

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: TAMPA ELECTRIC)
ST. JOHNS-PELLICER-PRINGLE,)
COMPANY WILLOW-OAK-WHEELER-) Case No. 07-4745TL
DAVIS TRANSMISSION LINE SITING)
APPLICATION NO. TA07-15)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 4 and 5, 2008, in Brandon, Florida, before the Division of Administrative Hearings, by its assigned Administrative Law Judge, Donald R. Alexander.

APPEARANCES

For Tampa Electric Company: Lawrence N. Curtin, Esquire
Gigi Rollini, Esquire
Holland & Knight, LLP
Post Office Box 810
Tallahassee, Florida 32302-0810

For Department of Environmental Protection: Toni L. Sturtevant, Esquire
Department of Environmental Protection
Mail Station 35
3000 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Hillsborough County: Marva M. Taylor, Esquire
Assistant County Attorney
601 East Kennedy Boulevard
County Center, 27th Floor
Tampa, Florida 33602-4156

For Polk County: Michael E. Duclos, Esquire
Assistant County Attorney
Post Office Box 9005
Bartow, Florida 33831-9005

For Intervenors: Susan Watson, pro se
3624 Windchime Lane
Dover, Florida 33527-4930

STATEMENT OF THE ISSUE

The issue for determination is whether and the extent to which the proposed corridor by Tampa Electric Company (TECO) contained in its Application for Corridor Certification (Application) should be approved in whole, with modifications or conditions, or denied.

PRELIMINARY STATEMENT

Pursuant to Section 403.537, Florida Statutes (2007),¹ on March 28, 2007, TECO submitted a petition for determination of need for the proposed Willow Oak-Wheeler-Davis 230 kV transmission line project with the Florida Public Service Commission (PSC). The PSC issued Order No. PSC-07-0522-FOF-EI, dated June 21, 2007, determining the need for the transmission line.

On October 12, 2007, TECO filed its Application with the Department of Environmental Protection (Department) and paid the appropriate application fee. The Application was filed under the Transmission Line Siting Act (TLSA), codified in Sections 403.52 through 403.5365, Florida Statutes, for a new 230 kV overhead transmission line and related facilities connecting the planned Willow Oak substation west of Mulberry in Polk County to the planned Davis substation located in Temple

Terrace, Hillsborough County, Florida, with an intermediate connection to the existing Wheeler substation located along Wheeler Road northeast of Brandon in Hillsborough County (the Project).

The various reviewing agencies have submitted reports on the Project and have proposed Conditions of Certification. On February 4, 2008, the Department issued its Transmission Line Site Certification Staff Analysis Report, incorporating the reports of the reviewing agencies and proposing a complied set of Conditions of Certification. During the certification hearing, a revised and updated version of the proposed Conditions of Certification was admitted into the record as Department Exhibit 4.

By Notice of Hearing dated October 26, 2007, a certification hearing was scheduled on March 4-7 and 10-14, 2008, in Brandon, Florida. On February 29, 2008, the case was transferred from Administrative Law Judge J. Lawrence Johnston to the undersigned.

On February 25, 2008, Tom and Susan Watson, who own property in Dover, Florida, immediately adjacent to the proposed corridor, filed their Petition to Intervene. Intervention was authorized by Order dated February 26, 2008.

On February 28, 2008, Intervenors filed a Motion for Leave to Allow Expert Witness to Appeal (sic) by Phone. This request

was granted at the certification hearing and Dr. Hanoch Talmor, a Gainesville physician, was permitted to testify by telephone on behalf of Intervenors.

The certification hearing was held on March 4 and 5, 2008, in Brandon, Florida. (Only two of the days reserved for hearing were required to complete the matter.) All notices required by law were timely published in accordance with Section 403.527, Florida Statutes. The final hearing was conducted for the purpose of receiving oral, written, and documentary evidence concerning whether the Project should be approved in whole, or with such modifications and conditions as the Siting Board deems appropriate, or denied under the TLSA.

At the certification hearing, TECO presented the testimony of David M. Lukcic, Manager of Capital Projects and Environmental Health and Safety; Chip S. Whitworth, Manager of the Transmission Engineering Department and accepted as an expert; Philip W. Simpson, a scientist with Environmental Consulting & Technology, Inc. (ECT) and accepted as an expert; Anthony N. Arcuri, a scientist with ECT and accepted as an expert; Darren Stowe, a scientist with ECT and accepted as an expert; Jim Brooks, a professional engineer with Black & Veatch and accepted as an expert; and Dr. Linda S. Erdreich, a senior managing scientist and epidemiologist for Exponent, Inc. and accepted as an expert. Also, it offered TECO Exhibits 1-26,

which were received in evidence. Although Intervenors filed a post-hearing written objection to Exhibit 26, that objection is overruled and the exhibit has been received in evidence. The Department presented the testimony of Ann S. Seiler, an Environmental Specialist III and accepted as an expert, and Michael P. Halpin, Administrator of its Siting Office and accepted as an expert. Also, it offered Department Exhibits 1 through 4, which were received in evidence. Hillsborough and Polk Counties participated in the hearing but did not submit any evidence. Intervenors were represented by Susan Watson, a non-attorney, who testified on her own behalf. She presented the testimony of Quilla Paul Daniels, who now resides in Plant City but formerly owned property near the proposed corridor, and Dr. Hanoch Talmor, a medical doctor in Gainesville, Florida. Intervenors also offered Intervenors Exhibits 1 and 2, which were received in evidence.

A public hearing was held at 7:00 p.m. on March 5, 2008, for the purpose of allowing members of the public an opportunity to present evidence and testimony. Thirty-five members of the public testified, one with a power point presentation. Public Exhibits 1-8 were also received in evidence.

The Transcript (three volumes) of the final hearing was filed on April 2, 2008. Intervenors and TECO filed Proposed Recommended Orders on April 15 and 16, 2008, respectively, which

have been considered in the preparation of this Recommended Order. The Department has joined in TECO's filing.

FINDINGS OF FACT

Based upon all of the evidence the following findings of fact are determined:

I. Parties

1. The TLSA establishes TECO and the Department as parties to this proceeding, and the following became parties upon their timely filing of a notice of intent to be a party, which each has done: Florida Department of Transportation (DOT), Department of Community Affairs (DCA), Southwest Florida Water Management District (SWRWMD), and Hillsborough County. See § 403.527(2), Fla. Stat. Although the Florida Fish and Wildlife Conservation Commission (FFWCC) did not become a party, the Department accepted its comments and recommended conditions in the agency report. On February 21, 2008, the City of Temple Terrace was accepted as a party without objection after the deadline for filing the notice of intent. § 403.527(2)(b), Fla. Stat. On February 25, 2008, Tom and Susan Watson filed a Petition to Intervene. Although this was after the deadline established in the prehearing schedule for becoming a party, TECO did not object based upon an agreement to conditions relating to the presentation of witnesses by the Watsons. Intervenors agreed to those conditions. Finally, Polk County

did not file a notice of intent to be a party, but appeared without objection at the certification hearing.

