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The 2010 Florida Statutes(including Special Session A)

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PUBLIC HEALTH

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ENVIRONMENTAL CONTROL

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United States Nuclear Regulatory Commission Official Hearing Exhibit	Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2)
ASLBP #: 09-879-04-COL-BD01 Docket #: 05200029 05200030 Exhibit #: PEF-303-00-BD01 Admitted: 10/31/2012 Rejected: Other:	Identified: 10/31/2012 Withdrawn: Stricken:
	
In the Matter of:	

CHAPTER 403
ENVIRONMENTAL CONTROL

PART I
POLLUTION CONTROL
(ss. 403.011-403.44)

PART II
ELECTRICAL POWER PLANT AND TRANSMISSION LINE SITING
(ss. 403.501-403.539)

PART III
INTERSTATE ENVIRONMENTAL CONTROL COMPACT
(s. 403.60)

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PART IX
EXPEDITED PERMITTING
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PART I
POLLUTION CONTROL

that would need to be met to do so, and how the program would encourage these conditions to be met, including developing monitoring and measuring techniques for land use emissions and sinks, regulating sources upstream, and other considerations.

History.—s. 65, ch. 2008-227; s. 2, ch. 2010-143.

PART II
ELECTRICAL POWER PLANT AND
TRANSMISSION LINE SITING

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- 403.539 Certification admissible in eminent domain proceedings; attorney's fees and costs.

403.501 Short title.—Sections 403.501-403.518 shall be known and may be cited as the “Florida Electrical Power Plant Siting Act.”

History.—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 90-331.

403.502 Legislative intent.—The Legislature finds that the present and predicted growth in electric power demands in this state requires the development of a procedure for the selection and utilization of sites for electrical generating facilities and the identification of a state position with respect to each proposed site and its associated facilities. The Legislature recognizes that the selection of sites and the routing of associated facilities, including transmission lines, will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The Legislature finds that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life and will not unduly conflict with the goals established by the applicable local comprehensive plans. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

- (1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To meet the need for electrical energy as established pursuant to s. 403.519.

(4) To assure the citizens of Florida that renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

History.—s. 1, ch. 73-33; s. 2, ch. 90-331; s. 2, ch. 2007-117; s. 66, ch. 2008-227.

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.—As used in this act:

(1) “Act” means the Florida Electrical Power Plant Siting Act.

(2) “Agency,” as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a regional or local governmental entity.

(3) “Alternate corridor” means an area that is proposed by the applicant or a third party within which all or part of an associated electrical transmission line right-of-way is to be located and that is different from the preferred transmission line corridor proposed by the applicant. The width of the alternate corridor proposed for certification for an associated electrical transmission line may be the width of the proposed right-of-way or a wider boundary not to exceed a width of 1 mile. The area within the alternate corridor may be further restricted as a condition of certification. The alternate corridor may include alternate electrical substation sites if the applicant has proposed an electrical substation as part of the portion of the proposed electrical transmission line.

(4) “Amendment” means a material change in the information provided by the applicant to the application for certification made after the initial application filing.

(5) “Applicant” means any electric utility which applies for certification pursuant to the provisions of this act.

(6) “Application” means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information.

(7) “Associated facilities” means, for the purpose of certification, those onsite and offsite facilities which directly support the construction and operation of the electrical power plant such as electrical transmission lines, substations, and fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

(8) “Board” means the Governor and Cabinet sitting as the siting board.

(9) “Certification” means the written order of the board, or secretary when applicable, approving an application for the licensing of an electrical power plant, in whole or with such changes or conditions as the board may deem appropriate.

(10) “Completeness” means that the application has addressed all applicable sections of the prescribed application format, and that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(11) “Corridor” means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at

the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the licensee, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way. The corridors proper for certification shall be those addressed in the application, in amendments to the application filed under s. 403.5064, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.5271 as incorporated by reference in s. 403.5064(1)(b) for which the required information for the preparation of agency supplemental reports was filed.

(12) “Department” means the Department of Environmental Protection.

(13) “Designated administrative law judge” means the administrative law judge assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct the hearings required by this act.

(14) “Electrical power plant” means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act. This term also includes the site; all associated facilities that will be owned by the applicant that are physically connected to the site; all associated facilities that are indirectly connected to the site by other proposed associated facilities that will be owned by the applicant; and associated transmission lines that will be owned by the applicant which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect. At the applicant’s option, this term may include any offsite associated facilities that will not be owned by the applicant; offsite associated facilities that are owned by the applicant but that are not directly connected to the site; any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line; or new transmission lines, upgrades, or improvements of an existing transmission line on any portion of the applicant’s electrical transmission system necessary to support the generation injected into the system from the proposed electrical power plant.

(15) “Electric utility” means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(16) “Federally delegated or approved permit program” means any environmental regulatory program approved by an agency of the Federal Government so as to authorize the department to administer and issue licenses pursuant to federal law, including, but not limited to, new source review permits, operation permits for major sources of air pollution, and prevention of significant deterioration permits under the Clean Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and permits under the Resource Conservation and Recovery Act (42 U.S.C. ss. 6901 et seq.).

