

**STATE OF FLORIDA
SITING BOARD**

**IN RE: TAMPA ELECTRIC COMPANY,)
POLK POWER STATION, POLK 2-5)
COMBINED CYCLE CONVERSION)
PROJECT,)
PPSA NO. 92-32-A3)**

**OGC CASE NO. 12-1566
DOAH CASE NO. 12-3369EPP**

FINAL ORDER APPROVING CERTIFICATION

An Administrative Law Judge (“ALJ”) with the Division of Administrative Hearings (“DOAH”) submitted a Recommended Order On Certification (“RO”) on August 23, 2013, in this certification proceeding. The RO indicates that copies were served upon counsel for Tampa Electric Company (“TEC”), counsel for the Department of Environmental Protection (“DEP” or “Department”), and counsel for Hillsborough County. The RO also shows that copies were served to counsel for other designated state, regional and local agencies. A copy of the RO is attached hereto as Exhibit A. On September 9, 2013, TEC and the Department filed a Joint Exception to the RO. This matter is now before the Governor and Cabinet, sitting as the Siting Board, for final action under the Florida Electrical Power Plant Siting Act (“PPSA”), Sections 403.501 *et seq.*, Florida Statutes.

BACKGROUND

In this proceeding, TEC seeks certification of the Polk 2-5 Combined Cycle Conversion Project (“Project”), to be located within the existing boundaries of the previously certified Polk Power Station. The Polk Power Station is located in southwest Polk County, 17 miles south of the City of Lakeland and 28 miles southeast of the City of Tampa. The Polk Power Station has five electric generating units and associated

facilities. Polk Units 2 through 5 are simple cycle combustion turbine generators fueled primarily with natural gas. The Project involves converting the four existing simple cycle combustion turbine generator units to combined cycle operation. The Project would be a four-on-one combined cycle unit consisting of the four existing combustion turbine generators, each combined with a new heat recovery steam generator, and a new steam turbine generator. The Project would increase ultimate site capacity for the Polk Power Station from the previously approved 1150 megawatts to 1420 megawatts.

TEC requests that the boundaries of the Polk Power Station site be reduced from 4,348 acres to 2,837 acres to reflect that the original certification required a donation of 1,511 acres to the Board of Trustees of the Internal Improvement Trust Fund as a wildlife management area and recreation area. The donation was completed in 2012.

The Project includes two new transmission line corridors. The proposed “Polk-Pebbledale Corridor” would be a 5.5-mile, single-circuit 230 kV transmission line from the Polk Power Station north to the Pebbledale substation in Polk County. The proposed “Polk-Fishhawk Corridor” would be a single-circuit 230 kV transmission line running west from the Polk Power Station to the Mines substation near the intersection of State Road 674 and County Road 39 in Hillsborough County; from there, north and then west again to connect to a new Aspen switching station to be located near the intersection of County Road 672 and Balm-Boyette Road; and from the Aspen station, two separate 230kV transmission lines would run northeast to the existing Fishhawk substation near the intersection of Fishhawk Boulevard and Boyette Road; a total length of 27 miles. TEC exercised its option under Section 403.5064(1)(b), Florida Statutes, to

allow parties to file alternate transmission line corridors. No alternate corridors were filed or reviewed in this proceeding.

TEC sought and obtained on January 8, 2013, from the Public Service Commission (“PSC”) a final order determining the need for the Project. The PSC determined that the most cost effective and reliable alternative to meet future power needs is the construction of the Project at the Polk Power Station. Among other findings, the PSC determined that the Project would improve fuel diversity and supply reliability, incorporate renewable energy and conservation factors, and is needed to maintain electric system reliability and integrity.

DOAH PROCEEDINGS

The DOAH proceeding was conducted under the PPSA to consider TEC’s application for certification of the Project. On October 4, 2012, TEC filed the site certification application (“Application”) with DEP. DEP transmitted the file to DOAH, on October 11, 2012, and by Notice of Hearing dated October 23, 2012, the ALJ scheduled the certification hearing for June 24-28, 2013. On December 17, 2012, DEP issued its determination that the Application was complete.

The various reviewing agencies submitted reports that recommended approval and certification of the Project. Some of the agencies also proposed conditions of certification. (RO ¶¶ 89-91). No agency opposed certification of the Project. (RO ¶ 94). On May 21, 2013, DEP issued its final Project Analysis Report (“PAR”), which incorporated the comments of the reviewing agencies. (RO ¶ 93). DEP recommended certification of the project, subject to a set of Conditions of Certification (“COCs”). See Department Exhibit 8; RO ¶ 95.