II. The Application

A. Project Description

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

3. TECO is seeking certification of a corridor between the planned Willow Oak substation located at the intersection of State Road 60 and Turner Road just northwest of Mulberry in Polk County, the existing Wheeler substation in Valrico, and the planned Davis substation in Temple Terrace, a span of approximately thirty miles, within which it will ultimately construct the line on a narrow right-of-way (ROW).² Once all property interests in the ROW are acquired, the boundaries of the corridor will shrink to the typical width of the 25 to 100-foot ROW. In some cases, the ROW will be 300 feet wide.

4. The objectives of the Project are to address: (a) the need, as confirmed by the PSC, to provide additional transmission reinforcement to the existing 230 kV transmission

network north of State Road 60, west of the planned Willow Oak substation, and east of the existing River substation in a reliable manner consistent with the North America Electric Reliability Council (NAERC) and the Florida Reliability Coordinating Council (FRCC) and other applicable standards; (b) the need to serve the increasing load and customer base in the Project service area; and (c) the need to provide for another electrical feed via a separate ROW path, thereby reducing the impact of a loss of existing transmission facilities on a common ROW.

B. Need for the Line

5. In earlier proceedings before the PSC, it determined a new 230 kV transmission line between the planned Willow Oak, the existing Wheeler, and the planned Davis substations is needed, taking into account the need for electric system reliability and integrity and the need to provide abundant, low cost electrical energy to assure the economic well-being of the citizens of the State. The PSC found that the planned Willow Oak substation and the planned Davis substation constitute the appropriate starting and ending points for the proposed line. The PSC noted that the additional transmission capacity will be needed by 2012 and recognized that the Siting Board will make the final determination concerning the route selection upon consideration

of the factors and criteria specified in Section 403.529, Florida Statutes.

C. Transmission Line Design

6. The typical design for the transmission line will be a single-circuit unguyed concrete pole structure using concrete or crushed stone back fill. The poles are proposed to range in height from 80 feet above grade to 125 feet above grade, with the conductors framed in a vertical configuration. Three conductors will be used, and each of the three conductors is anticipated to be a 1,590 aluminum conductor steel supported wire, with 45 strands of annealed aluminum that lay over seven steel strands. The conductor is 1.504 inches in diameter with a weight of approximately 1.7 pounds per foot. There will also be a smaller overhead ground wire to provide shielding and lightning protection for the conductors. The maximum current rating is 2,560 amperes. In some locations there could be a 69 kV and a distribution underbuild. Additionally, the vertical configuration will be adjusted to a horizontal configuration in the vicinity of the South Lakeland Airport to enable the height to be lowered to approximately 46 feet above grade to account for the air traffic.

7. The open span length between structures will typically vary between 300 and 800 feet, depending on site-specific

conditions. Both pole height and span length may vary to accommodate various conditions that may be encountered.

8. Access roads and structure pads will be constructed only where necessary to provide access for construction, maintenance, and emergency restoration. Where constructed, the typical road top width will be 14 feet, with a 2-to-1 side slope, and a minimum elevation of between six inches and two feet. Structure pads will have variable sizes but are typically 75 feet by 75 feet. These are designed to support the equipment needed to install and maintain the transmission line. Culverts will be installed beneath access roads and structure pads with the specific design reviewed by the appropriate regulatory agencies. The design will be similar to previously approved designs.

9. The design of the transmission line complies with good engineering practices. The transmission line will be designed in compliance with all applicable design codes, including the National Electrical Safety Code, the Department's regulations on electric and magnetic fields, the DOT Utility Accommodation Manual, the requirements of applicable regulatory agencies including the Department, SWFWMD, and PSC, as well as TECO's own design standards.

10. The Project assures the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

D. Transmission Line Construction

11. The initial phase of construction is to clear the ROW. Since much of the length of the corridor is collocated, that is, grouped or placed side by side, with existing roads and utility facilities, the need for clearing has been minimized. Clearing will consist mainly of tree trimming and the selective removal of trees. In areas owned by TECO clearing will range from a width of 25 to 100 feet. In forested areas in which a new line will be located, clearing will also be limited to 25 to 100 feet in width. In wetlands, trees capable of exceeding 14 feet in height that could come in conflict with the line will be removed by hand clearing or use of very low ground pressure equipment. Low growing herbaceous vegetation will not be cleared from wetlands.

12. After the ROW is cleared, any necessary access roads and structure pads will be constructed. Typically, access roads and pads are not required in all areas.

13. The next phases of construction involve the physical transmission line construction. Initially, the materials are assembled on the jobsite. Next, holes are augered at each pole location. The structures are framed with insulators and

hardware that may be installed prior to the setting of the structure. After all appropriate operations relative to the assembly and framing have been performed on the ground, the top section of the structure is lifted with a crane and set on the previously installed base section. The two sections are then jacked together. Typically, the pole is embedded into the ground approximately 25 to 35 feet deep.

14. After the poles have been installed and the hardware and equipment on the pole, including the insulators, have been installed, a wire pulling operation is conducted. In this phase, reels of wire, wire tensioning, and retarding equipment all will be mobilized. The locations generally include the dead end structures, but the length of the wire that can be placed on a reel may dictate the location of some of the equipment. Each structure must be equipped with hanging blocks or pulleys so the conductors may be pulled through smoothly for the entire length of the reel. Once the conductors are pulled in and secured at the dead end structures, the wires are sagged and tensioned appropriately to maintain vertical clearances. Finally, the pulleys are removed from each structure and the conductor is secured to the insulator attachment.

15. The final stage of construction is the cleanup stage. This involves inspection of the entire project to ensure that all material has been cleaned up, removal of all silt fences,

hay bales, excess spoils, or dirt from the foundation excavation, and ensuring that the gates and fences have been properly restored or installed.

16. Throughout construction, sedimentation management techniques, such as the use of silt screens and hay bales, or other best management practices, will be employed as necessary to minimize potential impacts from erosion and sedimentation.

17. While each phase of construction will typically take up to two weeks in a particular location, the construction crew will normally be active for two to four days at a typical structure location after the necessary pads have been installed. Construction for the entire project is expected to last from twelve to eighteen months.

E. Methodology for Choosing TECO Corridor

18. TECO established a multi-disciplinary team to identify and evaluate routing alternatives within the Project Study Area. This multi-disciplinary team was comprised of experts in land use, engineering, and environmental disciplines. The team, which included both TECO representatives and outside consultants from ECT, engaged in a number of activities including data collection, preparation of a regional screening map, the identification of alternative route segments, the development of criteria to evaluate the route segments, the actual evaluation both quantitatively and qualitatively of these routes, and the

ultimate selection of the preferred route which was accepted by TECO. Members of the public assisted in this effort throughout the development of the proposed corridor.

