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RESOLUTION NO. 2011-42

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO FPL; ISSUING THE VILLAGE'S AGENCY REPORT ON FLORIDA POWER AND LIGHT TURKEY POINT UNITS 6 & 7 PROJECT SITING APPLICATION PA03-45A3 AND TRANSMISSION LINE CORRIDOR (EAST PREFERRED CORRIDOR) BETWEEN DAVIS AND MIAMI SUBSTATIONS; RECOMMENDING DENIAL OF THE APPLICATION OR IN THE ALTERNATIVE PROVIDING FOR CONDITIONS RELATING TO SAME; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Florida Electrical Power Plant Siting Act (PPSA) process includes a multi-agency review that supersedes and encompasses all state and local permits and approvals; and,

WHEREAS, Florida Power and Light (FPL) issued its application in 2009 relating to Turkey Point Units 6 and 7 under project siting application PA03-45A3, which included the transmission line siting request; and,

WHEREAS, over time, FPL has selected a transmission line corridor between the Davis Substation and the Miami Substation (the "East Preferred Corridor"), proposing to run 80-120 foot concrete tower transmission lines between SW 136 Street and downtown Miami along the bus way and Metro Rail way adjacent to US Highway 1; and,

WHEREAS, according to the Department of Administrative Hearings (DOAH) has issued its Eighth Scheduling Order requiring affected agencies to issue their agency report on the transmission line corridor; and,

WHEREAS, any entity desiring to propose an alternate corridor for the transmission lines must submit that application to DOAH by May 15, 2011; and,

WHEREAS, Pinecrest, South Miami and Coral Gables submitted an alternate corridor by the May 15th deadline; and,

WHEREAS, the alternate corridor proposal shall be independently evaluated by the affected agencies, including all affected municipalities, and DOAH; and,

WHEREAS, the alternate corridor proposal does not affect the requirement for local agencies to provide a report as to local ordinances and regulations that are triggered by FPL's proposed "East Preferred Corridor;" and,

WHEREAS, the Governor and Cabinet are to review all agency reports and is to issue a final decision as to the corridor by September 2012, approximately a year and a half from now; and,

1 WHEREAS, FPL's East Preferred Corridor runs parallel to US Highway 1 and affects
2 Palmetto Bay, Pinecrest, South Miami, Coral Gables, Miami, and unincorporated Miami-Dade
3 County residents, businesses, and property owners; and,
4

5 WHEREAS, the agency reports allows the reviewing agencies to formally provide their input
6 on the East Preferred Corridor; and
7

8 WHEREAS, Agency reports are required by the PPSA process for each reviewing agency
9 after an application is found complete and the report is to address matters within the agency's
10 jurisdiction that may potentially be affected by the proposed project, a recommendation of approval
11 or denial of the project, and proposed conditions of certification with supporting legal authority;
12 and,
13

14 WHEREAS, thereafter, Department of Environmental Protection is to submit a
15 comprehensive project analysis containing the agency reports, proposed conditions of certification
16 and recommendation on final approval of the project to the Administrative Law Judge (ALJ); and,
17

18 WHEREAS, the Village has reviewed its Comprehensive Plan (adopted by Ordinance) and
19 its Land Development Code and has documented requirements which FPL should be conditioned
20 to comply with should the East Preferred Corridor be implemented and the Village issues its agency
21 recommendation to approve/deny the FPL application;
22

23 WHEREAS, the Mayor and Village Council desire to submit the attached Agency Report in
24 compliance with DOAH deadlines.
25

26 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
27 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
28

29 Section 1. The above whereas clauses are incorporated by reference into this resolution.
30

31 Section 2. The Village of Palmetto Bay incorporates by reference the attached exhibit 1,
32 agency report.
33

34 Section 3. The Village has issued a recommendation in the attached report and
35 recommends to DOAH and FPL the denial of FPL's application to implement the East Preferred
36 Corridor. In the alternative, the Village recommends conditions based upon its Comprehensive Plan
37 and Code of Ordinances should the corridor be approved.
38

39 Section 4. This resolution and the attached Village of Palmetto Bay agency report is to
40 be transmitted to DOAH under Case NO. 09-3575-EPP.
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42 Section 5. This resolution shall take effect immediately upon approval.
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PASSED and ADOPTED this 6TH day of June, 2011.