Hillsborough County, the Florida Fish and Wildlife Conservation Commission (“FWC”), and the Southwest Florida Water Management District (“SWFWMD”) each filed notices of intent to be parties. Of these agencies, only Hillsborough County appeared at the certification hearing. Hillsborough County also requested that a public hearing be held within its boundaries so that members of the public who were not parties to the certification hearing would have an opportunity to provide testimony regarding the proposed transmission line corridors. The request was granted and the public hearing was held on June 25, 2013. Public testimony was received and Public Testimony Composite Exhibit 1 was received into the record.

All notices required by law were timely published in accordance with Section 403.5115, Florida Statutes. The certification hearing was held on June 26, 2013. At the conclusion of the hearing, the parties were allowed to file proposed recommended orders (“PROs”). The Transcript of the final hearing was filed with the DOAH on July 12, 2013. The ALJ subsequently issued the RO on August 23, 2013.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Siting Board enter a Final Order: (a) approving TEC’s Application to construct, operate, and maintain the Project, including its associated transmission lines, subject to the Conditions of Certification set forth in Department Exhibit 8; (b) approving the increase in ultimate site capacity from the previously approved 1150 megawatts to 1420 megawatts; and (c) modifying the Polk Power Station site boundaries from 4,348 acres to 2, 837 acres, as depicted in TEC Exhibit 5. (RO at page 32).

The ALJ found that the parties stipulated that “there are no disputed issues of fact,” (RO ¶ 1), and “there are no disputed issues of law.” (RO ¶ 106). The ALJ concluded that the evidence presented in this proceeding demonstrated that the Project favorably satisfied all of the factors in Section 403.509(3), Florida Statutes, that the Siting Board must consider in determining whether to certify the Project. (RO ¶¶ 98-105, 110).

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).

JOINT EXCEPTION

TEC and DEP take exception to lines 3 and 6 of paragraph 36 of the RO, where the ALJ found that the “Polk-Pebbledale Corridor” and “Polk-Fishhawk Corridor” are “250 kV” transmission lines. TEC and DEP state that the ALJ’s reference appears to be a typographical error because the competent substantial record evidence shows that the Polk-Pebbledale and Polk-Fishhawk Corridors are each 230 kilovolt transmission lines. (Lukcic, Tr. p. 24, lines 22-25; p. 25, lines 1-17; TEC Exhibit 4).

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, “unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence.” § 120.57(1)(l), Fla. Stat. (2010); *Charlotte County v. IMC Phosphates Co.*, 18 So.3d

1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So.2d 61 (Fla. 1st DCA 2007). The ALJ's findings that the "Polk-Pebbledale Corridor" and "Polk-Fishhawk Corridor" are each "250 kV" transmission lines, are not supported by competent substantial evidence.

Therefore, based on the foregoing reasons, TEC and DEP's Joint Exception is granted.

CONCLUSION

The ALJ concluded that the evidence demonstrated that the Project satisfied all of the factors in Section 403.509(3), Florida Statutes; and recommended that the Siting Board enter a Final Order approving the Project subject to the Conditions of Certification. (RO ¶ 110; page 32).

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

It is therefore ORDERED that:

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

B. TEC's Application for Certification to construct, operate, and maintain the Polk 2-5 Combined Cycle Conversion Project, including its associated transmission lines, is APPROVED, subject to the Conditions of Certification set forth in Department Exhibit 8, attached hereto as Exhibit B;

C. TEC's request to increase the ultimate site capacity for the Polk Power Station site from the previously approved 1150 megawatts to 1420 megawatts, is APPROVED; and

D. TEC's request to modify the Polk Power Station site boundaries from 4,348 acres to 2,837 acres, as depicted in TEC Exhibit 5, is APPROVED;

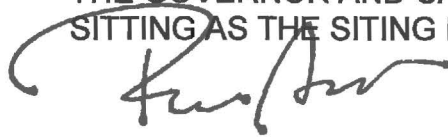
E. Authority to assure and enforce compliance by TEC and their agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP.

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.

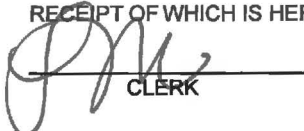
DONE AND ORDERED this 11th day of December, 2013, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on November 19, 2013.

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

12.11.13
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order was provided

by U.S. Mail to:

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and by electronic filing to:

Division of Administrative Hearings
Tallahassee, FL 32399

this 11 day of December, 2013.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

A handwritten signature in cursive script, appearing to read "Francine M. Ffolkes", is written over a horizontal line.

FRANCINE M. FFOLKES
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