” (i.e., “compressed” timeframes) that impacted its ability to present evidence supporting its health concerns. Miami’s due process arguments are addressed in the ruling on Miami Exception Nos. 71 and 72, which is incorporated herein.

Miami’s argument in this exception ignores the competent substantial record evidence supporting the findings and conclusions in paragraphs 781, 814, 874, 875, and other relevant paragraphs of the RO that incorporate human health protection as part of certain DEP nonprocedural requirements. *See, e.g.*, RO ¶¶ 318-326, 338-348, 858, 860-863; FPL Ex. 6, Chapters W9 and E9; *see also* Rulings on Miami Exception Nos. 24 and 63 regarding EMF impacts. These findings and conclusions of the ALJ establish FPL’s compliance with applicable nonprocedural requirements of chapters 373 and 403, F.S.

Therefore, based on the foregoing reasons, Miami’s Exception No. 85 is denied.

Miami Exception No. 5

Miami takes exception to paragraphs 30, 31 and 32 of the RO, by contending that these findings are legal and policy determinations under the PPSA. In these findings, the ALJ found that the plant and non-transmission line portion of the Project has sufficient operational safeguards; will meet the electrical energy needs of the state; and will not adversely affect the public health, safety, welfare, or property of others.

Miami does not contend that paragraphs 30, 31, and 32 are not supported by competent substantial record evidence. The record reveals that those findings are supported by competent substantial evidence. (T. Vol. 1, p. 139-141; T. Vol. 4, p. 420-

430; FPL Ex. 408, Copeland, p. 15-16). Paragraphs 30, 31, and 32, however, are also the statutory criteria that the Siting Board is called upon to consider under Section 403.509(3), F.S. See § 403.509(3)(a), (b), (d), Fla. Stat. (2013). As such, these findings are ultimate legal determinations within the substantive jurisdiction of the Siting Board. See §§ 120.57(1)(l), 403.509(3), Fla. Stat. (2013). The determinations are based, however, on the applicable underlying factual findings of the ALJ, which in the particular circumstances of this case are supported by competent substantial record evidence. In this case paragraphs 30, 31, and 32, are adopted in this final order as consistent with the applicable underlying factual findings of the ALJ. To the extent this exception incorporates Miami's arguments in Miami Exception Nos. 75-85, the rulings on those Exceptions are incorporated herein.

Therefore, for the foregoing reasons, Miami's Exception No. 5 is denied.

Water Use issues, e.g. radial collector wells

Miami Exception No. 6

Miami takes exception to paragraph 60 of the RO, arguing that it is actually "a legal conclusion as to whether radial collector wells are specifically allowed by Fla. Stat. § 258.397." Miami does not argue that paragraph 60 is not supported by the record, but instead argues that the witness testimony is not from a "qualified legal expert."

In paragraph 60, the ALJ found that, "[t]he radial collector wells are 'structures required for the installation or expansion of public utilities' and 'reasonable improvements for public utility expansion,' and are therefore specifically allowed by the Act that created the Biscayne Bay Aquatic Preserve." (RO ¶ 60). This finding is supported by competent substantial record evidence in the form of testimony from

FPL's witness, Mr. Steven Scroggs, an expert in power plant engineering, design, and siting; nuclear engineering; and independent engineering for power plant projects. (T. Vol. 1, p. 64; T. Vol. 2, pp. 274-275; T. Vol. 1, p. 136; FPL Ex. 20, FDEP Sewage Treatment Plant and Easements, p. 3-4). Whether FPL is a public utility and whether the radial collector wells are needed for expansion, are facts "susceptible of ordinary methods of proof" and includes matters of "determining the credibility of the witnesses [and] the weight to be given particular evidence." *Pillsbury v. Dep't of Health and Rehab. Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999)(reflecting that the obligation of the agency to honor the [ALJ's] findings of fact cannot be avoided by categorizing a contrary finding as a conclusion of law); *Viering v. Fla. Comm'n on Human Relations*, 109 So. 3d 296, 298 (Fla. 1st DCA 2013). Thus, Miami's exception to paragraph 60 is denied.

Miami also takes exception to paragraph 6[1] of the RO, arguing that "it is a legal conclusion and policy judgment whether the radial collector system is consistent with Biscayne Bay Aquatic Preserve Management Plan and is in the public interest." Miami's exception is denied because it had already stipulated to the factual finding that, "[c]onstruction and operation of the Project, including the radial collector well system, is consistent with the Biscayne Bay Aquatic Management Plan." See Miami Prehearing Stipulation filed 7/2/2013 at Section V. ¶ 47; see also *Kwastel v. Dep't of Bus. and Prof'l Regulation*, 736 So. 2d 762 (Fla. 2d DCA 1999). In addition, the ALJ's findings in paragraph 61 are supported by competent substantial record evidence. (Ault, T. Vol. 5, pp. 670-672; FPL Ex. 6; Bullock, T. Vol. 6, pp. 803-804; DEP Ex. 5, p. 5).

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

Miami Exception No. 7.

Miami takes exception to paragraphs 69-71, 74-76, and 80-81 of the RO, and asserts that the ALJ's findings are not supported by competent substantial evidence. Miami asserts that these findings that the Project's water use will not cause harm to wetlands, to ground and surface waters, or to Biscayne Bay and the Biscayne Bay Aquatic Preserve, are not supported by the evidence.

Paragraph 69, where the ALJ finds that the water use will not affect wetlands or other surface waters or cause water pollution is supported by competent substantial record evidence in the form of testimony from Mr. Peter Andersen, an expert in groundwater hydrology and hydrogeologic impact analysis (T. Vol. 4, pp. 523-30); and the testimony of Dr. Gregory Powell, an expert in civil and water resource engineering and surface water and groundwater hydrology impact assessment (T. Vol. 4, p. 434-35; *see also* DEP Ex. 3, p. 16). The ALJ's findings in paragraph 70 that the water uses will not affect wetlands is also supported by competent substantial evidence in the form of testimony from Mr. Andersen (T. Vol. 4, pp. 522-23; *see also* FPL Ex. 96, Figure 61 at p. 127). The ALJ's findings in paragraph 71 that construction and operation of the radial collector wells will not affect the ambient water quality in Biscayne Bay, including the Aquatic Preserve or Biscayne National Park, is supported by competent substantial evidence in the form of the testimony of Dr. Powell (T. Vol. 4, p. 434); the testimony of Dr. Jerald Ault, an expert in marine biology and fisheries (T. Vol. 5, pp. 652-56); by FPL Exhibit 66, pages 10 to 13; and by DEP Exhibit 3, page 16.

Similarly, the ALJ's findings in paragraphs 74, 75, and 76, that the design and operation of the radial collector wells will not affect the ecology and resources of

Biscayne Bay, will not interfere with the ecology of Biscayne Bay, and will not adversely impact fish and wildlife and their habitats, are supported by competent substantial evidence in the form of the testimony of Dr. Ault. (T. Vol. 5, pp. 668-670, pp. 657-659). The ALJ's findings in paragraphs 80 and 81, that the design and operation of the radial collector wells will not affect submerged land resources and MDC's wellfields, while being compatible with natural conditions, wildlife propagation, and recreational uses in Biscayne Bay, are also supported by competent substantial evidence. (Tomasko, T. Vol. 5, pp. 590-591; DEP Ex. 3, p. 19; Andersen, T. Vol. 4, p. 533; Ault, T. Vol. 5, pp. 667-669, 671-672).

Miami further asserts that these findings are "legal and policy judgments" within the province of the Siting Board. These eight findings, however, are "susceptible of ordinary methods of proof" which includes matters of "determining the credibility of the witnesses [and] the weight to be given particular evidence." *Pillsbury v. Dep't of Health and Rehab. Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999)(reflecting that the obligation of the agency to honor the [ALJ's] findings of fact cannot be avoided by categorizing a contrary finding as a conclusion of law); *Viering v. Fla. Comm'n on Human Relations*, 109 So. 3d 296, 298 (Fla. 1st DCA 2013).

Therefore, based on the foregoing reasons, Miami's Exception No. 7 is denied.

Miami Exception No. 8.

Miami takes exception to the last sentence of paragraph 82 of the RO, where the ALJ makes findings regarding FPL's control over its site and the compatibility of the water use with current land uses at the site. Miami also takes exception to the third sentence of paragraph 84, where the ALJ finds that the Project's water uses are

reasonable-beneficial uses, will not interfere with existing uses, and are in the public interest. Miami argues that these findings are not supported by competent substantial evidence.

Contrary to Miami's argument, paragraph 82 is supported by the testimony of Mr. Paul Jacobs of FPL (T. Vol. 3, pp. 325-326) and Mr. Rob Curtis, an expert in land use planning and zoning (T. Vol. 7, pp. 1035-1036). Paragraph 84 is supported by the expert testimony of Mr. Andersen (T. Vol. 4, p. 523-25). These findings of fact are "susceptible of ordinary methods of proof" which includes matters of "determining the credibility of the witnesses [and] the weight to be given particular evidence." *Pillsbury v. Dep't of Health and Rehab. Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999) (reflecting that the obligation of the agency to honor the [ALJ's] findings of fact cannot be avoided by categorizing a contrary finding as a conclusion of law); *Viering v. Fla. Comm'n on Human Relations*, 109 So. 3d 296, 298 (Fla. 1st DCA 2013). To the extent this exception incorporates Miami's arguments in Exception Nos. 75-85, this exception is also denied for the reasons stated in the rulings on Exception Nos. 75-85.

Therefore, for the foregoing reasons, Miami's Exception No. 8 is denied.

Miami Exception No. 82

In its Exception No. 82, Miami does not take exception to any specific paragraphs of the RO, instead Miami asserts that the ALJ fails to adequately consider impacts on water and infrastructure based on several alleged shortcomings. Miami contends that, for these reasons, certification of the Project should be denied. Section 120.57(1)(k), F.S., provides that an "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.” This exception fails to cite any disputed portion of the RO by page number or paragraph, and provides only two record citations for one of the six assertions, which in fact do not support this exception’s factual assertions. For this failure to comply with Section 120.57(1)(k), the Siting Board may decline to rule on this exception.

For the purpose of judicial review, however, the following rulings are made regarding Miami’s assertions in this exception. Miami’s first assertion, that the RO fails to consider impacts to the Miami area’s water use and infrastructure, is inconsistent with the numerous findings of fact in the RO that address impacts to water use and water resources in the area. (RO ¶¶ 33-86). In addition, the competent substantial record evidence supports findings that the Project would not impair the Miami area’s water infrastructure. (Scroggs, T. Vol. 2, pp. 235-236; Jacobs, T. Vol. 3, p. 372; FPL Ex. 8).

As to Miami’s second assertion that water usage is a critical component of the analysis under section 403.507(2)(a)(2), F.S., which defines the scope of the water management district’s agency report, the RO reflects detailed evaluation of the Project’s water usage in paragraphs 33 through 86. Further, in SFWMD Exhibit 3, the water management district provided a detailed report on the Project’s water usage, which satisfies Section 403.507(2)(a)(2), F.S.

Miami’s third assertion, provides two citations to the record to support its argument of “contradicted” evidence over whether the Project will “cause increases in water usage.” The first record citation, to page 235 of the hearing transcript (which is Mr. Scroggs’ testimony), does not support that proposition. The second citation, to page

60, lines 16 to 25, of the transcript (which is the opening statement of Miami's counsel, which is not evidence), does not even discuss that subject.

Miami's fourth assertion is that the RO does not address "enumerated relevant factors set forth in the statute." This general statement does not provide a legal basis for the assertion and Miami does not identify the alleged "relevant factors." See §120.57(1)(k), Fla. Stat. (2013). Assuming this is intended to refer to the factors for certification set forth in section 403.509(3), F.S., the RO contains extended discussion of the Project's compliance with those factors, including issues related to water usage. See, e.g., Conclusions of Law 800 to 816, and in particular Conclusions of Law 801, 803, 804, 805, 814, which discuss impacts to water resources.

Miami's fifth assertion, is that the zoning approvals issued by the MDC Board of County Commissioners are in violation of a consent decree entered by a federal court related to MDC's water infrastructure, and that FPL and MDC failed to show the Project did not violate that consent decree. Miami is not authorized to use this proceeding as a collateral attack on the County's zoning approvals for the Project. Miami does not show that it attempted to challenge any County approvals for alleged violation of a consent decree, either during the proceedings before the Board of County Commissioners or in a review of those approvals in an appropriate court. Miami cannot raise the validity of County ordinances for the first time in this proceeding. See, e.g., *In re: South Broward County Resource Recovery Project Power Plant Siting Certification Application*, Siting Board, DOAH Case No. 85-1106EPP, 1985 WL 26160 (Oct. 15, 1985)(Paragraph 14 of the RO provides that the County's zoning decision for power plant site "is final, and these [PPSA] proceedings do not provide a forum to collaterally attack it.").

In its sixth and final assertion regarding shortcomings, Miami argues that there is no evidence in the record that the Project will comply with Miami's stormwater ordinances. Miami cites to Chapter 22.5, Article IV, Section 2, of its ordinances, this provision, however, addresses water conservation, and not stormwater. Miami's reference to its agency report (Miami Exhibit 3), does not provide a basis for this argument. The cited pages 4 and 5 of that report contain a proposed condition of certification number 5.3.4 on the post-certification submittal of a stormwater pollution prevention plan to be implemented during construction, but without any citation for the legal authority for such a condition. Miami stipulated with FPL that Miami's concerns raised, among others, by section 5.3 of its report, were satisfied by FPL's acceptance of certain conditions of certification set forth in that stipulation. See FPL Ex. 20 - Partial Stipulation Between The City of Miami and Florida Power & Light Company, dated October 25, 2013, at page 2 of 2, ¶ 2. Having stipulated that its concerns raised under section 5.3.4 of its report were satisfied, Miami cannot argue that the ALJ failed to address those concerns. See, e.g., *Kwastel v. Dep't of Bus. and Prof'l Regulation*, 736 So. 2d 762 (Fla. 2d DCA 1999).

Therefore, based on the foregoing reasons, Miami's Exception No. 82 is denied.

Socioeconomic impacts and benefits of the Project

Miami Exception No. 10

Miami takes exception to paragraphs 244-245 and 248-249 of the RO, where the ALJ makes findings about the socioeconomic impacts and benefits of the Project. Miami argues that there is no evidence of socioeconomic benefit of the transmission lines. Miami also argues that certain portions of paragraphs 248 and 249 are conclusions of

law.

Although paragraphs 244-245 and 248-249 are in section II of the RO related to the “Plant and Non-Transmission Line Associated Facilities,” the ALJ’s prior findings had already defined “the Project” to include the transmission lines. The competent substantial record evidence supports the ALJ’s findings that the Project, as a whole, will have positive economic and fiscal impacts. (T. Vol. 29, pp. 3984-3989, 4127-4128; FPL Exs. 388, 389, 390).

Miami argues that certain portions of paragraphs 248 and 249 are legal conclusions and policy judgments rather than factual findings. Paragraphs 248 and 249 contain both underlying facts and ultimate facts that are supported by competent substantial record evidence. (DEP Ex. 5, p. 5; T. Vol. 1, pp. 118-119, pp. 141-142; FPL Ex. 408, Kosky, p. 20, 52, McNabb, p. 23-26, 29, Maliva, p. 22-24; T. Vol. 4, pp. 448-450; T. Vol. 5, pp. 590-591, 657-659, 669-670, T. Vol. 6, pp. 740-742, 765-766, 782-783, 791-793, 804; T. Vol. 7, pp. 898-899, 904-905, 907, 948-953; T. Vol. 9, p. 990; T. Vol. 11, pp. 1601-1602; T. Vol. 29, pp. 3984-3989, 3994; T. Vol. 40, pp. 5767-5769; SFWMD Ex. 3, p. 9-10; FPL Exs. 15, 16, 147, 170, 187, 188, 191, 195, 201, 388-391).

The Siting Board, as agency head in this proceeding, has the authority to ultimately determine whether a project is in the public interest and will serve the broad interests of the public. See § 403.509(3), Fla. Stat. (2013). The determination is based, however, on the applicable underlying resolution of factual disputes by the ALJ, which in the particular circumstances of this case are supported by competent substantial record evidence. See, e.g., *Fla. Power & Light v. Fla. Siting Bd.*, 693 So. 2d 1025, 1027-1028 (Fla. 1st DCA 1997)(reflecting that agency exercise of discretion regarding a policy

justification must be supported by the record and explained by the agency's final order). In this case paragraphs 248 and 249 are adopted in this final order as consistent with the applicable underlying factual findings of the ALJ. § 120.57(1)(I), Fla. Stat. (2013). To the extent this exception incorporates Miami's arguments in Exception Nos. 75-85, this exception is denied for the reasons stated in the rulings on Exception Nos. 75-85.

Therefore, based on the foregoing reasons, Miami's Exception No. 10 is granted to the extent that paragraphs 248 and 249 contain legal conclusions that are ultimately within the Siting Board's substantive jurisdiction, otherwise Miami's Exception No. 10 is denied.

Transmission Facilities

Applicability of Local Government Comprehensive Plans, Zoning Codes, and/or Land Development Regulations to transmission lines.

Coral Gables/Pinecrest Exception No. 14

Coral Gables/Pinecrest take exception to paragraph 304 of the RO, where the ALJ found that the "incremental costs of undergrounding transmission lines, where overhead transmission lines are feasible, but undergrounding is requested for aesthetic reasons, are typically paid by the requesting entity," and further found that the PSC-not local governments-has regulatory authority over the undergrounding of electric utility lines. Coral Gables/Pinecrest argue that paragraph 304 should be deleted and the "local agencies requests in Paragraph 430 of the RO" [to require undergrounding of the transmission line in their own jurisdictions] should be supported by the Siting Board. Coral Gables/Pinecrest make several arguments in this exception that also relate to their exceptions to the ALJ's legal conclusions in paragraphs 820 through 836, 848 through

851 and 866 of the RO. See Coral Gables/Pinecrest Exception Nos. 41 and 43. Coral Gables/Pinecrest argue that:

- Coral Gables' and Pinecrest's land use and zoning ordinances that require undergrounding of future transmission lines, are non-procedural requirements applicable to FPL's proposed transmission line;
- The PPSA does not preempt application of Coral Gables' land use plans and zoning requirements to FPL's proposed transmission line;
- The PSC's jurisdiction over service and rates does not preempt application of Coral Gables' requirements for undergrounding of future transmission lines;
- Coral Gables' and Pinecrest's home rule authority supports their land use and zoning requirements that the proposed transmission lines be placed underground;
- Aesthetics must be considered in determining whether the proposed transmission line meets the PPSA certification criteria;
- The ALJ's consideration of and citation to certain cases is misplaced, and paragraph 304 is in fact an erroneous conclusion of law that should be deleted in its entirety.

1) Coral Gables/Pinecrest argue that their land use and zoning regulations apply to FPL's proposed transmission line, by citing to the PPSA criteria in paragraphs 403.509(3)(b) and (c), F.S., where the Siting Board is required to consider, among other things, whether and the extent to which the electrical power plant, including the proposed transmission lines, will "[c]omply with applicable nonprocedural requirements

of agencies” and “[b]e consistent with applicable local government comprehensive plans and land development regulations,” as well as the PPSA definition of “nonprocedural requirements of agencies.” Coral Gables/Pinecrest’s land use plan and zoning regulations come within the definition of “nonprocedural requirements of agencies.” Demonstration of compliance with these regulations is not required, however, for electrical transmission lines because local government land use plans and zoning ordinances are not “applicable” nonprocedural requirements for those facilities.

2) Coral Gables/Pinecrest contend that their land use and zoning provisions are preserved by the PPSA and are not preempted, either expressly or impliedly, by the PPSA or any other statute. Contrary to Coral Gables/Pinecrest’s contention, their land use and zoning provisions have been preempted by the Legislature and, as a result, both the Siting Board (under the PPSA) and the PSC have the exclusive authority to regulate electrical transmission lines.

In the RO, the ALJ correctly concluded that the Legislature enacted the PPSA to empower the Siting Board to determine a “state position with respect to each proposed [power plant] site and its associated facilities.” See RO ¶ 822; *see also* § 403.502, Fla. Stat. (2013)(emphasis added). The PPSA’s sweeping preemptive effect over all other state, regional, and local regulation of electrical power plants including proposed associated electrical transmission lines is clear. *See, e.g., Pinellas County v. City of Largo*, 964 So. 2d 847, 853 (Fla. 2d DCA 2007)(“Express preemption requires clear language stating such intent.”). Section 403.510, F.S., provides:

403.510 Superseded laws, regulations, and certification power.-

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or

ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the regulation and certification of electrical power plant sites and electrical power plants as defined in this act. (Emphasis added).

The PPSA also plainly states that the “certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to ... chapter 125, ... chapter 163, chapter 166, ... chapter 380” and other chapters, with exceptions not relevant here. § 403.511(3), Fla. Stat. (2013), *see also* § 403.503(17), Fla. Stat. (2013)(defining “license” to include, among other things, a “comprehensive plan amendment, development order or permit as defined in chapters 163 and 380”).

Coral Gables/Pinecrest argue that the PPSA “did not clearly intend to preempt municipal zoning and land use regulations,” noting that the PPSA’s language “includes the requirement for local government review for land use and zoning impacts throughout the statute.” The PPSA does address consistency of a power plant site and certain associated facilities with applicable local land use plan and zoning ordinances. *See* § 403.50665, Fla. Stat. (2013). If the Siting Board determines that a plant site or such associated facility is consistent, the local government may not then amend its land use plan or zoning ordinance to make them inconsistent. *See* § 403.508(1)(e), Fla. Stat. (2013). Further, if the plant site or such associated facility is not consistent with the land use plan or zoning ordinances, the PPSA authorizes the Siting Board to grant relief. *See* § 403.508(1)(f), Fla. Stat. (2013).

The PPSA expressly excludes certain facilities, including electrical transmission lines, however, from those facilities that the Siting Board will consider for purposes of applying land use and zoning requirements in its exclusive role of certifying proposed electrical power plants. See §§ 403.50665(1)-(2), 403.508(1), Fla. Stat.

(2013)(addressing the land use and zoning consistency phase of a PPSA proceeding).

The PPSA specifically excludes from consideration those facilities that are not defined as development under chapters 163 and 380, F.S., and thus are otherwise excluded from regulation by local land use plans and zoning requirements. See § 403.50665(1) and (2)(a), Fla. Stat. (2013)(“The applicant shall include in the application a statement on the consistency of the site and any associated facilities that constitute a ‘development’ as defined in s. 380.04, with existing land use plans and zoning ordinances . . . ; “each local government shall file a determination . . . on the consistency of the site, and any associated facilities that are not exempt from the requirements of land use plans and zoning ordinances under chapter 163 and s. 380.04(3) . . .”).

3) Regarding preemption by the PSC, the Legislature assigned “exclusive and superior” jurisdiction to the PSC to “regulate and supervise each public utility with respect to its rates and service[,]” including electrical transmission lines. See § 366.04(1), Fla. Stat. (2013); *see also* § 366.04(5), Fla. Stat. (2013). The ALJ correctly concluded that local ordinances encroaching upon this “exclusive and superior” jurisdiction of the PSC over electric services are invalid and unenforceable. See, *e.g.*, *Fla. Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla. 1991); *Fla. Power Corp. v. Gadsden County*, Case No. 05-689-CAA (Fla. 2d Cir. Final Judgment Dec. 6, 2005); *In re: Petition by City of Parker*, PSC-003-0598-DS-EU, 2003 WL 21436985 (May 12,

2003); RO ¶ 821. Coral Gables/Pinecrest argue that the ALJ improperly relied on these three cases.

Coral Gables/Pinecrest argue that Coral Gables' undergrounding requirement is not preempted by the PSC's jurisdiction to regulate and supervise public utilities with respect to their rates and service. Coral Gables/Pinecrest further argue that to the extent *Seminole County* suggests otherwise, the facts of that case are distinguishable from the facts of this case. Coral Gables/Pinecrest's argument is not adopted in this Final Order.

In *Seminole County*, the Florida Supreme Court held that local ordinances that encroach on the PSC's exclusive jurisdiction are invalid and unenforceable. In that case, Seminole County-a charter county-and the City of Lake Mary relied upon their home rule powers, local comprehensive plans, and land development regulations, to maintain they could compel the electric utility to locate its power lines underground in a road right-of-way, with the utility bearing the additional costs of undergrounding. *Id.* at 106. The Court rejected that argument, holding that "the jurisdiction of the Public Service Commission to regulate rates and services of public utilities preempts the authority of the city and county to require [a public utility] to place its lines underground." *Id.* at 107.

Coral Gables/Pinecrest argue that *Seminole County* can be distinguished because, "[u]nlike the cities and counties in *Seminole County*, Coral Gables is not unilaterally mandating undergrounding" since "FPL seeks to upgrade its system and has filed an application for approval of its upgrades." Coral Gables/Pinecrest also argue that "unlike *Seminole County*, there is no indication that compliance with Coral Gables' land use and zoning ordinances will have any impact on FPL's rates and

service or cause FPL to expend large sums of money.” Contrary to Coral Gables/Pinecrest’s argument, the Court in *Seminole County* did not suggest that the entity initiating the application process is a determinative factor when analyzing whether an ordinance encroaches on the PSC’s exclusive jurisdiction. The Court states:

Thus, the Public Service Commission is vested with the authority to require conversion of distribution lines to underground where “feasible” if the commission finds this to be “cost-effective.” Permitting cities or counties to unilaterally mandate the conversion of overhead lines to underground would clearly run contrary to the legislative intent that the Public Service Commission have regulatory authority over this subject.

Id. at 108 (emphasis added). In other words, the Court concluded that cities and counties cannot require undergrounding unless the PSC also requires undergrounding, because to permit otherwise would allow cities and counties to “unilaterally” undermine the PSC’s regulatory authority over the subject matter as intended by the Legislature. That remains true in this case, regardless of whether FPL initiated the application process or not. In the instant case, the PSC’s need determination order did not require undergrounding. (FPL Ex. 15).

The ALJ’s consideration of and citation to a lower-court case and an administrative case was proper because they represent subsequent applications of *Seminole County*. The circuit court in *Gadsden County* relied upon the holding in *Seminole County* to conclude that Gadsden County’s comprehensive plan policies and land development regulations, which would have dictated the location, design, and construction of Florida Power Corp.’s proposed transmission line, were “unconstitutional as inconsistent with general law” and the county was permanently enjoined from enforcing them as against electrical transmission lines. In *City of Parker*, the PSC

concluded that it had exclusive jurisdiction over Gulf Power Corp.'s proposed transmission line and that the City of Parker's comprehensive plan and land development regulations could not be relied upon by the city to compel Gulf Power Corp. to locate the transmission line underground. *See In re Petition by City of Parker*, PSC-003-0598-DS-EU, 2003 WL 21436985 (Pub. Svc. Comm'n 2003) (May 12, 2003) (finding that "a city cannot supersede the legislative grant of authority in Chapter 366, unless it is shown that the underlying statutory authority, Chapter 163, is superior. This has not been shown").

Coral Gables/Pinecrest also argue that "there is no indication that compliance with the Coral Gables' land use and zoning ordinances will have any impact on FPL's 'rates and service' or cause FPL to expend large sums of money." Contrary to Coral Gables/Pinecrest's argument, competent substantial record evidence supports a finding that undergrounding the Davis-Miami 230-kV transmission line would impose greater costs on FPL and its ratepayers than the planned overhead construction of the line. FPL witness Hronec testified that undergrounding the Davis-Miami transmission line within the FPL East Preferred Corridor would cost approximately \$13.3 to \$18.5 million per mile; these numbers compare to a cost range of \$1.5 to \$2.5 million per mile for overhead facilities, with a cost differential of \$10.8 to \$17 million per mile (in other words, underground construction in this area would be roughly nine times more expensive than overhead construction). (T. Vol. 11, pp. 1592-1594; T. Compl.Resp.1 COG-08, p. 60). The ALJ relied on this record in support of the findings in paragraphs 304 and 431.

Coral Gables/Pinecrest further argue that the “cost-causers”/“cost allocation” principle reflected in paragraph 304—specifically, that the “incremental costs of undergrounding transmission lines, where overhead transmission lines are feasible, but undergrounding is requested for aesthetic reasons, are typically paid by the requesting entity”—has not been recognized by either the Florida Supreme Court or the PSC. Contrary to this argument, both *Seminole County* and *City of Parker* recognize the “cost-causers”/“cost allocation” principle. See *Seminole County*, 579 So. 2d at 107-108 (Fla. 1991) (rejecting a charter county and municipality’s attempts to require undergrounding at the utility’s cost, reasoning that if the utility “has to expend large sums of money in converting its overhead power lines to underground, these expenditures [would] necessarily be reflected in the rates of its customers” and thus would “clearly run contrary to the legislative intent that the [PSC] have regulatory authority over this subject”); *In re: Petition by City of Parker*, PSC-003-0598-DS-EU, 2003 WL 21436985 (May 12, 2003) (wherein the PSC declared on pages 13-16 that its jurisdiction preempted a municipality’s local land use regulations, and recognized on page 12 the PSC’s position in *Seminole County* that “the city and county are the cost causers in this case, and their position contravenes our policy that cost causers pay the direct costs of undergrounding”).

In Section 366.03, F.S., the Legislature has also recognized the “cost-causers” or “cost allocation” principle, insofar as it has prohibited public utilities from forcing one locality to pay for undergrounding that would benefit only customers in another locality. See § 366.03, Fla. Stat. (2013)(“[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to

any undue or unreasonable prejudice or disadvantage in any respect”). Thus, the cost causers in this case (i.e., the local governments) would be responsible for any costs associated with undergrounding the transmission line, not FPL and its ratepayers.

Coral Gables/Pinecrest assert that subsection (d) of the statute at issue in the *Seminole County* case, section 337.403(1), F.S., applies in the instant case. The statute provides that authorities (including municipalities) are “not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others.” § 337.403(1), Fla. Stat. (2013). Contrary to Coral Gables/Pinecrest’s assertion, section 337.403(1) only applies where, like in *Seminole County*, there is a threshold determination by the authority that existing utility infrastructure is “unreasonably interfering ... with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of ... [a] public road or publicly owned rail corridor.” § 337.403(1), Fla. Stat. (2013)(emphasis added); *see also Seminole County*, 579 So. 2d at 106 (providing that “[u]pon determining to widen Lake Mary Boulevard, the city and the county enacted ordinances requiring FPC to relocate its power lines underground”) (emphasis added). No such threshold determination has been made by Coral Gables or Pinecrest in this case. There is no evidence that suggests FPL’s proposed transmission line through the East Preferred Corridor is a “subsequent addition” to a “facility initially installed to exclusively serve” Coral Gables or Pinecrest. Thus, section 337.403(1)(d), F.S., does not apply to the instant case.