Attest: Meighan Alexander
Meighan Alexander
Village Clerk

Shelley Stanczyk
Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

Eve A. Boutsis
Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

- Council Member Patrick Fiore YES
- Council Member Howard Tendrich YES
- Council Member Joan Lindsay YES
- Vice-Mayor Brian W. Pariser YES
- Mayor Shelley Stanczyk YES

**VILLAGE OF PALMETTO BAY AGENCY REPORT ON FLORIDA POWER AND
LIGHT TURKEY POINT UNITS 6 & 7 PROJECT SITING APPLICATION PA03-45A3
AND TRANSMISSION LINE CORRIDOR BETWEEN DAVIS AND MIAMI
SUBSTATIONS (FPL "EAST PREFERRED CORRIDOR")**

FLORIDA DOAH CASE NO: 09-003575

DEP. OGC CASE NO.: 09-3107

1. CORRIDOR LOCATION ISSUES:

Pursuant to Section 403.526, Florida Statute, the Village of Palmetto Bay hereby submits a Final Agency Report pertaining to the Turkey Point Transmission Lines for the Proposed Preferred Route for the East Corridor. By way of background, this Agency Report is in response to a Site Certification Application filed by Florida Power and Light ("FPL") with the Florida Department of Environmental Protection ("DEP") on June 30, 2009. If the application is approved, FPL would be authorized to expand nuclear energy production at its Turkey Point facility in Miami-Dade County.

Technically the proposed FPL transmission line corridor, known as FPL's "East Preferred Corridor" does not run through the Village of Palmetto Bay, other than to provide a single guy wire within Village limits. The corridor is located just west and north of the Village of Palmetto Bay along the bus way adjacent to US Highway 1, through the cities of Pinecrest, South Miami, Coral Gables, Miami-Dade County and the City of Miami. The plan proposes 80-120 foot concrete polls, with intermittent shorter polls to provide local service to the community. The shorter poles are needed due to "drag" and safety related issues requiring shorter polls to provide local service. The transmission lines will only be necessary if the Unit 6 and 7 applications are approved.

Obviously it would have lesser impact on the surrounding environment if the line could be located within existing road rights of way and not overland. That corridor is along the main thoroughfare in Miami-Dade County, and is the center of commercial, mixed-use, and residential developments in the heart of Miami. The corridor is proposed within several high-density residential and mixed use areas, including the Dadeland mixed use area, and the County's main Metro-Rail and Bus Line. The corridor proposes to go through the heart of Miami's Commercial District, which is adjacent to or in close proximity to hospitals, single family residential, and multifamily residential units. There are residential developments that must be considered. Under the County's Master Plan, the bus line extending in the area east of US Highway 1 from Kendall to Homestead is proposed to become an elevated, above ground Metro-Rail line, continuing the existing Metro-Rail Line extending from Kendall Drive North to Downtown Miami. The existing Metro-Rail Line is at least 45 feet above ground, and would expose all travelers to electromagnetic fields from the proposed transmission lines. There has been no documentation or scientific studies distributed to the community to alleviate the concerns as to electromagnetic field exposure at that height.

Additionally, if the transmission lines are extended south of Kendall Drive to SW 136th Street (the Village's border), there is no provision indicated to ensure that the lines would not cause exposure to those traveling the bus way and/or how to deal with the extension of the Metro-Rail along that corridor, as provided in the Miami-Dade County Transit Master Plan.

Moreover, the Village is aware of an alternate corridor that is being proposed by the Village of Pinecrest and the City of Coral Gables and the economic damages analysis presented by the City of South Miami as part of that alternate corridor application. The economic detriment to the entire US Highway 1 Corridor is documented as being extensive, as seen in the City of South Miami economic report, as conducted by economist Dr. Richard Weisskoff of the University of Miami. That report is incorporated by reference herein and has been filed by the City of South Miami.

The Village is concerned about potential conflicts with existing and proposed homes and businesses in the corridor, a highly dense corridor that is one of the main thoroughfares in the County. The Village is concerned about where potential line locations could limit future development.

In order to ensure both safety and peace of mind for adjacent residential and commercial uses, the Village seeks a condition that would require FPL to show the limits of any EMF's (electro magnetic fields) to be generated by the line, along the densely populated corridor, and require compliance with all regulations relating to EMFs.