(17) “License” means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order or permit as defined in chapters 163 and 380, or similar form of authorization required by law, including permits issued under federally delegated or approved permit programs, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(18) “Licensee” means an applicant that has obtained a certification order for the subject project.

(19) “Local government” means a municipality or county in the jurisdiction of which the electrical power plant is proposed to be located.

(20) “Modification” means any change in the certification order after issuance, including a change in the conditions of certification.

(21) “Nonprocedural requirements of agencies” means any agency’s regulatory requirements established by statute, rule, ordinance, zoning ordinance, land development code, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(22) “Notice of intent” means that notice which is filed with the department on behalf of an applicant prior to submission of an application pursuant to this act and which notifies the department of an intent to file an application.

(23) “Person” means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(24) “Preliminary statement of issues” means a listing and explanation of those issues within the agency’s jurisdiction which are of major concern to the agency in relation to the proposed electrical power plant.

(25) “Public Service Commission” or “commission” means the agency created pursuant to chapter 350.

(26) “Regional planning council” means a regional planning council as defined in s. 186.503(4) in the jurisdiction of which the electrical power plant is proposed to be located.

(27) “Right-of-way” means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(28) “Site” means any proposed location within which will be located an electrical power plant’s generating facility and onsite support facilities, or an alteration or addition of electrical generating facilities and onsite support facilities resulting in an increase in generating capacity, including offshore sites within state jurisdiction.

(29) “State comprehensive plan” means that plan set forth in chapter 187.

(30) “Ultimate site capacity” means the maximum gross generating capacity for a site as certified by the board, unless otherwise specified as net generating capacity.

(31) “Water management district” means a water management district, created pursuant to chapter 373, in the jurisdiction of which the electrical power plant is proposed to be located.

History.—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 79-76; s. 3, ch. 81-131; s. 14, ch. 86-173; s. 22, ch. 86-186; s. 3, ch. 90-331; s. 6, ch. 93-94; s. 383, ch. 94-356; s. 134, ch. 96-410; s. 20, ch. 2006-230; s. 67, ch. 2008-227.

403.504 Department of Environmental Protection; powers and duties enumerated.—The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the

location, construction, and operation of electrical power plants.

(2) To prescribe the form and content of the public notices and the notice of intent and the form, content, and necessary supporting documentation and studies to be prepared by the applicant for electrical power plant certification applications.

(3) To receive applications for electrical power plant certifications and to determine the completeness and sufficiency thereof.

(4) To make, or contract for, studies of electrical power plant certification applications.

(5) To administer the processing of applications for electric power plant certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To require such fees as allowed by this act.

(7) To conduct studies and prepare a project analysis under s. 403.507.

(8) To prescribe the means for monitoring the effects arising from the construction and operation of electrical power plants to assure continued compliance with terms of the certification.

(9) To determine whether an alternate corridor proposed for consideration under s. 403.5064 (4) is acceptable.

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the electrical power plant.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

History.—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 77-174; s. 132, ch. 79-190; s. 4, ch. 81-131; s. 35, ch. 81-167; s. 35, ch. 83-55; s. 23, ch. 86-186; s. 4, ch. 90-331; s. 7, ch. 93-94; s. 384, ch. 94-356; s. 102, ch. 98-200; s. 21, ch. 2006-230; s. 68, ch. 2008-227.

403.5055 Application for permits pursuant to s. 403.0885.—In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

(2) If available at the time the department issues its project analysis pursuant to s. 403.507(5), the department shall include in its project analysis copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.

(3) The department shall not issue or deny the permit pursuant to s. 403.0885 in advance of the issuance of the electrical power plant certification under this part unless required to do so by the provisions of federal law. When possible, any hearing on a permit issued pursuant to s. 403.0885 shall be conducted in conjunction with the certification hearing held pursuant to this act. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing, if the hearing on the NPDES was conducted in conjunction with the certification hearing, and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions

taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program.

History.—s. 79, ch. 93-213; s. 22, ch. 2006-230.

403.506 Applicability, thresholds, and certification.—

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant of less than 75 megawatts in gross capacity, including its associated facilities, unless the applicant has elected to apply for certification of such electrical power plant under this act. The provisions of this act shall not apply to capacity expansions of 75 megawatts or less, in the aggregate, of an existing exothermic reaction cogeneration electrical generating facility that was exempt from this act when it was originally built; however, this exemption shall not apply if the unit uses oil or natural gas for purposes other than unit startup. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum electrical generator rating of any existing electrical power plant may be undertaken after October 1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum electrical generator rating of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