19. The objective of the corridor selection study was to select a corridor that could be certified balancing land use, socioeconomic, environmental, engineering, and cost considerations. Corridor selection methodologies were designed to be integrative of multidisciplinary siting criteria, regional and objective in decision-making, sensitive to social and environmental conditions, responsive to regulatory requirements, reflective of community concerns and issues, and capable of accurate documentation and verification.

20. The selection process consisted of three tasks including (a) project and study area definition; (b) resource mapping and alternative route delineation; and (c) evaluation of alternative routes and selection of the proposed corridor. Due to the dense and urban nature of the TECO service area, it was difficult to find areas with no population or development for a corridor.

21. The multidisciplinary team developed a regional screening map, received in evidence as TECO Exhibit 14, which was prepared by the team using generally publicly available information including Geographic Information System (GIS) mapping. The map data were collected from various state

agencies and local governments. Information was gathered from the Florida Geographic Data Library (which distributes GIS data), the Florida Natural Areas Inventory, and most of the agencies involved in this proceeding. Various environmental and land use data were mapped as were existing infrastructure, and information gathered on roads, railroads, rivers, waterbodies, and the like. These represented primarily siting constraints or siting issues within a particular study area. The regional screening map was then used to identify route segments.

22. The licensing team used the regional screening map as the first step in identifying the various route segments that connected the three substation locations at Davis, Wheeler, and Willow Oak.

23. TECO's multi-disciplinary team gathered data on siting opportunities and constraints within the study area and identified forty-one line segments which could be assembled into a total of four hundred twenty-three potential route combinations. Using a predefined set of ten environmental, land use, and engineering criteria, each route segment was measured for those resources. Using a software program developed by ECT, the data was entered and totaled for each route combination. Using the weights developed by the licensing team for each criterion, the weights were applied and tabulated for all

routes. The routes were then ranked in order from best to worst based on the weighted scores.

24. Once the rankings were performed, the top ranked routes were subjected to further evaluation. These routes were high in scoring but somewhat different in the path that they took between the three substation locations. They were then evaluated using predetermined qualitative criteria, which included such things as homes in proximity to the route. The analysis included an examination of where the homes were located along the route, whether they are scattered and easily avoided with the placement of a corridor, or whether they are clustered together in a fashion making it difficult to avoid them in placement of the corridor. Numerous driving surveys of the various routes were performed during this phase where the routes were publicly accessible, and a helicopter flyover was also completed.

25. At the completion of the evaluation, a recommendation was made for a proposed route, which was accepted by TECO. Once the proposed corridor location was selected, the team examined various siting issues within and along the route and developed corridor boundaries of varying widths. In some areas a much wider width was needed to provide flexibility for siting, while a more narrow width was needed in areas where siting issues were

less and where there was a reasonable certainty concerning where the ROW could be located.

26. TECO also engaged in an extensive public outreach program. The public participation program included open houses, mass mailings, surveys, a toll-free telephone number, newsprint advertisements, a website, and meetings with regulatory agencies and local elected officials.

27. There were three direct mailings as a part of the public outreach program. The first mailing was a notification of four open houses that were to be held. One open house was conducted in Polk County, while three (Seffner, Plant City, and Temple Terrace) were conducted in Hillsborough County. Following the completion of the open house process, a second mailing was sent providing a summary of the survey results. The third mailing notified recipients that the Application was filed on October 12, 2007. Approximately 4,500 recipients were identified for these mailings. The names of the recipients were obtained by identifying the properties located within 500 feet in both directions from the centerline of the routes. The Hillsborough and Polk County Property Appraisers' offices were a source for this information as well as the TECO customer database. The Hillsborough County Office of Neighborhood Relations was consulted for a list of registered homeowners' associations. For the homeowners' associations, which numbered

around two hundred, those that were within one mile in both directions from the centerline of the route were notified. The recipients of the notifications included property owners and tenants or lessees. The Hillsborough County Large Facilities Ordinance was used as a guide to identify the area of the notifications, although that Ordinance mandates a 250-foot notification distance from the centerline of the routes, and TECO actually used 500 feet on both sides of the centerline.

28. The same distances were not used for recipients of each of the mailings. The distances described in Finding of Fact 27 were used for the first two mailings. For the third mailing, the proposed corridor had been selected. As a result, the distance was measured not from the centerline of the route, but from the edge of the corridor. This was done because in some areas the corridor was extended beyond the 500-foot limit and potential recipients would have been missed had the area of inclusion not been extended. Additional mailings are planned if the corridor is certified. Additional informational open houses will also be held, and the transmission structures and potential locations will be identified at that time so the public can be informed.

29. As part of the public outreach, TECO also ran a series of four advertisements in local newspapers. The first newspaper advertisement was run on February 20, 2007, in The Tampa

Tribune, Lakeland Ledger, Mulberry Press, Temple Terrace News, and Brandon News. Two more advertisements were run on February 28 and March 1, 2007, in The Tampa Tribune and Lakeland Ledger. These advertisements were in addition to the required public notices of the application being filed, the certification hearing being scheduled, and the public hearing being scheduled that were run on October 30 and December 27, 2007, and February 18, 2008. The required advertisements were run in The Tampa Tribune, Lakeland Ledger, and The Winter Haven News Chief. The February 18 notice of public hearing was also run in The Polk County Press.

30. Copies of the Application were maintained for public inspection during the certification process at the TECO offices in Tampa and Winter Haven. In addition, a copy of the Application was provided to the John Germany Public Library in downtown Tampa, the Polk County Library in Bartow, and the Temple Terrace Library in Temple Terrace. All of the applications available for public inspection were updated as additional information was submitted to the Department.

31. The public participation program provided substantive input to the route evaluation study in terms of study area boundary, siting opportunities, and constraints in the area, identification of route segments to be evaluated, and weights to be assigned to the route evaluation criteria. The cumulative

responses of the public's ranking of the weights to apply to TECO's siting criteria were very comparable to the team's weighting indicating little significant difference in route ranking.

32. Once the proposed alignment was identified, the multi-disciplinary team delineated the boundaries or width of the corridor to provide flexibility for locating the eventual ROW within that corridor.

33. State, regional, and local agencies with regulatory authority of the Project reviewed the Application and submitted to the Department a report concerning the impact of the Project on matters within their respective jurisdictions, as required by Section 403.526(2), Florida Statutes. The Department compiled the reports and made a recommendation that the Project be granted approval subject to appropriate conditions. See Department Exhibit 2.