The purpose of the State Transmission Line Siting Act ("TLSA"), Sections 403.501-403.539, Florida Statutes, is to certify transmission line corridors through a centralized and coordinated planning and permitting process administered by the Florida DEP. Authority to issue the Certification Order is assigned to the Governor and Cabinet sitting as the Siting Board, after consideration of a Recommended Order issued by a Hearing Officer of the Department of Administrative Hearings. The Recommended Order includes findings of fact and conclusions of law on those matters raised at the hearing or pleadings filed, including the application. If certification is recommended, the Hearing Officer will also include any conditions of certification. If the Siting application is contested, then the Department of Administrative Hearings shall schedule a Certification Hearing.

In the instant matter, although the Power Plant Expansion Application and the transmission line application are proceeding under separate time tables, the Siting Board will issue their decision on whether to license both in one proceeding. (State Power Plant Siting Act ("PPSA"), Chapter 403, Part II, Florida Statutes).

The PPSA mandates that the affected local governments and other administrative agencies participate in the process, and further requires that they prepare an assessment report. Affected local government agencies are granted party status in the proceedings.

2. OUTSTANDING SUFFICIENCY ISSUES: No outstanding issues.

3. RECOMMENDATION FOR CERTIFICATION:

At the outset, the Village of Palmetto Bay, objects to the processing and review of the Transmission Lines Application on an earlier time line than the Power Plant Expansion Application. The Village respectfully requests that the present application be continued until such time as the Power Plant Siting application has at a minimum been determined complete. Miami-Dade County recently submitted their 5th incompleteness determination. Florida Statutes section 403.529, provides, in part, that the proposed lines "Effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, as determined by the commission, under section 403.537, and the impact upon the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines." The South Florida Regional Planning Council has raised concerns that the criteria of section 403.529 may not have been adequately studied by FPL as to the impacts to the community, including impacts to the environment, health, economic and/or social impacts to the surrounding communities.

The Village and other reporting agencies are at a disadvantage in analyzing the application in its present posture. The Agencies are to evaluate the preferred corridor under their existing regulations to comment on whether the proposal "Effect(s) a reasonable balance between the need for the transmission line..." and "the impact upon the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines". (Section 403.529 (4)(e), Florida Statutes).

However, the two nuclear reactors have not been approved. If the Siting Application is withdrawn, suspended or denied, until a much later date, then the affected agencies are tied to a recommended order for a proposal that may not see the light of day. The present Village Council would be placed in the unconstitutional and impermissible position of tying the hands of a future Village Council. See, Florida Constitution Article, VIII, Section 2, and Chapter 166, Florida Statutes. FPL cannot seek permission for a transmission line on an existing plant absent a "showing and approval of need" as required under applicable statutes. FPL is placed in the position of picking and choosing when to proceed on the power plant application. Alternatively, FPL can seek to amend their application to install the transmission lines without the Nuclear Power Plant Expansion. These proceedings should be suspended until the Power Plant Application has moved forward.

The Village of Palmetto Bay respectfully requests that FPL's application be denied due to the lack of completeness, and the uncertainty of the completion of the nuclear reactor applications, for which the lines are being proposed (if no reactors then no need for the lines). The Village therefore finds that FPL's designated preferred corridor should be denied. The Village supports the Coral Gables/Pinecrest Preferred Alternate Corridor approved ("PAC"), as FPL has an existing corridor which is located primarily FPL's Right of Way, and already traverses west to east towards the Miami substation. The Village supports the PAC filed by Coral Gables/Pinecrest as it appears to be the most appropriate corridor under the criteria in Chapter

403, Florida Statutes, and FPL should invest in improving that corridor rather than attempting to blaze through a new route. Additionally, the corridor should be rejected/denied due to the findings in the South Miami Economic report prepared by economist Dr. Richard Weisskoff of the University of Miami.

Alternatively, if DEP finds that the corridor should proceed, then, the Village of Palmetto Bay finds that the FPL application [Application for certification of the proposed Florida Power & Light Company Davis and Miami Substation Transmission Line Corridor Project (“East Preferred Corridor”)] meets the requirements of the Village’s Codes of Ordinances, with the conditions identified below at Section 5. Staff analysis is contained herein. This recommendation is made contingent upon the conditions contained herein be satisfactorily addressed during the post-certification review process.