4) Coral Gables and Pinecrest also assert that they may regulate FPL’s transmission lines notwithstanding the lines’ exclusion from the definition of “development” in chapter 380, F.S., based upon their independent home rule authority

and the reasoning in *Wilson v. Palm Beach County*, 62 So. 3d 1247 (Fla. 4th DCA 2011). This assertion is not adopted in this Final Order. The Legislature expressly excluded “[w]ork by any utility and other persons engaged in the . . . transmission of . . . electricity . . . for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any . . . pipes . . . power lines, towers, poles, . . . or the like” from the definition of “development” used in Chapter 163, Part II, F.S. See § 380.04(3)(b), Fla. Stat. (2013). The definition of “development” and the exclusions from that definition apply to the authority that a county or city exercises under Chapter 163, Part II, F.S., when adopting and enforcing a comprehensive plan or land development regulation. See § 163.3164(14), Fla. Stat. (2013)(incorporating § 380.04, F.S., into Chapter 163, Part II, F.S., for purposes of local comprehensive plans and land development regulations). Therefore, the ALJ correctly concluded that local governments are prohibited from exercising any authority to regulate the use and development of land through a comprehensive plan or land development regulation when it comes to matters encompassed by the exclusions in section 380.04(3), F.S. The ALJ’s reasoning is adopted in this Final Order.

The Florida Supreme Court, three District Courts of Appeal, and the former Florida Department of Community Affairs have also confirmed this construction of the statute by the ALJ. See, e.g., *Fla. Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla. 1991) (ruling that the PSC’s regulatory authority to determine when underground distribution and transmission facilities is cost-effective could not be infringed by local governments even when they have home rule authority); *Rinker Materials Corp. v. Town of Lake Park*, 494 So. 2d 1123 (Fla. 1986)(relying upon the definition of “development”

to preclude application of certain comprehensive planning requirements); *Leon County Bd. of County Comm'rs. v. Karimipour*, 4 So. 3d 777 (Fla. 1st DCA 2009), *affirming Karimipour v. Leon County*, Case No. 07-CA-3437 (Fla. 2d Cir. Final Summary Judgment June 3, 2008); *see also In re: Petition for Declaratory Statement filed by Hughes and Knowles*, Case No. DCA-03-DEC-295, 4-5 (Apr. 9, 2004) (wherein FDCA found that the exclusions in section 380.04(3)(b) and (h), F.S., were dispositive).

In support of their position, Coral Gables/Pinecrest cite to *Wilson v. Palm Beach County*, 62 So. 3d 1247 (Fla. 4th DCA 2011), for the proposition that regardless of the definition of “development” in section 380.04(3), F.S., they may nevertheless regulate FPL’s transmission lines and corridors and transmission access roads based upon their home rule authority. Their reliance on *Wilson*, however, is misplaced.

In *Wilson*, a landowner challenged the right of Palm Beach County, a charter county, to enforce certain land development regulations on his nursery on grounds that his property was exempt from local regulation under the Florida Right to Farm Act (“FRFA”). On appeal, the Fourth District Court of Appeal held that the FRFA did not preempt all regulation of agricultural activities under the FRFA, only ordinances adopted after the FRFA’s effective date; therefore, the County could still enforce an ordinance that pre-dated the FRFA, within certain limits. *Id.* at 1250-1251. Since all but one of the ordinances at issue pre-dated the effective date of the FRFA or conflicted with statutes governing agricultural uses, the Fourth District held the FRFA did not preempt them. *Id.* at 1251.

With respect to the one ordinance adopted after the effective date of the FRFA, however, the Fourth District reversed and remanded for fact-finding on whether the

remaining ordinance would “interfere” with farming operations under the FRFA, notwithstanding the fact that agricultural activities (like utility work) are excluded from the definition of “development” in section 380.04(3), F.S. *Id.* at 1251-1252. The Fourth District noted, without further analysis, that the County’s authority to regulate agricultural activities was not based exclusively on chapter 163, F.S., but also on constitutional home-rule powers as well as the general authority granted under Chapter 125, F.S. *Id.* at 1252. Based upon the Fourth District’s fleeting comment regarding independent home rule authority, Coral Gables/Pinecrest argue that regardless of the exclusions from definition of “development” found in section 380.04(3), F.S., they may nevertheless regulate FPL’s transmission lines pursuant to their independent home rule authority.

Contrary to their assertion, Coral Gables/Pinecrest cannot rely upon home rule authority as an independent, alternative source of authority to regulate FPL’s transmission lines. The ALJ correctly concluded that under their home rule authority, charter counties and municipalities may only enact ordinances that are not inconsistent with general law. See RO ¶¶ 828-829; *see also* Art. VIII, §§ 1(g), and 2(b), Fla. Const. An ordinance is “inconsistent” with general law if (1) the Legislature has preempted a particular subject area, or (2) the local enactment conflicts with a state statute. *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 885-86 (Fla. 2010).

For the reasons articulated above, the Legislature has preempted this subject area and therefore any County or municipal local comprehensive plans or land development ordinances seeking to regulate FPL’s transmission lines would be inconsistent with general law and thus invalid. *See id.*; *see also City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1247 (Fla. 2006) (a local government “cannot forbid what the

legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden”); *see also Dade County v. Acme Specialty Co.*, 292 So. 2d 378 & n.2 (Fla. 3d DCA 1974) (county ordinances under home rule charter treated the same as municipal ordinances).

Coral Gables’ and Pinecrest’s comprehensive plan provisions and land development regulations adopted pursuant to their home rule authority would also be inapplicable as to FPL’s transmission lines because said ordinances would conflict with several statutes: chapter 366, F.S., to the extent that they purport to regulate FPL facilities that are part of the “coordinated electric power grid throughout Florida” for which the PSC has “exclusive and superior” jurisdiction; chapter 403, Part II, F.S., the PPSA, to the extent it preempts and adopts the exclusion of transmission lines from the definition of “development”; chapter 163, Part II, F.S., and section 380.04(3), F.S., to the extent plans or regulations pursuant to that statute purport to regulate FPL in the “creation ... of rights of access ... or other rights in land,” or in its “[w]ork ... for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way”; and chapter 361, F.S., to the extent that they purport to regulate FPL in the exercise of its broad eminent domain powers conferred by general law. *See* §§ 366.04(1) and (5), 403.511(3), 380.04(3)(b) and (3)(h), 361.01, Fla. Stat. (2013).

Thus, Coral Gables/Pinecrest’s reliance on *Wilson* is misplaced, where the *Wilson* court acknowledged that home rule powers may not be exercised in conflict with general law. *Id.* at 1252 (qualifying that even the remanded ordinance would only apply “to the extent that the regulation [did] not conflict with other statutes governing agricultural uses”). For all of the above reasons, Coral Gables/Pinecrest’s assertions that their land

use and zoning ordinances are “applicable nonprocedural requirements of agencies” that the ALJ must consider when assessing the project’s consistency with the PPSA criteria and potential for aesthetic impacts are rejected.

5) Coral Gables/Pinecrest argue that aesthetics must be considered in considering whether, and the extent to which, the location, construction and operation of the electrical power plant will “[m]inimize, 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,” and “[s]erve and protect the broad interests of the public,” citing to section 403.409(3)(f) and (g), F.S. The Siting Board agrees that aesthetics is a consideration to be included in the balancing of interests under the PPSA certification criteria. Contrary to Coral Gables/Pinecrest’s argument, however, aesthetics were considered by the ALJ, who expressly addressed aesthetics, including those in Coral Gables, in paragraphs 375 and 776:

375. While sharply conflicting testimony on the issue was presented, the more persuasive evidence established that the transmission lines will be just one of the many necessary urban features visible to the eye in the current urban landscape, such as street and traffic lights. Measures can be employed to minimize aesthetic impacts of the lines, such as landscaping to direct the eye away from the structures and adding new vertical elements to blend in with the pole. Numerous similar visible linear features exist in the U.S. Highway 1 multi-modal transportation corridor.

776. Several individuals testified about negative aesthetic impacts or blight that may be caused by the installation of transmission lines in their communities. Several also stated that they were concerned about negative impacts to quality of life. Specific aesthetic concerns included the height and diameter of the transmission line poles as well as the sway of the transmission lines. A few individuals were concerned

about maintaining the historic aesthetic of Coral Gables. The greater weight of the evidence offered with respect to the quality of life impacts from the transmission lines did not support these concerns as expressed by the public. Aesthetic and economic impacts have been addressed, and the height and diameter of the transmission line poles was established as customary for FPL. FPL complies with local tree ordinances, including tree replacement planting where appropriate. Landscaping and trees can help to minimize any aesthetic impacts. The final transmission line alignment will take into account approved and proposed development to be constructed in the area. The testimony established that while transmission lines in urban settings may involve aesthetic impacts, those aesthetic impacts from placing the transmission lines such as within any of the eastern corridors would be minimal, and the transmission lines would be just one of many urbanized vertical elements in the landscape. Any aesthetic impacts from the proposed transmission lines would be no different in kind from those normally experienced every day in settings like those proposed for the transmission lines. Additionally, FPL is not required to comply with zoning ordinances relating to aesthetics because they are not applicable non-procedural requirements with which FPL is required to demonstrate compliance in the siting of transmission lines.

(RO ¶¶ 375, 776).

6) Coral Gables/Pinecrest argue that paragraph 304 should be relabeled as a conclusion of law. Paragraph 304 is a mixed finding of fact and conclusion of law. To the extent that paragraph 304 addresses factual issues regarding undergrounding, it is supported by competent substantial record evidence. (Hronec, T. Vol. 11, pp. 1594-1596; T. Vol. 21, pp. 2892-2894; DEP Ex. 1, pp. 9-10). To the extent that paragraph 304 contains legal conclusions, as discussed in this exception those conclusions are reasonable and are adopted in this Final Order.

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 14 is denied.

Coral Gables/Pinecrest Exception No. 18

Coral Gables/Pinecrest take exception to paragraphs 358-361 and 458 of the RO, arguing that these paragraphs “are in fact Conclusions of Law,” are “clearly erroneous,” and thus should be “deleted in their entirety.” These paragraphs are actually mixed findings of fact and conclusions of law. To the extent that paragraphs 358-361 and 458 contain factual findings, they are supported by competent substantial record evidence. DEP witness Mulkey testified that under the agency’s interpretation of the PPSA, there are no “applicable” local government comprehensive plans or land development regulations for the proposed transmission lines and pipelines in this case. (Mulkey, T. Vol. 40, pp. 5741-5743).

The testimony of FPL and local government witnesses confirmed that if local governments were permitted to regulate the design, height, size or placement of transmission pole structures, those local regulations could vary or even conflict, causing FPL to be unable to (1) implement transmission line designs that comply with necessary industry standards and safety codes, such as the National Electrical Safety Code (“NESC”), with which transmission lines must comply; (2) provide service to a designated area or substation; or (3) acquire the necessary uninterrupted contiguous ROW needed between substations and designated service areas. (T. Vol. 11, pp. 1582-1585; T. Vol. 48, pp. 6740-6743; T. Vol. 49, pp. 6830-6836 (Miami’s Planning & Zoning Director, asserting that industrial zoned areas are the only location within the City of Miami where the proposed overhead 230-kV transmission line might be “compatible or contextual or consistent” although there are no industrial zoned areas that connect to the Miami substation); T. Vol. 37, p. 5321 (Coral Gables City Planner suggesting a concrete wall to

buffer 98-foot tall transmission structure to comply with Coral Gables' land use regulations); T. Vol. 42, p. 5896 (Miami's Chief of Community Planning opining that the proposed transmission line should not be located within the City of Miami because there is no type of landscaping or buffering adequate for a 105-foot transmission structure); T. Vol. 45, pp. 6403-6404 (Village of Pinecrest Planning Director asserting that FPL's transmission line could not be placed anywhere within the Village of Pinecrest due to land use and zoning compatibility concerns)).

This testimony exemplifies the Florida Supreme Court's recognition that:

If 100 such municipalities each had the right to impose its own requirements with respect to installation of transmission facilities, a hodgepodge of methods of construction could result and costs and resulting capital requirements could mushroom. As a result, the supervision and control by the Public Service Commission with respect to the company, its facilities, its indebtedness, its investment, and its rates ... would be nullified. (Emphasis added)

Seminole County, 579 So. 2d at 107 (quoting *Union Elec. Co. v. City of Crestwood*, 499 S.W.2d 480,483 (Mo. 1973)).

To the extent that paragraphs 358-361 and 458 are conclusions of law, the ALJ's conclusions are reasonable and are adopted in this Final Order. See § 120.57(1)(k), Fla. Stat. (2013). Coral Gables/Pinecrest argue that the references to comprehensive plans and zoning regulations in the PPSA and TLSA are evidence that the Legislature intended those local ordinances to apply to transmission lines. As discussed in the ruling on Coral Gables/Pinecrest Exception No. 14 above, the plain language of the PPSA proves otherwise. Those comprehensive plans and zoning regulation provisions are included and apply to the facilities that are subject to land use

regulation, i.e., for the PPSA – power plants and non-linear facilities; and for the TLSA - substations. See, e.g., §§ 403.503(7), 403.50665, 403.522(22), Fla. Stat. (2013).

Coral Gables/Pinecrest also argue that section 380.04(3), F.S., (defining “development”), should be “read” more narrowly “to deal with the ordinary work of replacement and construction of [p]ower poles which break and fall and require immediate replacement versus an application for certification” These limitations are not found anywhere in the statutory text, and conflict with the exclusion from “development” of work for the purpose of “constructing” power lines or the “creation” of rights-of-way. See, e.g., § 380.04(3)(b) and (h), Fla. Stat. (2013).

Coral Gables/Pinecrest’s arguments are inconsistent with the plain language of the statute, the Siting Board’s consistent and longstanding interpretation of the statute, and past judicial constructions of the statute. See, e.g., *In re: Progress Energy Florida Levy Nuclear Project Units 1 and 2*, PA08-51, DOAH Case No. 08-2727EPP, 2009 Fla. ENV LEXIS 151; 2010 ER FALR 12 (May 15, 2009) p. 28, ¶ 208 of RO (“Construction of transmission lines on such established rights-of-way is excepted from the definition of ‘development’ contained in Section 163.3164(6), Florida Statutes.”), adopted *in toto* DEP OGC Case No. 08-1621, 2009 Fla. ENV LEXIS 150, 2010 ER FALR 12 (Siting Bd. Aug. 26, 2009), p. 18 (no party filed an exception to ¶ 208); *In re: Florida Power and Light Co. Bobwhite-Manatee 230kV Transmission Line Project Transmission Line Siting Application*, TA07-14, DOAH Case No. 07-0105TL, 2008 Fla. ENV LEXIS 194, 2009 ER FALR 13 p. 76, ¶ 211 of RO (Aug. 11, 2008) (“ . . . the construction of an electric transmission line in an established right-of-way is not “development” under Chapter 163, Florida Statutes”), adopted in most parts in DEP OGC Case No. 07-0026, 2008 Fla.

ENV LEXIS 195, 2009 ER FALR 13 (Siting Bd. Nov. 6, 2008) (no parties took exception to ¶ 211); *In re: Florida Power & Light St. Johns-Pellicer-Pringle, 230 kV Project, Transmission Line Siting Application*, DOAH Case No. 05-2478TL, 2006 Fla. ENV LEXIS 101, 2006 ER FALR 164, p. 21-22, ¶ 61 of RO (March 6, 2006), adopted *in toto* DEP OGC Case No. 05-1712, 2006 Fla. ENV LEXIS 100, 2006 ER FALR 164 (Siting Bd. Apr. 27, 2006) (no party filed an exception to ¶ 61); *In re: Tampa Elec. Co. Willow Oak-Wheeler-Davis Transmission Line Siting Application*, DOAH Case No. 07-4745TL, 2008 Fla. ENV LEXIS 115, 2008 ER FALR 175, p. 27, ¶ 50 of RO (May 13, 2008) (“Construction of transmission lines on such established ROWs is excepted from the definition of ‘development’ in Section 163.3164(5), Florida Statutes. Accordingly, the provisions of the local comprehensive plans related to ‘development’ that have been adopted by the local governments crossed by the line are not applicable to this project.”), adopted *in toto* 2008 Fla. ENV LEXIS 114, 2008 ER FALR 175, DEP OGC Case No. 07-1858, p. 6 (Siting Bd. Aug. 1, 2008)(no exceptions were filed by any party to ¶ 50).

Therefore, based on the foregoing reasons and the ruling on Coral Gables/Pinecrest Exception No. 14 above, Coral Gables/Pinecrest’s Exception No. 18 to paragraphs 358-361 and 458 is denied.

Coral Gables/Pinecrest Exception No. 34

Coral Gables/Pinecrest take exception to paragraph 779 of the RO, arguing that it “should either be amended to state that FPL has stipulated it will meet all noise ordinances or reversed as unsupported by substantial competent evidence.” Coral Gables/Pinecrest also argue that the ALJ’s finding that “[l]ocal zoning codes and LDRs

are not applicable non-procedural requirements with which a transmission line is required to comply,” should be deleted. The ruling on Coral Gables/Pinecrest’s Exception No. 14 above, is incorporated herein.

Competent substantial record evidence demonstrates that FPL has committed to and has the capability to comply with the various local government noise ordinances. (T. Vol. 1, pp. 127-130; T. Vol. 11, p. 1585-1589; T. Vol. 13, p. 1843; T. Vol. 14, pp. 2010-2011; T. Vol. 22, p. 2911; T. Vol. 17, pp. 2296-2297; T. Vol. 33, p. 4758; RO Attachment 1, Conditions C.VII.B, C.VIII.I, C.VIII.J, C.IX.A, C.X.D.2, C.XI.D, C.XIII.H; and RO Attachment 2, Condition III.B; *see also* FPL Ex. 20 (stipulations with local governments addressing noise ordinances, all of which have been incorporated into RO Attachments 1 or 2)).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception No. 34 is denied.

Coral Gables/Pinecrest Exception Nos. 41, 43, and 55

Coral Gables/Pinecrest takes exception to paragraphs 820-836, 848-851, 866, and 896 of the RO, arguing that these legal conclusions “should be deleted in their entirety.” Specifically, Coral Gables/Pinecrest object to the conclusions in these paragraphs that, (1) their comprehensive plans and land development regulations do not apply to the proposed transmission lines and pipelines in this case; (2) the Siting Board is not bound by local land use and zoning requirements; (3) their authority to regulate FPL’s transmission lines and corridors has been preempted by the PSC and the Siting Board; (4) transmission lines are excluded from the definition of “development” under chapters 380 and 163, F.S., and for that reason they are prohibited from regulating same under

their land use and zoning ordinances; and (5) the municipalities lack the independent home rule authority to require undergrounding.

For the reasons articulated in the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 above, their Exception Nos. 41, 43, and 55, are denied.

MDC/NPCA Exception No. 10

MDC/NPCA take exception to paragraph 358 of the RO, asserting that it "becomes a conclusion of law" that "the PPSA preempts local government comprehensive plans and land development regulations" and "that none of FPL's project facilities-even those that are to be installed outside of existing rights-of-way-constitute 'development[.]'" To the extent that MDC/NPCA's assertions concern preemption of local government comprehensive plans and land development regulations, the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 are adopted and incorporated herein. With regard to MDC/NPCA's assertion that transmission lines installed outside of existing rights-of-way constitute "development," the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 above, as well as on MDC/NPCA Exception No. 66 below, are adopted and incorporated herein.

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 10 to paragraph 358 is denied.

MDC/NPCA Exception No. 66

MDC/NPCA take exception to the legal conclusions in paragraphs 820-832 of the RO, which determine that MDC is preempted from applying its comprehensive plan and land development regulations to the transmission line facilities and that the facilities

would in any event be exempt from the statutory definition of “development.”

MDC/NPCA argue that these conclusions are “clearly erroneous.”

MDC/NPCA’s make four arguments:

- the PPSA does not preempt land development regulations;
- the Conservation Element of MDC’s comprehensive plan is an applicable, nonprocedural environmental regulation;
- construction of a transmission line on land that is not currently ROW constitutes “development”; and
- as interpreted by the ALJ, section 403.509(3), Florida Statutes, violates the non-delegation doctrine because it vests the Siting Board with “unfettered discretion” to determine when local zoning regulations are “applicable.”

MDC/NPCA’s first and third arguments are addressed in the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 above, adopted and incorporated herein.

MDC/NPCA’s second argument is that the Conservation Element of MDC’s comprehensive plan contains environmental regulations that are distinguishable from land use and zoning regulations, and thus are applicable nonprocedural requirements. It should be noted that to the extent these plan policies have been implemented via MDC’s environmental protection ordinances, such as those governing permits for work in wetland areas set forth in Chapter 24, Art. IV, Div. 1 of the County Code, FPL has addressed and satisfied them. (See Conditions C.VII.A, .C, .D, .F, .I, .J, .K, .L, .N, .P, .S, and .Z (p. 147-63)).

The CDMP (including its Conservation Element) is a local planning document, which MDC has been authorized to adopt pursuant to chapter 163, Part II, F.S., and is

therefore not otherwise applicable for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 above. Consequently, MDC/NPCA's argument that the Conservation Element of the CDMP is independently applicable to the proposed transmission lines is rejected and not adopted in this Final Order. (i.e. independently applicable notwithstanding the environmental standards that are included within Chapter 24, of the County Code) lacks merit and should be denied.

Finally, MDC/NPCA argue that as interpreted in the RO, section 403.509(3), F.S., violates the non-delegation doctrine because it vests the Siting Board with "unfettered discretion" to determine when local zoning regulations are applicable. MDC/NPCA argue that the ALJ incorrectly interprets the PPSA to give the Siting Board "complete discretion, uninhibited by any legislative guidance, criteria, or factors, to determine whether, and to what extent, a proposed transmission line corridor should be required to comply with a local government land use or zoning regulation."

Contrary to MDC/NPCA's argument the ALJ's interpretation is a reasonable interpretation of the PPSA. For the reasons provided in the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 above, local government land use and zoning requirements are not applicable to transmission line corridors seeking PPSA certification. The PPSA requires evaluation of the consistency of the power plant site and certain associated facilities with applicable local government land use plans and zoning ordinances to the extent that the facilities are otherwise subject to land use regulation. For the associated facilities subject to PPSA certification that are not subject to land use regulation, the PPSA does not require such evaluation. See §§ 403.50665 and 403.509(3)(c), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 66 to paragraphs 820-832 is denied.

Miami Exception Nos. 26, 44, and 67; MDC/NPCA Exception Nos. 11, 12, and 13

Miami and MDC/NPCA take exception to paragraphs 358-361 of the RO for the same reasons argued in Coral Gables/Pinecrest Exception No. 18 and MDC/NPCA Exception No. 10. The rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18, and MDC/NPCA Exception No. 10, are incorporated herein.

Miami also takes exception to the second sentence in paragraph 458 and the final sentence of paragraph 779, on the basis that it is not clear which regulations FPL has committed to comply with and which are now conditions to the certification. These findings are supported by competent substantial record evidence, in the form of witnesses who indicated FPL's willingness to comply with the recommended conditions of certification. (T. Vol. 1, p. 129; T. Vol. 11, p. 1609). Those conditions of certification are in the record of the hearing (FPL Ex. 20), are included as Attachments 1 and 2 to the RO, and are all recommended by the ALJ. See RO ¶ 725 (Attachment 1); RO ¶¶ 295, 746, 750, and 762 (Attachment 2); and RO at page 326). The remainder of paragraph 458 is also supported by competent substantial record evidence. (T. Vol. 40, pp. 5740-5752, 5787; T. Vol. 11, pp. 1582-1585; T. Vol. 12, p. 1714).

Therefore, based on the foregoing reasons, Miami's Exception Nos. 26, 44, and 67, and MDC/NPCA's Exception Nos. 11, 12, and 13, are denied. To the extent these exceptions incorporate Miami's arguments in Miami Exception Nos. 72, 75 and 76, these exceptions are also denied for the reasons stated in the rulings on those exceptions.

Miami Exception No. 48; Coral Gables/Pinecrest Exception No. 26

Miami takes exception to the ALJ's findings in paragraphs 465-468 of the RO, arguing that FPL's evidence of compliance with Miami's applicable nonprocedural requirements is incomplete. Paragraphs 465-468 are, however, supported by competent substantial record evidence. (T. Vol. 11, pp. 1553-1562, 1585-1586, 1591-1592, 1611-1615; T. Vol. 25, pp. 3362-3363; RO, Attachments 1 and 2 (recommended conditions of certification)). To the extent this exception incorporates Miami's arguments in its Exception Nos. 72, 75 and 76, this exception is denied for the reasons stated in the rulings on those exceptions.

Coral Gables/Pinecrest take exception to paragraph 465, by suggesting that there may be inconsistencies between paragraph 465 and the condition of certification and/or stipulations entered into by FPL. Coral Gables/Pinecrest do not identify a specific inconsistency. *See* § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Miami's Exception No. 48 and Coral Gables/Pinecrest's Exception No. 26, are denied.

Miami Exception No. 75

Miami takes exception to the findings in paragraphs 358 and 458 and the conclusions in paragraphs 818-836 and 883 of the RO, where the ALJ concludes that local government comprehensive plans and land development regulations are not applicable to the electrical transmission lines. The rulings on Coral Gables/Pinecrest Exceptions Nos. 14, 18, and 21, are incorporated herein.

In addition, Miami's argument that it requested that the ALJ "determine consistency with its plans and ordinances before undertaking the certification hearing" is

addressed in the ruling on Miami's Exception No. 72, which is incorporated herein.

Miami's argument that the ALJ erred in rejecting conditions proposed by Coral Gables (RO ¶ 883) is addressed in the rulings on Coral Gables/Pinecrest Exception Nos. 29 and 53, which are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 75 is denied.

Miami Exception No. 76

Miami again takes exception to paragraphs 358, 809, 819-832, and 896, where the ALJ determined that local comprehensive plans and land development regulations do not apply to the electrical transmission lines. The rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18, and MDC/NPCA Exception Nos. 10 and 66, are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 76 is denied.

Miami Exception No. 86

Miami takes exception to the ALJ's conclusions in paragraphs 803-808 and 859-863 of the RO. Miami argues that the ALJ incorrectly concluded that FPL has complied with the applicable nonprocedural requirements of section 403.509(3)(b), F.S., and also argues that the ALJ misconstrued the PPSA and misapplied "preemption law."

Miami argues that because it repeatedly said during the hearing that applicable nonprocedural requirements were not being met, the conclusion in paragraphs 803-808 and 859-863, finding that FPL provided reasonable assurances of the Project's compliance with applicable nonprocedural requirements, is in error. Contrary to Miami's arguments, the ALJ's conclusions are reasonable and based on permissible inferences

from the record evidence. See, e.g., *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277 (Fla. 1st DCA 1985).

Miami also argues, by citing to section 403.511(3), F.S., that this case fits an enumerated exception relating to federally delegated or approved permit programs. Miami, however, does not provide a legal basis for asserting that this certification proceeding fits the enumerated exception. See §120.57(1)(k), Fla. Stat. (2013)(agency need not rule on an exception that does not provide a legal basis). Miami's remaining arguments in this exception are addressed in the rulings on Miami's Exception No. 72 and Coral Gables/Pinecrest Exception Nos. 14 and 18, which are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 86 is denied.

Coral Gables/Pinecrest Exception No. 45

Coral Gables/Pinecrest take exception to the ALJ's conclusion in paragraph 859 that FPL has complied with the applicable nonprocedural requirements of section 403.509(3)(b), F.S. Coral Gables/Pinecrest argue that paragraphs 859 should be deleted in its entirety as it relates to the eastern transmission line corridors. More specifically, Coral Gables/Pinecrest argue that the ALJ "has misinterpreted applicable law, the evidence and the applicable statutes[.]" and "failed to require that FPL comply with applicable non-procedural requirements[.]" and therefore the RO's "conclusions are clearly erroneous."

For the reasons articulated in the rulings on Coral Gables/Pinecrest's Exception Nos. 14, 18 and 21, which are incorporated herein, this exception is denied. To the extent Coral Gables/Pinecrest also incorporate the arguments in their Exception Nos.

10, 15, 19, 20, 33, and 41-43, this exception is denied for the same reasons stated in the rulings on those exceptions.

Siting and Corridor Selection Process vs. Statutory Criteria

Coral Gables/Pinecrest Exception No. 10

Coral Gables/Pinecrest take exception to paragraphs 269-274, 277-286, 288-290 and 377-395 of the RO. Coral Gables/Pinecrest contend that the ALJ adopted FPL's corridor evaluation and selection criteria rather than applying the statutory criteria (in section 403.509(3) and (4), F.S.) for the purpose of determining which corridor, FPL East Preferred Corridor or PAC Alternate Corridor, is most suitable for certification under the PPSA. Coral Gables/Pinecrest requests modification or deletion of the challenged paragraphs based on their arguments in this exception.

Contrary to their contention, the ALJ's conclusions in paragraphs 837-880 expressly address each of the PPSA criteria. These conclusions show that the ALJ did not substitute FPL's corridor selection methodology and criteria for an analysis of the PPSA statutory criteria. In this exception, Coral Gables/Pinecrest attempt to confuse the criteria used by FPL for its initial transmission corridor selection process with the ultimate determination as to transmission corridor certification under section 503.509(3) and (4), F.S.

In paragraph 269, the ALJ found that "the corridor selection process used by FPL is found to be reasonable, is consistent with the methodology, guidelines, and criteria used in prior corridor projects throughout the State, and therefore is appropriate for use in this proceeding." Coral Gables/Pinecrest contend that the ALJ erred and conducted "improper rulemaking" by relying on the evidence presented by FPL concerning its

comparative evaluation of the two eastern corridors. Contrary to Coral Gables/Pinecrest's contention, the ALJ did not make any finding in the RO that FPL's corridor selection methodology is an agency statement of general applicability that must be applied in all certification proceedings. See § 120.52(16), Fla. Stat. (2013)(defining "rule" as "each agency statement of general applicability that implements, interprets or applies law or policy") (emphasis added). In addition, the record does not reflect that an "unadopted rule" issue was raised by Coral Gables/Pinecrest as a disputed issue for adjudication by the ALJ. See *also* § 120.57(1)(e), Fla. Stat. (2013).