34. The Department, SWFWMD, and DOT stipulated as to the certification of the Project subject to conditions of certification proposed by the Department. On April 16, 2008, the City of Temple Terrace and TECO entered into a separate stipulation for certification. None of the agencies involved in the review process recommended that the proposed corridor be denied or modified. No alternate corridors were filed for consideration by any of the parties. Further, no additional

conditions of certification were proposed by any party at the certification hearing.

III. Detailed Description of the TECO Corridor

35. The proposed corridor provides significant opportunities for collocation with other linear facilities such as roads and transmission lines which provide the opportunity to reduce the amount of new access road construction, impacts to wildlife habitat, and other impacts. The width of the proposed corridor varies along the route to provide flexibility within the corridor to avoid impacts to such areas as existing developments, large wetland areas, and a bald eagle's nest.

A. From the Planned Davis Substation to the Existing Wheeler Substation

36. The western end of the corridor begins at the planned Davis substation site in Temple Terrace which is a large parcel owned by TECO. There is an existing substation there called the River substation and the planned Davis substation will be located in proximity to that existing substation. Land use is generally open land. This portion of the corridor is bordered on the west by the Hillsborough River and has a large area of pasture land on the east side with mixed hardwood swamp and cypress swamp on the western portion.

37. Leaving the TECO substation property, the corridor travels east across Interstate 75 (I-75) and the width of the

corridor in this area narrows to approximately 300 feet. This is also TECO property. As the corridor passes I-75 it approaches the Tampa Bypass Canal, which is owned by the SWFWMD. The corridor is expanded in this area to minimize the impacts on the SWFWMD operations along the Bypass Canal and on the recreational facilities located in the southwestern portion of the parcel used by Temple Terrace. Land is low density residential with a cemetery and a recreational facility. The property has pine/oak woods along the northwestern corner and a mixed hardwood swamp on the northeastern corner. The property is bisected north and south by the Tampa Bypass Canal.

38. Once the SWFWMD property is exited the corridor turns due east for approximately 5.4 miles until south of Lake Thonotosassa, where it turns south. This portion is owned by TECO. The corridor is 300 feet wide. The western portion is primarily developing and developed lands surrounding the corridor and, as it proceeds east, it crosses more rural lands, pasture, strawberry fields, row crops, various agricultural operations, cattle grazing, and some citrus groves. A portion of the corridor contains a natural gas pipeline within TECO's property. In addition to the agricultural vegetation, there is a pine/oak area, some marsh, and some emergent aquatic vegetation, along with some ponds. The corridor crosses Baker Creek, a tributary to Lake Thonotosassa, which is north of the

corridor. A mixed hardwood swamp and a cypress swamp are found here.

39. The proposed corridor then turns south and approaches areas of developing or developed lands. TECO's fee ownership extends to the south. The corridor crosses Interstate 4 and, at the beginning of its intersection with U.S. Highway 92, the corridor has been expanded from approximately 3,100 feet up to 5,100 feet in width to avoid a bald eagle's nest and the scattered residences in the area. The widened corridor proceeds south to State Road 574 or Martin Luther King Boulevard. Land use is agricultural, low density residential, and undeveloped property. This area of the corridor contains some pine/oak woods, large areas of marsh, some crop land, some mixed hardwood swamp, and scattered residential development.

40. Once the corridor crosses State Road 574 it narrows again to approximately 300 feet in width and is located on TECO property. The corridor then proceeds south to the existing Wheeler substation located off of Wheeler Road in Valrico. There is a large amount of development to the west of the corridor and developing lands to the east of the corridor.

B. From the Existing Wheeler Substation to the Planned Willow Oak Substation

41. From the existing Wheeler substation near Wheeler Road the corridor proceeds south slightly more than one mile and then

turns east for approximately one mile before turning south to State Road 60. In this portion of the corridor the width is approximately 300 feet and it is located on TECO property. There are residential properties in the vicinity of the corridor, including the Diamond Hills and Sommerset subdivisions. The land use is generally medium density residential surrounding the corridor and also some agricultural lands. Land uses in this area include pasture land, pine/oak woods, crop land, marsh, open land, ponds, mixed hardwood conifer swamp, and pine flat woods.

42. The corridor proceeds east along State Road 60, which is a major transportation corridor. The corridor is expanded to approximately 2,000 to 3,000 feet in this area to allow opportunities to follow other linear facilities that are located south of State Road 60, such as other transmission lines or roads. There are scattered residential properties with agricultural uses, strawberry fields, pastures, and some citrus in the area. Phosphate lands are located to the south of this segment of the corridor. The corridor proceeds along to the east. The majority of this area is reclaimed phosphate mining lands.

43. The final segment of the proposed corridor has again been expanded to approximately 4,000 feet wide as it continues along both sides of State Road 60 and both sides of Old Hopewell

Road. As the roads converge, the corridor is narrowed to approximately 500 feet. From there it proceeds to the planned Willow Oak substation in western Polk County. In this area there is existing development surrounding the substation site and proposed development along State Road 60. The South Lakeland Airport is in this area. Along State Road 60 there is a mix of commercial, residential, and some industrial properties. The Willow Oak substation site is located within open land.

IV. Compliance With Section 403.529(4) Criteria

A. Ensure Electric Power System Reliability and Integrity

44. The PSC found that there are regional transmission system limitations in northeast Hillsborough County. By 2012, the existing 230 kV transmission network will not have sufficient capability to provide reliable electric service to the existing and proposed substations. The PSC also found that some of the projected load to be served by the planned future distribution substations will be located further east and north of the existing 230 kV transmission network. The PSC determined that the proposed transmission line is needed by March 2012 to (a) provide additional transmission reinforcement to the existing 230 kV transmission network north of State Road 60, west of Willow Oak substation, and to the east of the existing River substation in a reliable manner consistent with the NERC,

FRCC, and other applicable standards; (b) serve the increasing load and customer base in the projected service areas; and (c) provide for another electrical feed via a separate ROW path, thereby reducing the impact of a loss of the existing transmission facilities on a common ROW. The PSC concluded that the Project is needed to preserve electric system reliability and integrity.

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

45. The PSC recognized that TECO's planning studies indicate that the proposed line is needed by March 2012 to provide sufficient capability to provide reliable service to existing and proposed substations.

46. The location of the proposed transmission line on the proposed corridor would meet the electrical energy needs of the state in a timely fashion.

C. Comply with the Nonprocedural Requirements of Agencies

47. Construction, operation, and maintenance of the proposed corridor will comply with applicable nonprocedural requirements of agencies.

48. The Department has concluded that the Project as proposed will comply with all applicable Department statutes, rules, policies, and procedures.

D. Be Consistent with Applicable Local Government Comprehensive Plans

49. The Polk County Comprehensive Plan identified electric transmission and distribution facilities as a permitted use in all land use categories. In the Future Land Use Element of the Hillsborough County Comprehensive Plan, there are an objective and several policies that address bulk transmission lines. The policies address the locational criteria and public input. The policies will be met by the proposed transmission line. The City of Temple Terrace's Comprehensive Plan does not address bulk transmission lines.