(3) An electric utility may obtain separate licenses, permits, and approvals for the construction of facilities necessary to construct an electrical power plant without first obtaining certification under this act if the utility intends to locate, license, and construct a proposed or expanded electrical power plant that uses nuclear materials as fuel. Such facilities may include, but are not limited to, access and onsite roads, rail lines, electrical transmission facilities to support construction, and facilities necessary for waterborne delivery of construction materials and project components. This exemption applies to such facilities regardless of whether the facilities are used for operation of the power plant. The applicant shall file with the department a statement that declares that the construction of such facilities is necessary for the timely construction of the proposed electrical power plant and identifies those facilities that the applicant intends to seek licenses for and construct prior to or separate from certification of the project. The facilities may be located within or off the site for the proposed electrical power plant. The filing of an application under this act shall not affect other applications for separate licenses which are pending at the time of filing the application. Furthermore, the filing of an application shall not prevent an electric utility from seeking separate licenses for facilities that are necessary to construct the electrical power plant. Licenses, permits, or approvals issued by any state, regional, or local agency for such facilities shall be incorporated by the department into a final certification upon completion of construction. Any facilities necessary for construction of the electrical power

plant shall become part of the certified electrical power plant upon completion of the electrical power plant's construction. The exemption in this subsection shall not require or authorize agency rulemaking, and any action taken under this subsection shall not be subject to the provisions of chapter 120. This subsection shall be given retroactive effect and shall apply to applications filed after May 1, 2008.

History.—s. 1, ch. 73-33; s. 3, ch. 76-76; s. 2, ch. 79-76; s. 5, ch. 81-131; s. 15, ch. 86-173; s. 24, ch. 86-186; s. 5, ch. 90-331; s. 80, ch. 93-213; s. 23, ch. 2006-230; s. 69, ch. 2008-227.

403.5063 Notice of intent to file application.—

(1) To expedite the processing of the application which may be filed subsequently, the applicant for a proposed power plant may file a notice of intent to file an application with the department.

(2) The department shall establish, by rule, a procedure by which an applicant, after public notice, may enter into binding written agreements with the department and other affected agencies as to the scope, quantity, and level of information to be provided in the application, as well as the methods to be used in providing such information and the nature of the supporting documents to be included in the application.

History.—s. 6, ch. 81-131.

403.5064 Application; schedules.—

(1) The formal date of filing of a certification application and commencement of the certification review process shall be when the applicant submits:

(a) Copies of the certification application in a quantity and format as prescribed by rule to the department and other agencies identified in s. 403.507(2)(a).

(b) A statement affirming that the applicant is opting to allow consideration of alternate corridors for an associated transmission line corridor. If alternate corridors are allowed, at the applicant's option, the portion of the application addressing associated transmission line corridors shall be processed under the schedule set forth in ss. 403.521-403.526, 403.527(4), and 403.5271, including the opportunity for the filing of alternate corridors by third parties; however, if such alternate corridors are filed, the certification hearing shall not be rescheduled as allowed by s. 403.5271(1)(b).

(c) The application fee specified under s. 403.518 to the department.

(2) Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional agencies or persons entitled to notice and copies of the application and any amendments. Copies of the application shall be distributed within 5 days by the applicant to these additional agencies. This distribution shall not be a basis for altering the schedule of dates for the certification process.

(3) Any amendment to the application made prior to certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered good cause for alteration of time limits pursuant to s. 403.5095.

(4) Within 7 days after the filing of an application, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, submittal of final reports, and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(3). If the application includes one or more associated transmission line corridors, at the request of the applicant filed concurrently with the application, the department shall use the application

processing schedule set forth in ss. 403.521-403.526, 403.527(4), and 403.5271 for the associated transmission line corridors, including the opportunity for the filing and review of alternate corridors, if a party proposes alternate transmission line corridor routes for consideration no later than 165 days before the scheduled certification hearing. Notwithstanding an applicant's option for the transmission line corridor portion of its application to be processed under the proposed schedule, only one certification hearing shall be held for the entire plant in accordance with s. 403.508(2). The proposed schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection (2), and all parties. Within 7 days after the filing of the proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(5) Copies of changes and amendments to the application shall be timely distributed by the applicant to all agencies and parties who have received a copy of the application.

(6) Notice of the filing of the application shall be published in accordance with the requirements of s. 403.5115.

History.—s. 6, ch. 90-331; s. 135, ch. 96-410; s. 24, ch. 2006-230; s. 70, ch. 2008-227.

403.5065 Appointment of administrative law judge; powers and duties.—

(1) Within 7 days after receipt of an application, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department. In designating an administrative law judge for this purpose, the division director shall, whenever practicable, assign an administrative law judge who has had prior experience or training in electrical power plant certification proceedings. Upon being advised that an administrative law judge has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge, who shall docket the application.

(2) 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.

History.—s. 4, ch. 76-76; s. 1, ch. 77-174; s. 7, ch. 81-131; s. 7, ch. 90-331; s. 136, ch. 96-410; s. 25, ch. 2006-230; s. 71, ch. 2008-227.

403.5066 Determination of completeness.—

(1)(a) Within 30 days after the filing of an application, affected agencies shall file a statement with the department containing each agency's recommendations on the completeness of the application.

(b) Within 40 days after the filing of an application, the department shall file a statement with the Division of Administrative Hearings, with the applicant, and with all parties declaring its position with regard to the completeness of the application. The department's statement shall be based upon consultation with the affected agencies.