In fact, in this proceeding FPL's corridor selection methodology differed between the east and west transmission line corridors. In the comparative quantitative evaluation of candidate routes, two of the criteria evaluated measured the number of buildings and schools within 200 feet for the east corridors selection and 500 feet for the west. (T. Vol. 8, pp. 1129-1130; FPL Ex. 6, p. W9-34 and E9-29 at Tables W9.3.1-3 and E9.3.1-3). This variation in methodology, as explained by FPL's expert in multi-disciplinary transmission line corridor selection Philip Simpson, was due to variation in density between the east and west study areas. Mr. Simpson noted, however, that the FPL corridor selection team could have used "any measurement we wanted." (T. Vol. 8, p. 1130; T. Vol. 9, pp. 1334-1335). Also, the other parties were free to utilize other corridor selection methodologies, and were not rejected for inconsistency with FPL's methodology.

Coral Gables/Pinecrest's assertion that the "ALJ dismissed out-of-hand several of the corridor selection criteria offered by the Cities, including census data, density information, house-by-house or parcel-by-parcel analysis" is also unfounded. The ALJ's

consideration of this information is evidenced by the listing of these evidentiary matters in paragraph 269. The ALJ determined, however, that it was not necessary for these specific metrics to be used in FPL's corridor selection methodology. The competent substantial record evidence shows that FPL did not ignore overall density of development in its corridor selection methodology. (T. Vol. 2, pp. 253-254; T. Vol. 8, pp. 1129-1130; T. Vol. 10, pp. 1465-1466; T. Vol. 27, pp. 3770, 3813-3818; T. Vol. 33, pp. 4692-4693; FPL Ex. 6, p. W9-34, W9-35, E9-29, E9-31).

Coral Gables/Pinecrest also argue that the ALJ did not include findings of fact on certain evidence they presented at the hearing. The ALJ issued a comprehensive RO noting in the final paragraph that, "[a]ll other arguments not specifically addressed by this Recommended Order have been considered and found to be without merit." (RO ¶ 897). The Siting Board does not find that the ALJ has failed to perform his function of making the necessary findings of fact, relevant under the PPSA, to support the recommendation of certification. The Siting Board is able to enter a coherent final order, so that remand as suggested by Coral Gables/Pinecrest, is not necessary or appropriate. *See e.g., Cohn v. Dep't of Prof'l Regulation*, 477 So. 2d 1039 (Fla. 3d DCA 1985).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 10 is denied.

Miami Exception Nos. 12, 33, and 34

Miami takes exception to the ALJ's findings in paragraphs 288-290 and 377-395 of the RO. Miami asserts that FPL's corridor selection methodology and criteria used for comparing corridors is an "unadopted rule." The ruling on Coral Gables/Pinecrest's

Exception No. 10 is incorporated herein. Miami also argues that FPL did not consider “population data and density information, electromagnetic field (“EMF”), aesthetics and certain land use elements such a future land use, community facilities, mobility, natural resources, public safety and historical resources.”

Miami does not cite to any legal requirement that “population data and density information” must be expressly considered in corridor selection. Even so, the competent substantial record evidence shows that these types of considerations were part of FPL’s analysis. For example, FPL considered existing and proposed development for which local approvals are pending, planned unit developments and developments of regional impact, buildings in proximity, number of non-FPL parcels/lots crossed, and types of development in proximity to the corridors. (FPL Ex. 6, pp. W9-28 to W9-37, E9-12, E9-25 to E9-30). EMFs were addressed by FPL’s witnesses, both as to compliance with DEP’s EMF standards and the lack of a potential for health effects. (T. Vol. 11, pp. 1590-1591; T. Vol. 14, pp. 2005-2006; FPL Ex. 6, pp. W9-124, E9-127; FPL Exs. 301 and 302). Mobility was addressed by FPL’s expert in traffic engineering and traffic impact analysis (T. Vol. 25, p. 3352-3433). Natural resources were addressed by multiple witnesses (T. Vol. 8, pp. 1096-1097, 1140-1178; T. Vol. 9, pp. 1186-1210, 1215-1217; T. Vol. 26, pp. 3528-3695; T. Vol. 43, pp. 3142-3187; FPL Exs. 6, 282, 283, 286 and 287). Public safety was addressed by FPL’s expert in transmission line engineering, siting and design, who testified that the proposed transmission lines will comply with the NESC, adopted by the PSC pursuant to its exclusive jurisdiction to prescribe safety standards for transmission lines (T. Vol. 11, pp. 1585, 1588; T. Vol. 14, pp. 1947, 1960-1961). Historical resources were addressed by

FPL's expert in archaeological and historical resources, Kathleen Hoffman, Ph.D. (T. Vol. 25, pp. 3435-3521).

Miami also takes exception to paragraph 380, on the basis that it is not supported by the evidence and is "overly general and vague." In paragraph 380, the ALJ found that "land uses and constructability constraints were key considerations" in the eastern corridor selection process. Competent substantial record evidence supports the ALJ's finding. (T. Vol. 27, pp. 3710-3713; T. Vol. 11, pp. 1659-1666; FPL Exs. 278 and 287).

Therefore, based on the foregoing reasons, Miami's Exception Nos. 12, 33, and 34, are denied.

Coral Gables/Pinecrest Exception No. 21; Miami Exception No. 36

Coral Gables/Pinecrest and Miami take exception to paragraph 400 of the RO, where the ALJ found that "[t]he eastern transmission lines in either of the eastern corridors will be generally compatible with the communities' priorities and preferences as reflected in their comprehensive plans and LDRs." Coral Gables/Pinecrest and Miami argue that there is no evidence that FPL or its experts considered any comprehensive plans and LDRs. Coral Gables/Pinecrest and Miami also argue that the ALJ's findings are inconsistent with the testimony of "each and every one of the staff and experts for the affected municipalities."

Contrary to Coral Gables/Pinecrest and Miami's argument, competent substantial record evidence supports the ALJ's findings. (T. Vol. 25, pp. 3438-3439; T. Vol. 28, p. 3709, 3832-3833, 3833-3847, 3849-3851, 3875). In addition, 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 Reg'l Water Supply Auth. 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).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 21 and Miami's Exception No. 36, are denied.

Coral Gables/Pinecrest Exception Nos. 22 and 51

Coral Gables/Pinecrest take exception to the ALJ's findings in paragraphs 411-418, 424, 425-429, 469-479, and related conclusions in paragraph 877, on the basis that these paragraphs are not supported by competent substantial evidence. Coral Gables/Pinecrest argue that "the ALJ's comparisons and ultimate findings as to the [East Preferred Corridor] and the PAC are flawed as the comparisons are not between two distinctive corridors."

The competent substantial record evidence shows that FPL did not compare the East Preferred Corridor to an alignment within the PAC, as argued by Coral Gables/Pinecrest. The testimony of Mr. Daniel Hronec, FPL's expert transmission line engineer, states that for purposes of the quantitative portion of the comparison exercise, FPL looked at the alignment within the PAC identified by Coral Gables/Pinecrest in their filing, as well as another alignment that FPL identified in the PAC using its own professional judgment, and an alignment FPL identified within the East Preferred Corridor, in order to develop quantitative measurements that could be compared. (T. Vol. 22, pp. 2984-2987; T. Vol. 9, pp. 1212-1213; T. Vol. 21, pp. 2822-2824).

The challenged findings in paragraphs 411-418, 424, 425-429, 473, 475, 477, and 478, address the entire PAC, not single alignments. In paragraph 417, the ALJ found that, “[d]epending on the alignment, two aerial crossings of State Road 836 (an elevated roadway) may be required, which could require taller poles.” In paragraph 415 the ALJ found that, “[d]epending on the alignment of the Davis-Miami transmission line within the PAC, construction may require demolition of a residence.” Thus, the basis for Coral Gables/Pinecrest Exception No. 22 does not apply to these findings.

The challenged findings in paragraphs 469-472, 474, 476, and 479 provide information about the relative comparisons of alignments in both of the eastern corridors proper for consideration, alignments identified by FPL in the East Preferred Corridor and the PAC, as well as an alignment identified by Coral Gables/Pinecrest in the PAC. The findings clearly state the basis of the analysis (i.e., expressly state in each case that they involve comparison of “alignments”) and, as explained by FPL’s witness, Mr. Hronec, this type of analysis is the only way to do a uniform comparison of variable width corridors for certain quantitative criteria. Coral Gables/Pinecrest do not cite to any legal basis suggesting that consideration of this type of analysis is inappropriate. See § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception Nos. 22 and 51, are denied.

Coral Gables/Pinecrest Exception No. 42

Coral Gables/Pinecrest take exception to the ALJ’s conclusions in paragraphs 837-843, arguing in part that the “findings and conclusions are not based on application of the criteria” in the PPSA, resulting in “an unadopted rule.” The ruling on Coral

Gables/Pinecrest's Exception No. 10 is incorporated herein. In addition, it should be noted that FPL's corridor selection methodology was only part of FPL's evidence demonstrating that the Turkey Point Unit 6 & 7 Project will "[m]eet the electrical energy needs of the state in an orderly, reliable, and timely fashion," will "[m]inimize, 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," and will "[s]erve and protect the broad interests of the public," pursuant to section 403.509(3)(d), (f) and (g), F.S. FPL's use of this corridor selection methodology, however, does not convert it into an "unadopted rule."

Coral Gables/Pinecrest also argue that the "ALJ has failed to provide any reasoned explanation why he disregarded the process utilized by Coral Gables and the Village of Pinecrest ..." Coral Gables/Pinecrest does not cite to any legal authority or record support for their argument that the ALJ's findings fail to "provide any reasoned explanation." See § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 42 is denied.

Coral Gables/Pinecrest Exception No. 50

Coral Gables/Pinecrest take exception to paragraph 872 of the RO, arguing that the paragraph should be deleted "[o]n the basis of the exceptions, statements and arguments provided in Exceptions 14, 22, 27, 30, 50, 51 and 52, [Conclusion of Law 872] is [] clearly erroneous and a misinterpretation of the law." The rulings on Coral Gables/Pinecrest's Exception Nos. 14, 22, 27, 30, 49, 51, and 52, are incorporated herein.

Coral Gables/Pinecrest also argue that “FPL gave no testimony as to how the PAC would be more costly.” FPL’s expert Daniel Hronec, however, testified that to prepare cost estimates that are reflective of actual expected costs, one must lay out a prospective line route and get parcel-by-parcel data. (Hronec, T. Vol. 12, pp. 1743-1750). For the PAC, FPL developed cost estimates for both the alignment identified by Coral Gables/Pinecrest in their alternate corridor filing as well as an alignment identified by FPL within the PAC. (T. Vol. 11, pp. 1643, 1659-1660; FPL Exs. 286, 287, 314). The ALJ’s acceptance of this methodology for estimating costs for purposes of comparing the corridors is supported by competent substantial evidence. *See* § 120.57(1)(l), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception No. 50 is denied.

Coral Gables/Pinecrest Exception No. 52

Coral Gables/Pinecrest take exception to paragraph 879 of the RO, where the ALJ concludes:

879. For the reasons set forth above, FPL has provided reasonable assurances that the location, construction, operation, and maintenance of the eastern transmission lines within the FPL East Preferred Corridor constitutes the eastern corridor with the least adverse impacts, including costs, considering the factors set forth in section 403.509(3)(e).

Coral Gables/Pinecrest argue that for the reasons in their Exception Nos. 14, 22, 27, 30, 49, 50 and 51, paragraph 879 is an erroneous conclusion of law. For the reasons set forth in the rulings on Coral Gables/Pinecrest’s Exception Nos. 14, 22, 27, 30, 49, 50, and 51, which are incorporated herein, this exception is denied.

Transmission lines certification

Miami Exception No. 77

Miami takes exception to the conclusions in paragraphs 837-847, 851, 858, 862-880 of the RO, that any of the proposed transmission lines meet the requirements for certification set forth in section 403.509(3), F.S., particularly the eastern corridors. Miami's argument is based in part on the reasons stated in its Exception No. 12. The rulings on Miami's Exception Nos. 12, 33 and 34, are incorporated herein.

Miami also argues that it "proved at the hearing," there are a number of problems with the transmission lines that individually and cumulatively should result in a denial of certification. These alleged problems are addressed below in the rulings on Miami's Exception Nos. 78-85, and include: (1) need for undergrounding and storm hardening; (2) consideration of aesthetic concerns; (3) consideration of census information; (4) concerns over sea level rise and storm surge; (5) concerns over water usage and infrastructure; (6) transmission lines exceeding Miami's Franchise Agreement; (7) need for a City referendum for building on City-owned waterfront; and (8) inadequate consideration of health effects. Miami argues that some of these issues were discussed briefly and summarily dismissed, while others were not considered at all by the ALJ in the RO. The rulings on Miami's Exception Nos. 78-85 are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 77 is denied.

Undergrounding and Storm Hardening

Miami Exception No. 78

Miami takes exception to the ALJ's findings in paragraph 304 and conclusions in paragraphs 848-851, regarding whether the "municipalities should be made to bear the

costs of undergrounding.” Miami argues that the ALJ erred by “usurping the role of the PSC in the portions of the [RO] addressing undergrounding. . .” Miami does not argue that paragraph 304 lacks record support. Paragraph 304 is supported by competent substantial record evidence. (T. Vol. 11, pp. 1594-1596; T. Vol. 21, pp. 2892-2894; DEP Ex. 1, p. 9-10).

For the reasons explained in the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18, and Miami Exception No. 75, which are incorporated herein, this exception is denied. In addition, contrary to Miami’s assertions, the RO does not reflect any intention on the part of the ALJ to usurp the PSC’s jurisdiction. Instead, the ALJ acknowledges the rulings by the PSC on the matter of undergrounding transmission lines, and that the PSC’s jurisdiction over rates and service is exclusive.

Miami also takes exception to the ALJ’s findings in paragraphs 297, 298, and 429, asserting that “[t]he ALJ should not have rejected undergrounding and blesses FPL’s proposed storm hardening measures outright.” This assertion, however, is contrary to its pre-hearing stipulation listing the issue for determination by the ALJ during the hearing: “Whether the failure of the hardening process for FPL facilities and the lack of inadequate [sic] overhead poles for the transmission lines, requires FPL to underground the transmission lines because there are no other means with which to place the lines.” See Miami’s Pre-Hearing Stipulation, Issues of Law Remaining to be Litigated #25, unnumbered p. 68 of 78).

Miami’s assertion that “[t]here is nothing in the PSC’s regulations that would prevent a municipality from seeking to require a utility to comply with higher safety

standards” is contrary to the plain language of section 366.04(6), F.S., which provides in pertinent part:

The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall, at a minimum:

- (c) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and
- (d) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2).

The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. . . . (Emphasis added.)

Clearly, the legislature has precluded local governments from applying regulations and standards that address transmission line safety because those matters are within the PSC’s exclusive jurisdiction. The PSC has adopted the NESC, as required by this statute, as the “applicable safety standards for transmission and distribution facilities subject to the Commission’s safety jurisdiction.” Fla. Admin. Code R. 25-6.0345.

The ALJ’s findings in paragraphs 297, 298, and 429, are supported by competent substantial record evidence. (T. Vol. 11, pp. 1585-1588, 1616; T. Vol. 13, p. 1830; T. Vol. 14, pp. 1962, 2006-2007; T. Vol. 20, p. 2671; T. Vol. 27, p. 3816; FPL Ex. 6, p. E9-12, E9-125 to E9-126, E9-135 to E9-136). In addition it would not be appropriate, as suggested by Miami, for the Siting Board to make “it a condition of approval of the siting

application that FPL will construct its transmission facilities in accordance with the storm hardening plan it has in place when construction begins.” Storm hardening is a safety issue that is within the exclusive jurisdiction of the PSC. See §§ 366.04(1), (6), Fla. Stat. (2013); Fla. Admin. Code R. 25-6.0342.

Therefore, based on the foregoing reasons, Miami’s Exception No. 78 is denied.

Miami Exception No. 32

Miami takes exception to the ALJ’s findings in paragraph 376, arguing that “it incorrectly suggests that there is a requirement that lines be sited overhead unless overhead siting is not feasible.” Miami also takes exception to paragraphs 304 and 433, which paragraphs Miami argues “imply that the decision to underground lies entirely with FPL, and that undergrounding is done only where engineering constraints prevent lines from being installed overhead.” The rulings on Coral Gables/Pinecrest’s Exception No. 14 and Miami’s Exception Nos. 38, 39, and 40, are incorporated herein. The challenged paragraphs are supported by competent substantial record evidence, and nowhere does the ALJ expressly find that the undergrounding decision “lies entirely with FPL.” To the extent this exception incorporates Miami’s arguments in Exception No. 78, the rulings on Miami’s Exception No. 78 are incorporated herein.

Therefore, based on the foregoing reasons, Miami’s Exception No. 32 is denied.

Miami Exception No. 38

Miami takes exception to paragraph 431 of the RO, on the basis that the cost estimates for underground construction were dated 2009, and were included in a draft report. The ALJ found the evidence “credible” and the finding is supported by competent substantial record evidence. (T. Vol. 11, p. 1592-94, 1625; Exhibit FPL 6, T.

Compl. Resp.1 COG-08, p. 60); T. Vol. 12, p. 1746; T. Vol. 18, p. 2437-44; T. Vol. 17, p. 2319-21, 2361-2362). See § 120.57(1)(l), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Miami's Exception No. 38 is denied.

Miami Exception No. 39

Miami takes exception to paragraphs 432 and 433 of the RO, on the basis that they are conclusory and unsupported by the evidence. Contrary to Miami's assertion, the findings in paragraphs 432 and 433 are supported by competent substantial record evidence. (T. Vol. 11, p. 1585-88, 1592-94, 1596; T. Vol. 14, p. 1972-74; T. Vol. 17, p. 2257-59; see also T. Vol. 38, Peters, p. 5508-12). See § 120.57(1)(l), Fla. Stat. (2013); see also *Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005)(reflecting that the reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses.). To the extent this exception incorporates Miami's arguments in Exception No. 78, the rulings on Miami's Exception No. 78 are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 39 is denied.

Miami Exception No. 40

Miami again takes exception to paragraph 433 "to the extent that it indicates that FPL's determination of when lines should be undergrounded is determinative of the issue." The rulings on Miami's Exception Nos. 32 and 39 are incorporated herein. Therefore, based on the foregoing reasons, Miami's Exception No. 40 is denied.

Aesthetic concerns

Miami Exception No. 31

Miami takes exception to paragraph 375 of the RO, where the ALJ found:

375. While sharply conflicting testimony on the issue was presented, the more persuasive evidence established that the transmission lines will be just one of many necessary urban features visible to the eye in the current urban landscape, such as street and traffic lights. Measures can be employed to minimize aesthetic impacts of the lines, such as landscaping to direct the eye away from the structures and adding new vertical elements to blend in with the pole. Numerous similar visible linear features exist in the U.S. Highway 1 multi-modal transportation corridor.

Miami argues that this paragraph is not supported by competent substantial evidence.

Contrary to Miami's argument, paragraph 375 is supported by competent substantial evidence in the form of testimony from Ms. Martha Gilbert, a licensed landscape architect, qualified as an expert in landscape architecture (T. Vol. 59, pp. 8152, 8185-8189, 8198-8199, 8294-8295). See § 120.57(1)(l), Fla. Stat. (2013); see also *Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005)(reflecting that the reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses).

Therefore, based on the foregoing reasons, Miami's Exception No. 31 is denied.

Miami Exception Nos. 65 and 79; Coral Gables/Pinecrest Exception No. 31

Miami and Coral Gables/Pinecrest take exception to the ALJ's findings in paragraph 776 (addressing concerns raised by the public regarding aesthetic impacts); and Miami takes exception to the ALJ's conclusions in paragraph 851 (where undergrounding transmission lines are sought for aesthetic reasons, requesting entity should pay incremental cost of undergrounding). Miami argues that the ALJ disregarded the public's aesthetic concerns, and stepped into the role of the PSC in determining cost allocation of undergrounding transmission lines. The rulings on

Miami's Exception Nos. 31, 65, and 78, and Coral Gables/Pinecrest's Exception Nos. 10, 14, 18, 20, 21, 41, 42, and 43, are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception Nos. 65 and 79, and Coral Gables/Pinecrest's Exception No. 31, are denied.

Census information and urban density

Miami Exception Nos. 29 and 80

Miami takes exception to the ALJ's finding in paragraph 373 that "[w]hile urban density is a factor in corridor selection, it is not determinative as to the siting of a transmission line corridor." (RO ¶ 373). Miami contends that the ALJ and FPL did not meaningfully consider census information or population density "in setting the corridor through which FPL's transmission would run."

Contrary to Miami's contention, the competent substantial record evidence shows that urban density was considered by FPL and the ALJ as one of many factors evaluated in siting the proposed transmission lines. (T. Vol. 2, pp. 253-254 (population density is reflected in many of the qualitative and quantitative factors used in FPL's corridor selection methodology); T. Vol. 10, pp. 1466-1468; T. Vol. 14, p. 2012 (population generally taken into account in development of the application); T. Vol. 27, p. 3770 (considering relative population density in areas of the western alternate corridors), pp. 3817-3818 (describing maximum allowable density in various areas of the eastern corridors); T. Vol. 31, pp. 4429, 4562, 4693 (describing densely populated areas where transmission lines exist today and areas considered in comparing the corridors proper for certification)). In addition, FPL's experts testified that many factors must be (and were) considered and balanced in siting transmission lines, not only urban

density. (T. Vol. 10, pp. 1423-1447; T. Vol. 12, p. 1775; T. Vol. 20, p. 2650; T. Vol. 22, p. 2997). See § 120.57(1)(I), Fla. Stat. (2013); *see also Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005)(reflecting that the reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses).

Therefore, based on the foregoing reasons, Miami's Exception Nos. 29 and 80, are denied.

Miami Exception No. 30

Miami takes exception to paragraph 374 of the RO, where the ALJ found that:

374. FPL provided evidence of numerous 230-kV transmission lines of similar design to the transmission lines proposed for the FPL East Preferred Corridor. These transmission lines are in similar urban areas of FPL's service territory, including areas of Miami-Dade, Broward, and Palm Beach Counties.

Miami argues that the evidence offered by FPL "were merely statements by witnesses without any competent substantial evidence to corroborate."

Contrary to Miami's argument the witness testimony is competent substantial evidence to support the ALJ's findings. See § 120.57(1)(I), Fla. Stat. (2013); *Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996). The ALJ's finding is supported by the testimony of several witnesses, as well as photographic evidence. (T. Vol. 11, p. 1597-1598; T. Vol. 12, p. 1778-1780; T. Vol. 22, pp. 3004-3007, 3012-3013; T. Vol. 28, pp. 3681-3687; T. Vol. 59, p. 8174, 8176-8177, 8182, 8245; T. Vol. 1, pp. 158-160; FPL Ex. 315, pp. 273-295; FPL Exs. 428 and 430). See *Id.*

Therefore, based on the foregoing reasons, Miami's Exception No. 30 is denied.

MDC Referendum to Build on City-Owned Waterfront

Miami Exception No. 84

In this exception Miami asserts that the ALJ erred by failing to consider the need for a County-wide referendum for the transmission lines. Miami asserts that Sections 7.01-7.02 of the County Charter require a County-wide referendum for the transmission lines because the transmission lines will be located on City-owned waterfront property.

This exception does not comply with section 120.57(1)(k), F.S., because Miami does not identify any specific finding of fact or conclusion of law with which it takes exception. See § 120.57(1)(k), Fla. Stat. (2013). Even so, Sections 7.01 and 7.02 of the County Charter apply to “parks, aquatic preserves, and lands acquired by the County for preservation.” There is no competent substantial record evidence to support a conclusion that this County Charter provision applies to City-owned waterfront property; or that there exists any City-owned waterfront property within the East Preferred Corridor that would fall within the category of lands subject to Sections 7.01 and 7.02 of the County Charter.

Therefore, based on the foregoing reasons, Miami's Exception No. 84 is denied.

Consideration of health effects

Miami Exception Nos. 68, 69, and 85; Coral Gables/Pinecrest Exception No. 35

Miami takes exception to the ALJ's findings in paragraphs 781 and 782, and conclusions in paragraphs 814, 874, and 875 of the RO. Miami and Coral Gables/Pinecrest argue that the ALJ failed to adequately consider the human health impacts of the Project, and failed to specifically include language in the stipulations between FPL and Coral Gables and Miami regarding actions to address any radio and

microwave interference. Miami also argues that the alleged “procedural defects” in the proceeding (Miami Exception Nos. 71 and 72) impacted its ability to present health effects evidence. The rulings on Miami’s Exception Nos. 71 and 72 are incorporated herein.

Paragraph 781 that “the transmission lines will not have adverse effects on human health” is supported by competent substantial evidence. (Hronec, T. Vol. 11, pp. 1616, 1585-1588; T. Vol. 14, p. 1962; Peters T. Vol. 38, pp. 5511-5512; FPL Ex. 6, p. E9-125 to E9-126, p. E9-135 to E9-136; Iglesias, T. Vol. 54, p. 7619). Also, the rulings on Miami’s Exception Nos. 24 and 63 are incorporated herein.

Paragraph 782 is supported by competent substantial evidence. (T. Vol. 17, pp. 2221-2230; FPL Ex. 6, T.Compl.Resp.2 SFWMD(2)-02). In the RO, the ALJ’s final recommendation in favor of certification is “subject to the Conditions of Certification appended hereto.” (RO, p. 326, and ¶ 725 (recommending conditions in Attachment 1), ¶¶ 295, 746, 750, and 762 (recommending conditions in Attachment 2)). Attachments 1 and 2 to the RO incorporate all of the written conditions of certification stipulated between FPL and Miami, as well as others offered by FPL in its Proposed Recommended Order and accepted by the ALJ. (RO Attachment 1, Recommended Conditions C.X; RO Attachment 2, Recommended Conditions II.A and II.B; and FPL Ex. 20, Miami Stipulation). Attachment 1 to the RO explicitly includes the conditions agreed between FPL and Miami regarding radio and microwave communication systems, as well as the condition agreed between FPL and Coral Gables addressing the same issue. (RO Attachment 1, Recommended Conditions C.X.F, and CVIII.M).

Therefore, based on the foregoing reasons, Miami's Exception Nos. 68, 69, and 85, and Coral Gables/Pinecrest's Exception No. 35, are denied.

Miami Exception No. 24

Miami takes exception to paragraphs 349 and 350 of the RO, where the ALJ found:

349. The proposed transmission lines will comply fully with the applicable Department standards for EMF from transmission lines. See Fla. Admin. Code Ch. 62-814. There is nothing unusual about the levels of EMF from the proposed transmission lines. The EMF levels are within the range to which people are exposed from many sources in everyday environments at home, work, and in public locations. The EMF levels are also many times lower than the international standards for public exposures to EMF and do not pose a health risk to people living or working near the proposed transmission lines. The large body of scientific research on EMF does not provide a reliable scientific basis to conclude that exposure to EMF causes any adverse health effects, including the development or promotion of cancer or neurodegenerative illness in children or adults. The testimony presented by several members of the public claiming cancer or other risks was either unsupported by actual scientific evidence or was based on epidemiological studies whose results were inconsistent and did not establish a causal relationship between EMF and any adverse health effects.

350. Dr. Barredo and Dr. Bailey presented the only credible expert testimony on EMF and health. Based on their detailed expert evaluations of the body of relevant scientific research, the EMF will not have an adverse health effect on the populations living and working near the lines.

Miami argues that the findings are not supported by competent substantial evidence.

Contrary to Miami's argument, paragraphs 349 and 350 are supported by competent substantial record evidence. (Barredo, T. Vol. 52, pp. 7261-7262, 7264-7265, 7274-7282; FPL Ex. 414; Bailey, T. Vol. 56, pp. 7779-7781, 7783-7786, 7805-7807; FPL Ex. 418). *See* § 120.57(1)(l), Fla. Stat. (2013); *see also Rogers v. Dep't of*

Health, 920 So. 2d 27, 30 (Fla. 1st DCA 2005)(reflecting that the reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses).

Therefore, based on the foregoing reasons, Miami's Exception No. 24 is denied.

Miami Exception No. 63

Miami takes exception to paragraph 749 of the RO, arguing that it is not supported by competent substantial evidence and should be labeled a conclusion of law. In paragraphs 749, the ALJ found:

749. The City of Miami proposed condition 5.6 regarding EMFs in both east corridors. However, it failed to offer into evidence this section of its two Agency Reports. The City's proposed condition is rejected because that topic is exclusively regulated by the Department; FPL has demonstrated that it will comply with the relevant, applicable Department standards; and the City of Miami presented no credible evidence to rebut that showing.

Under section 403.061(30), F.S., EMF is exclusively regulated by DEP. *See* § 403.061(30), Fla. Stat. (2013)("[T]he department shall have exclusive jurisdiction in the regulation of electric and magnetic fields associated with all electrical transmission and distribution lines and substation facilities."). Also, competent substantial evidence supports the ALJ's finding that FPL has demonstrated that it will comply with applicable DEP EMF standards. (Hronec, T. Vol. 11, p. 1590; FPL Ex. 301 and 302). To the extent Miami's argument in this exception is directed to health-related EMF concerns, paragraph 749 does not relate to health effects of EMF. The ALJ found in paragraph 350 that the only credible expert testimony on EMF and health effects established that "EMF will not have an adverse health effect on the populations living and working near

the lines.” As explained in the ruling on Miami’s Exception No. 24 above, paragraph 350 is supported by competent substantial evidence.

Miami’s argument that it “did indeed raise an issue with EMF in its Agency Report filed on June 15, 2011,” is well taken. The entirety of Miami’s Agency Reports (Miami Exhibits 7 and 8) were admitted into evidence (T. Vol. 59, p. 8327). In addition, the ALJ clearly addressed section 5.6 of Miami’s Agency Report (and the conditions proposed therein) in paragraph 749. Thus, the ALJ’s finding in the second sentence of paragraph 749 is rejected as not supported by the competent substantial evidence.

Therefore, for the foregoing reasons, Miami’s Exception No. 63 is granted in part, and denied in part.