50. After certification of this project, TECO will acquire the necessary property interests in a ROW within the certified corridor for placement of the line. 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.

51. No variances or exemptions from applicable state or local standards or ordinances are needed for the project.

E. Implementation of Legislative Intent in Section 403.521

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

52. The PSC determined that the proposed line is needed taking into account the factors set forth in Section 403.537, Florida Statutes.

53. The PSC found that TECO evaluated three alternatives to the Project. All three were transmission modifications to the proposed ROW that used a portion of, or the entire existing, common ROW. The PSC accepted TECO's rejection of the alternatives primarily because of economics and reliability concerns. The PSC found that the proposed line will assure the economic well-being of the citizens of the state by serving projected new electric load in the region and improving the region's electric reliability by minimizing the region's exposure to single contingency events.

b. Impact Upon the Public

54. The proposed line is appropriate from a land use perspective. The Project takes advantage of the opportunity to be collocated with other transmission lines, roadways, and ROWs. By following these existing linear features, the corridor conforms to existing and future development patterns and minimizes intrusion into residential areas. As a result, the proposed line is in proximity to relatively few residences.

55. The line as proposed will comply with all applicable nonprocedural agency standards, including the Department standards in Florida Administrative Code Rule Chapter 62-814 limiting the electric and magnetic fields associated with new transmission lines.

56. TECO proposes to use five different configurations for the transmission line, depending upon the location. The options include a 230 kV single circuit roadside, a 230 kV single circuit roadside with a 69 kV underbuild, a 230 kV single circuit roadside with 69 kV and 13 kV distribution underbuild, a 230 kV single circuit for the South Lakeland Airport, and a 230 kV single circuit for use in the 300-foot existing TECO ROW. For each of these configurations the Department's rule requires that the electric and magnetic fields (or energy forces) be calculated to ensure compliance. The electric field is what is created underneath and outside of a transmission line as a result of placing voltage on the conductor. It is a byproduct of placing voltage on the conductor. The magnetic field is created as a result of the current traveling along the conductor. It is generally a magnetic flux field that surrounds the conductors and the transmission lines.

57. Those portions of Florida Administrative Code Rule Chapter 62-814 that are applicable to this Project establish maximum values for electric and magnetic fields. The electric

field is expressed as a kilovolt meter (kV/m) and compliance is required both within the ROW and at the edge of the right-of-way for the transmission line. The magnetic field is expressed as milliGauss (mG) and compliance is determined at the edge of the ROW.

58. Compliance with the electric and magnetic field requirements was calculated for each of the configurations that may be utilized for the Project. The results were then compared to the requirements of Florida Administrative Code Rule 62-814.450(3). See TECO Exhibit 21. The maximum expected values from all configurations for the electric fields within the ROW and at the edge of the ROW and for the magnetic fields at the edge of the ROW are all below the values set forth in the rule.

59. The maximum voltage and current that is ever anticipated for the line during its life are used in making the calculations. However, it is highly unlikely that this condition would occur. It is anticipated that the maximum condition would occur less than five percent of the time while the transmission line is operating. In order to operate at the maximum level the conductor must be operating at its maximum temperature and the conductor would be at its lowest point in the span to create that condition. There would also need to be some type of system disturbance that would cause a maximum condition to occur. This would be a worst case scenario.

Levels for electric fields will be less at the normal operating levels and magnetic fields about fifty percent less.

60. Intervenors own property and live within the area of the expanded corridor between U.S. Highway 92 and State Road 574 in Dover. In this area TECO owns a 300-foot ROW originally considered for the corridor, which contains an eagle's nest. While this area is near the Intervenors' property, the proposed corridor is the entire area up to 5,100 feet in width, and the actual ROW location for the line has not yet been determined. Intervenors are primarily concerned about the potential health effects to their son caused by exposure to electric and magnetic fields from the transmission line in the vicinity of their property. In support of these concerns, they presented the prefilled, written testimony of Dr. Hanoch Talmor, a medical doctor in Gainesville, Florida, who has treated their son for over fifteen years. Doctor Talmor is a board-certified pediatrician who now specializes in the area of general holistic medicine.

61. In his written statement Dr. Talmor states that Intervenors' son is at present nonambulatory and nonverbal. He also testified that he displays severe chemical sensitivities and is listed on the state chemically sensitive lists. Although he is not a neurologist, Dr. Talmor opined that because of the son's neurological involvement and his extensive medical

history, he would be adversely affected by high voltage power lines near his home. He further testified that the son has seizures which can be affected by smells, sounds, visual stimuli, sleep patterns, and allergic reactions.

62. During cross-examination, Dr. Talmor acknowledged that he is not familiar with the levels of electric and magnetic fields expected to result from this transmission line in the vicinity of Intervenors' property. Even so, he opined that the only safe levels of electric and magnetic fields with regard to human exposure would be at levels of zero. He admitted, however, that electric devices typically found in the household such as clocks, ovens, refrigerators, televisions, electric blankets, and the like, as well as electric wiring in the house, would be expected to produce electric and magnetic fields to which a person living in the house would be exposed. At the certification hearing, Dr. Talmor also discussed various research articles concerning this subject. In formulating his opinions, however, Dr. Talmor had reviewed only summaries and excerpts of the studies, rather than the complete studies.

63. TECO presented the testimony of Dr. Laura S. Erdreich, an epidemiologist, who is familiar with the configuration for the transmission ROW that is proposed to be used in the vicinity of Intervenors' residence. Doctor Erdreich testified that she is familiar with the levels expected to be produced from the

transmission line at the edge of the ROW. With regard to electric fields, Dr. Erdreich testified that the lowest level that has ever been proposed as being necessary for the protection of human health is 4.2 kV/m. This was by an organization called the International Commission for Non-Ionizing Radiation Protection (ICNIRP). The organization is based in Europe and is sponsored by the World Health Organization. The level that organization recommended is more than twice the maximum level of 2.0 kV/m found in Florida Administrative Code Rule 62-814.450(3)(a). The maximum expected electric fields at the edge of the ROW for the Project in the vicinity of Intervenors' residence is 0.1 kV/m.

64. For magnetic fields, Dr. Erdreich testified that the ICNIRP proposed a level of 833 mG as being protective of human health based on exposure. This is the lowest level that has been proposed by any regulatory authority or similar body based on potential health effects. In contrast, Florida Administrative Code Rule 62-814.450(3)(d) provides in relevant part that the "maximum magnetic field at the edge of a 230 kV or smaller transmission ROW . . . shall not exceed 150 mG." This value is much greater than the 13.6 mG maximum level expected at the edge of the TECO ROW and in the vicinity of Intervenors' home. Under typical operational conditions, the expected magnetic field would be approximately 7 mG, which is less than

one percent of the health-based exposure limit recommended by the ICNIRP.