(2) If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, with the department, and all parties:

(a) A withdrawal of the application;

(b) A statement agreeing to supply the additional information necessary to make the application complete. Such additional information shall be provided within 30 days after the

issuance of the department's statement on completeness of the application. The time schedules under this act shall not be tolled if the applicant makes the application complete within 30 days after the issuance of the department's statement on completeness of the application. A subsequent finding by the department that the application remains incomplete, based upon the additional information submitted by the applicant or upon the failure of the applicant to timely submit the additional information, tolls the time schedules under this act until the application is determined complete;

(c) A statement contesting the department's determination of incompleteness; or

(d) A statement agreeing with the department and requesting additional time beyond 30 days to provide the information necessary to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute.

(c) If the administrative law judge determines that the application was not complete, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(d) If the administrative law judge determines that the application was complete at the time it was declared incomplete, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 22 days after receipt of the additional information from the applicant submitted under paragraph (2)(b), paragraph (2)(d), or paragraph (3)(c), the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

History.—s. 8, ch. 90-331; s. 137, ch. 96-410; s. 26, ch. 2006-230.

403.50663 Informational public meetings.—

(1) A local government within whose jurisdiction the power plant is proposed to be sited may hold one informational public meeting in addition to the hearings specifically authorized by this act on any matter associated with the electrical power plant proceeding. Such informational public meetings shall be held by the local government or by the regional planning council if the local government does not hold such meeting within 70 days after the filing of the application. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electrical power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed

electrical power plant.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council if a public meeting is not held by the local government. It is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting and to the general public in accordance with s. 403.5115(5). The expense for such notice is eligible for reimbursement under s. 403.518(2)(c)1.

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting is not grounds for the alteration of any time limitation in this act under s. 403.5095 or grounds to deny or condition certification.

History.—s. 27, ch. 2006-230; s. 72, ch. 2008-227.

403.50665 Land use consistency.—

(1) 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 that were in effect on the date the application was filed and a full description of such consistency. This information shall include an identification of those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act provisions of chapter 163 and s. 380.04(3).

(2)(a) Within 45 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties 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), with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. However, this requirement does not apply to any new electrical generation unit proposed to be constructed and operated on the site of a previously certified electrical power plant or on the site of a power plant that was not previously certified that will be wholly contained within the boundaries of the existing site.

(b) The local government may issue its determination up to 55 days later if the application has been determined incomplete based in whole or in part upon a local government request for additional information on land use and zoning consistency as part of the local government’s statement on completeness of the application submitted pursuant to s. 403.5066(1)(a). Incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances.

(c) Notice of the consistency determination shall be published in accordance with the requirements of s. 403.5115.

(3)(a) If the local government issues a determination that the proposed site and any nonexempt associated facilities are not consistent or in compliance with local land use plans and zoning ordinances, the applicant may apply to the local government for the necessary local approval to address the inconsistencies identified in the local government’s determination.

(b) If the applicant makes such an application to the local government, the time schedules under this act shall be tolled until the local government issues its revised determination on land use and zoning or the applicant otherwise withdraws its application to the local government.

(c) If the applicant applies to the local government for necessary local land use or zoning approval, the local government shall commence a proceeding to consider the application for land use or zoning approval within 45 days after receipt of the complete request and shall issue a revised determination within 30 days following the conclusion of that local proceeding. The time schedules and notice requirements under this act shall apply to such revised determination.

(4) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the designated administrative law judge within 21 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

(5) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(6) If it is determined by the local government that the proposed site or nonexempt associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

(7) The issue of land use and zoning consistency for any proposed alternate intermediate electrical substation which is proposed as part of an alternate electrical transmission line corridor which is accepted by the applicant and the department under s. 403.5271(1)(b) shall be addressed in the supplementary report prepared by the local government on the proposed alternate corridor and shall be considered as an issue at any final certification hearing. If such a proposed alternate intermediate electrical substation is determined not to be consistent with local land use plans and zoning ordinances, then that alternate intermediate electrical substation shall not be certified.

History.—s. 28, ch. 2006-230; s. 73, ch. 2008-227.

403.507 Preliminary statements of issues, reports, project analyses, and studies.—

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, the applicant, and all parties no later than 40 days after the certification application has been determined complete. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to the department and the applicant, unless a final order denying the determination of need has been issued under s. 403.519:

1. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

2. The water management district shall prepare a report as to matters within its jurisdiction,

including but not limited to, the impact of the proposed electrical power plant on water resources, regional water supply planning, and district-owned lands and works.

3. Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed electrical power plant, including any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

4. The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

5. Each regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction.

6. The Department of Transportation shall address the impact of the proposed electrical power plant on matters within its jurisdiction.

(b) Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

(3) Each report described in subsection (2) shall contain:

(a) A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the proposed electrical power plant to be certified. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of that agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

(b) A recommendation for approval or denial of the application.

(c) Any proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition.

(d) The agencies shall initiate the activities required by this section no later than 15 days after the application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

(4)(a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

(5) The department shall prepare a project analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 days after the application is determined complete, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance and consistent with matters within the department's standard

jurisdiction, including the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the nonprocedural requirements of the affected agencies.