Transmission line design and construction standards

Miami Exception No. 13; Coral Gables/Pinecrest Exception No. 12 and 13

Miami takes exception to the ALJ’s findings in paragraphs 297-303 and 304, regarding FPL’s transmission line design standards, on the basis that they are “not supported by competent substantial evidence and are refuted by Miami’s witness Iglesias.” Coral Gables/Pinecrest take exception to the findings in paragraph 302, arguing that “the ALJ misapplied the testimony by their transmission engineering expert regarding the reliability of overhead and underground transmission lines.” Coral Gables/Pinecrest also take exception to the findings in paragraph 303, on the basis that they are not supported by competent substantial evidence.

Miami and Coral Gables/Pinecrest essentially argue that the Siting Board should substitute its judgment for that of the ALJ on the weight of the evidence and credibility of witnesses. 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). These evidentiary-related matters are within the province of the ALJ, as the “fact-finder” in these administrative proceedings. *See, e.g., 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., Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983).

The challenged findings in paragraphs 297-303 are supported by competent substantial record evidence. (T. Vol. 1, p. 276; T. Vol. 11, p. 1585-88, 1592-94, 1596, 1616-18; T. Vol. 14, p. 1962, 2006-08; T. Vol. 17, p. 2257-59; T. Vol. 38, Peters, p. 5508-12, 5537-39; Exhibit FPL 6, p. E9-12 to E9-136). *See* § 120.57(1)(l), Fla. Stat. (2013).

In addition, the challenged findings in paragraph 304 are supported by competent substantial evidence. (DEP Ex. 1, p. 9-10; T. Vol. 11, pp. 1594-1596). The ruling on Coral Gables/Pinecrest's Exception No. 14 regarding paragraph 304 is also incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 13, and Coral Gables/Pinecrest's Exception Nos. 12 and 13, are denied.

Miami Exception No. 20

Miami takes exception to the ALJ's findings in paragraph 338 regarding construction and pre-construction requirements, on the basis that it is “unclear from the

[RO] specifically which pre-construction and construction requirements will be applicable.” Paragraph 338, however, is supported by competent substantial record evidence. (T. Vol. 1, pp. 138-139; T. Vol. 11, p. 1553-1562, 1608-1615; T. Vol. 23, pp. 3000-3002). See § 120.57(1)(l), Fla. Stat. (2013). To the extent this exception incorporates Miami’s arguments in its Exception Nos. 75 and 76, the rulings on Miami’s Exception Nos. 75 and 76 are incorporated herein.

Therefore, based on the foregoing reasons, Miami’s Exception No. 20 is denied.

Miami Exception Nos. 21 and 43

Miami takes exception to paragraphs 339 and 457 of the RO, where the ALJ found that the proposed transmission lines and substations will comply with good engineering practices and safety standards for the design of such facilities. Miami argues that paragraphs 339 and 457 are not supported by competent substantial evidence.

Contrary to Miami’s argument, these paragraphs are supported by competent substantial evidence in the form of testimony provided by FPL’s transmission line engineer, Mr. Daniel Hronec, and commitments made in FPL’s SCA. (T. Vol. 11, pp. 1585-1588; FPL Ex. 6, p. W9-133, E9-135-36, T.Compl.Resp.5, MD(5)-20(H)). Miami’s suggestion that these commitments should be made conditions of certification has already occurred. (RO, Attachment 1, Condition A.VI, p. 8-9). This condition requires FPL to design its transmission lines in compliance with “all applicable codes, guidelines, and standards,” as reflected in the SCA, including the NESC; Occupational Safety and Health Administration (“OSHA”) rules; American Society of Civil Engineers (“ASCE”) Manual 74, Guidelines for Electrical Transmission Line Structure Loading, and Standard

48-05, Design of Steel Transmission Pole Structures; FAA Guidelines; and FDOT Utility Accommodation Manual.” (Exhibit FPL 6, p. W9-133, E9-135-36, T.Compl.Resp.5, MD(5)-20(H)).

Therefore, based on the foregoing reasons, Miami’s Exception Nos. 21 and 43, are denied.

Miami Exception No. 22

Miami takes exception to paragraph 340 of the RO, where the ALJ found that “[r]eliable, safe, cost-effective electrical service is in the public interest and supports the general welfare of the community.” Miami asserts that this is a conclusion of law and policy judgment reserved for the Siting Board and not the ALJ.

Contrary to Miami’s assertion, even the “policy judgments” of the Siting Board must be supported by the record of the hearing. See *Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997)(reflecting that the APA prescribes the process by which disputed facts are found, and “requires an agency to explain the exercise of its discretions and subjects that explanation to judicial review.”). Thus, the ALJ’s factual findings in paragraph 340 is supported by competent substantial record evidence. (Mellgren, T. Vol. 60, pp. 8405-8406; Spanioli , T. Vol. 55, pp. 7711-7712; T. Vol. 1, p. 141; T. Vol. 11, p. 1616; T. Vol. 27, p. 3747). To the extent this exception incorporates Miami’s arguments in its Exception No. 74, the ruling on Miami’s Exception No. 74 is incorporated herein.

Therefore, based on the foregoing reasons, Miami’s Exception No. 22 is denied.

Miami Exception No. 23

Miami takes exception to paragraphs 342-348, “regarding FPL’s compliance with applicable public health and welfare requirements, including for public works, right-of-way, traffic, construction, waste and noise regulations.” Miami argues that these findings are not supported by competent substantial evidence.

Contrary to Miami’s argument, these paragraphs are supported by competent substantial record evidence in the form of testimony from FPL’s Project Director (Mr. Steven Scroggs), FPL’s transmission line engineer (Mr. Daniel Hronec), two additional engineers (Mr. Bernardo Susi and Mr. Joaquin Vargas), as well as commitments made in FPL’s SCA, and recommended by the ALJ for conditions of certification. (T. Vol. 2, p. 139; T. Vol. 11, pp. 1557-1560, 1585-1589, 1609, 1613-1618; T. Vol. 15, p. 2056-2057; T. Vol. 25, pp. 3362-3363; FPL Ex. 6, p. W9-125, W9-133, E9-126 to E9-128, T.Compl.Resp.5, MD(5)-20(H); *see also* RO, Attachment 1, Recommended Conditions C.II, C.VII.P, C.VIII.N, C.X.D, C.XIII.A; and Attachment 2, Recommended Condition III.F). *See* § 120.57(1)(I), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Miami’s Exception No. 23 is denied.

Tree protection and replacement measures

Miami Exception Nos. 14, 46, 47, and 62; Coral Gables/Pinecrest Exception Nos. 25 and 32

Miami takes exception to paragraphs 306-308, 463, 464, 746, 747, and 776-777, where the ALJ found that FPL is willing and capable of designing the transmission lines to avoid and minimize tree impacts and comply with the conditions of certification relating to the tree impacts. Coral Gables/Pinecrest take exception to paragraphs 463

and 777. Miami and Coral Gables/Pinecrest argue that the findings are not supported by competent substantial evidence.

Contrary to Miami and Coral Gables/Pinecrest's argument, the record contains competent substantial evidence to support the ALJ's findings regarding tree protection within Miami. FPL's transmission engineer, Mr. Hronec, testified that FPL will comply with local government tree protection and replacement ordinances. (T. Vol. 11, pp. 1543-1545, 1551-1554; T. Vol. 12, p. 1712; T. Vol. 13, pp. 1839-1840; T. Vol. 20, p. 2662; T. Vol. 21, pp. 2899-2900). In addition, several recommended conditions of certification require compliance with Miami's tree protection and replacement ordinances. (RO Attachment 2, Condition II.A (requiring FPL to comply with Miami's tree protection ordinance); Attachment 1, Condition A.VI (certification is predicated upon FPL's substantial compliance with the SCA and testimony at the hearing in the design, construction, operation and maintenance of the transmission lines); and A.XII.A (non-compliance with any condition of certification constitutes a violation of Chapter 403, F.S.)).

Miami characterizes the evidence presented at the hearing as "mere assertions by FPL." The ALJ's RO and the recommended conditions, however, recognize certification is "as described in the [SCA] and in the evidence presented at the certification hearing, and subject to the Conditions of Certification" (RO, p. 326; RO, Attachment 1, Condition A.VI, p. 8-9). Miami appears to believe that the RO does not adopt all of the recommended conditions in Attachments 1 and 2. The ALJ's final recommendation in favor of certification, however, is "subject to the Conditions of Certification appended hereto." (See RO, pg. 326, and ¶ 725 (recommending conditions

in Attachment 1), ¶¶ 295, 746, 750, and 762 (recommending conditions in Attachment 2)). Attachments 1 and 2 to the RO, incorporate all of the conditions of certification agreed between FPL and Miami, as well as others offered by FPL in its proposed recommended order and accepted by the ALJ. (RO Attachment 2, Recommended Conditions II.A and II.B).

Miami argues that the ALJ did not “properly take into account other reasonable requests by Miami” and that Miami had introduced evidence that tree placement “will not sufficiently compensate” for loss of tree canopy. The Siting Board is not authorized to reweigh and resolve conflicting evidence. 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). The ALJ found Miami’s requests to be “undefined” and to “exceed the scope of the [City’s] ordinances.” (RO ¶ 747). The record contains competent substantial evidence that FPL will avoid and minimize impacts to trees, and where there are unavoidable impacts, FPL will mitigate for (or replace) those tree impacts. (T. Vol. 11, pp. 1553-1554; T. Vol. 12, p. 1712; T. Vol. 13, pp. 1839-1840). Further, the ALJ found that, despite “sharply conflicting testimony,” “the greater weight of the evidence” did not support the concerns raised by the cities and members of the public regarding landscaping or other visual impacts. (RO ¶ 776).

Miami argues that the conditions do not expressly list a tree disposition plan or landscape plan. Condition II.A.1, however, requires FPL to comply with the applicable nonprocedural requirements of Article I, Chapter 17 of the City of Miami Code of

Ordinances. To comply with this condition, FPL will be required to provide a tree disposition plan and landscape plan in accordance with Sections 17-4(b)(1)(b) and 17-4(b)(3) of the City of Miami Code of Ordinances.

Therefore, based on the foregoing reasons, Miami's Exception Nos. 14, 46, 47, and 62, and Coral Gables/Pinecrest's Exception Nos. 25 and 32, are denied.

Miami Exception No. 50

Miami takes exception to paragraph 483 of the RO, arguing that the ALJ's use of the term "to the extent practicable," leaves minimization of impacts to Natural Forest Communities ("NFCs") to FPL's "full discretion" and "renders its decision nearly impossible to enforce." Miami argues that in paragraph 483 the ALJ fails to "articulate the standard applied."

Paragraph 483 is supported by competent substantial record evidence. (FPL Ex. 20, MDC, Simpson Park and Homestead Bayfront Park; FPL Ex. 6, T.Compl.Resp.2.MD(2)-10; T. Vol. 10, pp. 1437-1438; T. Vol. 11, p. 1611). Miami's assertion that FPL will have "full discretion" relative to minimization of impacts in NFCs, or that minimization requirements cannot be enforced, is not factually and legally accurate. The recommended conditions of certification include avoidance and minimization requirements specific to NFCs. (RO Attachment I, Recommended Conditions C.VII.F, C.VII.L). While paragraph 483 and the recommended conditions themselves recognize that the implementation of certain measures is "to the extent practicable," that term is expressly defined in the recommended conditions: "'Practicable' means reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs." (RO Attachment 1,

Recommended Condition A.IV.O). Compliance with these conditions is enforced in the same manner as any other condition of certification. See § 403.514, Fla. Stat. (2013).¹⁵

Miami also argues that the ALJ “fails to articulate the standard applied in determining whether the impacts to NFCs in the corridors are acceptable.” Contrary to Miami’s argument the ALJ specifically found that FPL will minimize impacts to NFCs “consistent with the NFC standards and requirements contained in Chapter 24 of the Miami-Dade County Code.” To the extent this exception incorporates Miami’s arguments in its Exception Nos. 14, 46, 47, and 62, the rulings on those exceptions are incorporated herein.

Therefore, based on the foregoing reasons, Miami’s Exception No. 50 is denied.

Miami Exception No. 62

For reasons provided in ruling on Miami’s Exception Nos. 14, 46, 47, and 62, Miami’s Exception No. 62 is denied with respect to the ALJ’s findings in paragraph 747 regarding tree protection measures.

For reasons provided in ruling on Miami’s Exception No. 32, Miami’s Exception No. 62 is denied with respect to the ALJ’s findings in paragraph 748 regarding

¹⁵ The phrase “to the extent practicable” is not unusual in environmental regulations. See, e.g., Fla. Admin. Code R. 62-555.310(2), 62-610.100(10), 62-672.870(2), 62-780.600(3)(c). Also in Siting Act conditions of certification. See, e.g., *In re: Progress Energy Florida Levy Nuclear Project Units 1 and 2*, PA08-51, Recommended Order, DOAH Case No. 08-2727EPP, ¶¶ 215, 219, 224, and Condition of Certification No. C.XXXVIII.C (May 15, 2009), adopted *in toto* in Final Order, DEP OGC Case No. 08-1621 (Siting Bd. Aug. 26, 2009); *In re: Florida Power and Light Co. Bobwhite-Manatee 230kV Transmission Line Project Transmission Line Siting Application No. TA07-14*, Recommended Order, DOAH Case No. 07- 0105TL, Condition of Certification No. XXI.C, adopted in relevant parts in Final Order, FDEP OGC Case No. 07-0026, (Siting Bd. Nov. 6, 2008).

underground construction. Also the rulings on Miami's Exception Nos. 75-78 are incorporated herein.

Construction impacts to wetlands and wildlife

Miami Exception No. 15

Miami takes exception to the ALJ's findings in paragraphs 315 and the last sentence of 317, on the basis that they are not supported by competent substantial evidence. In paragraph 315, the ALJ found that FPL will minimize the potential for wetland impacts through sediment control methods and other best management practices. The record contains competent substantial evidence to support this finding. Three expert witnesses testified that FPL will use techniques in wetlands to minimize the potential for wetland impacts, such as sedimentation devices and best management practices. (T. Vol. 11, pp. 1554, 1555-1556, 1603; T. Vol. 15, p. 2079-2080; T. Vol. 23, p. 3176; FPL Ex. 6, p. E9-107).

In paragraph 317, the ALJ described FPL's post-construction and maintenance techniques, including vegetation management. In the last sentence of paragraph 317, the ALJ found that "FPL will control exotic vegetation within the ROWs in any certified corridor." This finding is supported by competent substantial evidence. (T. Vol. 11, pp. 1571-1573; FPL Ex. 6, p. E9-122 to E9-123). See § 120.57(1)(I), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Miami's Exception No. 15 is denied.

Miami Exception No. 16

Miami takes exception to paragraph 320 of the RO, where the ALJ found:

320. FPL's proposed wetland mitigation plan for the transmission line impacts will offset the adverse effects, including functional loss, caused by the location, construction, operation, and maintenance of the transmission lines in the

certified corridors, and the transmission lines will not cause unmitigated secondary or cumulative impacts to wetlands or surface waters.

Miami argues that the findings are “not supported by competent substantial evidence that FPL’s wetlands mitigation plans will meet Miami-Dade County’s [] environmental regulations.” Contrary to Miami’s argument, paragraph 320 is supported by competent substantial evidence in the record.

FPL evaluated the quality of all wetlands to be impacted by the transmission lines by using the Uniform Mitigation Assessment Method (“UMAM”), which is used by state agencies and local governments in Florida. (Bullock, T. Vol. 23, pp. 3147-3148). See § 373.414(18), Fla. Stat. (2013). Mr. Karl Bullock, an expert in terrestrial and wetland ecology, including wildlife and wetland mitigation, testified regarding avoidance, minimization, and mitigation measures that FPL has taken and will continue to take regarding the transmission line facilities and access roads. (Bullock, T. Vol. 23, pp. 3149-3150, 3169-3173; DEP Ex. 1, pp. 18-19, 24-25; DEP Ex. 4, p. 8). Mr. Bullock also testified that FPL meets the hierarchy set forth in Section 24-48.3, MDCC, because: (1) FPL looked to all corridors it owns and proposed the one that avoids the most impacts; (2) FPL minimized the impacts by co-locating where possible and through transmission line design; (3) FPL will restore adjacent wetlands after construction is complete; (4) FPL will preserve and maintain the area to reduce and eliminate the impacts to wetlands; and (5) FPL will fully mitigate all wetland impacts. (Bullock T. Vol. 23, pp. 3169-3173).

Mr. Bullock testified how FPL meets the MDCC standards regarding wetland impacts because there will not be an unmitigated, adverse effect on the regional

wetland ecology. (Bullock, T. Vol. 23, pp. 3153-3155, 3157-3159, 3161-3162, 3165-3166, 3168-3169; FPL Ex. 325). The mitigation bank to be used as wetlands mitigation for impacts in the area is the Hole in the Donut Mitigation Bank, located within the Everglades National Park. (T. Vol. 23, pp. 3150-51; FPL Ex. 171). FPL's wetland mitigation plan fully offsets the adverse impacts while meeting MDC's environmental regulations. (T. Vol. 15, pp. 2056-2064; T. Vol. 23, pp. 3150-3169, p. 3178-85; FPL Exs. 170 and 191).

Therefore, based on the foregoing reasons, Miami's Exception No. 16 is denied.

Miami Exception Nos. 17 and 37; Coral Gables/Pinecrest Exception No. 15

Miami and Coral Gables/Pinecrest take exception to paragraph 326 of the RO, where the ALJ found that the location, construction, operation and maintenance of the proposed transmission lines in the proposed transmission line corridors will not have a significant adverse impact on the wildlife and ecological values. Miami also takes exception to paragraph 403 of the RO. Miami argues that: (1) the phrase "proper for certification" should follow the phrase "proposed transmission line corridors;" (2) the paragraph is not supported by competent substantial evidence because placement of the transmission lines in Simpson Park would impact NFCs and birds; and (3) it is not supported by competent substantial evidence because the transmission lines pose a risk of electrocution and collision to avian species in Simpson Park and in the Everglades. Coral Gables/Pinecrest also argue that paragraph 326 should be amended to address "corridors proper for certification."

Since all corridors proper for certification are included within the phrase "proposed" transmission line corridors, there is no need for the parties' suggested

amendment. (RO page 47). Miami's argument that paragraph 326 is not supported by competent substantial evidence because FPL failed to present testimony that the transmission lines will not adversely impact birds and NFCs in Simpson Park, is contrary to other findings in the RO and the record. In paragraph 403, the ALJ found that "impacts to [the Simpson Park] NFC or other NFCs due to placement of the proposed transmission lines in the FPL East Preferred Corridor are anticipated to be insignificant." This finding is supported by competent substantial record evidence. (Simpson, T. Vol. 8, p. 1066, p. 1077; T. Vol. 9, pp. 1204-1205). Mr. Simpson further testified that he considered Simpson Park in reaching his opinion that in comparing the eastern corridors there is "no material difference from the environmental or ecological perspective." (T. Vol. 10, pp. 1437- 1438; *see also* Gordon, T. Vol. 26, pp. 3567-3568).

Miami's argument that paragraph 326 is not supported by competent substantial evidence because it fails to recognize impacts to avian species in "the Everglades" is contrary to other findings in the RO and the record. The ALJ made detailed findings as to the potential impacts to wood storks and other avian species from the proposed western transmission lines in paragraphs 598-601, 604, 605, and 607-616. These findings are supported by competent substantial record evidence. (T. Vol. 26, pp. 3528-3698; T. Vol. 53, pp. 7415-7491; FPL Ex. 6, T. Compl. Resp. 5.SFWMD(5)-02-1 (Ecological Risk Assessment of Potential Impacts of Turkey Point Units 6 & 7 West Corridor Transmission Lines on Wood Storks (July 2010)); FPL Exs. 187, 191, 195, 287; FPL Ex. 6, T. Compl.Resp.6.SFWMD(6)-01-1 (Addendum to the Ecological Risk Assessment of Potential Impacts of Turkey Point Units 6 & 7 West Corridor

Transmission Lines on Wood Storks: Response to SFWMD's Letter of August 18, 2010)).

Therefore, based on the foregoing reasons, Miami's Exception Nos. 17 and 37, and Coral Gables/Pinecrest's Exception No. 15, are denied.

Miami Exception No. 18

Miami takes exception to paragraphs 327, 333 (third sentence), 334, 335, 337 (second sentence), and 608, for the same reasons set forth in its Exception No. 17.

Contrary to Miami's arguments, paragraph 327 is supported by competent substantial record evidence, in the form of testimony from FPL's witness Mr. Karl Bullock, several exhibits admitted into evidence, as well as pre-hearing stipulations including the one submitted by Miami. (T. Vol. 6, pp. 780-781,789; FPL Ex. 187, p. 63-64; DEP Ex. 3, p. 18; Pre-Hearing Stipulation ¶V.184; Miami Pre-Hearing Stipulation ¶V.114).

The challenged third sentence of paragraph 333 is supported by competent substantial evidence, in the form of expert opinion testimony from Dr. Caleb Gordon, an expert in ornithology, migratory bird ecology, and ecological risk assessment. (Gordon, T. Vol. 26, pp. 3545-3563). Paragraph 334 is supported by competent substantial evidence, including the testimony of Dr. Gordon and several of FPL's exhibits admitted into evidence. (Gordon, T. Vol. 26, pp. 3545-3563; FPL Exs. 195, 359-361). Paragraph 335 related to compliance with the Migratory Bird Treaty Act of 1918, as amended, is similarly supported by competent substantial evidence. (Gordon, T. Vol. 26, pp. 3554-3555).

The challenged second sentence of paragraph 337 is supported by competent substantial evidence, including testimony by Dr. Gordon and Mr. Simpson, as well as the stipulation between FWC and FPL. (See T. Vol. 8, pp. 1146-1164; T. Vol. 9, pp. 1192-1198, 1207-1209, 1215-1216; T. Vol. 26, pp. 3558-3559; FPL Ex. 20, Stipulation Between FPL and FWC). Paragraph 608 relating to the protection of threatened and endangered avian species is also supported by competent substantial evidence. (Gordon, T. Vol. 26, pp. 3554-3563).

In addition, since all corridors proper for certification are included within the phrase “proposed” transmission line corridors, there is no need for Miami’s suggested amendment to paragraphs 338-353 and 356. Miami also does not cite any legal or factual basis for the suggested amendment. See § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Miami’s Exception No. 18 is denied.

Miami Exception No. 19

Miami takes exception to the ALJ’s findings in paragraph 336, “on the lack of adverse impact to fish and fish habitat as not supported by credible substantial evidence.” Paragraph 336 is supported by competent substantial evidence in the record. (Bullock, T. Vol. 23, p. 3177-79, 3184).

Therefore, based on the foregoing reasons, Miami’s Exception No. 19 is denied.

Miami Exception No. 45

Miami takes exception to paragraphs 462 and 634 of the RO, asserting that they are legal conclusions and unsupported by the evidence. In paragraphs 462 and 634, the ALJ determined that FPL’s location, construction, operation and maintenance of the

transmission lines (in the eastern and western corridors, respectively) will comply with applicable DEP permitting criteria.

Paragraphs 462 and 634 are mixed findings of fact and conclusions of law that flows from the ALJ's underlying factual findings regarding the DEP's applicable nonprocedural requirements for regulating wetland impacts. *See* § 373.414, Fla. Stat. (2013)(DEP shall require the applicant to provide reasonable assurance that its activity in wetlands is not contrary to the public interest). The Siting Board, as agency head in this proceeding, has the authority to ultimately determine whether a project is not contrary to the public interest using a regulatory public interest balancing test. *Id. see also Save Anna Maria, Inc. v. Dep't of Transp.*, 700 So. 2d 113, 116-117 (Fla. 2d DCA 1997). The determination is based, however, on the applicable underlying factual findings of the ALJ, which in the particular circumstances of this case are supported by competent substantial record evidence. (T. Vol. 11, p. 1520; T. Vol. 11, pp. 1555-1556, 1585-1586, 1589-1591, 1603-1605, 1613; T. Vol. 15, p. 2058-2064; T. Vol. 21, p. 2750; T. Vol. 28, pp. 3773-3775, 3868-3869; FPL Exs. 301, 302, 335). In this case paragraphs 462 and 634 are adopted in this final order as consistent with the applicable underlying factual findings of the ALJ. *See Kramer v. Dep't of Env'tl. Prot.*, DOAH Case No. 00-2873, 2002 WL 1774316 (Fla. Dept. of Env. Prot. April 29, 2002).

In addition, numerous conditions of certification will ensure FPL's compliance with DEP regulatory criteria in the location, construction, operation and maintenance of the transmission lines. (RO Attachment 1, Recommended Conditions A.I.C., A.II, A.VI, A.VIII.B, .D, .E, and .F, A.XII, A.XIV, A.XXVI, A.XXVIII, and C.I).

Therefore, based on the foregoing reasons, Miami's Exception No. 45 is granted to the extent that paragraphs 462 and 634 are legal conclusions that are ultimately within the agency head's substantive jurisdiction, otherwise this exception is denied.

Miami Exception No. 49

Miami takes exception to the findings in paragraphs 481, 482, and 486, for the same reasons stated in its Exception Nos. 15-19. The rulings on Miami's Exception Nos. 15-19 are incorporated herein. Therefore, Miami's Exception No. 49 is denied.

Miami Exception No. 53

Miami takes exception to the last sentence in paragraph 528, where the ALJ found that, "[i]n any of the western corridors proper for certification, throughout the West Divergence Area, the potential for adverse impacts to any wildlife species is low." Miami argues that this finding is not supported by competent substantial evidence.

Contrary to Miami's argument, the rulings on Miami's Exception Nos. 15-19 are incorporated herein, and contain the record citations to evidence supporting the ALJ's finding. Because paragraph 528 is supported by competent substantial evidence, Miami's Exception No. 53 is denied. See § 120.57(1)(l), Fla. Stat. (2013).

Miami Exception No. 54

Miami takes exception to paragraph 543, where the ALJ found that, "[t]he western transmission lines in any of these corridors would be compatible and consistent with the adjacent land uses, including the Everglades National Park, and would serve the broad interests of the public." Miami argues that the ALJ does not explain what standard is being applied and whether the section 403.509(3)(g), F.S., criteria are met.

At the same time, Miami argues that this is a legal conclusion reserved for the Siting Board and it is not supported by competent substantial evidence.

As explained in the ruling on Miami's Exception No. 22 above, even the policy judgments of the Siting Board must be supported by the record of the hearing. *See Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997)(reflecting that the APA prescribes the process by which disputed facts are found, and "requires an agency to explain the exercise of its discretion and subjects that explanation to judicial review."). Contrary to Miami's argument, paragraph 543 is supported by competent substantial record evidence. (Curtis, T. Vol. 27, pp. 3763-3764, 3742, 3766-3768). In addition, the ruling on MDC/NPCA's Exception No. 21 to paragraph 543, is incorporated herein.

To the extent that this exception incorporates Miami's arguments in its Exception Nos. 15-19 and 77-85, the rulings on those exceptions are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 54 is denied.

Miami Exception No. 55

Miami takes exception to paragraphs 598, 599, 604 and 609-616, where the ALJ found that the record establishes there will be no adverse impacts on avian species from the Project, or that any impacts will be small and necessarily mitigated by FPL, or that FPL will comply with all applicable nonprocedural requirements related to the protection of avian species or wetland habitats. The rulings on Miami's Exception Nos. 15-19 are incorporated herein. *See a/so* Gordon, T. Vol. 26, p. 3554-3561, 3676-3677.

Therefore, based on the foregoing reasons, Miami's Exception No. 55 is denied.

Miami Exception No. 56

Miami takes exception to the ALJ's findings in paragraphs 644-646, arguing that the paragraphs are "not supported by competent substantial evidence and contain [] conclusions of law that there are no adverse impacts to the hydrological or ecological integrity of the Everglades, including to wildlife and wetlands, and that FPL will properly and adequately ensure that no such impacts occur." The rulings on Miami's Exception Nos. 15-19, 22 and 54, are incorporated herein.

In addition, competent substantial record evidence supports the findings regarding the hydrological or ecological integrity of the Everglades. (Susi, T. Vol. 15, pp. 2052, 2056-2058; FPL Ex. 334; Ammon, T. Vol. 22, pp. 3041-3047; T. Vol. 23, p. 3075-3077; FPL Exs. 368, 369, 370; T. Vol. 22, pp. 3038-3047). For the foregoing reasons, Miami's Exception No. 56 should be denied.

Therefore, based on the foregoing, Miami's Exception No. 56 is denied.

Miami Exception No. 58

Miami takes exception to the ALJ's findings in paragraphs 687 and 691-92, "for the reasons set forth in the Exceptions above, including Exceptions 15-19" asserting that there is not competent substantial evidence that FPL will take measures that are "sufficiently protective of wildlife species in any of the western corridors." The rulings on Miami's Exception Nos. 15-19 and 53-56, are incorporated herein.

Therefore, based on the foregoing reasons, Miami's Exception No. 58 is denied.

Miami Exception No. 59

Miami takes exception to paragraph 722 of the RO, asserting that it should be labeled a conclusion of law, and that it is "incorrect" for the reasons explained in Miami's

Exception Nos. 77-85. The rulings on Miami's Exception Nos. 77-85 are incorporated herein.

Paragraph 722 is supported by competent substantial evidence in the form of testimony from Mr. Steven Scroggs and other FPL witnesses cited in the rulings on Miami's Exception Nos. 11, 22, and 28. (T. Vol. 1, pp. 102, 103, 140-142; T. Vol. 11, p. 1616; T. Vol. 27, pp. 3747, 3753-3754, 3764, 3822-3823; T. Vol. 55, p. 7711-7712; T. Vol. 60, p. 8405-8406).

Therefore, based on the foregoing reasons, Miami's Exception No. 59 is denied.

Economic impacts

Coral Gables/Pinecrest Exception Nos. 19, 27, 30, 33, 49 and 54; Miami Exception Nos. 27, 28, 42, 52, and 66.

Coral Gables/Pinecrest and Miami take exception to the ALJ's findings in paragraphs 362, 363, 454, 455, 490, 775, 778, 869, 892 and 893 of the RO, related to the economic impacts of the transmission lines. The cities' argue that the ALJ did not accurately review or compare the matters on which the economic experts relied and testified.

First, as acknowledged in the ruling on Coral Gables/Pinecrest's Exception No. 6.a., the exhibit offered by Coral Gables/Pinecrest's economic expert, Dr. Frishberg (VOP/CCG Ex. 44) was admitted into evidence and the ALJ referenced Dr. Frishberg's analysis in paragraph 455.