65. Doctor Erdreich also testified that she is familiar with the research that has been conducted concerning health effects from environmental exposure to electric and magnetic fields. The research includes epidemiological studies of humans in the natural environment, laboratory studies which typically expose all animals to high levels often for nearly their entire lifetime, and studies of cells and tissues in laboratories to try to isolate the mechanism that may affect humans. The amount of research being performed has been reduced over the last few years because, despite considerable research, an adverse effect from exposure to humans at environmental levels has not been substantiated. Additionally, causal associations between exposure and health effects have not been found when the data and research have been reviewed by committees of scientists of various disciplines. Doctor Erdreich testified that she is aware of the studies that were referred to by Dr. Talmor as well as other studies on the subject. Although the subject of exposure to low levels, even on a long-term basis, such as levels less than 10 mG, has been studied extensively, she noted that the findings have been that magnetic fields have no known effect on the human body until exposure to levels well above 1,000 mG.

66. The United States Government does not regulate electric and magnetic exposure except in occupational settings. There are no requirements for regulation of transmission lines in these areas. The State of Florida is one of only a few states that have such requirements. There is no existing body of research demonstrating that adverse health consequences result from exposure to electric and magnetic fields at the levels expected to result from the 300-foot ROW single pole configuration that is proposed for the vicinity of Intervenors' property. Doctor Erdreich opined that these levels do not pose a threat of adverse health effects to the population near the edge of the ROW. She further opined that in the unlikely circumstance that the edge of the ROW for the transmission line would be placed at the edge of the residence of the property, the levels of electric and magnetic fields from the transmission line would still not create a health concern. She also stated that her opinion would be the same if one of the residents were shown to have an illness that resulted in a chemical sensitivity. She based her opinions on the fact that there is no evidence demonstrating any correlation between this exposure and adverse health effects. Finally, Dr. Erdreich testified that no group has ever suggested that there is a need for lower levels near hospitals or convalescent facilities or other places where physical therapy occurs.

67. The levels of electric and magnetic fields from the transmission line will decrease as one moves further from the edge of the ROW. The levels expected from the transmission line, which are already well below the State requirements and a small fraction of the lowest levels that have ever been suggested as being required for the protection of human health, are similar to the levels that would be expected to result from common household appliances.

68. Mrs. Watson testified that her residence has electricity and electric household appliances such as air-conditioning, television, refrigerator, and a vacuum cleaner. All of these devices produce electric and magnetic fields at levels in the range of what would be expected from the TECO transmission line. Additionally, there is natural exposure to magnetic fields and electric and magnetic fields from electrical devices that are encountered in everyday life.

69. Transmission lines can generate audible noise as a result of irregularities that collect on the conductor. During periods of fair weather dust can collect on the conductor and that may cause low levels of audible noise. When rain is experienced, the dust is washed off but replaced with water droplets on the conductor that create a condition that results in slightly higher levels of audible noise. The noise levels experienced during rainfall events are temporary, and the noise

is reduced as soon as the water droplets evaporate from the conductor.

70. The expected levels of noise are generally calculated using a program called the Bonneville Power Administration Field Effects Program. The information utilized to make the calculations includes the conductor size, the configuration of the transmission line, and the voltage expected.

71. The calculations performed for the transmission line show that the audible noise levels at the edge of the ROW during fair weather would range from 16.1 dBA, which is decibels of noise in a range that can be heard, to a high of 22.5 dBA. During periods of rainfall the expected audible noise at the edge of the ROW ranges from a low of 41.1 dBA to a high of 47.5 dBA. For the ROW configuration that is proposed for the area including the Watson property, the expected levels during fair weather are a maximum of 16.1 dBA and during foul weather a maximum of 41.1 dBA at the edge of the ROW. The noise levels will decrease as one moves away from the edge of the ROW. Also, during rainfall events, when the maximum noise levels are expected, the rain will tend to mask the sound from the transmission line.

72. Studies that have been prepared on this issue indicate that complaints concerning noise are primarily related to interference with sleep. The studies indicate that to minimize

the potential of interference with sleep, the noise level outside of the home should not exceed 50 dBA. The maximum expected noise level from the Project will not exceed 50 dBA. Mr. Brooks, TECO's expert who testified on this issue, stated that he had never had an occasion to deal with a noise level complaint during his thirty-seven years of experience with transmission lines.

73. TECO Exhibit 22 contains a summary of the audible noise expected from the transmission line for the various configurations. It also contains a chart with the noise levels expected from common activities for comparative purposes. The maximum fair weather audible noise from any of the five configurations would be comparable to the levels that one would encounter in a bedroom at night. The maximum levels for the same configurations during foul weather would be comparable to what one might experience in a quiet office or a living room. The levels for the configuration to be utilized in the area of the Watson property are below the maximums for the Project and significantly less than levels expected at a quiet office or bedroom at night.

74. At the public portion of the certification hearing, thirty-five members of the public uniformly testified in opposition to the Project, as proposed. A number of those testifying expressed concern about the impact of the Project on

property values, the possible effects of the electric and magnetic fields expected from the transmission line once the ROW has been selected and the line constructed, and the desire to have TECO seek another route. Although these concerns are genuine, impacts on property values is not a subject for consideration at this hearing. As discussed above in greater detail, the evidence demonstrates that adverse impacts from the low levels of electric and magnetic fields projected from the Project are not expected. No alternate corridors have been proposed for consideration by any party to this proceeding. Finally, some members of the public complained that they were unaware that a new transmission line corridor was being proposed until just before the hearing. However, the evidence shows that long before the certification hearing, information concerning this process was widely disseminated through advertisements, open houses, mass mailings, surveys, and meeting with regulatory agencies and local elected officials.

c. Impact Upon the Environment

75. The Project as proposed will have minimal environmental impact.

76. Construction of the line within the proposed corridor will not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats. The proposed corridor avoids or minimizes intrusion into the

undisturbed wildlife habitats due to its collocation with existing linear facilities for almost its entire length. The current condition and relative value of function of the habitat in the proposed corridor is generally minimal from a wildlife ecology and protected species perspective. There are some areas with higher quality habitat. One is in the area south of Lake Thonotosassa. In that location, there is a natural gas pipeline corridor that already disturbs the area in the proposed corridor. In the area of the bald eagle's nest, clearing in the ROW would be limited to 25 to 100 feet in width. Also, the Conditions of Certification require extensive surveys and plans for wildlife protection. The area has experienced clearing and tree removal to accommodate development. Care was taken in routing the proposed corridor to avoid or minimize proximity of the corridor to known listed species locations, including routing inputs from wildlife agencies such as the FFWCC and the U.S. Fish and Wildlife Service (USFWS). Clearing of additional natural habitats and potential wetland impacts will be minimized.