(b) Copies of the studies and reports required by this section.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) If available, the recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

(6) Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report are grounds to deny or condition certification.

History.—s. 1, ch. 73-33; s. 5, ch. 76-76; s. 133, ch. 79-190; s. 8, ch. 81-131; s. 33, ch. 81-169; s. 36, ch. 83-55; s. 25, ch. 86-186; s. 10, ch. 90-331; s. 7, ch. 92-132; s. 8, ch. 93-94; s. 385, ch. 94-356; s. 14, ch. 95-149; s. 139, ch. 96-410; s. 206, ch. 99-245; s. 30, ch. 2006-230; s. 74, ch. 2008-227.

403.508 Land use and certification hearings, parties, participants.—

(1)(a) Within 5 days after the filing of a petition for a hearing on land use pursuant to s. 403.50665, the designated administrative law judge shall schedule a land use hearing to be conducted in the county of the proposed site or associated facility that is not exempt from the requirements of land use plans and zoning ordinances under chapter 163 and s. 380.04(3), as applicable, as expeditiously as possible but not later than 30 days after the designated administrative law judge's receipt of the petition. The place of such hearing shall be as close as possible to the proposed site or associated facility. If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application.

(b) Notice of the land use hearing shall be published in accordance with the requirements of s. 403.5115.

(c) The 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. If the administrative law judge concludes that the proposed site or nonexempt associated facility is not consistent or in compliance with existing land use plans and zoning ordinances, the administrative law judge shall receive at the hearing evidence on, and address in the recommended order any changes to or approvals or variances under, the applicable land use plans or zoning ordinances which will render the proposed site or nonexempt associated facility consistent and in compliance with the local land use plans and zoning ordinances.

(d) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 days after receipt of the recommended order by the board.

(e) If it is determined by the board that the proposed site or nonexempt associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application, or as otherwise provided by this act, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed electrical power plant on the proposed site or associated facilities unless

certification is subsequently denied or withdrawn.

(f) If it is determined by the board that the proposed site or nonexempt associated facility does not conform with existing land use plans and zoning ordinances, the board may, if it determines after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land for a site or associated facility, authorize a variance or other necessary approval to the adopted land use plan and zoning ordinances required to render the proposed site or associated facility consistent with local land use plans and zoning ordinances. The board's action shall not be controlled by any other procedural requirements of law. In the event a variance or other approval is denied by the board, it shall be the responsibility of the applicant to make the necessary application for any approvals determined by the board as required to make the proposed site or associated facility consistent and in compliance with local land use plans and zoning ordinances. No further action may be taken on the complete application until the proposed site or associated facility conforms to the adopted land use plan or zoning ordinances or the board grants relief as provided under this act.

(2)(a) A certification hearing shall be held by the designated administrative law judge no later than 265 days after the application is filed with the department. The certification hearing shall be held at a location in proximity to the proposed site.

(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3)(a) Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The Fish and Wildlife Conservation Commission.
5. The water management district.
6. The department.
7. The regional planning council.
8. The local government.
9. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120, upon the filing with the administrative law judge of a notice of intent to be a party no later than 75 days after the application is filed, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.
2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated administrative law judge and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(5), shall be made a party upon the request of the department or the applicant.

(4)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.
2. The department.
3. State agencies.
4. Regional agencies, including regional planning councils and water management districts.
5. Local governments.
6. Other parties.

(b) When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(5) At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

(6)(a) No earlier than 29 days prior to the conduct of the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of fact or law to be raised at the certification hearing, and if sufficient time remains for the applicant and the department to publish public notices of the cancellation of the hearing at least 3 days prior to the scheduled date of the hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days after receipt of the request.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing, in accordance with s. 403.5115.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.509(1)(a).

2. Parties may submit proposed recommended orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

(8) In issuing permits under the federally approved new source review or prevention of significant deterioration permit program, the department shall observe the procedures specified under the federally approved state implementation plan, including public notice, public comment, public hearing, and notice of applications and amendments to federal, state, and local agencies, to assure that all such permits issued in coordination with the certification of a power plant under this

act are federally enforceable and are issued after opportunity for informed public participation regarding the terms and conditions thereof. When possible, any hearing on a federally approved or delegated program permit such as new source review, prevention of significant deterioration permit, or NPDES permit shall be conducted in conjunction with the certification hearing held under this act. It is the intent of the Legislature that the review, processing, and issuance of such federally delegated or approved permits be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures, the applicable federal requirements shall control.

History.—s. 1, ch. 73-33; s. 6, ch. 76-76; s. 1, ch. 77-174; s. 134, ch. 79-190; s. 9, ch. 81-131; s. 36, ch. 81-167; s. 37, ch. 83-55; s. 26, ch. 86-186; s. 11, ch. 90-331; s. 9, ch. 93-94; s. 386, ch. 94-356; s. 140, ch. 96-410; s. 1008, ch. 97-103; s. 207, ch. 99-245; s. 31, ch. 2006-230; s. 75, ch. 2008-227.

403.509 Final disposition of application.—

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving or denying certification, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

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

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

(b) Comply with applicable nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and land development regulations.