Second, the ALJ's findings are based on competent substantial record evidence. (Fishkind, T. Vol. 29, p. 3979; T. Vol. 57, p. 8041-8043; T. Vol. 29, pp. 3989-3992, 4013-4015, 4022-4023; Diskin, T. Vol. 56, pp. 7858-7875; T. Vol. 57, p. 7934; FPL Ex. 391; Hronec, T. Vol. 20, pp. 2651-2654; T. Vol. 21, pp. 2811-2813, 2824-2826; FPL Ex.

287). See § 120.57(1)(l), Fla. Stat. (2013). 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). 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 Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983).

To the extent that Miami's exceptions rely on its arguments in its Exception Nos. 77-85, the rulings on Miami's Exception Nos. 77-85, are incorporated herein.

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception Nos. 19, 27, 30, 33, 49, and 54, and Miami's Exception Nos. 27, 28, 42, 52, and 66, are denied.

Coral Gables/Pinecrest Exception No. 40; Miami Exception No. 87.

Coral Gables/Pinecrest and Miami take exception to paragraphs 797-799 of the RO, where the ALJ concludes that "FPL has met its burden of showing by a preponderance of the evidence its entitlement to site certification under the PPSA for the Project, including the plant and transmission line facilities." Coral Gables/Pinecrest asserts that paragraphs 797-799 should be modified to exclude the eastern transmission line corridors "[b]ased on the reasons set forth in the foregoing exceptions."

Under section 120.57(1)(k), F.S., an agency need not rule on an exception that, among other things, “does not identify the legal basis for the exception.” Coral Gables/Pinecrest’s Exception No. 40 can be denied on that basis alone. In addition, the rulings on Coral Gables/Pinecrest and Miami’s exceptions in this Final Order, do not present a basis for denying certification of the FPL East Preferred Corridor.

Coral Gables/Pinecrest and Miami also take exception to the ALJ’s conclusion that “no agency or party offered credible evidence in opposition to that presented by FPL on issues related to the plant and non-transmission facilities, and no agency or party offered evidence of equivalent quality as that presented by FPL on any portion of the Project.” (RO ¶ 799). These evidentiary-related rulings 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).

Miami then takes exception to paragraphs 800, 812 to 816, where the ALJ concludes that the plant-portion of the Project satisfies the criteria for certification. The rulings on Miami’s exceptions in this Final Order, however, do not present a basis for denying certification of the plant-portion of the Project.

Finally, Miami takes exception to paragraphs 890 to 899, where the ALJ concludes that the requested easements meet various considerations, including that the requested easements on state owned lands will not have “any unacceptable adverse cumulative effect on the Biscayne Aquatic Preserve or on state- owned uplands.” The rulings on Miami’s exceptions in this Final Order, however, do not present a basis for denying the requested easements.

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 40 and Miami's Exception No. 87, are denied.

"No other Practicable Alternative" - Section 337.401, F.S.

Coral Gables/Pinecrest Exception No. 37

Coral Gables/Pinecrest take exception to paragraphs 392-394, 763, and 897 of the RO, related to placement of the proposed Davis-Miami 230-kV transmission line along US-1, a state highway. Coral Gables/Pinecrest cite to section 337.401(1)(b), F.S., which requires that there be "no practicable alternative" to such a US-1 alignment, and assert that FPL has failed to show the requirement has been met.

The cited requirement for longitudinal placement of a transmission line when there is "no practicable alternative" applies only to "limited access facilities." § 337.401(1)(b), Fla. Stat. (2013) ("For aerial and underground electric utility transmission lines designed to operate at 69 or more kilovolts that are needed to accommodate the additional electrical transfer capacity on the transmission grid resulting from new base-load generating facilities, the [Department of Transportation's] rules shall provide for placement of and access to such transmission lines adjacent to and within the right-of-way of any department-controlled public roads, including longitudinally within limited access facilities where there is no other practicable alternative available, to the greatest extent allowed by federal law, if compliance with the standards established by such rules is achieved. . . ."). U.S.-1 is not a limited access facility, because it has intersections with numerous driveways/access points to abutting properties. See FPL Ex. 315, pp. 68-131; § 334.03(12), Fla. Stat. (2013) ("'Limited access facility' means a street or highway especially designed for through traffic, and over, from, or to which

owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. . . .”).

Coral Gables/Pinecrest assert that the stipulations between FPL and FDOT, and FPL and the MDX, do not address this “no practicable alternative” criterion. The criterion, however, does not apply to U.S.-1.

Therefore, based on the forgoing reasons, Coral Gables/Pinecrest’s Exception No. 37 is denied.

Miami Exception No. 35

Miami takes exception to paragraphs 392 and 780 of the RO, arguing that FPL “failed to present any evidence as to whether there is no other practicable alternative to placing the transmission lines along U.S. Highway 1, especially one without as many adverse impacts to Miami and other affected communities.” The ruling on Coral Gables/Pinecrest Exception No. 37 is incorporated herein. Also, paragraphs 392 and 780 are supported by competent substantial record evidence. (T. Vol. 11, pp. 1557-1558).

Therefore, based on the foregoing reasons, Miami’s Exception No. 35 is denied.

BOT Easements

Miami River Crossing

Miami Exception No. 41

Miami takes exception to the ALJ’s findings in paragraphs 439, 442, and 451 of the RO. Miami argues that these paragraphs are legal conclusions for the Siting Board to decide, not the ALJ. Paragraphs 439, 442, and 451, contain findings that are

“susceptible of ordinary methods of proof, such as determining the credibility of the witnesses or the weight to be given particular evidence.” *Pillsbury v. Dep’t of HRS*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999). These paragraphs do not address matters so “infused with overriding policy considerations” that “the issue[s] should be left to the discretion of the agency.” *Id.* In addition, even the policy judgments of the Siting Board must be supported by the record of the hearing. *See Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997)(reflecting that the APA prescribes the process by which disputed facts are found, and “requires an agency to explain the exercise of its discretion and subjects that explanation to judicial review.”).

Competent substantial record evidence supports: paragraph 439 relating to the Biscayne Bay Aquatic Preserve criteria (T. Vol. 1, p. 136; FPL Ex. 20, FDEP, Sewage Treatment Plant and Easements, ¶¶ 6, 11, 12); paragraph 442 regarding electric system reliability and integrity relating to the underground transmission line crossing of the Miami River (T. Vol. 17, pp. 2262-2263); and paragraph 451 regarding the public interest relating to the sovereign submerged lands easement for the underground transmission line crossing of the Miami River (T. Vol. 28, pp. 3869-3870; FPL Ex. 20, FDEP, Sewage Treatment Plant and Easements, ¶ 13).

To the extent this exception incorporates Miami’s arguments in its Exception Nos. 75-85, the rulings on Miami’s Exception Nos. 75-85 are incorporated herein.

Therefore, based on the foregoing reasons, Miami’s Exception No. 41 is denied.

Upland easement (western corridor)

Miami Exception No. 57

Miami takes exception to paragraph 670 of the RO, asserting “it is a legal conclusion as to whether grant of an upland easement is not contrary to the public interest and meets a clear public need.” Paragraph 670 contains findings that are “susceptible of ordinary methods of proof, such as determining the credibility of the witnesses or the weight to be given particular evidence.” *Pillsbury v. Dep’t of HRS*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999). This paragraph does not address matters so “infused with overriding policy considerations” that “the issue[s] should be left to the discretion of the agency.” *Id.* In addition, even the policy judgments of the Siting Board must be supported by the record of the hearing. See *Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997)(reflecting that the APA prescribes the process by which disputed facts are found, and “requires an agency to explain the exercise of its discretion and subjects that explanation to judicial review.”).

Paragraph 670 is supported by competent substantial evidence. (Hronec, T. Vol. 11, pp. 1601-1602; FPL Ex. 20, FDEP Stipulation on Sewage Plant and Easements; RO Attachment 1, Recommended Conditions A.XVI and C.XIV.B).

Therefore, based on the foregoing reasons, Miami’s Exception No. 57 is denied.

“All other Arguments” RO ¶ 897

Coral Gables/Pinecrest Exception No. 56; Miami Exception No. 88.

Coral Gables/Pinecrest and Miami take exception to paragraph 897 of the RO, where the ALJ states: “All other arguments not specifically addressed by this Recommended Order have been considered and found to be without merit.” The cities

argue that this prevents them from meaningfully taking exception to the ALJ's rulings. The cities do not cite to any legal authority suggesting that the ALJ's conclusion is improper. To the contrary, Florida courts have approved these type of conclusions. *See, e.g., Fla. Chapter of the Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983) (approving a similar finding in a recommended order: "To the extent that the proposed findings of fact and conclusions of law of any party in this proceeding have not been incorporated in this recommended order, those proposed findings of fact and conclusions of law are deemed irrelevant, immaterial, unsupported by competent, substantial evidence or otherwise unnecessary to the determination of this cause.").

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 56 and Miami's Exception No. 88, are denied.

MIAMI'S REMAINING EXCEPTION

Miami Exception No. 89

In this exception Miami "disagrees with and objects to the specified findings and recommendations of the ALJ" for "all of the reasons stated above, as well as in Miami's Proposed Order, testimony and evidence presented at the hearing, Miami Pre-Hearing Stipulation, Miami Agency Report and any other material submitted by Miami to the ALJ as part of the PPSA process." Miami's Exception No. 89 does not "clearly identify the disputed portion of the recommended order by page number or paragraph," "does not identify the legal basis for the exception," and "does not include appropriate and specific citations to the record." § 120.57(1)(k), Fla. Stat. (2013). To the extent Miami's Exception No. 89 can be considered an exception, it merely incorporates Miami's other

exceptions and is denied for all of the reasons stated in the rulings on Miami's other exceptions.

CORAL GABLES/PINECREST'S REMAINING EXCEPTIONS

Coral Gables/Pinecrest Exception No. 9

Coral Gables/Pinecrest, in this exception, request the Siting Board to modify paragraph 258 of the RO. In paragraph 258, the ALJ found:

258. The proposed transmission lines are necessary to safely and reliably connect the new power generation from the Project to FPL's existing electrical transmission network. Certification of the eastern and western transmission lines, as conditioned, serves the broad interests of the public by ensuring reliable service at a reasonable cost.

Coral Gables/Pinecrest appear to argue that this paragraph only applies to the FPL preferred corridors. Contrary to Coral Gables/Pinecrest's assertion, and consistent with the competent substantial evidence, this paragraph relates to all of the corridors proper for certification. (T. Vol. 1, pp. 102-103, 140-142; T. Vol. 11, p. 1616; T. Vol. 22, pp. 3010-3012 (explicitly addressing both eastern corridors); T. Vol. 27, pp. 3822-3823; T. Vol. 29, p. 3994). Coral Gables/Pinecrest appear to misapprehend the subject of paragraph 258, which is "transmission lines," not "corridors." There is nothing in this finding of fact that suggests it would not apply to construction and operation of the transmission lines in any of the corridors proper for certification. In addition, paragraph 258 is found within a section titled "Overview" "Transmission Facilities," providing further support that the finding was intended to address the transmission lines in any of the corridors proper for certification. (RO, p. 90).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest's Exception No. 9 is denied.

Coral Gables/Pinecrest Exception Nos. 16 and 17

In this exception, Coral Gables/Pinecrest argue that paragraphs 338-353 and 356 “are inconsistent with the testimony at trial” and the attached conditions for certification, as they should apply to “any corridor proper for certification.” Coral Gables/Pinecrest misunderstand the subject of these findings, which is “transmission lines,” not “corridors.” There is nothing in these paragraphs that suggests they would not apply to all of the corridors proper for certification. In addition, these paragraphs are found within a section titled “Post-Certification Planning and Design, All Corridors Proper for Certification,” providing further support that the paragraphs were intended to address the transmission lines in any of the corridors proper for certification. (RO, p. 103). Thus, there is no need to modify of these paragraphs.

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception Nos. 16 and 17, are denied.

Coral Gables/Pinecrest Exception No. 23

Coral Gables/Pinecrest take exception to paragraph 457 of the RO, where the ALJ found:

457. All of the transmission lines, including the Clear Sky substation, will be constructed and operated in compliance with all applicable design codes, standards, and industry guidelines, including NESC, the Department’s EMF standards, and the industry standards adopted by ASCE, ASTM, ANSI, ACI, and the Institute of Electronic and Electrical Engineers.

Coral Gables/Pinecrest asserts that to the extent the term “industry guidelines” incorporates the ALJ’s findings in paragraphs 370-375, they incorporate their arguments in Coral Gables/Pinecrest Exception No. 20. For the reasons articulated in the ruling on

Coral Gables/Pinecrest Exception No. 20, which are incorporated herein, this exception is denied.

Coral Gables/Pinecrest also seek to modify paragraph 457 to include “all corridors proper for certification.” Paragraph 457 is not limited to the FPL East Preferred Corridor. The paragraph references “[a]ll of the transmission lines” and comes under subheading B.5., which covers “Eastern Transmission Line Construction and Design Standards.” Thus, it covers all eastern corridors proper for certification. Since the challenged paragraph 457 is based on competent substantial evidence (T. Vol. 11, p. 1585-86), this exception is denied.

Coral Gables/Pinecrest Exception No. 24

In this exception, Coral Gables/Pinecrest suggest that paragraph 462 should be modified to include “all corridors proper for certification.” The paragraph is not limited to the FPL East Preferred Corridor. Paragraph 462 references “the proposed transmission lines” and comes under subheading B.6., which covers “Applicable Non-Procedural Requirements for Eastern Transmission Facilities.” Thus, it covers all eastern corridors proper for certification.

Since the challenged paragraph 462 is supported by competent substantial evidence (T. Vol. 11, pp. 1520, 1555-1556, 1585-1586, 1603-1605; T. Vol. 15, pp. 2058-2060; T. Vol. 28, pp. 3868-3869), this exception is denied.

Coral Gables/Pinecrest Exception No. 36

Coral Gables/Pinecrest take exception to paragraph 784, where the ALJ found that “FPL replaces inadequate or outdated transmission lines and poles on an as-

needed basis.” Coral Gables/Pinecrest contend that “FPL provides no maintenance and minimal upgrades” to its transmission facilities.

Contrary to Coral Gables/Pinecrest’s assertion, there is competent substantial record evidence that describes FPL’s maintenance and hardening practices for its transmission lines. (T. Vol. 22, p. 2996). See § 120.57(1)(l), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, Coral Gables/Pinecrest’s Exception No. 36 is denied.

Coral Gables/Pinecrest Exception No. 38

Coral Gables/Pinecrest take exception to paragraph 790, where the ALJ concludes the “evidence demonstrates compliance with the procedural requirements of the PPSA.” Without providing specific record and legal citations required by section 120.57(1)(k), F.S., Coral Gables/Pinecrest “incorporates” all of their “exceptions, statements and arguments” as the bases for this exception. The Siting Board declines to rule on this exception as authorized under section 120.57(1)(k), F.S. To the extent that a ruling is necessary for judicial review purposes, this exception is denied.

Coral Gables/Pinecrest Exception No. 47

In this exception, Coral Gables/Pinecrest request the Siting Board to modify paragraph 86[2] to add “including any corridor proper for certification.”

Paragraph 86[2] describes the need determination issued by the PSC and then considers that determination in light of BOT rules on sovereign submerged lands easements requiring there be a “public necessity” for the Project and for the Project to be in the public interest. See Fla. Admin. Code R. 18-18.006. The PSC does not consider “corridors” for transmission lines associated with a power plant. See §

403.519, Fla. Stat. (2013). Instead, “corridors” are addressed by the Siting Board in its final order on certification. See § 403.509(4), Fla. Stat. (2013). There is no need for this paragraph discussing the PSC’s need determination to expressly address transmission line corridors.

Therefore, for the foregoing reasons, Coral Gables/Pinecrest’s Exception No. 47 is denied.

Coral Gables/Pinecrest Exception No. 53

Coral Gables/Pinecrest take exception to paragraph 883, where the ALJ concludes that Coral Gables has not shown that its listed proposed conditions are supported by applicable nonprocedural requirements.

To the extent that Coral Gables/Pinecrest rely on their arguments in Coral Gables/Pinecrest’s Exception Nos. 10, 14, 18, 20, 21, 26, 29, 41, 42, and 43, the rulings on those exceptions are incorporated herein. For the reasons articulated in the rulings on Coral Gables/Pinecrest’s Exception Nos. 10, 14, 18, 20, 21, 26, 29, 41, 42, and 43, this exception is denied.

MDC/NPCA EXCEPTIONS

MDC/NPCA Exception No. 1.

MDC/NPCA take exception to paragraph 252 of the RO, where the ALJ found that “[t]he County does not currently have plans to construct roads at other locations identified for dedication.” MDC/NPCA argue that the Siting Board should delete the sentence because it is a legal conclusion that does not recognize MDC’s “planned roadway network” ordinance. Paragraph 252, however, contains factual findings that are supported by the competent substantial record evidence. (Lacau, T. Vol. 49, pp.

6877-6878, 6879-6880, 6882-6883; FPL Ex. 413). MDC/NPCA do not provide any factual or legal basis for rejecting the ALJ's finding. See § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 1 is denied.

MDC/NPCA Exception No. 2

MDC/NPCA take exception to the first three sentences in paragraph 253 of the RO, on the basis that the findings are not supported by competent substantial evidence. The challenged findings relate to dedication of property by FPL to MDC for public road ROWs. Because there is competent substantial record evidence to support the findings, there is no basis for the Siting Board to disturb the ALJ's findings of fact. (Hefty, T. Vol. 52, pp. 7467-7468; MDC Ex. 38; T. Vol. 53, pp. 7466-7467); *see also* § 120.57(1)(k), Fla. Stat.

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 2 is denied.

MDC/NPCA Exception Nos. 3, 5, 25, 47, 50, and 57

In a series of similar and cross-referenced exceptions, MDC/NPCA take exception to paragraphs 310, 323, 569-570, 630-635, 686, and 711 of the RO, and argue that "no competent substantial evidence demonstrates culverts are sufficient to maintain existing surface water flow conditions in the wetlands west of the L-31N," or that no competent substantial evidence demonstrates the flow of water will not be adversely affected west of the L-31N canal. MDC/NPCA propose that the Siting Board revise and supplement these findings of fact.

A reviewing agency cannot reject the ALJ's findings that are supported by competent substantial evidence, even to make alternate findings that are also arguably supported by competent substantial evidence. *See, e.g., Resnick v. Flagler County Sch. Bd.*, 46 So. 3d 1110, 1112 (Fla. 5th DCA 2010). In addition, as an agency head, the Siting Board does not have authority to make independent or supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

Competent substantial record evidence supports the ALJ's findings of fact. Mr. Bernardo Susi, an engineer and hydrologic expert with decades of experience in the design and engineering of transmission lines to maintain sheet flow, testified that FPL can design the proposed western transmission lines to maintain sheet flow. (Susi, T. Vol. 15, pp. 2037-2046, 2052-2053, 2055-2060, 2069-2070, 2088-2093, 2111-2112; FPL Ex. 6, W9-48, W9-99, W9-107 to W9-108; FPL Ex. 322 (regarding diameter and length of culverts as required to maintain flow); FPL Exs. 334 and 335). Mr. Susi's experience and FPL's includes design of access roads and structure pads for the Levee-Midway transmission line project, which traversed very similar wet environments in Water Conservation Area 3-B. (T. Vol. 15, pp. 2039-2044, 2092-2093). Mr. Susi explained that properly designed and functioning culverts for the transmission lines would not backup and disrupt hydrologic flow. (T. Vol. 15, p. 2114-2117). Mr. Susi also addressed FPL's proposed hydrologic studies if final project elements are reasonably expected to impact surface water or groundwater and FPL's design measures to maintain sheet flow in Northeast Shark River Slough and Wink Eye Slough. (T. Vol. 15,

pp. 2064-2069, 2095-2096; FPL Ex. 17, condition 15 (hydrologic study); FPL Ex. 337; Conditions of Certification, Condition C.VIII.I.6 (Wink Eye Slough)).

FPL engineer Mr. Daniel Hronec also provided competent substantial evidence that transmission line access roads and structure pads would be constructed so preconstruction flows are maintained without adverse effect to the flow of water. Such construction contemplates the use of culverts. (Hronec, T. Vol. 11, p. 1531-1532, 1551, 1604; T. Vol. 21, p. 2748-2750; FPL Ex. 290). Neither Mr. Susi nor Mr. Hronec testified that the proposed transmission lines could not be engineered to maintain sheet flow west of the L-31N canal, as suggested by MDC/NPCA in this series of related exceptions.

FPL has agreed, through a stipulation with SFWMD and the conditions of certification, to employ at-grade roads, geoswales, elevated roadways to bridge slough features, or other appropriate construction techniques to maintain historical drainage patterns and sheet flow to the extent practicable on SFWMD lands. FPL has also agreed to maintain or improve pre-construction hydroperiods within affected wetland areas. (FPL Ex. 20, Stipulation Between SFWMD and FPL (May 14, 2013); COCs, Section C, VI.D.2). In addition, Condition A.XXXVI.A.I requires FPL to construct and operate the transmission lines to comply with DEP Environmental Resource Permit ("ERP") criteria, including the requirement to maintain historical sheet flow. See ERP Applicant Handbook, Vol. 2, Section 2.1.3, incorporated by reference in Fla. Admin. Code R. 62.330.010(4)(b)5. and 40E-4.091(1)(a). MDC/NPCA's suggested revisions depart from FPL's agreed upon language, and more importantly, constitute independent

and supplemental findings of fact for which the Siting Board does not have authority. *Fla. Power & Light Co.*, 693 So. 2d at 1026-1027.

Therefore, based on the foregoing reasons, MDC/NPCA's Exception Nos. 3, 5, 25, 47, 50, and 57, are denied.

MDC/NPCA Exception Nos. 4 and 29

MDC/NPCA take exception to paragraphs 320 and 586, where the ALJ found:

320. FPL's proposed wetland mitigation plan for the transmission line impacts will offset the adverse effects, including functional loss, caused by the location, construction, operation, and maintenance of the transmission lines in the certified corridors, and the transmission lines will not cause unmitigated secondary or cumulative impacts to wetlands or surface waters.

586. These measures satisfy the state Environmental Resource Permit criteria and the County code criteria relative to wetland impacts.

MDC/NPCA argue that paragraph 320 should be stricken in its entirety and paragraph 586 should be modified, for the following reasons: (1) "FPL's proposed wetland mitigation plan fails to account for the uniquely high quality of the wetlands located west of the L-31N canal . . . and their importance as nesting and feeding habitat for threatened and endangered avian species;" (2) "[n]o competent substantial evidence demonstrates that installation of project facilities west of the L-31N satisfies the stricter, applicable, non-procedural requirements of MDC's regulations."

Contrary to MDC/NPCA's argument, paragraphs 320 and 586 are supported by competent substantial record evidence. FPL properly evaluated the quality of all wetlands to be impacted by the project by using the UMAM, which is used by state agencies and local governments in Florida. (T. Vol. 23 pp. 3147-3148; see *a/so* §

373.414(18), Fla. Stat.). Direct testimony by FPL expert witness Mr. Karl Bullock states that the wetlands within the ENP are not necessarily of unique high quality, nor are they inherently more important than other wetlands; and that some of the wetlands in the FPL West Preferred Corridor are degraded by the presence of exotic species such as Australian pines, melaleuca, and Brazilian pepper. (Bullock, T. Vol. 23, pp. 3194-3198). Mr. Bullock also testified at length as to the avoidance, minimization, and mitigation measures that FPL has taken and will continue to take regarding the transmission line facilities and access roads. (T. Vol. 23, pp. 3149-3150, 3169-3173; DEP Ex. 1, p. 18-19, 24-25; DEP Ex. 4, p. 8). Mr. Bullock also testified that FPL meets the hierarchy set forth in Section 24-48.3, MDCC because:

- (1) FPL looked to all corridors it owns and proposed the one that avoids the most wetland impacts;
- (2) FPL minimized the wetland impacts by co-locating where possible and through transmission line design;
- (3) FPL will restore adjacent wetlands after construction is complete;
- (4) FPL will preserve and maintain the area to reduce and eliminate the impacts to wetlands; and
- (5) FPL will fully mitigate all wetland impacts. (See T. Vol. 23, pp. 3169-3173, 3194).

To the extent that MDC/NPCA suggests that the ALJ or DEP should have required FPL to further avoid and minimize wetland impacts, regardless of whether such actions would be reasonable, such suggestion is not supported by any statute, rule or County Code requirement. See § 403.509(3), Fla. Stat.; DEP Ex. 1, p. 24-25; DEP Ex. 4, p. 8.

Finally, the competent substantial record evidence supports the finding that FPL's wetland mitigation plan can, and does, fully offset the adverse impacts, including functional loss thereof, to all wetlands proposed to be impacted. (T. Vol. 15, pp. 2056-2064; T. Vol. 23, pp. 3150-3169, pp. 3178-3185; FPL Exs. 170, 191).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception Nos. 4 and 29, are denied.

MDC/NPCA Exception No. 6

MDC/NPCA take exception to paragraphs 326-327 of the RO, where the ALJ made findings regarding impacts to wildlife and ecology of the proposed transmission lines in the proposed transmission line corridors. MDC/NPCA argue that paragraph 326 must be stricken in its entirety as not supported by competent substantial evidence. MDC/NPCA also argue that paragraph 327 should be modified to exclude "avian species" from the list of wildlife protected by the measures in FPL's comprehensive threatened and endangered species management plan.

Contrary to MDC/NPCA's argument, competent substantial evidence supports the ALJ's findings in paragraphs 326 and 327. (Bullock, T. Vol. 23, pp. 3149-3150, 3169-3173; DEP Ex. 1, p. 18-19, 24- 25; DEP Ex. 4, p. 5-6; Simpson, T. Vol. 9, pp. 1192-1193, 1197; FPL Ex. 6, W9-112; FPL Ex. 187, p. 38; Bullock, T. Vol. 23, pp. 3153-3155, 3157-3159, 3161, 3165-3166, 3168; FPL Ex. 325).

Multiple witnesses also discussed the lack of negative impacts on listed species, including the Florida panther, the American crocodile, and avian species. (T. Vol. 24, p. 3317-3321, 3327-3343; T. Vol. 26, p. 3558-3563). Dr. Gordon testified as to the transmission lines' lack of adverse impacts on avian species, including threatened and

endangered species. (Gordon, T. Vol. 26, pp. 3557-3561). FPL's Threatened and Endangered Species Evaluation and Management Plan provides for installation of protective features on the transmission facilities, mitigation to offset impacts to suitable foraging habitat, and monitoring. (FPL Ex. 187, p. 52-53).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 6 is denied.

MDC/NPCA Exception No. 7

MDC/NPCA take exception to paragraph 333 related to the adequacy of protection measures to prevent adverse impacts to avian species. MDC/NPCA argue that the last sentence in paragraph 333 should be stricken in its entirety as not supported by competent substantial evidence.

Contrary to MDC/NPCA's argument, the last sentence of paragraph 333 is supported by competent substantial evidence. (Gordon, T. Vol. 26, pp. 3528-3597; T. Vol. 53, pp. 7415-7435; FPL Ex. 6, T. Compl.Resp.5.SFWMD(5)-02-1 (Ecological Risk Assessment of Potential Impacts of Turkey Point Units 6 & 7 West Corridor Transmission Lines on Wood Storks (July 2010)); FPL Ex. 6, T. Compl.Resp.6.SFWMD(6)-01-1 (Addendum to the Ecological Risk Assessment of Potential Impacts of Turkey Point Units 6 & 7 West Corridor Transmission Lines on Wood Storks: Response to SFWMD's Letter of August 18, 2010); FPL Ex. 187, 191, 195, 287).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 7 is denied.

MDC/NPCA Exception No. 8

MDC/NPCA take exception to paragraph 334 of the RO. MDC/NPCA assert that paragraph 334 should be modified to limit its applicability to areas “only to the extent they are east of the L-31N” based on arguments in prior exceptions demonstrating that “impacts to avian species are only avoided or minimized by placing project facilities east of the L-31N.” The above rulings on MDC/NPCA’s Exception Nos. 4, 6, and 7, dealing with avian species, are incorporated herein.

Therefore, based on the foregoing reasons, MDC/NPCA’s Exception No. 8 is denied.

MDC/NPCA Exception No. 9

MDC/NPCA take exception to paragraph 337 of the RO. MDC/NPCA assert that paragraph 337 should be modified to limit its applicability to areas “only to the extent they are east of the L-31N,” and add lengthy language related to the insufficiency of the proposed conditions of certification based on arguments in prior exceptions demonstrating that “impacts to avian species are only avoided or minimized by placing project facilities east of the L-31N.” The above rulings on MDC/NPCA’s Exception Nos. 4, 6, 7, and 8, are incorporated herein. Based on those prior rulings MDC/NPCA has not cited any factual or legal basis to limit placement of Project facilities to locations east of the L-31N, or for application of additional conditions of certification in areas west of the L31-N. See § 120.57(1)(k), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, MDC/NPCA’s Exception No. 9 is denied.

MDC/NPCA Exception No. 14

MDC/NPCA take exception to paragraph 497 of the RO. MDC/NPCA argue that the ALJ's finding "assumes that the land swap will be consummated, and it thus does not accurately reflect the legal hurdles that remain to the completion of the Land Exchange." MDC/NPCA suggest that the word "Once" be replaced by "If" at the start of paragraph 497.

Contrary to MDC/NPCA's argument, the finding of fact is supported by competent substantial evidence. Also, as explained below the proposed revision of "Once" to "If," is unnecessary.

MDC/NPCA's reading of paragraph 497, ignores paragraph 496, which begins, "If the Land Exchange is consummated. . .," and goes on to recognize required environmental review by the National Parks Service ("NPS") and final approval from the Department of the Interior ("DOI") of any land exchange, as discussed by FPL's witnesses. (T. Vol. 1, p. 104; T. Vol. 11, p. 1639).

The exception also claims the finding "does not accurately reflect the legal hurdles that remain." The exception does not identify specific legal hurdles. Nevertheless, additional NPS and DOI approvals are already addressed in paragraph 496. To the extent the RO does not address speculation regarding possible legal challenges or other unspecified "hurdles" to approval by the DOI, the ALJ stated in RO paragraph 897, "All other arguments not specifically addressed by this Recommended Order have been considered and found to be without merit."