77. During the regional screening route selection process the known locations of bald eagle nests were identified and mapped. Members of the public pointed out at the open houses that there existed a previously unreported bald eagle nest in the area north of Jess Baldwin Road. This was subsequently

verified and identified as a correct location of an eagle nest that had been previously unknown to the FFWCC and USFWS. When the nest was identified and located, the corridor was expanded up to 5,100 feet in this area to give TECO maximum flexibility in avoiding potential impacts to the nest as well as to existing homes in the area. TECO has begun a long-term monitoring program for this particular nest and this will be continued until such time as the applicant and the agencies deem it sufficient. The program is designed to monitor the activity of the eagles in the area with respect to successful breeding, successful rearing of the young, and the habitat usage and flight patterns from that nest. This information will be utilized in the selection of the ultimate ROW in this area to avoid any impacts to the nesting area.

78. The USFWS and FFWCC establish buffers for limiting activity in proximity to an eagle's nest. The buffers are either 330 feet or 660 feet in diameter, depending on the level of construction activity that is to be carried out. In cases in which a more minimal level of construction is to be performed, a 660-foot buffer must be maintained if there is not visual buffer between the nest and the construction activity. A 330-foot buffer must be maintained at all times. If a visual buffer can be maintained in the area of this eagle's nest, the buffer size could be reduced below 660 feet, providing additional

flexibility for the location of the ROW. This determination will be made by the USFWS and FFWCC.

79. Construction of the line within the proposed corridor will not cause a significant adverse impact to the current condition and relative value of functions of the vegetative communities within the corridor. Much of the length of the corridor allows placement of the transmission line within or adjacent to existing linear features to take advantage of previous disturbances to vegetation. TECO will also minimize impacts to forested wetland vegetation through the use of restrictive clearing practices during both construction and maintenance. In the forested wetland portions of the ROW, trees and shrubs that have an expected mature height greater than fourteen feet and "danger trees," which are trees that could fall into the conductors and cause an outage, will be removed. Other vegetation will generally not be disturbed. In these areas, vegetation will be removed by hand, usually with chain saws or with low-ground-pressure equipment to reduce soil compaction and damage to ground cover. The removal of vegetation in forested wetlands will not significantly affect the vegetative root mat or soil surface conditions. The non-forested wetlands should not require any clearing.

80. There will be some filling in wetlands associated with the placement of pole pads and access roads. However, TECO will

minimize these impacts through a careful alignment of the ROW and the varying of span distances between poles. TECO will also install an appropriate number and size of culverts to properly maintain existing wetland hydroperiods along areas of fill in wetlands. Also, any unavoidable wetland impacts associated with the project will be mitigated in accordance with the Conditions of Certification.

81. TECO has utilized information from the Hillsborough and Polk County Comprehensive Plans and the Department of State, Division of Historical Resources (DHR), to identify potential archeological and historical resources within the proposed corridor. A number of locations were identified as a result of the information and the Conditions of Certification require that a survey be performed when the actual ROW is located. If any artifacts are found the information will be submitted to the DHR for analysis and decisions will be made as to how to proceed. The proposed corridor contains the least potential impacts to known sites and the corridor allows ample opportunity for siting the ROW to avoid potential historic and archeological sites.

82. In addition to comments from the public described in Finding of Fact 74, a number of members of the public expressed concern over the environmental impacts from the construction and maintenance of the transmission line. Some of those expressing concerns have residences or property in the area of the expanded

corridor surrounding the eagle's nest. Although some of these individuals are within the corridor, it is not clear at this point that they will be near or adjacent to the ROW which is ultimately selected. The ROW is proposed to be within the expanded corridor in this area. The eagle's nest presents a constraint with a 330 or 660-foot buffer. Evaluations will be performed considering impacts to the community and homes, impacts to the environment, and costs. If the buffer is reduced to 330 feet this will assist in the routing of the ROW. As detailed above, TECO engaged in extensive public outreach, made efforts to avoid populated areas with the corridor location, and the Conditions of Certification require extensive measures to eliminate or minimize the potential impacts on wildlife and habitat. TECO will minimize any necessary cutting of trees in areas that do not already have an established ROW. The area of clearing will be limited to from 25 to 100 feet in width.

83. The Project will comply with all applicable state, regional, and local nonprocedural regulations, including the wetland regulatory standards applicable to such projects.

d. Balance of Need versus Impacts

84. The Project effects a reasonable balance between the need for a transmission line as a means for providing abundant low cost energy and the impact upon the public and the environment resulting from the location of the transmission line

corridor and the construction and maintenance of the transmission line.

V. Conditions of Certification

85. The design, construction, and operation of the line in the proposed corridor will comply with the Conditions of Certification set forth in Department Exhibit 4.

86. The Conditions of Certification establish a post-certification review process through which the final ROW, access road, and structure locations will be reviewed by agencies with regulatory authority over the project for the purpose of monitoring for compliance with the Conditions of Certification.

87. While the proposed corridor has few homes in close proximity to it and very limited wetland crossings, TECO has agreed to conditions of certification that further minimize land use and environmental impacts. For example, TECO has agreed that to the extent practicable it will locate its ROW to avoid the taking of homes, to collocate the ROW within or adjacent to existing ROWs, and to vary the length of the span between poles as appropriate to eliminate or reduce wetland impacts.

CONCLUSIONS OF LAW

88. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 403.527(1), Fla. Stat.

89. This certification proceeding was held pursuant to the Transmission Line Siting Act, Sections 403.52 through 403.5365, Florida Statutes, and Florida Administrative Code Rule Chapter 62-17, Part II. The intent of this certification process is:

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

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

90. All parties identified in Finding of Fact No. 1 have standing in this proceeding.

91. TECO has the burden of proving that, under the criteria of Section 403.529(4)(a)-(e), Florida Statutes, the proposed corridor for the Willow Oak-Wheeler-Davis transmission line should be certified as proposed based upon a preponderance of the evidence presented at the certification hearing. See, e.g., Fla. Dept. of Transp. v. J.W.C Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

92. The evidence in the record of this proceeding demonstrates compliance with the procedural requirements of the TLSA, including the notice requirements for the certification and public hearings. It is noted that TECO voluntarily engaged in an extensive public outreach program that included additional newspaper notices and extensive mailings.

93. In deciding whether TECO's Application should be approved, approved with conditions, or denied, the Siting Board must determine whether, and the extent to which, the location of the corridor and the construction and maintenance of the transmission line in the corridor will:

- (a) Ensure electric power system reliability and integrity;
- (b) Meet the electrical energy needs of the state in an orderly and timely fashion;
- (c) Comply with nonprocedural requirements of agencies;
- (d) Be consistent with applicable local government comprehensive plans; and

(e) Effect a reasonable balance between the need for the transmission line as a means of providing abundant low-cost electrical energy and the impact upon the public and the environment resulting from the location of the transmission line corridor and the maintenance of the transmission lines.