(d) Meet the electrical energy needs of the state in an orderly, reliable, and timely fashion.

(e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519 and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

(f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

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

(4)(a) Any transmission line corridor certified by the board, or secretary if applicable, shall

meet the criteria of this section. When more than one transmission line corridor is proper for certification under s. 403.503(11) and meets the criteria of this section, the board, or secretary if applicable, shall certify the transmission line corridor that has the least adverse impact regarding the criteria in subsection (3), including costs.

(b) If the board, or secretary if applicable, finds that an alternate corridor rejected pursuant to s. 403.5271 as incorporated by reference in s. 403.5064(1)(b) meets the criteria of subsection (3) and has the least adverse impact regarding the criteria in subsection (3), the board, or secretary if applicable, shall deny certification or shall allow the applicant to submit an amended application to include the corridor.

(c) If the board, or secretary if applicable, 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 board, or secretary if applicable, shall certify the corridor preferred by the applicant if the corridor is one proper for certification under s. 403.503 (11).

(5) The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan.

(6) For certifications issued by the board in regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification. For certifications issued by the department in regard to the properties and works of any agency that is a party to the proceeding, any stipulation filed pursuant to s. 403.508(6)(a) must include a stipulation regarding any issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant. Any agency stipulating to the use of, connection to, or crossing of its property must agree to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

(7) The issuance or denial of the certification by the board or secretary of the department shall be the final administrative action required as to that application.

History.—s. 1, ch. 73-33; s. 7, ch. 76-76; s. 141, ch. 77-104; s. 27, ch. 86-186; s. 12, ch. 90-331; s. 8, ch. 92-132; s. 10, ch. 93-94; s. 4, ch. 94-321; s. 141, ch. 96-410; s. 32, ch. 2006-230; s. 76, ch. 2008-227.

403.5095 Alteration of time limits.—Any time limitation in this act may be altered by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party.

History.—s. 8, ch. 76-76; s. 13, ch. 90-331; s. 142, ch. 96-410.

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.

(3) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

History.—s. 1, ch. 73-33; s. 9, ch. 76-76; s. 14, ch. 90-331.

403.511 Effect of certification.—

(1) Subject to the conditions set forth therein, any certification shall constitute the sole license of the state and any agency as to the approval of the location of the site and any associated facility and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order that the public interests set forth in s. 403.509(3) in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

(3) 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, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 373, chapter 376, chapter 379, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to any federally delegated or approved permit program and except as provided in chapter 404 or the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This act shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) No term or condition of an electrical power plant certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to a facility certified under this part.

(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

History.—s. 1, ch. 73-33; s. 2, ch. 74-170; s. 10, ch. 76-76; s. 1, ch. 77-174; s. 83, ch. 79-65; s. 28, ch. 86-186; s. 15, ch. 90-331; s. 11, ch. 93-94; s. 81, ch. 93-213; s. 33, ch. 2006-230; s. 77, ch. 2008-227; s. 48, ch. 2009-21.

403.5112 Filing of notice of certified corridor route.—

(1) Within 60 days after certification of an associated linear facility pursuant to this act, the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

History.—s. 34, ch. 2006-230; s. 78, ch. 2008-227.

403.5113 Postcertification amendments and review.—

(1) POSTCERTIFICATION AMENDMENTS.—

(a) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

(b) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

(c) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed

change to the application requires a request for modification pursuant to s. 403.516.

(2) POSTCERTIFICATION REVIEW.—Postcertification submittals filed by the licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification and must be reviewed by the agencies on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. In no event shall a postcertification review be completed in more than 90 days after complete information is submitted to the reviewing agencies.

History.—s. 35, ch. 2006-230; s. 79, ch. 2008-227.

403.5115 Public notice.—

(1) The following notices are to be published by the applicant for all applications:

(a) Notice of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice of filing of the application, which shall include a description of the proceedings required by this act, within 21 days after the date of the application filing. Such notice shall give notice of the provisions of s. 403.511(1) and (2).

(c) If applicable, notice of the land use determination made pursuant to s. 403.50665(2) within 21 days after the deadline for the filing of the determination.

(d) If applicable, notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

(e) Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification hearing. If one or more alternate corridors have been accepted for consideration, the notice of the certification hearing shall include a map of all corridors proposed for certification.

(f) Notice of revised deadline for filing alternate corridors if the certification hearing is rescheduled to a date other than as published in the notice of filing of the application. This notice shall be published at least 185 days before the rescheduled certification hearing and as specified in subsection (2), except no map is required and the size of the notice shall be no smaller than 6 square inches.

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing. The newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(h) Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification. The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing.

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices, unless otherwise specified, shall be at least one-half page in size in a standard

size newspaper or a full page in a tabloid size newspaper. These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) Notice of the filing of the notice of intent within 15 days after receipt of the notice.

(b) Notice of the filing of the application, no later than 21 days after the application filing.

(c) Notice of the land use determination made pursuant to s. 403.50665(2) within 21 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.

(g) Notice of the revised deadline for filing alternate corridors if the certification hearing is rescheduled to a date other than as published in the notice of filing of the application. This notice shall be published at least 185 days before the rescheduled certification hearing.