While the ALJ's findings do not suggest the ENP Land Exchange is a foregone conclusion, extensive evidence detailed the "great amount of energy and effort that has

been already put into place" to accomplish the ENP Land Exchange. (T. Vol. 19, p. 2615; FPL Ex. 410). Efforts include consummating cooperation agreements with state and federal agencies that support establishment of property rights for a continuous corridor and obtaining federal authorization from the U.S. Congress. (T. Vol. 1, pp. 103-105; T. Vol. 11, pp. 1639-1641). FPL's lead project engineer noted that the ENP Land Exchange "is significantly more mature and much further along the path than a process to undertake on any of the alternate corridors now, which are effectively at ground zero." (T. Vol. 19, p. 2615). NPCA's transmission line siting witness, Mr. Jack Halpern, contested FPL's certainty of acquiring property-including the ENP Land Exchange-for its proposed corridors. (T. Vol. 35, pp. 4997-4998). Mr. Halpern and his team, however, had "never heard anything about ... [nor] read anything about" FPL's studies over a number of years with the NPS, the U.S. Army Corps of Engineers, the State of Florida, and the SFWMD to identify land exchange alignments before settling on the proposed ENP Land Exchange. (T. Vol. 35, pp. 5030-5031; FPL Ex. 410). In addition, Mr. Halpern "really never had a lot of discussion" about the written cooperation agreements between FPL and these agencies supporting the ENP Land Exchange. (T. Vol. 35, p. 5031-32).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 14 is denied.

MDC/NPCA Exception No. 15

MDC/NPCA take exception to the ALJ's findings in paragraph 506, by asserting that the ALJ incorrectly references urban land uses permitted (or not permitted) under the County's Comprehensive Plan. Paragraph 506, however, makes no mention or

even reference to the Comprehensive Plan. This paragraph appears to be an introductory paragraph, explaining the general location of the West Consensus Corridor/MDLPA No. 2.

MDC/NPCA specifically take exception to the portion of paragraph 506 where the ALJ found that the West Consensus Corridor/MDLPA No. 2 avoids “more urban uses to the east.” The Finding of Fact does not specify what land uses are referenced, i.e., what land uses to the east of the West Consensus Corridor/MDLPA No. 2 are “more urban” than the corridor itself. It is possible the ALJ was referencing the urbanized portions of MDC, which generally exist east of the western transmission line corridors (even if not immediately adjacent to them). It is indisputable that more urban land uses exist east of the West Consensus Corridor than west of that corridor. (FPL Ex. 266, 280, 315, p. 1-15; T. Vol. 44, pp. 6184-6185 (describing “urban communities” in western portions of MDC), pp. 6191-6192 (describing areas east of the L-30/ L-31N levee as “urban” or “highly urbanized” areas)). There are numerous manmade features, structures and land uses in the area where the western transmission line corridors diverge (the “West Divergence Area”). (T. Vol. 27, pp. 3721-3724 (describing actual land uses in the area of agricultural uses, residential uses, mining uses, park uses, institutional facility uses), pp. 3728-3729 (describing vertical features visible in the area, such as radio towers, rock mining cement towers); FPL Ex. 315, p. 8-15; FPL Ex. 320). There is competent substantial evidence to support the ALJ’s finding of “more urban [land] uses to the east” of the West Consensus Corridor. See § 120.57(1)(l), Fla. Stat. (2013).

Further, MDC/NPCA assert that the ALJ's finding as to the "goal" of the MDLPA's corridor selection is opinion that is entitled to no deference. This "opinion," however, is based on competent substantial evidence, in the form of testimony from the MDLPA representative. (MacVicar, T. Vol. 44, pp. 6159-6160). Mr. MacVicar, the representative of the MDLPA and a water resource engineer with many years of experience in the area of the western corridors, testified that the MDLPA alternate corridors were developed to minimize the crossing of the Pennsuco wetlands and ENP. (MacVicar, T. Vol. 44, pp. 6135, 6145-6154, 6157 (regarding Pennsuco wetlands) and 6159-6160 (regarding ENP)). Thus, the ALJ's finding on the "goal" of the MDLPA corridor selection relates to matters that are "susceptible of ordinary methods of proof" and is a proper finding of fact, based on competent substantial evidence in the record. *Pillsbury*, 744 So. 2d 1042.

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 15 is denied.

MDC/NPCA Exception No. 16

MDC/NPCA take exception to two points within paragraph 510 of the RO. First, that the NPCA corridor selection process did not consider potential impacts to future urban development in the Urban Expansion Area ("UEA") or encumbrances that might hinder the use of the NPCA corridor; and second, that no recognition was given to the stipulation between MDC, NPCA, and SFWMD regarding the County and SFWMD's willingness to make parcels under their control available subject to conditions of certification.

There is competent substantial evidence to support the ALJ's finding that the NPCA corridor selection process did not consider potential impacts to future urban development (whether inside or outside the UEA) and did not consider encumbrances that might hinder the use of the NPCA corridor. (T. Vol. 34, pp. 4859-4862; T. Vol. 34, pp. 4937, 4939- 4942; T. Vol. 35, pp. 4971-4973, 5028; T. Vol. 36, pp. 5132, 5137-5138, 5140-5141, 5143-5145, 5147-48; T. Vol. 52, p. 7373, 7409). See § 120.57(1)(k), Fla. Stat. (2013).

With respect to the land encumbrances within the various corridors, there is competent substantial evidence to support the ALJ's finding that NPCA assumed that land parcels would likely be made available. FPL does not dispute the assertion by MDC and NPCA that the October 2013 stipulation between MDC, NPCA, and SFWMD provides an indication that the parcels under the control of MDC or SFWMD can be made available subject to conditions. (See Stipulation between MDC, SFWMD, and NPCA, ¶ 17). The record evidence demonstrates, however, that MDC and SFWMD are not the only government agencies that own lands within the western transmission line corridors. (FPL Ex. 309 (showing lands owned by the State of Florida, Army Corps of Engineers, and other landowning agencies); FPL Ex. 310 (same); FPL Ex. 311 (same); FPL Ex. 312 (same)). Thus, the stipulation by SFWMD and MDC does not address the issue of all encumbrances.

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 16 is denied.

MDC/NPCA Exception No. 17

MDC/NPCA take exception to paragraph 528 of the RO, on the basis that it should be modified to limit its applicability to areas “east of the L-31N canal” based on arguments in prior exceptions that FPL failed to present competent substantial evidence “(i) that adverse impacts to avian species from project facilities west of the L-31N in the West Preferred Corridor would not be significant, and (ii) that the adverse impacts would only be avoided or minimized by placing project facilities east of the L- 31N.”

The ruling on MDC/NPCA’s Exception No. 7 is incorporated herein. There is competent substantial record evidence that placement of the transmission lines in any of the western corridors proper for certification (which would include portions west of the L-31N) would not adversely impact avian species. (T. Vol. 26, pp. 3546, 3562-3563).

Therefore, based on the foregoing reasons, MDC/NPCA’s Exception No. 17 is denied.

MDC/NPCA Exception No. 18

MDC/NPCA take exception to the statement in paragraph 531 that the West Divergence Area has “open lands, with more urban development to the east.” In paragraph 531, the ALJ describes the land uses within the West Divergence Area (the area where the western transmission line corridors diverge). The finding of fact does not specify where the referenced “urban development” is located. It could be a reference to the urbanized portions of MDC, which generally exist east of the western transmission line corridors. MDC/NPCA argue that the NPCA Corridor should not be considered to include “urban land” because of its inclusion within the UEA (see

MDC/NPCA Exception No. 15). Paragraph 531, however, does not reference or even mention the UEA.

The finding in paragraph 531, regarding the presence of urban development to the east of the West Divergence Area, is supported by competent substantial record evidence. (T. Vol. 27, pp. 3721-3724, 3728-3729; FPL Ex. 266, 280 and FPL Ex. 315, p. 8-25). MDC/NPCA also assert that paragraph 531 is an incorrect conclusion of law. This finding, describing the actual land uses in the vicinity of the West Divergence Area, is properly characterized as a finding of fact because it is “susceptible of ordinary methods of proof” and includes matters of “determining . . . the weight to be given particular evidence.” *See Pillsbury*, 744 So. 2d at 1042.

For these reasons and the reasons explained in the ruling on MDC/NPCA’s Exception No. 15, incorporated herein, MDC/NPCA’s Exception No.18 is denied.

MDC/NPCA Exception No. 19

MDC/NPCA take exception to the ALJ’s description, in paragraph 538, of the designation of the Bird Drive Basin as a “zoning overlay.” MDC/NPCA assert that this is an erroneous conclusion of law. MDC/NPCA are correct in pointing out that the County’s Bird Drive Overlay is “an environmental regulation set forth in Chapter 24 of the County Code,” and not a zoning overlay.

As FPL points out in its response to exceptions, however, any such error in paragraph 538 is harmless, in light of the ALJ’s extended findings in paragraphs 647-651 concerning the Project’s compliance with the environmental standards in the Bird Drive Basin Overlay in the County’s environmental regulations. Specifically in paragraph 647, the ALJ found that “[t]he County has two environmental districts within

portions of the proposed western transmission line corridors, which have been adopted in chapter 24, MDCC. The ALJ then goes on to address the transmission line's compliance with those environmental standards for the Bird Drive Basin and the North Trail Basin overlays. (RO ¶¶ 650 and 651). No party, including MDC and NPCA, took exception to paragraphs 647-651 regarding the western transmission lines' compliance with the environmental standards in the Bird Drive Basin overlay. Paragraphs 647-651 expressly recognize that the Bird Drive Basin program in the County Code is included as part of the County's environmental regulations and not part of the County's zoning regulations. A review of the record reveals no competent substantial evidence that the Bird Drive Basin is a zoning overlay.

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 19 is granted.

MDC/NPCA Exception No. 20

MDC/NPCA take exception to paragraph 541 of the RO, where the ALJ found:

541. The Urban Development Boundary (UDB) is an area designated by the County in the CDMP for existing urban uses, while the UEA, adjacent to the UDB, is designated by the County for anticipated future urban development after 2015, if there is a need based on population growth. Corridors farthest from these areas are more desirable from the standpoint of potential conflict with residential and urban land uses, although all would be compatible from a land use perspective.

MDC/NPCA take exception to two items within paragraph 541 based in part on "the reasons explained in [MDC/NPCA] Exception 15."

First, MDC/NPCA take exception to the ALJ's description of the UEA as "designated by the County for anticipated future urban development after 2015, if there

is a need based on population growth,” and seek to have this language stricken from the finding. The finding is, however, supported by competent substantial record evidence. (Curtis, T. Vol. 27, pp. 3736-3740; FPL Ex. 315, p. 51).

Second, MDC/NPCA take exception to the ALJ’s finding that the “[c]orridors farthest from these [UEA] areas are more desirable from the standpoint of potential conflict with residential and urban land uses,” again requesting that this language be stricken. This finding is supported by competent substantial record evidence. (Curtis, T. Vol. 27, pp. 3739-3740; Vol. 28, pp. 3952-3953, 3963-3964). With respect to the matter of how the County Comprehensive Plan should be evaluated in considering the local community’s priorities and preferences, see the ruling on Coral Gables/Pinecrest Exception No. 21, *supra*.

Finally, MDC/NPCA assert that the ALJ’s findings are an “erroneous conclusion of law.” These findings are properly characterized as findings of fact because they are matters “susceptible of ordinary methods of proof” and include matters of “determining . . . the weight to be given particular evidence.” *See Pillsbury*, 744 So. 2d at 1042. The findings in paragraph 541 are supported by competent substantial evidence offered through expert opinion testimony, despite conflicting testimony offered by witnesses for MDC/NPCA. 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 Reg’l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 20 is denied.

MDC/NPCA Exception No. 21

In this exception to paragraph 543, MDC/NPCA proposes to modify the paragraph to limit the ALJ's finding (that the transmission line corridors in any of the corridors proper for certification will be compatible and consistent with adjacent land uses and would serve the broad interests of the public) to only those areas east of the L-31N canal.

The ALJ's findings in paragraph 543, however, are supported by competent substantial record evidence, and without MDC/NPCA's proposed limitation. (Curtis, T. Vol. 27, pp. 3763-3764; T. Vol. 27, pp. 3742, 3766-3768).

For this reason, and the reasons explained in the rulings on MDC/NPCA's Exception Nos. 7 and 17, which are incorporated herein, MDC/NPCA's Exception No. 21 is denied.

MDC/NPCA Exception No. 22

MDC/NPCA take exception to paragraph 545 of the RO, on the basis that the wetland acreage for each alternate corridor is not based on competent substantial evidence. Contrary to MDC/NPCA's assertion, the wetland acreage for each alternate corridor found in paragraph 545 is supported by the evidence. (FPL Ex. 325).

Therefore, this exception is denied.

MDC/NPCA Exception Nos. 23 and 24

MDC/NPCA take exception to paragraphs 557 and 560, describing the reference to the UEA as an "incorrect conclusion of law." With respect to the matter of how the

County Comprehensive Plan should be evaluated in considering the local community's priorities and preferences, see the ruling on Coral Gables/Pinecrest Exception No. 21, which is incorporated herein. Mr. Curtis testified that the UDB, UEA, and other overlays referenced in the County Zoning Code and Comprehensive Plan informed his opinion as to the compatibility of the transmission lines with the community's goals and preferences. (Curtis, T. Vol. 27, pp. 3765-3766; T. Vol. 28, pp. 3952-3953; 3956-3958; FPL Ex. 315, p. 51). Thus, there is competent substantial evidence supporting this finding of fact.

In addition, MDC/NPCA take exception to the ALJ's finding that Limonar has "yet-to-be finalized plans for future residential and mixed-use development of its 485-acre tract," alleging that the ALJ "ignores the significant legal impediments to Limonar's 'plans.'" There is competent substantial evidence, however, to support the ALJ's finding regarding Limonar's plans for future development. (T. Vol. 41, pp. 5823-5826; T. Vol. 28, pp. 3952-3953; Limonar Exs. 2 and 40). The ALJ's finding recognizes that Limonar's plans are not certain or approved, and that they are "yet-to-be finalized."

For these reasons, as well as the reasons explained in the rulings on MDC/NPCA's Exception Nos. 15 and 20, incorporated herein, MDC/NPCA's Exception Nos. 23 and 24, are denied.

MDC/NPCA Exception No. 26

In this exception MDC/NPCA take exception to paragraph 576 of the RO, where the ALJ found that "FPL establishes a transmission line ROW through multiple means." MDC/NPCA asserts that the term "establishment" is "a legal term about which the parties disagree." The findings in paragraph 576, however, are supported by competent

substantial evidence in the record. (Hronec, T. Vol. 11, p. 1581-1582). This is a matter susceptible of ordinary methods of proof, and thus is correctly characterized as a finding of fact. *See Pillsbury*, 744 So. 2d at 1042.

To the extent MDC/NPCA assert that the ALJ's construction of the term "establishment" is incorrect, the rulings on MDC/NPCA Exception No. 66 and Coral Gables/Pinecrest Exception Nos. 14 and 18 address that issue, and are incorporated herein.

Therefore, based on the foregoing reasons, and the rulings on MDC/NPCA Exception No. 66 and Coral Gables/Pinecrest Exception Nos. 14 and 18, this exception is denied.

MDC/NPCA Exception No. 27

MDC/NPCA takes exception to the last sentence of paragraph 582 of the RO, where the ALJ found that "[t]he need for new access roads will be minimized in the West Consensus Corridor/MDLPA No. 2, due to the ability to use existing access." MDC/NPCA argue that this finding is not supported by competent substantial evidence.

Contrary to MDC/NPCA's argument, the finding is supported by competent substantial evidence. (T. Vol. 23, pp. 3192-3194; FPL Ex. 411; T. Vol. 44, pp. 6210-6212; T. Vol. 45, p. 6308-6311; FPL Ex. 20, Stipulation between FPL and SFWMD Regarding Alternate Corridors (Oct. 25, 2013), Exhibit A-3 to the Stipulation, Condition No. 13 ("FPL may use the existing SFWMD access roadways on the L-31N levee and east of the L-31N Canal within the SFWMD ROW, other public roadways, and newly constructed access roads within the corridor boundaries for access to transmission structures within the West Consensus Corridor south of Tamiami Trail."); DEP Ex. 4,

Figure 1 at p. 2; MDLPA Ex. 3, Figure 1 at p. 9 (depicting proposed access corridors for West Consensus Corridor/MDLPA No. 2); FPL Ex. 316, p. 16 (depicting existing roadways coinciding with proposed access corridors for West Consensus Corridor/MDLPA No. 2)).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 27 is denied.

MDC/NPCA Exception No. 28

In this exception MDC/NPCA assert that paragraph 584 should be modified to limit its applicability to areas "only to the extent they are east of the L-31N," based on arguments in prior exceptions that "there is no competent substantial evidence that FPL's wildlife protection measures are sufficient to prevent adverse impacts to avian species west of the L-31N."

Contrary to MDC/NPCA's assertion, and as explained in the rulings on MDC/NPCA's Exception Nos. 7 and 17, incorporated herein, there is competent substantial evidence that placement of the transmission lines in any of the western corridors proper for certification (which would include portions west of the L-31N) would not adversely impact avian species. (T. Vol. 26, pp. 3546, 3562-3563).

Therefore, based on the foregoing reasons, and the rulings on MDC/NPCA's Exception Nos. 7 and 17, this exception is denied.

MDC/NPCA Exception No. 30

MDC/NPCA take exception to paragraph 588 of the RO, on the basis that "there is no competent substantial evidence that the transmission lines west of the L-31N will not adversely impact wetlands or other surface waters from a wildlife perspective."

Contrary to MDC/NPCA's assertion, paragraph 588 is supported by competent substantial evidence in the record. The rulings on MDC/NPCA's Exception Nos. 4, 6, and 48 detail extensive competent substantial evidence that the transmission lines will not adversely impact wetlands or other surface waters or wildlife. The testimony and exhibits referenced in those exceptions do not distinguish between the land on either side of the L-31N.

Therefore, based on the reasons in the rulings on MDC/NPCA's Exception Nos. 4, 6, and 48, this exception is denied.

MDC/NPCA Exception No. 31

MDC/NPCA take exception to the last sentence of paragraph 594 (finding that U.S. Fish & Wildlife Service ("USFWS") recommended management restrictions would not prohibit placement of the proposed transmission lines in the FPL West Preferred Corridor or the West Consensus Corridor/MDLPA No. 2). MDC/NPCA argue that it is not supported by competent substantial evidence.

Contrary to MDC/NPCA's argument, the finding is supported by competent substantial record evidence in the form of expert testimony. (Gordon, T. Vol. 239, p. 3534-3539; FPL Exs. 359 and 360). Therefore, this exception is denied.

MDC/NPCA Exception No. 32

In this exception to paragraph 597, MDC/NPCA argue that the ALJ's finding is not supported by competent substantial evidence and is "an erroneous conclusion of law." Contrary to MDC/NPCA's assertion, paragraph 597 is supported by competent substantial evidence (T. Vol. 26, pp. 3530-3531; FPL Ex. 358); and is not an "erroneous conclusion of law" since it addresses matters that are "susceptible of ordinary methods

of proof” and includes matters of “determining the credibility of the witnesses [and] the weight to be given particular evidence.” *See Pillsbury*, 744 So. 2d at 1042.

MDC/NPCA assert that paragraph 597 should address issues related to compliance with the County’s CDMP Conservation Element Policies. These Policies are not “applicable nonprocedural requirements” for transmission lines, as explained in the RO’s Conclusions of Law 818-836, and in the rulings on MDC/NPCA Exception No. 66 and Coral Gables/Pinecrest Exception Nos. 14 and 18, incorporated herein.

For these reasons, and the reasons provided in the rulings on MDC/NPCA Exception No. 66 and Coral Gables/Pinecrest Exception Nos. 14 and 18, this exception is denied.

MDC/NPCA Exception No. 33

MDC/NPCA take exception to paragraph 598 of the RO, on the basis that it “must be modified to strike findings that are not supported by competent substantial evidence.” Contrary to MDC/NPCA’s assertion, the ALJ’s findings are supported by competent substantial record evidence. (T. Vol. 26, pp. 3541-3562; FPL Ex. 20, Stipulation Between FPL and FFWCC; FPL Ex. 195, p. 40, 46; FPL Exs. 362 and 363). In addition, the ruling on MDC/NPCA’s Exception No. 7 is incorporated herein.

For these reasons, and the reasons in the ruling on MDC/NPCA’s Exception No. 7, this exception is denied.

MDC/NPCA Exception No. 34

In this exception MDC/NPCA assert that the last sentence of paragraph 559 is not supported by competent substantial evidence. The rulings on similar assertions in MDC/NPCA’s Exception Nos. 7 and 33, are incorporated herein.

Philip Simpson, an expert in wildlife biology, terrestrial ecology, with special knowledge in his areas of expertise relating to transmission line siting, testified to the adequacy of the conditions of certification proposed by the FWC to protect wood storks and Everglade snail kites, as well as other listed species. (Simpson, T. Vol. 8, pp. 1151-1152, 1154-1157, 1159-1160; T. Vol. 9, pp. 1192-1193). See § 120.57(1)(l), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, and the rulings on MDC/NPCA's Exception Nos. 7 and 33, this exception is denied.

MDC/NPCA Exception No. 35

MDC/NPCA take exception to the last two sentences of paragraph 601 as not supported by competent substantial evidence. In the last two sentences of paragraph 601, the ALJ found that FPL's Avian Protection Plan ("APP") includes standards "designed to avoid and minimize potential bird impact issues such as electrocutions and collisions, as well as avian enhancement activities that can provide benefits to birds from FPL structures and activities." The ALJ goes on to directly address the avian impact issues MDC/NPCA raise in this exception, stating: "These steps should resolve the concerns expressed by NPCA at hearing." This finding is supported by competent substantial evidence in the form of testimony from Dr. Caleb Gordon, an expert ornithologist, and by the APP itself. (T. Vol. 26, p. 3545-46; Exhibit FPL 195). Thus, the ALJ's finding is supported by competent substantial evidence. An agency reviewing a recommended order may not reject or modify the ALJ's findings of fact unless the agency, based on review of the entire record, determines that the findings of fact were not based on competent substantial evidence. See § 120.57(1)(l), Fla. Stat. (2013)

MDC/NPCA Exception Nos. 36, 37, and 38

In these exceptions MDC/NPCA assert that paragraphs 604, 605, and 606 should be modified to limit their applicability to areas “east of the L-31N canal” based on arguments in prior exceptions that FPL failed to present competent substantial evidence “(i) that adverse impacts to avian species from project facilities west of the L-31N in the West Preferred Corridor would not be significant, and (ii) that the adverse impacts would only be avoided or minimized by placing project facilities east of the L- 31N.”

For the reasons explained in the ruling on MDC/NPCA's Exception No. 7, these exceptions are denied.

MDC/NPCA Exception No. 39

MDC/NPCA take exception to paragraph 608 of the RO, asserting that it should be modified by deleting the last sentence based on arguments in prior exceptions that FPL failed to present competent substantial evidence “(i) that adverse impacts to avian species from project facilities west of the L-31N in the West Preferred Corridor would not be significant, and (ii) that the adverse impacts would only be avoided or minimized by placing project facilities east of the L-31N.”

For the reasons explained in the ruling on MDC/NPCA's Exception No. 7, these exceptions are denied.

MDC/NPCA Exception No. 40

In this exception MDC/NPCA assert that paragraph 609 should be modified to limit its applicability to areas “only to the extent they are east of the L-31N” based on arguments in prior exceptions that “the loss of wetland feeding and nesting habitat in the

West Preferred Corridor west of the L-31N poses a risk to avian species beyond the mere risk of electrocution of [sic] collision.”

For the reasons explained in the rulings on MDC/NPCA’s Exception Nos. 4 and 7, this exception is denied.

MDC/NPCA Exception Nos. 41, 42, 43, 44, 45, 46, and 49

In these exceptions MDC/NPCA assert that paragraphs 610, 612, 613, 614, 615, 616, and 678-679 should be modified to include limitations to their applicability “as long as project facilities are installed east of the L-31N” and “from project facilities installed east of the L-31N” based on arguments in prior unspecified exceptions.

For the reasons explained in the ruling on MDC/NPCA’s Exception Nos. 4, 6, and 7, these exceptions are denied.

MDC/NPCA Exception No. 48

MDC/NPCA take exception to the ALJ’s findings in paragraphs 643-646 that the County East Everglades Area ordinances, found in the County Zoning Code and titled “Overlay Zoning Regulations,” are zoning regulations. There is competent substantial evidence to support the ALJ’s finding that the County’s East Everglades Area ordinances are zoning ordinances. See, e.g., Chapter 33B, Article II, Division 2, of MDC Code, titled “East Everglades Area Overlay Zoning Regulations” (plain language of title of ordinance, found within County “Zoning Code”).

MDC/NPCA argue that the legislative history and intent of the East Everglades Area ordinance should be used to trump the plain language of the ordinance itself, transforming a “zoning” ordinance found in the Zoning Code into an “environmental” ordinance. This argument is not a reasonable interpretation of the County’s ordinance,

particularly in light of the County's attempt to use that ordinance (like a zoning ordinance) to prohibit the placement of transmission lines in a particular area. The County has experience in adopting geographically-based environmental regulations outside the Zoning Code; see, for example, the Bird Drive Everglades Wetland Basin and North Trail Basin regulations that are found in Chapter 24 of the MDCC with other environmental regulations. See Sections 24-48.20 and 24-48.21, MDCC, and discussed in paragraphs 647-651.

MDC has adopted the East Everglades regulations as part of its Zoning Code, it cannot now be allowed to unilaterally change the nature or expand the scope of those regulations to suit its purposes in this proceeding. See *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552 (Fla. 1973) (rejecting lower courts' reliance on zoning director's interpretation of legislative intent for zoning ordinance where legislative intent was clear from plain language of the ordinance); *Ocean's Edge Dev. Corp. v. Town of Juno Beach*, 430 So. 2d 472, 475 (Fla. 4th DCA 1983) (relying on plain meaning of comprehensive development plan and zoning ordinance to reverse final order denying development permit based on after-the-fact expert testimony of legislative intent, where legislative intent testimony would "amend the ordinance as the town would have liked it to read, not as it read"); *Town of Longboat Key v. Islandside Prop. Owners Coal., LLC*, 95 So. 3d 1037, 1042 (Fla. 2d DCA 2012) (finding that the town code should be interpreted based on its wording, aided by dictionary definition, not the town's self-serving interpretation or traditional application).

In addition, even if the ALJ's finding that the County's East Everglades Area ordinances are not applicable nonprocedural requirements is an erroneous conclusion

of law, the ALJ ultimately concluded that the western transmission lines would not conflict with the County's East Everglades Area ordinances. (RO ¶ 835.) That conclusion is consistent with paragraphs 645 and 646, which are supported by competent substantial record evidence. (T. Vol. 15, p. 2060, 2063-2064, 2122-2123; T. Vol. 23, 3173-3176; RO Attachment 1, Conditions A.XXVI, C.VI, and C.VII).

For these reasons, MDC/NPCA's Exception No. 48 is denied.

MDC/NPCA Exception No. 51

MDC/NPCA take exception to paragraph 687, asserting that it should be modified to replace "equally low" with "equivalent" and to limit the applicability of this finding "to the extent project facilities are installed east of the L-31N." The exception is based on arguments in prior MDC/NPCA exceptions that there is "no competent substantial evidence that FPL's wildlife protection measures are sufficient to prevent adverse impacts to avian species west of the L-31N." The ruling on MDC/NPCA's Exception No. 7 is incorporated herein. There is competent substantial evidence that placement of the transmission lines in any of the western corridors proper for certification (which would include portions west of the L-31N) would not adversely impact avian species. (T. Vol. 26, pp. 3546, 3562-3563). There is also competent substantial evidence that the potential for adverse unmitigated impacts is equally low within the FPL West Preferred Corridor and MDLPA No. 1, as explained in the ruling on MDC/NPCA's Exception No. 58. (T. Vol. 8, p. 1066; T. Vol. 9, pp. 1192-1196; T. Vol. 26, p. 3561-3563; FPL Ex. 283).

For these reasons, and the ruling on MDC/NPCA's Exception No. 7, this exception is denied.

MDC/NPCA Exception No. 52

In this exception MDC/NPCA assert that paragraphs 691 and 692 should be modified to exclude listed wood storks and Everglade snail kites “west of the L-31N” in the findings of low potential for adverse impacts based on arguments in prior exceptions that FPL failed to present competent substantial evidence “(i) that adverse impacts to avian species from project facilities west of the L- 31N in the West Preferred Corridor would not be significant, and (ii) that the adverse impacts would only be avoided or minimized by placing project facilities east of the L-31N.”

In addition, MDC/NPCA are asking the Siting Board to inappropriately make supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997). The challenged findings are supported by competent substantial evidence and therefore, should not be modified. (T. Vol. 9, pp. 1192-1196; T. Vol. 23, pp. 3178-3179; T. Vol. 26, pp. 3560-3563; DEP Ex. 1, Appendix III.D; FPL Exs. 282, 283).

Therefore, based on the foregoing reasons, MDC/NPCA's Exception No. 52 is denied.

MDC/NPCA Exception No. 53

MDC/NPCA take exception to the findings in paragraphs 693-699 describing the land uses within and near the transmission line corridors. Competent substantial record evidence supports those findings. (T. Vol. 27, pp. 3721-3724 (describing actual land uses in the area as agricultural uses, residential uses, mining uses, park uses, institutional facility uses), 3728-3729 (describing vertical features visible in the area, such as radio towers and a rock mining cement stack), 3740; T. Vol. 28, pp. 3952-3953,

3963-3964; FPL Exs. 266, 280, 315, p. 1-51; FPL Ex. 6, Figure 9.1.0-2 (showing the corridors overlaid with MDC Comprehensive Plan land-use designations); FPL Ex. 316 (same)).

As previously explained, Mr. Curtis evaluated the comprehensive plans of the various local governments as evidence of the local communities' priorities and preferences (not as applicable nonprocedural requirements), and thus, the location of the County's UDB and UEA were relevant to Mr. Curtis' evaluation. With respect to MDC/NPCA's assertion that transmission lines west of the L-31N canal would not be compatible with the land uses located there, see the ruling on MDC/NPCA's Exception No. 21.