§ 403.529(4), Fla. Stat.

94. Compliance with Section 403.529(4)(a), Florida Statutes. The PSC determined the need for a new 230 kV transmission line between the planned Willow Oak and Wheeler substations with an intermediate connection to the existing Wheeler substation in Order No. PSC-07-0522-FOF-EI issued on June 21, 2007. Among other things, the PSC found that the existing 230 kV transmission network will not have sufficient capability to provide reliable service to the existing and proposed substations by the year 2012. The PSC also found that some of the projected load to be served by the proposed distribution substations will be located further east and north of the existing 230 kV transmission network. It further found that the proposed transmission line is needed by March 2012 to (a) provide additional transmission reinforcement to the existing 230 kV transmission network north of State Road 60, west of Willow Oak substation and to the east of the existing River substation in a reliable manner consistent with other applicable standards; (b) serve the increasing load and customer base in the projected service area; and (c) provide for another

electrical feed via a separate ROW path, thereby reducing the impact of the loss of the existing transmission facilities on a common ROW. The PSC's determination of need for the project is binding on all parties to the certification proceeding. See § 403.537(1)(d), Fla. Stat. Based upon the PSC Order determining need, a prima facie showing that the proposed transmission line would enhance electric system reliability, integrity, and restoration of service has been made. Finally, the PSC found that the corridor meets the criteria of Section 403.529(4)(a), Florida Statutes.

95. Compliance with Section 403.529(4)(b), Florida Statutes. The PSC acknowledged in its Order Determining Need for the proposed line that TECO demonstrated the need for the line by March 2012. Evidence regarding the design of the transmission line, the construction phases for the transmission line, including the projected 12 to 18-month construction schedule, and the proposed location of the line, demonstrates that the Project will meet the electrical needs of the State in an orderly and timely fashion within the timeframes established by the PSC.

96. Compliance with Section 403.529(4)(c), Florida Statutes. The evidence supports a conclusion that the location of the transmission line in the proposed corridor and the construction and maintenance of that line in conformance with

the recommended Conditions of Certification contained in Department Exhibit 4 will comply with the non-procedural requirements of all agencies.

97. Compliance with Section 403.529(4)(d), Florida Statutes. The evidence supports a conclusion that there are no inconsistencies between the proposed transmission line and the comprehensive plans adopted by local governments whose jurisdictions are crossed by the proposed line.

98. Compliance with Section 403.529(4)(e), Florida Statutes. The location of the proposed corridor and the construction, operation, and maintenance of the transmission line in that corridor provide a reasonable balance between the need for the transmission line and the impact of the transmission line upon the public and the environment. The impact upon the public and the environment will be minimized by the collocation with existing linear facilities where feasible, the practices that TECO will utilize concerning clearing activities and construction and operation activities to minimize unnecessary clearing, the avoidance of wetland areas where feasible, the avoidance of taking homes where feasible, and compliance with the extensive Conditions of Certification that have been imposed by the Department and other agencies. Measures have been and will be taken to minimize the impact to the previously undocumented bald eagle's nest and a buffer of at

least 330 feet will be established in accordance with applicable guidelines to protect the nest. The corridor has been widened in appropriate locations to provide TECO with flexibility in locating the ROW, and the Conditions of Certification have requirements to which TECO has agreed concerning the establishment of the ROW and impacts to the environment and residents. The electric and magnetic field levels expected from the transmission line have been shown to be significantly below the maximum limits in effect in Florida and a small fraction of the lowest levels that have ever been even proposed based upon potential effects to human health. The evidence does not demonstrate that the location of the ROW in reasonable proximity to Intervenor's residence will increase the potential exposure to electric and magnetic fields of the residents beyond that which is already occurring as a result of everyday living. Research has not demonstrated that levels in the range expected from the Project produce any adverse health effects. The overall impacts of the Project have been shown to be minimal, particularly when balanced with the significant electrical energy requirements that will be satisfied by construction and operation of the transmission line within the proposed corridor.

99. While the concerns of Intervenor and the members of the public who offered comments on the proposal are genuine and well-intended, they do not constitute a basis under the TLSA or

applicable Department rules for modifying, or providing further conditions to, the corridor, or denying the Application.³

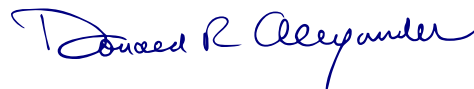
100. Based upon a preponderance of the evidence presented at the certification hearing, TECO has met its burden of proving that the transmission line and related facilities should be certified as proposed, subject to the Conditions of Certification included in Department Exhibit 4.

RECOMMENDATION

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

RECOMMENDED that the Siting Board enter a Final Order approving Tampa Electric Company's Willow Oak-Wheeler-Davis 230 kV Transmission Line Application for Certification subject to the Conditions of Certification set forth in Department Exhibit 4.

DONE AND ENTERED this 13th day of May, 2008, in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of May, 2008.

ENDNOTES

1/ All subsequent references are to the 2007 version of the Florida Statutes.

2/ The estimated capital cost of the transmission line is \$72.2 million, excluding right-of-way costs. See TECO Exhibit 1, Appendix A.

3/ For obvious reasons, it can be said with almost certainty that no owner, tenant, or lessee desires to have a transmission line, with large concrete poles, related equipment, and wires, placed near or adjacent to his or her property.

COPIES FURNISHED:

Lea Crandall, Agency Clerk
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

Gregory M. Munson, General Counsel
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

Lawrence N. Curtin, Esquire
Holland & Knight LLP
Post Office Box 810
Tallahassee, Florida 32302-0810

Toni L. Sturtevant, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

Kelly A. Martinson, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Marva M. Taylor, Esquire
Assistant County Attorney
601 East Kennedy Boulevard
County Center, 27th Floor
Tampa, Florida 33602-4156

Michael E. Duclos, Esquire
Assistant County Attorney
Post Office Box 9005
Bartow, Florida 33831-9005

Martha A. Moore, Esquire
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604-6899

Susan Watson
3624 Windchime Lane
Dover, Florida 33527-4930

Seauching Yu, Esquire
Department of Transportation
605 Suwannee Street
Mail Station 58
Tallahassee, Florida 32399-0458

James V. Antista, General Counsel
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

Manny L. Pumariega, Executive Director
Tampa Bay Regional Planning Council
4000 Gateway Centre Boulevard, Suite 100
Pinellas Park, Florida 33782-6138

Patricia M. Steed, Executive Director
Central Florida Regional
Planning Council
555 East Church Street
Bartow, Florida 33830-3931

Samantha M. Cibula, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Shaw P. Stiller, General Counsel
Department of Community Affairs
2470 Centerview Drive
Tallahassee, Florida 32399-2100

NOTICE OF RIGHT TO FILE EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.