(h) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(i) Notice of the hearing before the board, if applicable.

(j) Notice of stipulations, proposed agency action, or petitions for modification.

(5) A local government or regional planning council that proposes to conduct an informational public meeting pursuant to s. 403.50663 must publish notice of the meeting in a newspaper of general circulation within the county or counties in which the proposed electrical power plant will be located no later than 7 days prior to the meeting. A newspaper of general circulation shall be the newspaper that has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(6)(a) A good faith effort shall be made by the applicant to provide direct written notice of the filing of an application for certification by United States mail or hand delivery no later than 45 days after filing of the application to all local landowners whose property, as noted in the most recent local government tax records, and residences are located within the following distances of the proposed project:

1. Three miles of the proposed main site boundaries of the proposed electrical power plant.

2. One-quarter mile for a transmission line corridor that only includes a transmission line as defined by s. 403.522(22).

3. One-quarter mile for all other linear associated facilities extending away from the main site boundary except for a transmission line corridor that includes a transmission line that operates

below those defined by s. 403.522(22).

(b) No later than 60 days from the filing of an application for certification, the applicant shall file a list with the department's Siting Coordination Office of landowners and residences that were notified.

(7)(a) A good faith effort shall be made by the proponent of an alternate corridor that includes a transmission line, as defined by s. 403.522(22), to provide direct written notice of the filing of an alternate corridor for certification by United States mail or hand delivery of the filing no later than 30 days after filing of the alternate corridor to all local landowners whose property, as noted in the most recent local government tax records, and residences, are located within one-quarter mile of the proposed boundaries of a transmission line corridor that includes a transmission line as defined by s. 403.522(22).

(b) No later than 45 days from the filing of an alternate corridor for certification, the proponent of an alternate corridor shall file a list with the department's Siting Coordination Office of landowners and residences that were notified.

History.—s. 16, ch. 90-331; s. 12, ch. 93-94; s. 36, ch. 2006-230; s. 80, ch. 2008-227; s. 49, ch. 2009-21.

403.5116 County and municipal authority unaffected by ch. 75-22.—Except as provided in ss. 403.510 and 403.511, nothing in chapter 75-22, Laws of Florida, shall be construed to have altered the authority of county and municipal governments as provided by law.

History.—s. 22, ch. 75-22; s. 17, ch. 90-331.

Note.—Former s. 403.5111.

403.512 Revocation or suspension of certification.—Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this act or regulations or orders issued hereunder.

History.—s. 1, ch. 73-33; s. 11, ch. 76-76; s. 18, ch. 90-331.

403.513 Review.—Proceedings under this act shall be subject to judicial review as provided in chapter 120. When possible, separate appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

History.—s. 1, ch. 73-33; s. 12, ch. 76-76; s. 29, ch. 86-186; s. 19, ch. 90-331; s. 37, ch. 2006-230.

403.514 Enforcement of compliance.—Failure to obtain a certification, or to comply with the conditions thereof, or to comply with this act shall constitute a violation of chapter 403.

History.—s. 1, ch. 73-33; s. 12, ch. 76-76; s. 20, ch. 90-331.

403.515 Availability of information.—The department shall make available for public inspection and copying during regular office hours, at the expense of any person requesting copies, any information filed or submitted pursuant to this act.

History.—s. 1, ch. 73-33.

403.516 Modification of certification.—

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b)1. The department may modify specific conditions of a certification which are inconsistent with the terms of any federally delegated or approved permit for the certified electrical power plant.

2. Such modification may be made without further notice if the matter has been previously noticed under the requirements for any federally delegated or approved permit program.

(c) The licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

1. A petition for modification must set forth:

a. The proposed modification.

b. The factual reasons asserted for the modification.

c. The anticipated environmental effects of the proposed modification.

2. The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

3. If objections are raised or the department denies the request, the applicant or department may file a request for a hearing on the modification with the department. Such request shall be handled pursuant to chapter 120.

4. Requests referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(d) As required by s. 403.511(5).

(2) Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

History.—s. 13, ch. 76-76; s. 10, ch. 81-131; s. 30, ch. 86-186; s. 21, ch. 90-331; s. 9, ch. 92-132; s. 143, ch. 96-410; s. 38, ch. 2006-230; s. 81, ch. 2008-227.

403.517 Supplemental applications for sites certified for ultimate site capacity.—

(1)(a) Supplemental applications may be submitted for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. Such applications shall include all new associated facilities that support the construction and operation of the electrical power plant.

(b) The review shall use the same procedural steps and notices as for an initial application.

(c) The time limits for the processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(d) Any time limitation in this section or in rules adopted pursuant to this section may be

altered pursuant to s. 403.5095.

(2) The land use and zoning consistency determination of s. 403.50665 shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

History.—s. 14, ch. 76-76; s. 11, ch. 81-131; s. 34, ch. 81-169; s. 38, ch. 83-55; s. 22, ch. 90-331; s. 144, ch. 96-410; s. 39, ch. 2006-230; s. 82, ch. 2008-227.