MDC/NPCA request that the sentence be deleted in paragraph 694 finding that the County and NPCA reviewed and considered "primarily environmental impacts" in comparing the various corridors, as opposed to FPL's evaluation which included a balancing of land use impacts, environmental impacts, and engineering factors. This finding should not be set aside because it is based on competent substantial record evidence. (T. Vol. 34, Ring, pp. 4859-4862; T. Vol. 35, Halpern, p. 5028 (NPCA corridor selection team did not include a land use planner); T. Vol. 36, Davis, pp. 5132, 5137-5138, 5140-5141 (no comparison of visual impacts among the corridors), 1543-1545; T. Vol. 52, Grossenbacher, p. 7373, 7409 (review based on environmental considerations, rather than a balancing of environmental, land use and engineering considerations); *see also* T. Vol. 8, pp. 1119- 1121, 1139-1140, 1198-1200; T. Vol. 27, p. 3756-3760; FPL Ex. 283).

For these reasons, MDC/NPCA's Exception No. 53 is denied.

MDC/NPCA Exception No. 54

In this exception to paragraphs 703 and 704, MDC/NPCA raise inapplicable comprehensive plan and zoning requirements and challenge the findings on the ENP Land Exchange. The findings are supported by competent substantial evidence and the reasonableness of assumptions regarding the ENP Land Exchange is an evidentiary matter for the ALJ's determination.

MDC/NPCA alleges FPL's multidisciplinary team "ignored" the County's EEACEC and CDMP Environmentally Protected Parks designations on lands west of L-31N canal. Mr. Hronec testified to his familiarity with and review of the MDC Code section addressing the EEACEC. (T. Vol. 19, pp. 2540-2542). Mr. Curtis also testified to his familiarity with the land use element of the CDMP, which includes the section on Environmentally Protected Parks. (See T. Vol. 28, p. 3875, 3953-54). More importantly, for the reasons discussed in responses to MDC/NPCA Exception Nos. 48 and 66 and Coral Gables/Pinecrest Exception Nos. 14 and 18, the land use element of the CDMP and the EEACEC zoning overlay, are not applicable nonprocedural requirements.

MDC/NPCA also take issue with the analytical premise of the ENP Land Exchange being consummated, whereby all transmission line corridors would be outside of ENP. As discussed in paragraphs 494-497 and the ruling on MDC/NPCA's Exception No. 14, this ENP Land Exchange was negotiated over several years between the NPS, FPL and several other land-owning agencies, and would result in the replacement of FPL's existing transmission line ROW from the ENP with one that is outside a slightly adjusted ENP eastern boundary. In 2008, agreements for the ENP Land Exchange were executed, and in 2009 authorization for the Exchange was issued

via federal legislation by the U.S. Congress. The NPS has been conducting an environmental assessment and environmental impact statement to evaluate whether it will support the Exchange. (T. Vol. 1, pp. 103-104; FPL Ex. 410.) The reasonableness of the assumption that the ENP Land Exchange will be implemented is an evidentiary matter within the province of the ALJ.

The assertion of MDC/NPCA that the findings “assume that the land swap is consummated and does not accurately reflect the current status of the properties as being within the current boundaries of Everglades National Park” is not accurate because a prior finding (RO ¶ 495) already recognized that the ENP Land Exchange is the condition precedent for adjusting the eastern boundary of the ENP such that a transmission line ROW would be entirely outside of ENP.

For these reasons, MDC/NPCA’s Exception No. 54 is denied.

MDC/NPCA Exception No. 55

MDC/NPCA take exception to paragraph 705 by asserting that the ALJ ignored a stipulation between SFWMD, NPCA, and MDC, and that the ALJ’s assessment of desirability of various proposed corridors is an opinion not entitled to deference.

Subsequent to the hearing, NPCA, MDC and SFWMD signed a stipulation in which MDC and SFWMD agreed to “provide FPL with the opportunity to acquire land interests” in their lands crossed by the NPCA corridor. Notably, this is an “opportunity,” not a “commitment” to allow FPL to acquire the necessary interests in government lands. Also, there are other governmental lands and property interests crossed by the NPCA corridor for which there is no stipulation on cooperation on land acquisition. Those lands and property interests include ones over which FPL does not necessarily

have eminent domain authority. (T. Vol. 2, p. 270; FPL Ex. 424, p. 17-18; FPL Exs. 309-312). To the extent the ALJ did not address this stipulation, the ALJ stated in RO Paragraph No. 897, "All other arguments not specifically addressed by this Recommended Order have been considered and found to be without merit."

Finally, MDC/NPCA assert that the ALJ's assessment of desirability of various proposed corridors is not entitled to deference. The evaluation of preference among corridors can be an ultimate fact for the ALJ. For although the PPSA vests the Siting Board with discretion, even the policy judgments of the Siting Board must be supported by the record of the hearing. *See Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997)(reflecting that the APA prescribes the process by which disputed facts are found, and "requires an agency to explain the exercise of its discretion and subjects that explanation to judicial review.").

For the foregoing reasons, MDC/NPCA's Exception No. 55 is denied

MDC/NPCA Exception No. 56

MDC/NPCA take exception to paragraphs 707 and 708 regarding the impact of the several proposed western transmission line corridors on areas designated by MDC for urban development. MDC/NPCA argue that there is no competent substantial evidence to support the final sentence of paragraph 708 that locating the transmission line in the UEA would reduce the size of the UEA.

MDC/NPCA do not provide any record citation that paragraphs 707 or 708 are not supported by competent substantial evidence. These two paragraphs are supported by competent substantial evidence in the form of testimony from Mr. Rob Curtis, an expert in land use planning and zoning, (T. Vol. 27, pp. 3726-3740) and Mr. Daniel

Hronec, an expert in transmission line engineering, siting, and design, (T. Vol. 19, p. 2621-2626), as well as by FPL Exhibit 283, item 9, FPL Exhibit 315, p. 51, and Limonar 40.

Also, MDC/NPCA characterizes paragraph 708 as finding “that the ‘size’ of the Urban Expansion Area would be . . . ‘reduced’ by the transmission line corridors.” The challenged findings do not support this assertion. Instead, in the final sentence in paragraph 708, the ALJ makes a reasonable and permissible inference from the record, that placing a transmission line in the UEA would reduce the area available for urban development in that area. This is a reasonable inference for the ALJ to reach in his exclusive role in making findings of fact, based upon the other record evidence including the testimony of Mr. Rob Curtis, an expert in land use planning and zoning. (Curtis, T. Vol. p. 3739-3740).

The ALJ reasoned that a “disadvantage” to these two proposed corridors was that they would reduce the area available for future urban expansion in the UEA. It is also reasonable for the ALJ to take notice of the areas that MDC has proposed for future urban expansion, i.e, the County’s UEA, in comparing the advantages and disadvantages of the several western transmission line corridors, even if those provisions of the CDMP do not apply to regulate the location and design of electrical transmission lines themselves. It is reasonable for the ALJ to find that the transmission lines would reduce the amount of land available for other development, even if the transmission lines were compatible with adjacent land uses.

For these reasons, MDC/NPCA’s Exception No. 56 is denied.

MDC/NPCA Exception No. 58

MDC/NPCA take exception to paragraph 716 of the RO, for two reasons: (1) no competent substantial evidence demonstrates certainty regarding the Land Exchange; and (2) the ALJ's opinion that the Land Exchange provides a valid basis to prefer one corridor over another is not entitled to deference.

With regard to the first reason, the ruling on MDC/NPCA's Exception No. 14 is incorporated herein. With regard to the second reason, the ruling on MDC/NPCA's Exception No. 55 is incorporated herein.

For these reasons, MDC/NPCA's Exception No. 58 is denied.

MDC/NPCA Exception No. 59

MDC/NPCA take exception to paragraphs 721 and 722 of the RO. MDC/NPCA assert that: (1) the findings are unsupported by competent substantial evidence and premised on erroneous conclusions of law, (2) the findings represent policy recommendations not entitled to deference, and (3) the ALJ's findings are based on an assumption that the ENP Land Acquisition is a *fait accompli*. In addition, MDC/NPCA argue that (4) paragraph 722 is internally inconsistent with other portions of the RO and (5) reference to the UEA Boundary is inappropriate.

First, MDC/NPCA assert-without citing any specific exception, testimony, or legal basis-"[f]or the reasons set forth in the foregoing Exceptions, the ALJ's assessment of the 'Least Adverse Impact' is not supported by competent substantial evidence and is premised on erroneous conclusions of law." The rulings on MDC/NPCA's Exception Nos. 3, 4, 6, 7, and 30, incorporated herein, contain the competent substantial evidence and appropriate conclusions of law.

Second, MDC/ NPCA assert that these findings constitute policy recommendations on the balancing of statutory criteria that are not entitled to deference. As set forth in MDC/NPCA Exception No. 55, evaluating the preferred balance of statutory criteria among corridors can be an ultimate fact proper for the ALJ to determine. For even the policy judgments of the Siting Board must be supported by the record of the hearing. *See Fla. Power & Light Co. v. State, Siting Bd.*, 693 So. 2d 1025, 1027 (Fla. 1st DCA 1997)(reflecting that the APA prescribes the process by which disputed facts are found, and “requires an agency to explain the exercise of its discretions and subjects that explanation to judicial review.”). Therefore, the ALJ’s ultimate finding as to which proposed transmission line corridor best balances the considerations under section 403.509, F.S., is appropriately characterized as a mixed finding of fact and conclusion of law.

Third, to the extent MDC/NPCA attack these findings because they assume completion of the ENP Land Exchange, it rests on the same invalid premise in MDC/NPCA Exception No. 54, incorporated herein. The reasonableness of the assumption that the ENP Land Exchange will be implemented is an evidentiary matter within the province of the ALJ. To the extent this exception incorrectly suggests the ALJ determined the ENP Land Exchange is *fait accompli*, it repeats arguments raised in MDC/NPCA Exception No. 14 that were denied.

MDC/NPCA point to the “great significance to the entire ecology of South Florida” of the ENP. The record reflects that the NPS, however, which is responsible for managing the ENP Land Exchange area to restore and maintain the Everglades ecosystem, and other land-owning agencies, entered into cooperation agreements for

the ENP Land Exchange even after designations for all or parts of the ENP by Congress, designation under the Ramsar Convention, and designation under the World Heritage Convention. (T. Vol. 1, pp. 103-104; T. Vol. 34, pp. 4818-4819, 4830-4831, 4868-4871; T. Vol. 36, p. 5212).

Fourth, this exception asserts that paragraph 722 should be stricken because it is “internally inconsistent” with certain portions of the RO. The finding addresses only the West Consensus Corridor/MDLPA No. 2 and FPL West Preferred Corridor’s ability, as conditioned, to serve the broad interests of the public by ensuring reliable electric service at a reasonable cost. This finding is not inconsistent. Rather, it addresses only two corridors without taking a position on other corridors as the exception suggests. Testimony by Mr. Scroggs, Mr. Hronec, Mr. Curtis, and Mr. Fishkind supports the finding as written. (See T. Vol. 1, p. 140-41; T. Vol. 11, p. 1616; T. Vol. 27, p. 3753, 3764; T. Vol. 3994). The Siting Board may not reject or modify the ALJ’s findings of fact unless the Siting Board, based on review of the entire record, determines that the findings of fact were not based on competent substantial evidence. *See* § 120.57(1)(l), Fla. Stat.

In addition, MDC/NPCA are asking the Siting Board to inappropriately make supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

Finally, to the extent this exception refers to prior exceptions, particularly MDC/NPCA Exception No. 15, this exception is denied for the reasons set forth in the ruling on that exception. For these reasons, MDC/NPCA’s Exception No. 59 is denied.

MDC/NPCA Exception No. 60

In this exception MDC/NPCA take exception to the factual finding in paragraph 726 that MDC's proposed condition of certification related to road ROW dedications for the plant portion of the Project "is not authorized." MDC/NPCA argue that this paragraph of the RO is not supported by competent substantial evidence, and is a conclusion of law. MDC/ NPCA cite to their Exception Nos. 1 and 2 as support for this exception. MDC/NPCA then propose that the Siting Board amend the RO to add a new condition of certification related to road ROW dedications.

As discussed in the rulings on MDC/NPCA's Exception Nos. 1 and 2, the ALJ's findings in paragraphs 252 and 253 are supported by competent substantial evidence showing that MDC has not previously sought road ROW dedications during local permitting proceedings and that in some locations MDC is seeking dedications for purposes other than for use as public roads. In paragraph 251, the ALJ found that based on the County's Code, those road ROWs are to be "dedicated to the public for road purposes." MDC/NPCA did not challenge this finding. Those factual findings underpin the findings in paragraph 726 that MDC's proposed conditions of certification related to road ROW dedications are not authorized.

MDC/NPCA argue that paragraph 726 is a conclusion of law. To the extent this paragraph is deemed a conclusion of law, the ALJ reasonably concluded that MDC had not shown that such a condition of certification was authorized. MDC has not shown that the ALJ's determination in paragraph 726 was not reasonable and MDC has not offered an alternate, more reasonable conclusion. §120.57(l)(1), F.S.

MDC/NPCA offer a new condition of certification related to road ROW dedications that is different from the condition MDC proposed to the ALJ at the hearing. (Compare the road ROW dedication condition found in Exhibit MDC 12, MDC's Plant Agency Report, dated February 1, 2013, at p. 28 and Exhibit MDC 31, which is Attachment 3 to Exhibit MDC 11, to the new condition that MDC and NPCA now propose in their Exception No. 60). Contrary to the requirements of section 120.57(1)(k), F.S., MDC/NPCA does not offer any record citation or legal basis in support of the new condition of certification. In addition, MDC/NPCA are asking the Siting Board to inappropriately make supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

For these reasons, MDC/NPCA's Exception 60 is denied.

MDC/NPCA Exception No. 61

MDC/NPCA take exception to paragraph 732, where the ALJ rejects MDC proposed General Condition 26, which relates to dedication of road ROWs by FPL. MDC/NPCA disagree with the ALJ's findings concerning Road ROW dedications and applicability of land development regulations. MDC/NPCA cite to their Exception Nos. 1, 2, 10, 60, and 66 in support of this exception. MDC/NPCA Exception No. 61 then proposes that the Siting Board impose a new condition of certification related to dedication of road ROWs prior to construction of the electrical transmission lines.

MDC/NPCA have not shown that paragraph 732 of the RO is not supported by competent substantial evidence. §120.57(1)(l), Fla. Stat. (2013); *see also* rulings on MDC/NPCA Exception Nos. 1 and 2. The ALJ's findings in paragraphs 251 and 254 of the RO, are supported by competent substantial evidence and unchallenged by any

party. Paragraphs 251 and 254 explain that MDC is relying upon its zoning code as the legal basis for its proposed road ROW dedications and that many of the proposed locations are along proposed transmission line and pipeline corridors. In its PRO submitted jointly with NPCA, MDC acknowledged that the road ROW dedication requirement was part of its “zoning code” and its “land development regulations.” See NPCA and MDC PRO, p. 38, proposed Finding of Fact 129. Thus, the ALJ reasonably concludes in the RO at paragraph 896, that since local government comprehensive plans and zoning ordinances do not apply to the proposed electrical transmission lines and pipelines, the ROW dedication provisions of MDC’s zoning code cannot support MDC proposed General Condition 26 requiring such dedication for transmission line facilities. To the extent this paragraph is deemed to constitute a conclusion of law, MDC/NPCA have not shown that the ALJ’s determination in paragraph 732 was not reasonable or offered an alternate conclusion that is as or more reasonable.

§120.57(l)(1), Fla. Stat. (2013).

In addition, MDC/NPCA are asking the Siting Board to inappropriately make supplemental findings of fact. See, e.g., *Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

For these reasons, and the reasons articulated in the rulings on MDC/NPCA’s Exception Nos. 1, 2, 10, 60, and 66, this exception is denied.

MDC/NPCA Exception No. 62

MDC/NPCA take exception to paragraphs 735-739 of the RO because: “[f]or the reasons set forth in [MDC/NPCA] Exceptions 10 and 66, the ALJ’s findings concerning the applicability of land development regulations are erroneous conclusions of law.”

For these reasons, as well as those provided by the rulings on MDC/NPCA's Exception No. 66 and Coral Gables/Pinecrest's Exception Nos. 14 and 18, this exception is denied.

MDC/NPCA Exception No. 63

MDC/NPCA take exception to paragraph 741, arguing that it should be modified to reflect the certification of the NPCA Corridor as a back-up corridor. The Siting Board may not reject or modify the ALJ's findings of fact unless the Siting Board, based on review of the entire record, determines that the findings of fact were not based on competent substantial evidence. See § 120.57(1)(l), Fla. Stat. (2013). In addition, MDC/NPCA are asking the Siting Board to inappropriately make supplemental findings of fact. See, e.g., *Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

For these reasons, MDC/NPCA's Exception No. 63 is denied.

MDC/NPCA Exception No. 64

MDC/NPCA take exception to paragraph 786 of the RO. The rulings on MDC/NPCA's Exception Nos. 3, 6, 7, 17, and 28-52, incorporated herein, detail the competent substantial evidence that the transmission lines will not have adverse impacts to wading bird colonies and will maintain surface water flow west of the L-31N.

With respect to Everglades restoration projects, FPL presented testimony by Mr. Ken Ammon, an expert in civil engineering and water resources with a special emphasis on CERP, that FPL's proposed transmission lines will not negatively impact any of the projects pursuant to CERP or other Everglades restoration efforts. (Ammon, T. Vol. 22, pp. 3041-3047; T. Vol. 23, pp. 3075-3077; FPL Exs. 368, 369, 370). As Mr. Ammon

detailed, the transmission line structures and associated facilities will be designed to maintain sheet flow in the area and to accommodate the higher water levels that are anticipated to result from Everglades restoration projects. (Ammon, T. Vol. 22, pp. 3041-3047; T. Vol. 23, pp. 3075-3077; FPL Exs. 368, 369, 370).

Because paragraph 786 is supported by competent substantial evidence as described above, MDC/NPCA's Exception No. 64 is denied.

MDC/NPCA Exception No. 65

In this exception MDC/NPCA assert that paragraphs 797-799 should be modified to limit their applicability by adding "except as to those portions of the Western Corridor transmission lines proposed for installation west of the L-31N canal and north of SW 120th Street" to each of them. The rulings on MDC/NPCA Exceptions, including Nos. 3, 4, 6, 7, 8, 9, 17, 21, 27, 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52 and 59, explain that there is no basis to limit placement of Project facilities to locations east of the L-31N. For these reasons, MDC/NPCA's Exception No. 65 is denied.

MDC/NPCA Exception No. 67

In this exception MDC/NPCA assert that paragraphs 833-834 are erroneous conclusions. In paragraphs 833-834, the ALJ concludes that MDC is preempted from applying its regulations for the EEACEC. For the reasons explained in the ruling on MDC/NPCA's Exception No. 48 (which addresses the issues of the EEACEC and not MDC/NPCA's referenced MDC/NPCA Exception 50, which addresses culverts), this exception is denied.

MDC/NPCA Exception No. 68

In this exception MDC/NPCA takes exception to paragraph 835 of the RO. MDC/NPCA assert that the ALJ's finding that FPL nevertheless satisfies the EEACAC is both an erroneous conclusion of law and finding of fact. For the reasons explained in the ruling on MDC/NPCA's Exception No. 48, this exception is denied.

MDC/NPCA Exception No. 69

In this exception MDC/NPCA take exception to paragraph 836 "[f]or the reasons set forth in the foregoing Exceptions[.]" MDC/NPCA specifically seek modification of paragraph 836 to delete language reflecting the ALJ's conclusion that "[t]here are no local government comprehensive plans or LDRs that apply to the location, construction, operation, and maintenance of the transmission lines." For the reasons provided in the rulings on Coral Gables/Pinecrest's Exception Nos. 14 and 18 and MDC/NPCA's Exception No. 66, this exception is denied.

MDC/NPCA Exception No. 70

MDC/NPCA takes exception to paragraph 847 "[f]or the reasons set forth in the foregoing Exceptions, the ALJ's assessment of the 'Least Adverse Impact' is not supported by competent substantial evidence and is premised on erroneous conclusions of law," and proposes modifications to paragraph 847. Pursuant to section 120.57(1)(k), F.S., an agency need not rule on an exception that, among other things, "does not identify the legal basis for the exception" or "does not include appropriate and specific citations to the record." This exception does not include a legal citation or record support of any kind and should be denied on that basis alone.

This exception is denied for the reasons set forth in the foregoing responses regarding the ALJ's findings being supported by competent substantial evidence and appropriate nature of the conclusions of law. In particular, this exception appears to repeat the arguments raised in MDC/NPCA's Exceptions Nos. 30 and 59.

MDC/NPCA Exception No. 71

In this exception MDC/NPCA assert that paragraphs 852 and 853 should be rejected entirely and paragraphs 854 and 857 should be modified to limit certification of the West Consensus Corridor/MDLPA No. 2 "only to the extent project facilities are installed east of the L-31N canal" and that the West Consensus Corridor/MDLPA No. 2 should be certified, "with the NPCA Corridor, which has the next-least adverse impacts on balance, certified as the backup" "[f]or the reasons set forth in the foregoing Exceptions" as the challenged conclusions of law are "based on erroneous conclusions of law and findings of fact that are not supported by competent substantial evidence."

As explained in the rulings on MDC/NPCA's Exception Nos. 3, 4, 6, 7, 8, 9, 17, 21, 27, 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52 and 59, there is no basis to limit placement of Project facilities to locations east of the L-31N. As explained in the ruling on MDC/NPCA's Exception Nos. 63 and 78, paragraph 857 should not be modified in the manner suggested by MDC/NPCA to certify the NPCA Corridor as a backup corridor to the West Consensus Corridor/MDLPA No. 2 corridor. Therefore, MDC/NPCA have not established that their "substituted conclusion[s] of law . . . [are] as or more reasonable" than the ALJ's recommended conclusions. § 120.57(1)(l), Fla. Stat. (2013).

For these reasons, MDC/NPCA's Exception No. 71 is denied.

MDC/NPCA Exception No. 72

In this exception MDC/NPCA assert that paragraphs 859-863 should be rejected or modified to limit their applicability by adding “except as to those portions of the Western Corridor transmission lines proposed for installation west of the L-31N canal between SW 120th Street and SW 8th Street (Tamiami Trail)” “[f]or the reasons set forth in the foregoing Exceptions” as they are “based on erroneous conclusions of law and findings of fact that are not supported by competent substantial evidence.”

As explained in the rulings on MDC/NPCA's Exception Nos. No. 3, 4, 6, 7, 8, 9, 17, 21, 27, 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52 and 59, there is no basis to limit placement of Project facilities to locations east of the L-31N. Therefore, MDC/NPCA have not established that their “substituted conclusion[s] of law . . . [are] as or more reasonable” than the ALJ's recommended conclusions. § 120.57(1)(l), Fla. Stat. (2013).

For these reasons, MDC/NPCA's Exception No. 72 is denied.

MDC/NPCA Exception No. 73

MDC/NPCA take exception to paragraph 866 of the RO, asserting that it is erroneous “[f]or the reasons set forth in the foregoing Exceptions, in particular Exceptions 66 and 67[.]” For the reasons provided in the rulings on Coral Gables/Pinecrest's Exception Nos. 14 and 18, and MDC/NPCA's Exception Nos. 10, 66, and 67, this exception is denied.

MDC/NPCA Exception No. 74

MDC/NPCA take exception to paragraph 870, arguing that is in error because it includes a criterion related to costs that does not appear in the statutory language of

section 403.509(3)(d), F.S. MDC/NPCA then request that the Siting Board modify this conclusion of law to make additional findings of fact related to the western transmission line corridors. In paragraph 870 the ALJ concluded:

870. As previously found, FPL has provided reasonable assurances that the location, construction, operation, and maintenance of the western transmission lines in the West Consensus Corridor/MDLPA No. 2, if a ROW can be obtained in a timely manner at a reasonable cost, or the FPL West Preferred Corridor, if a ROW within the West Consensus Corridor/MDLPA No. 2 cannot be so obtained, will better meet the electrical needs of the state by allowing for more orderly, timely, and less expensive construction of the transmission line, as compared to the other western alternate corridors.

MDC/NPCA assert that the ALJ has substituted the statutory criterion “reliable” for a new criterion “less expensive,” which is not included in the language of section 403.509(3)(d), F.S. MDC/NPCA’s assertion fails to recognize, however, that evidence of being able to acquire ROW in an orderly, reliable, and timely fashion, would necessarily include the cost of such acquisition. *See, e.g., In re: Progress Energy Fla. Levy Nuclear Project Units 1 and 2*, Case No. 08-2727EPP (Fla. DOAH May 15, 2009; Fla. Siting Bd. August 26, 2009)(reflecting in paragraph 210 of the RO, the ALJ’s finding that the “anticipated schedule for the transmission line portion of the Project calls for . . . [ROW] acquisition, . . . to be carried out such that the transmission lines are constructed and operating in 2015 . . .”).

MDC/NPCA also request that the Siting Board modify paragraph 870 to add a new factual finding (apparently to be disguised as a conclusion of law) as follows:

But given the uncertainties surrounding both the Land Exchange and the acquisition of numerous government parcels, it is difficult to compare FPL’s preferred corridors to the other western alternate corridors in terms of timeliness,

and the record does not establish a difference among the corridors in terms of either reliability or orderliness.

This is an attempt to have the Siting Board make factual findings on the nature and adequacy of the evidence in the record, comparing the various transmission line corridors. The ALJ has the exclusive authority “to consider all the evidence presented, resolve conflicts, judge the credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence.” *Goin vs. Comm’n on Ethics*, 658 So. 2d 1131, 1138 (Fla. 1st DCA 1995)(quoting *Heifetz*, 475 So. 2d at 1281); see also *Belleau*, 695 So. 2d at 1307. Further the Siting Board cannot engage in fact finding in the manner sought by MDC/NPCA. A state agency reviewing an ALJ’s RO has no authority to make independent and supplementary findings of fact to support conclusions of law in the agency final order, *Fla. Power & Light Co. vs. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

For these reasons, MDC/NPCA’s Exception No. 74 is denied.

MDC/NPCA Exception No. 75.

In this exception MDC/NPCA assert that paragraph 871 should be modified to limit its applicability by adding “except as to those portions of the Western Corridor transmission lines proposed for installation west of the L-31N canal between SW 120th Street and SW 8th Street (Tamiami Trail)” “[f]or the reasons set forth in the foregoing Exceptions” as it is “based on erroneous conclusions of law and findings of fact that are not supported by competent substantial evidence.”

As explained in the rulings on MDC/NPCA’s Exception Nos. 3, 4, 6, 7, 8, 9, 17, 21, 27, 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52 and 59, Project

facilities need not be limited to locations east of the L-31N. Therefore, MDC/NPCA have not established that their “substituted conclusion[s] of law . . . [are] as or more reasonable” than the ALJ’s recommended conclusions. § 120.57(1)(k), F.S.

For these reasons, MDC/NPCA’s Exception No. 75 is denied.

MDC/NPCA Exception No.76

In this exception MDC/NPCA assert that paragraph 873 is internally inconsistent with paragraphs 684, 686 and 691 regarding some of the impacts of the NPCA Corridor, and therefore is not supported by competent substantial evidence. The exception relies on “the foregoing Exceptions, in particular Exception 46” as support for these claims. Based on these alleged shortcomings in the RO, MDC/NPCA request that paragraph 873 be modified. For the following reasons, MDC/NPCA’s Exception No. 76 is denied.

Pursuant to section 120.57(1)(k), F.S., an agency need not rule on an exception that, among other things, “does not identify the legal basis for the exception” or “does not include appropriate and specific citations to the record.” MDC/NPCA Exception No. 76 includes no legal citation or record support beyond its reference to Exception No. 46. MDC/NPCA Exception No. 46 similarly fails to include any record citation or legal basis to support that exception.

A review of paragraph 873 shows that it relies on natural resource impacts and other considerations beyond just those impacts addressed in paragraphs 684, 685, and 691, in concluding that the West Consensus Corridor/MDLPA No. 2 or the FPL West Preferred Corridor would have the fewest adverse impacts “relative to air and water quality, fish and wildlife, water resources, and other natural resources of the state.”

Thus, there is no internal inconsistency among those three cited findings of fact and paragraph 873.

As explained in response to the other MDC/NPCA Exceptions, including No. 46, there is no basis to disturb paragraph 873. Therefore, MDC and NPCA have not established that their “substituted conclusion[s] of law . . . [are] as or more reasonable” than the ALJ’s recommended conclusions. § 120.57(1)(l), F.S.

For these reasons, MDC/NPCA’s Exception No. 76 is denied.

MDC/NPCA Exception No. 77

In this exception MDC/NPCA assert that paragraph 874 should be modified to exclude “portions of the Western Corridor transmission lines proposed for installation west of the L-31N canal between SW 120th Street and SW 8th Street (Tamiami Trail)” from the conclusion that “FPL has provided reasonable assurances that the proposed transmission lines can be constructed, operated, and maintained in any of the corridors proper for certification, so as to 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.”

Pursuant to section 120.57(1)(k), F.S., an agency need not rule on an exception that, among other things, “does not identify the legal basis for the exception” or “does not include appropriate and specific citations to the record.” MDC/NPCA Exception No. 77 includes no legal citation or record support.

MDC/NPCA then request that the Siting Board modify this conclusion of law to make additional findings of fact related to the western transmission line corridors. MDC/NPCA are asking the Siting Board to modify this conclusion of law by

inappropriately making supplemental findings of fact related to the western transmission line corridors. *See, e.g., Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

As explained in the rulings on MDC/NPCA's foregoing exceptions, including rulings on MDC/NPCA's Exceptions No. 3, 4, 6, 7, 8, 9, 17, 21, 27, 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52 and 59, there is competent substantial evidence that placement of the transmission lines in any of the western corridors proper for certification (which would include portions west of the L-31N) would not have adverse impacts.

For these reasons, MDC/NPCA's Exception No. 77 is denied.

MDC/NPCA Exception No. 78

In this exception MDC/NPCA assert that paragraph 878 should be modified to indicate FPL's reasonable assurances that the construction of the western transmission lines in the West Consensus/MDLPA No. 2 Corridor will better serve and protect the broad interests of the public than construction in certain other corridors have been provided "only to the extent project facilities are installed east of the L-31N canal." MDC/NPCA also assert that the NPCA Corridor rather than the FPL West Preferred Corridor should be certified as a back-up if a ROW within the West Consensus Corridor/MDLPA No. 2 cannot be obtained in a timely manner at a reasonable cost.