403.5175 Existing electrical power plant site certification.—

(1) An electric utility that owns or operates an existing electrical power plant as defined in s. 403.503(14) may apply for certification of an existing power plant and its site in order to obtain all agency licenses necessary to ensure compliance with federal or state environmental laws and regulation using the centrally coordinated, one-stop licensing process established by this part. An application for certification under this section must be in the form prescribed by department rule. Applications must be reviewed and processed using the same procedural steps and notices as for an application for a new facility, except that a determination of need by the Public Service Commission is not required.

(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations and associated facilities;

(b) A description of all proposed changes or alterations to the site and all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and associated facilities, and the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination requirements of s. 403.50665 do not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site or to add additional offsite associated facilities that are not exempt from the provisions of s. 403.50665. If the applicant proposes to expand the boundaries of the existing site or to add additional offsite associated facilities that are not exempt from the provisions of s. 403.50665 to accommodate portions of the electrical generating facility or associated facilities, a land use and zoning determination shall be made as specified in s. 403.50665; provided, however, that the sole issue for determination is whether the proposed site expansion or additional nonexempt associated facilities are consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation

under certification will:

(a) Comply with the provisions of s. 403.509(3).

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken.

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

History.—s. 10, ch. 92-132; s. 40, ch. 2006-230; s. 82, ch. 2007-5; s. 83, ch. 2008-227.

403.518 Fees; disposition.—The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1) A fee for a notice of intent pursuant to s. 403.5063, in the amount of \$2,500, to be submitted to the department at the time of filing of a notice of intent. The notice-of-intent fee shall be used and disbursed in the same manner as the application fee.

(2) An application fee, which shall not exceed \$200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in electrical generating capacity proposed by the application.

(a) Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b) The following percentages shall be transferred to the Operating Trust Fund of the Division of Administrative Hearings of the Department of Management Services:

1. Five percent to compensate expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 5 percent if a land use hearing is held pursuant to s. 403.508.

3. An additional 10 percent if a certification hearing is held pursuant to s. 403.508.

(c)1. Upon written request with proper itemized accounting within 90 days after final agency action by the board or department or withdrawal of the application, the agencies that prepared reports pursuant to s. 403.507 or participated in a hearing pursuant to s. 403.508 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request shall contain an accounting of expenses incurred which may include time spent reviewing the application, preparation of any studies required of the agencies by this act, agency travel and per diem to attend any hearing held pursuant to this act, and for any local government's or regional planning council's provision of notice of public meetings required as a result of the application for certification. The department shall review the request and verify that the expenses are valid. Valid expenses shall be reimbursed; however, in the event the amount of funds available for reimbursement is insufficient to provide for full compensation to the agencies requesting reimbursement, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement. This time period shall be measured from the date the applicant has provided written notification to the department that it desires to have the application review process placed on hold. The fee disbursement shall be processed in accordance with subparagraph 1.

(d) If any sums are remaining, the department shall retain them for its use in the same manner

as is otherwise authorized by this act; provided, however, that if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after the submittal of the written notification of withdrawal.

(3)(a) A certification modification fee, which shall not exceed \$30,000. The department shall establish rules for determining such a fee based on the number of agencies involved in the review, equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated facility location.

(b) The fee shall be submitted to the department with a petition for modification pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2), except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only \$10,000 of the fee shall be transferred to the Operating Trust Fund of the Division of Administrative Hearings of the Department of Management Services.

(4) A supplemental application fee, not to exceed \$75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in subsection (2).

(5) An existing certification application fee, not to exceed \$200,000, to cover all reasonable costs and expenses of the review processing and proceedings for certification of an existing power plant site under s. 403.5175. This fee must be established, disbursed, and processed in the same manner as the certification application fee in subsection (2).

(6) An application fee for an alternate corridor filed pursuant to s. 403.5064(4). The application fee shall be \$750 per mile for each mile of the alternate corridor located within an existing electric transmission line right-of-way or within an existing right-of-way for a road, highway, railroad, or other aboveground linear facility, or \$1,000 per mile for each mile of an electric transmission line corridor proposed to be located outside the existing right-of-way.

History.—s. 23, ch. 90-331; s. 11, ch. 92-132; s. 13, ch. 93-94; s. 387, ch. 94-356; s. 65, ch. 96-321; s. 208, ch. 99-245; s. 29, ch. 2000-153; s. 13, ch. 2006-79; s. 41, ch. 2006-230; s. 84, ch. 2008-227.

403.5185 Law applicable to applications processed under ss. 403.501-403.518.—Any application for electrical power plant certification filed pursuant to ss. 403.501-403.518 shall be processed under the provisions of the law applicable at the time the application was filed, except that the provisions relating to cancellation of the certification hearing under s. 403.508(6), the provisions relating to the final disposition of the application and issuance of the written order by the secretary under s. 403.509(1)(a), and notice of the cancellation of the certification hearing under s. 403.5115 may apply to any application for electrical power plant certification.

History.—s. 42, ch. 2006-230.

403.519 Exclusive forum for determination of need.—

(1) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(2) The applicant shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 days prior to the scheduled date for the