MDC/NPCA fail to state with particularity the "reasons for rejecting or modifying such conclusion of law" and fail to allege, much less establish, that their suggested modification is "as or more reasonable" than the ALJ's. Both of these requirements must be met before a conclusion of law can be modified. *See* § 120.57(1)(l), Fla. Stat.

(2013). Moreover, the modifications to paragraph 878 requested by MDC/NPCA are not supported by the ALJ's findings of fact. The ALJ's findings of fact, however, are supported by competent substantial evidence as explained in the rulings on exceptions herein, including MDC/NPCA's Exception Nos. 3, 4, 6, 7, 8, 9, 17, 21, 27, 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 46 49, 50, 51, 52 and 59.

For these reasons, as well as those set forth in the rulings on MDC/NPCA's Exception Nos. 75 and 77, this exception is denied.

MDC/NPCA Exception No. 79

In this exception MDC/NPCA assert that paragraph 880 should be modified to indicate FPL's reasonable assurances that the West Consensus Corridor/MDLPA No. 2 constitutes the western corridor with the least adverse impacts, including costs, considering the factors set forth in section 403.509(e), F.S., if it can be timely obtained at a reasonable cost have been provided "only to the extent project facilities are installed east of the L-31N canal." MDC/NPCA also asserts that the NPCA Corridor rather than the FPL West Preferred Corridor should be certified as a back-up if a ROW within the West Consensus Corridor/MDLPA No. 2 cannot be obtained in a timely manner at a reasonable cost.

MDC/NPCA fail to state with particularity the "reasons for rejecting or modifying such conclusion of law" and fail to allege, much less establish, that their suggested modification is "as or more reasonable" than the ALJ's. Both of these requirements must be met before a conclusion of law can be modified. See § 120.57(1)(l), Fla. Stat. (2013). Moreover, the modifications to paragraph 880 requested by MDC/NPCA are not supported by the ALJ's findings of fact. The ALJ's findings of fact, however, are

supported by competent substantial evidence as explained in the rulings on exceptions herein, including MDC/NPCA's Exception Nos. 46 and 59.

For these reasons, as well as those set forth in the rulings on MDC/NPCA's Exceptions 63, 75, 77 and 78, this exception is denied.

MDC/NPCA Exception No. 80

In this exception MDC/NPCA assert that paragraph 881 should be modified by the addition of the following sentences: "The County has shown that requested General Condition 26 and West Conditions 4, 5, and 9, and the unnumbered conditions of page 59 of its Exhibit 9 are supported by the County's applicable nonprocedural requirements. Therefore, these proposed conditions are accepted, as modified above." As justification for this modification, MDC/NPCA cite "the reasons set forth in the foregoing Exceptions."

Pursuant to section 120.57(1)(k), F.S., an agency need not rule on an exception that, among other things, "does not identify the legal basis for the exception" or "does not include appropriate and specific citations to the record." MDC/NPCA's Exception No. 80 includes no legal citation or record support of any kind and can be denied on that basis alone. Mere reference to unidentified "foregoing Exceptions" by MDC/NPCA is insufficient to meet their obligations under section 120.57(1)(k), F.S. To the extent MDC/NPCA are incorporating their previous exceptions, this exception is denied for the reasons stated in the rulings on those exceptions.

For these reasons, MDC/NPCA's Exception No. 80 is denied.

MDC/NPCA Exception No. 81

MDC/NPCA take exception to paragraphs 895-896 “[f]or the reasons set forth in the foregoing Exceptions, in particular Exceptions 1, 2, 10, 60-63, 66-67 and 79[.]” For the reasons provided in the rulings on Coral Gables/Pinecrest’s Exception Nos. 14 and 18, and MDC/NPCA’s Exception Nos. 1, 2, 10, 60-63, 66-67, and 79, this exception is denied.

SOUTH MIAMI EXCEPTIONS

South Miami Exception No. 8

South Miami Exception No. 8 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 9 above.

South Miami Exception No. 9

South Miami Exception No. 9 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 10 above.

South Miami Exception No. 11

South Miami Exception No. 11 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 12 above.

South Miami Exception No. 12

South Miami Exception No. 12 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 13 above.

South Miami Exception No. 13

South Miami Exception No. 13 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 14 and 18 above.

South Miami Exception No. 14

South Miami Exception No. 14 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 15 above.

South Miami Exception No. 15

South Miami Exception No. 15 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 16 above.

South Miami Exception No. 16

South Miami Exception No. 16 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 17 above.

South Miami Exception No. 17

South Miami Exception No. 17 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exceptions No. 14 and 18 above.

South Miami Exception No. 18

South Miami Exception No. 18 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 19 above.

South Miami Exception No. 19

South Miami Exception No. 19 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exceptions No. 20 and 21 above.

South Miami Exception No. 20

South Miami Exception No. 20 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 22 above.

South Miami Exception No. 21

South Miami Exception No. 21 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception No. 23 above.

South Miami Exception No. 22

South Miami Exception No. 22 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 24 above.

South Miami Exception No. 23

South Miami Exception No. 23 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 25 above.

South Miami Exception No. 24

South Miami Exception No. 24 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 26 above.

South Miami Exception No. 25

South Miami Exception No. 25 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 27 above.

South Miami Exception No. 27

South Miami Exception No. 27 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 29 above.

South Miami Exception No. 27a.

South Miami takes exception to paragraph 766 of the RO, where the ALJ found:

766. Doral and South Miami also proposed conditions of certification beyond those included by the Department in Attachment 1. However, these cities provided no evidence or legal argument to support these conditions, and they are rejected.

Following DEP's rejection of those conditions (DEP Ex. 1, Attachment 1), South Miami did not introduce any documentary or testimonial evidence at the hearing to support those conditions. South Miami also improperly raises this specific issue for the first time in its Exceptions. See *Woodholly Assoc. v. Dep't of Natural Resources*, 451 So. 2d 1002, 1004 (Fla. 1st DCA 1984)(The petitioner "simply failed to make an issue, for resolution by the hearing officer, of the matter of which it now complains."); see also § 120.57(1)(k), Fla. Stat. (2013).

Therefore, for the foregoing reasons, South Miami's Exception No. 27a is denied.

South Miami Exception No. 28

South Miami Exception No. 28 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 30 above.

South Miami Exception No. 29

South Miami Exception No. 29 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception No. 31 above.

South Miami Exception No. 30

South Miami Exception No. 30 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 32 above.

South Miami Exception No. 31

South Miami Exception No. 31 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 33 above.

South Miami Exception No. 32

South Miami Exception No. 32 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 34 above.

South Miami Exception No. 33

South Miami Exception No. 33 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 35 above.

South Miami Exception No. 34

South Miami Exception No. 34 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 36 above.

South Miami Exception No. 35

South Miami Exception No. 35 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception No. 37 above.

South Miami Exception No. 36

South Miami Exception No. 36 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 38 above.

South Miami Exception No. 38

South Miami Exception No. 38 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 40 above.

South Miami Exception No. 39

South Miami Exception No. 39 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 14, 18, and 41 above.

South Miami Exception No. 40

South Miami Exception No. 40 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception No. 42 above.

South Miami Exception No. 41

South Miami Exception No. 41 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 14, 18, and 43 above.

South Miami Exception No. 43

South Miami Exception No. 43 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 14, 18, and 45 above.

South Miami Exception No. 45

South Miami Exception No. 45 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 47 above.

South Miami Exception No. 46

South Miami Exception No. 46 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 6.b. and 48 above.

South Miami Exception No. 46.a.

South Miami takes exception to the conclusions in paragraph 885, arguing they are “clearly erroneous” and requests that it be deleted. Paragraph 885 rejects those conditions of certification requested by the Cities of Doral and South Miami which have not been shown to be supported by applicable nonprocedural requirements. South Miami claims the rejected conditions are supported by “the City’s codes and comprehensive plan as cited within the Agency’s report and its supplemental responses provided to the DEP.”

Paragraph 885 states that to the extent South Miami’s requested conditions are supported by “applicable nonprocedural requirements” (emphasis added), they have been included in the recommended conditions in Attachment 1 to the RO. As to the

other conditions requested by South Miami, they are either related to matters within the jurisdiction of other agencies (such as electric and magnetic fields, State roads, and particulate matter), are procedural in nature (such as the requirement to obtain building permits), or are based on South Miami's land use plan and land development regulations (see Exhibit DEP 1, App. III. K. [City of South Miami Amended Transmission Lines Agency Report], p. 16-27), and have been properly excluded from the recommended conditions in RO Attachment 1.

Therefore, based on the foregoing reasons, and the rulings on Coral Gables/Pinecrest's Exception Nos. 14, 18, 19, 20, 21, 30, 32, and 49, South Miami's Exception No. 46.a. is denied.

South Miami Exception No. 47

South Miami Exception No. 47 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 49 above.

South Miami Exception No. 48

South Miami Exception No. 48 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 50 above.

South Miami Exception No. 49

South Miami Exception No. 49 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 51 above.

South Miami Exception No. 50

South Miami Exception No. 50 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 32 above.

South Miami Exception No. 51

South Miami Exception No. 51 is denied for the reasons set forth in the ruling on Coral Gables/Pinecrest Exception No. 54 above.

South Miami Exception No. 52

South Miami Exception No. 52 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception Nos. 14, 18, and 55 above.

South Miami Exception No. 53

South Miami Exception No. 53 is denied for the reasons set forth in the rulings on Coral Gables/Pinecrest Exception No. 56 above.

SFWMD EXCEPTIONS**SFWMD Exception No. 1**

SFWMD takes exception to paragraphs 655, 656, 657, and 682, “to the extent that the Findings of Fact incorrectly imply that transmission lines do not interfere with SFWMD operations and maintenance of its facilities if the transmission lines are merely configured to accommodate the SFWMD facilities.” SFWMD also asserts that “FPL’s agreed compliance with the SFWMD conditions is the basis by which the SFWMD found that it had reasonable assurances that the transmission lines could be accommodated within its right-of-way (ROW), not interfere with its flood protection communication systems, and not be inconsistent with CERP [the Comprehensive Everglades Restoration Plan] nor other ecosystem restoration projects.” Thus, SFWMD asserts that “[t]hose FPL stipulated conditions are precedent to any findings of Fact that the transmission lines will not interfere with SFWMD ROW, operation and maintenance of

facilities, and CERP/ecosystem restoration activities and should have been captured as such in the Recommended Order.”

The ALJ recommended, and FPL committed to comply with all of the SFWMD proposed conditions of certification included in Attachment 1 to the RO. The ALJ’s final recommendation in favor of certification is “subject to the Conditions of Certification appended hereto.” (RO, p. 326, and ¶ 725 (recommending conditions in Attachment 1); FPL Ex. 20, Stipulation between SFWMD and FPL (May 14, 2013)). To the extent that the ALJ’s specific factual findings may imply that mere configuration of the transmission lines to comply with SFWMD ROW criteria is the only basis for a finding of no impact to SFWMD facilities, that implication is rejected. Further, in the rulings on other exceptions, including MDC/NPCA’s Exception Nos. 3, 5, 25, 47, 50, and 57, the Siting Board notes that FPL has agreed to comply with SFWMD’s “detailed and restrictive” recommended conditions of certification.

In addition, the challenged findings of fact are supported by competent substantial evidence. (T. Vol. 11, p. 1608; T. Vol. 15, pp. 2056-2058; T. Vol. 17, p. 2264-2266; T. Vol. 20, pp. 2710-2711, 2713-2714; T. Vol. 27, pp. 3772-3773; T. Vol. 28, pp. 3867-3868; T. Vol. 44, pp. 6213-6214, 6225-6227; T. Vol. 44, p. 6261; FPL Ex. 20, Stipulation between SFWMD and FPL (May 14, 2013), p. 38-9; FPL Exs. 333, 334). Thus, there is no basis for amendments or modifications to paragraphs 655, 656, 657, and 682. See § 120.57(1)(k) and (l), Fla. Stat. (2013).

Therefore, based on the foregoing reasons, SFWMD’s Exception No. 1 is denied.

SFWMD Exception No. 2

SFWMD takes exception to the ALJ's finding in paragraph 718, which SFWMD argues states that the purchase by FPL of substitute land is the only mechanism for removal of encumbrances from SFWMD-owned parcels. SFWMD's exception does not cite to any factual basis in the record for the assertion that "swapping of other land parcels with the currently encumbered parcels" is a measure for removing federal and other land grant encumbrances. See § 120.57(1)(k), Fla. Stat. (2013).

Paragraph 718 provides, inter alia, that the "encumbrances may be overcome if FPL purchases substitute land." The ALJ does not find that purchase by FPL of substitute land is the only mechanism for removal of encumbrances. SFWMD asserts that the encumbrances may be removed through the use of mechanisms other than the purchase by FPL of substitute land, such as swapping other SFWMD-owned parcels with the encumbered parcels; however, SFWMD provides no record citations to support this assertion. The record clearly provides that encumbrances may be overcome through the purchase of substitute land and the transfer of the encumbrances to it. This is explicitly provided for in the stipulation between FPL and SFWMD addressing the western alternate corridors:

The District agrees to provide FPL the opportunity to acquire land interests, as determined by the parties, on any District-owned property necessary for the construction, operation and maintenance of the proposed transmission lines in any certified corridor. The District agrees to work in good faith to assist in removing or transferring the federal grant restrictions that may apply on District property for encumbered parcels that are necessary for the construction, operation and maintenance of the proposed transmission lines in any certified corridor.

(FPL Ex. 20, SFWMD Stipulation on Alternate Transmission Line Corridors, ¶ 5). The stipulation signed by SFWMD also explicitly provides that costs associated with the removal (or release) of encumbrances from SFWMD-owned parcels are to be borne by FPL:

Use of SFWMD Parcels Subject to Encumbrances: FPL shall bear the SFWMD's administrative costs (e.g., surveying, appraisals, and title searches) of release of encumbrances within the proposed transmission line rights-of-way.

(FPL Ex. 20, SFWMD Stipulation on Alternate Transmission Line Corridors, cond. 7). SFWMD also argues that paragraph 718 implies that the NPCA alternate corridor will necessarily add real estate purchase costs as a negative element for consideration. This is not supported by the text of the finding of fact, which provides that "it is not known how much time or cost would be required to clear these encumbrances."

Finally, paragraph 718 is supported by competent substantial evidence. (T. Vol. 11, Hronec, pp. 1636-1641; T. Vol. 45, pp. 6314-6315; FPL Exs. 309-312, 411, 423, p. 17-18). See § 120.57(1)(l), Fla. Stat. (2013).

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

FPL/DEP EXCEPTIONS

Exception No. 1

FPL and DEP take exception to paragraph 86 of the RO, where the phrase "collector well system" is used in two locations. This is an apparent scrivener's error because the finding is clearly referring to the "circulating water system." (FPL Ex. 6, Plant Response to Completeness Comment SFRPC-B-4).

Paragraph 86 is revised to replace the two occurrences of "collector well system" with "circulating water system." This exception is granted.

Exception No. 2

FPL and DEP take exception to paragraph 427 of the RO. The second sentence of paragraph 427 begins with “In this segment,” which references back to the Davis-Flagami segment of the PAC Alternate Corridor described in the first sentence of that finding. The reference to “this segment” is an apparent scrivener’s error, as the descriptions following this reference in the second and third sentences of paragraph 427 clearly relate to the Flagami-Miami segment (see RO ¶¶ 412, 415-417, 475), not the Davis-Flagami segment (see RO ¶¶ 411, 414). See also Hronec, T. Vol. 11, pp. 1663-1665; T. Vol. 27, p. 3815-3816.

The second sentence of paragraph 427 is revised to read, “In the Flagami-Miami segment, . . .” This exception is granted.

Exception No. 3

FPL and DEP take exception to paragraph 306 in the RO, where the parenthetical in the last sentence contains a scrivener’s error. The correct acronym for Natural Forest Communities is “NFC.” Paragraph 306 mistakenly contains “NRC” in the parenthetical. The last sentence of paragraph 306 is revised to substitute “NFC” for “NRC.” This exception is granted.

CONCLUSION

The ALJ concluded that FPL met its burden of proving that the Project should be certified, subject to the Conditions of Certification. Thus the ALJ recommended that the Siting Board enter a Final Order approving the Project as described in the Site Certification Application and in the evidence presented at the certification hearing, subject to the Conditions of Certification in Attachments 1 and 2 to the RO.

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 it may have been modified by the rulings in this Final Order, and is incorporated by reference herein.

B. FPL's application for certification to locate, construct, and operate Turkey Point Units 6 and 7, representing a 2,200 MW nuclear generating facility, and supporting facilities on a site within FPL's existing Turkey Point plant property, and other off-site associated linear and nonlinear facilities, is APPROVED, subject to the Conditions of Certification.

C. FPL's application to certify the location, construction and operation of electrical transmission lines, pursuant to section 403.509, F.S., in the East Preferred Corridor, is APPROVED, subject to the Conditions of Certification, including the additional condition of certification in the Settlement Agreement between FPL and Coral Gables executed on May 12, 2014, and filed with the DEP on May 13, 2014, attached hereto as Exhibit B and incorporated herein by reference.

D. FPL's application to certify the location, construction and operation of electrical transmission lines, pursuant to section 403.509, F.S., in the West Consensus Corridor/MDLPA No. 2; and the West Preferred Corridor as a back-up if an adequate right-of-way within the West Consensus Corridor/MDLPA No. 2 cannot be secured in a timely manner and at a reasonable cost, is APPROVED, subject to the Conditions of Certification, including Paragraph E below.

E. (1). For the West Consensus Corridor/MDLPA No. 2, FPL shall build and maintain all structures to the east of the L-31N canal (outside Everglades National Park) if the following commitments are made by MDLPA and SFWMD within one year from the date that a final Site Certification Order can no longer be appealed, or within one year from the date FPL requests such commitment in writing, whichever is later:

a. The affected MDLPA member companies will allow access to and placement of transmission line structures in the affected member-company-owned or company-controlled property within the West Consensus Corridor/MDLPA No. 2 east of L-31N as provided in the Agreement between the MDLPA and FPL Regarding the Western Transmission Corridor Portion of the FPL's Turkey Point 6 & 7 Power Plant Site Certification Application dated August 30, 2013; and

b. SFWMD will allow placement of structures (and use of its property for access) on its property in Segment 1 of Attachment W within the West Consensus Corridor/MDLPA No. 2, adjacent to Everglades National Park, and property necessary to transition the transmission facilities to or from MDLPA member company-owned or company-controlled property, in addition to any other conditions of certification, including those made a part of the FPL/SFWMD Alternate Corridor Stipulation dated October 25, 2013 (included as Specific Conditions C.VI.F.3.f.ii and iii, in Attachment 1 to the RO).

(2). Should MDLPA make the commitment set forth in paragraph (1).a., but SFWMD be unable or unwilling to approve the commitment set forth in paragraph (1).b., FPL shall build and maintain all structures to the east of the L-31N canal (outside of Everglades National Park) in accordance with Specific Conditions C.VI.F.3.f.ii and iii, in

Attachment 1 to the RO, recognizing the need for accommodating canal crossings.

(3). Should SFWMD make the commitment set forth in paragraph (1).b., but MDLPA be unable or unwilling to make the commitment set forth in paragraph (1).a., FPL shall build and maintain all structures to the east of the L-31N canal (outside of Everglades National Park) upon receiving the written agreement of SFWMD for the construction, operation and maintenance of transmission structures and the need for accommodating canal crossings.

(4). Any use by FPL of SFWMD right-of-way in these areas described above will be subject to necessary accommodations by FPL for SFWMD's operation and maintenance of the Central and Southern Flood Control System ("C&SF System"), as determined by SFWMD, and as generally reflected in the Specific Conditions C.VI.A through C.VI.F, in Attachment 1 to the RO. FPL shall comply with Specific Condition C.VI.B regarding the maintenance of, and avoidance of harmful interference with or adverse impacts to, the South Florida Water Management District Communication System and Facilities ("WMDCSF").

(5). In areas where FPL is unable to build and maintain its structures east of the L-31N canal (outside of Everglades National Park), FPL shall only use the minimum amount of land west of the L-31N canal (inside the current boundaries of Everglades National Park) that is necessary to build and maintain the structures, and FPL shall return to installing structures to the east side of the L-31N canal at the first available and practicable location.

(6). In the event of any conflict between Paragraph E and any other conditions of certification for the Turkey Point 6 and 7 Project, FPL and SFWMD shall

work to resolve such conflicts through mutual agreement with the intent to minimize the transmission facilities to be placed within Everglades National Park and minimize impacts to SFWMD's L-31N property interests. If the transmission facilities cannot be located pursuant to Paragraph E, the transmission facilities shall be constructed, operated and maintained in accordance with the Specific Conditions C.VI.F.3.f.ii and iii, in Attachment 1 to the RO.

F. FPL's request for a variance from section 24-43.1(6), MDC, to allow use of the on-site package sanitary treatment plant and other on-site cooling water and wastewater treatment and disposal in lieu of connecting the Project to a public sanitary sewer line for treatment and disposal of these waters by Miami-Dade County, is GRANTED.

G. The Board of Trustees of the Internal Improvement Trust Fund shall grant to FPL three separate easements over state-owned lands, including: (1) submerged lands owned by the State of Florida located within Biscayne Bay for the installation of the laterals associated with a radial collector well system to supply back-up cooling water; (2) submerged lands owned by the State of Florida located within the Miami River for the installation of a subaqueous 230-kV electrical transmission line; and (3) an approximate four acre parcel of state-owned uplands along the western certified corridor to allow the construction of a 230-kV electrical transmission line.

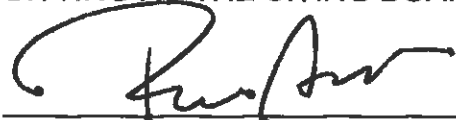
H. Authority to assure and enforce compliance by FPL and their agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP

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 filing 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 19 day of May, 2014, 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 May 13, 2014.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE RICK SCOTT
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

5-19-14
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order on Certification has been sent by electronic mail to:

Florida Power & Light Company

Peter Cunningham, Esquire
Carolyn Raepple, Esquire
Douglas S. Roberts, Esquire
James S. Alves, Esquire
Virginia Dailey, Esquire
Brooke E. Lewis, Esquire
Vnette Godelia, Esquire
Amelia A. Savage, Esquire
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, FL 32314
peterc@hgslaw.com
craepple@hgslaw.com
vdailey@hgslaw.com
brookel@hgslaw.com
douglasr@hgslaw.com
jima@hgslaw.com
vinetteg@hgslaw.com
amelias@hgslaw.com
cc: jmcneill@hgslaw.com

Michael S. Tammaro, Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
michael.tammaro@fpl.com

Florida Public Service Commission

Jennifer Crawford, Asst. Gen. Cnsl.
2450 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
jcrawfor@psc.state.fl.us

Department of Economic Opportunity

Aaron C. Dunlap, Asst. Gen. Cnsl.
[f/k/a Department of Community Affairs]
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
Aaron.C.Dunlap@deo.myflorida.com

Fish and Wildlife Conservation Comm.

Anthony Pinzino, Asst. Gen. Cnsl.
620 S. Meridian Street
Tallahassee, FL 32399-1600
anthony.pinzino@myfwc.com

Department of Transportation

Kimberly Menchion, Asst. Gen. Cnsl.
605 Suwannee Street, MS 58
Tallahassee, FL 32399-0450
Kimberly.Menchion@dot.state.fl.us

South Florida Water Mgt. District

Ruth Holmes, Asst. Gen. Cnsl.
3301 Gun Club Road
West Palm Beach, FL 33406
rholfmes@sfwmd.gov

Board of Trustees of the**Internal Improvement Trust Fund**

Thomas Sawyer, Deputy General Counsel
FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Boulevard, M.S. 35
Tallahassee, Florida 32399-3000
thomas.sawyer@dep.state.fl.us
cc: yolonda.richardson@dep.state.fl.us

South Florida Regional Planning Council

Sam Goren, Esquire
Michael D. Cirullo, Jr., Esquire
Goren, Cherof, Doody, Ezrol
3099 E. Commercial Blvd., Suite 200
Ft. Lauderdale, FL 33308
sgoren@cityatty.com
mcirullo@cityatty.com

Miami-Dade County

John McInnis, Asst. County Attorney
Abbie Raurell, Asst. County Attorney
Dennis Kerbel, Asst. County Attorney
111 NW First Street, Suite 2810
Miami, FL 33128
jdm@miamidade.gov
ans1@miamidade.gov
dkerbel@miamidade.gov

City of Miami

Victoria Mendez, City Attorney
444 SW 2nd Ave., Suite 945
Miami, Florida 33130
vmendez@miamigov.com

City of Doral

Weiss, Serota Helfman Pastoriza
Cole & Boniske
2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, FL 33134
mpearl@wsh-law.com

Town of Medley

Michael A. Pizzi, Jr., Town Attorney
7777 NW 72nd Avenue
Medley, Florida 33166
mpizzi@townofmedley.com

Village of Palmetto Bay

John Herin, Interim Village Attorney
GrayRobinson, P.A.
1221 Brickell Avenue, Suite 1600
Miami, Florida 33131
john.herin@gray-robinson.com

City of Coral Gables

Elizabeth M. Hernandez, Esquire
Jennifer Cohen Glasser, Esquire
Silvia M. Alderman, Esquire
Akerman Senterfitt
1 SE 3rd Ave
Miami, Florida 33131
elizabeth.hernandez@akerman.com
jennifer.glasser@akerman.com
silvia.alderman@akerman.com

City of Coral Gables

Craig Leen, City Attorney
405 Biltmore Way
Coral Gables, FL 33134
cleen@coralgables.com
cc: zosle@coralgables.com

Village of Pinecrest

Mitchell A. Bierman, Village Attorney
c/o Weiss, Serota, Helfinan, Pastoriza,
Cole & Boniske
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
mbierman@wsh-law.com

Village of Pinecrest

William Garner, Esquire
Gregory T. Stewart, Esquire
Nabors Giblin & Nickerson, PA
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
bgarner@ngnlaw.com
gstewart@ngnlaw.com
cc: pdorn@ngn-tally.com

City of South Miami

Thomas F. Pepe, Esquire
PEPE & NEMIRE, P.A.
1450 Madruga Avenue, Suite 202
Coral Gables, Florida 33146
pepenemirepa@gmail.com
tpepe@southmiami.gov

City of Homestead

Matthew Pearl, Esquire
Weiss, Serota, Helfman, Pastoriza,
Cole, & Boniski, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
mpearl@wsh-law.com

City of Florida City

Jeff P. H. Cazeau, Esquire
BECKER & POLIAKOFF
901 Ponce De Leon Blvd.
Penthouse Suite
Coral Gables, FL 33134
jcazeau@bplegal.com
cc: syordi@bplegal.com

Monroe County

Steven Williams, Asst. County Attorney
1111 12th Street, Suite 408
Key West, FL 33040
williams-steve@monroecounty-fl.gov

Coconut Grove Village Council

Michelle Niemeyer, Esquire
3250 Mary Street, Suite 302
Coconut Grove, FL 33133
mniemeyer@paymyclaim.com

Kendale Homeowners Assoc.

Ronald Lieberman, Esquire
10625 SW 100 Street
Miami FL, 33176
miamilawyr@aol.com

Miami-Dade Limestone Products Assn.

Kerri L. Barsh, Esquire
Edward O. Martos, Esquire
GREENBERG TRAURIG, P.A.
333 Avenue of the Americas
Miami, Florida 33131
barshk@gtlaw.com
martose@gtlaw.com

Vecellio And Grogan, Inc.**D/B/A/ White Rock Quarries¹**

Kerri L. Barsh, Esquire
Edward O. Martos, Esquire
GREENBERG TRAURIG, P.A.
333 Avenue of the Americas
Miami, Florida 33131
barshk@gtlaw.com
martose@gtlaw.com

Limonar Development, Inc.**Wonderly Holding, Inc.**

Francisco J. Pines, Esquire
FRANCISCO J. PINES, P.A.
3301 Ponce de Leon Blvd - Suite 220
Coral Gables, Florida 33134
fpines@pinesgroup.com

Kendall Federation of Homeowners Associations

Michael Rosenberg
12900 SW 84 St.
Miami, FL 33183
Dmiq2001@gmail.com

Miami-Dade Expressway Authority

Francine T. Steelman, Esquire
3790 NW 21st Street
Miami, FL 33142
fsteelman@mdxway.com

National Parks Conservation Assoc.

Sara Fain, Esquire
Jason Totoiu, Esquire
Everglades Law Center
1172 S. Dixie Hwy. #246
Coral Gables, FL 33146
sara@evergladeslaw.org
Jason@evergladeslaw.org

Richard Grosso, Esquire
Shepard Broad Law Center
Nova Southeastern University
3305 College Ave.
Ft. Lauderdale, FL 33314
grossor@nsu.law.nova.edu

Robert N. Hartsell, Esquire
Robert N. Hartsell, P.A.
Federal Tower
1600 South Federal Highway, Suite 921
Pompano Beach, FL 33062
Robert@hartsell-law.com

**Roberta L. Marcus, Inc.,
d/b/a The Marcus Centre,
and Marcus Properties, Inc.,**
Paul R. Marcus, Esquire
9990 S.w. 77th Avenue, Ph-1
Miami, Florida 33156
paul@marcuscentre.com

and

Department of Environmental Protection

Fred Aschauer, Deputy General Counsel

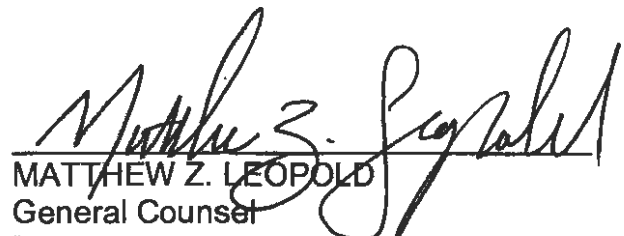
Office of General Counsel

3900 Commonwealth Boulevard, MS 35

Tallahassee, Florida 32399-3000

fred.aschauer@dep.state.fl.us

this 19th day of May, 2014.

A handwritten signature in black ink, appearing to read "Matthew Z. Leopold", is written over a horizontal line.

MATTHEW Z. LEOPOLD
General Counsel

Florida Department of Environmental
Protection, as counsel for and on behalf
of the State of Florida Siting Board.

3900 Commonwealth Blvd., M.S. 35

Tallahassee, FL 32399-3000

Telephone (850) 245-2242