4. VARIANCE TO STANDARDS: The Village requests, that should the FPL proposed corridor go forward that FLP be required to underground and shield the transmission lines regardless of the cost. FPL is entitled to reimbursement for the construction expenditures and as the lines are a benefit to the entire state, FPL should be required to protect electrical power for all residents of the state by ensuring (1) that the dense residential/commercial corridor is protected; (2) that Miami-Dade County is affected most frequently by hurricane events than any other County in Florida and has faced catastrophic damage due to Hurricane Andrew, Hurricane Wilma, Hurricane Katrina, and other hurricanes over the past 20 years, which events have caused downed power lines and power outages. As such, undergrounding the transmission lines would be a benefit to all electrical providers as the lines would not be affected by wind storm events; and (3) the US Highway 1 corridor (East Preferred Corridor) would be protected from the economic downturn projected in the South Miami economic report as prepared by economist Dr. Richard Weisskoff of the University of Miami.

5. Proposed Conditions of Certification:

5.1 Definitions:

“Application shall mean the Application for Corridor Certification for the Florida Power & Light Company “East Preferred Corridor between Davis and Miami Substations” project.

“Facility” or “Project” shall mean the Turkey Point Units 6 & 7 Project and the “East Preferred Corridor” proposed by FPL between the Davis Substation and the Miami Substation under Plant Siting Application PA03-45A3, under DOAH case no.: 09-3575-EPP; and DEP OGC Case no.: 09-3107.

“Feasible” or “Practicable” shall mean reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints and costs.

“Post-Certification Submittal” shall mean a submittal made by FPL pursuant to a Condition of Certification.

“ROW” shall mean the transmission line right-of-way to be selected by FPL within the certified corridor in accordance with the Conditions of Certification

- 5.2 **Conditions: Access and Drainage:** FPL as a post-certification submittal to the Village shall submit detailed design plans showing all access roads and drainage plans after right-of-way surveys and final design plans are completed.
- 5.3 **Electric and Magnetic Fields:** The Transmission lines shall comply with the applicable electric and magnetic field standards set forth in Chapter 62.814, FAC. The electric magnetic fields associated with any configuration developed during the final design of this project that is not shown in the application shall be provided to DEP at least 90 days prior to the start of construction, or such a shorter time period to which the DEP Siting Coordination Office agrees, as required by Rule 62-814.520(3), FAC, and provide an informational copy of same to the Village.
- 5.4 In the construction of the transmission line on or crossing State Road rights-of-way FPL shall (1) comply with the requirements of the FDOT’s Utility Accommodation Manual (Document 710-020-001 and Rule Chapter 14-46, Utilities Installation or Adjustment, FAC); (2) place transmission line structures at crossings of State Roads in such a manner as to accommodate future road widening, (creation of Metro-Rail extension), to the extent practicable. If future widening of any road in the area of the transmission line is required, the cost of relocating the transmission lien shall be borne by the Licensee to the extent required by Section 337.403, Florida Statutes, and Rule Chapter 14-46, FAC.
- 5.5 A post-certification submittal to the Village shall be a final design plan showing: (1) all protected trees to be removed for the transmission line, access road and drainage installation. Protection measure for trees proposed for preservation shall be detailed. The Village has adopted the County’s DERM standard for tree removals. (2) aerial photos of the transmission line location within the Village; (3) Construction timetables, phasing and construction traffic to be generated by the transmission line construction. (4) FPL confirms that it will not install any auxiliary equipment; (5) all existing and proposed easements; (6) show as existing site conditions on the final design plan and the following (a) the location of the right-of-way with respect to adjoining development, the existing zoning on adjoining property and existing land use adjacent to the right-of-way; (b) the name, location and width of existing or platted street public right-of-way within or contiguous to the right-of-way; (c) approximate location, size and depth of sewers, water mains and storm drains, and approximate location of power and phone lines; within all contiguous of the right-of-way; (d) location and size of easements for all the above ground utilities, such as electric power lines, within or adjacent to the right-of-way; (e) flood plain management information on flood zones delineated if applicable; (g) location of fire hydrants and exterior fire suppression systems supplied by portable and non-portable water sources; and (h) location, size and type of all proposed stormwater management facilities.
- 5.6 FPL shall employ best management practices, construction techniques, and adequate culverting in order to maintain existing drainage patters along the Certified Transmission

Line's ROW. Section 373.416 and 403.5011, Florida Statutes. FPL has provided a commitment that no storm water facilities and no facilities in a flood zone. Should such occur, supplemental information to be submitted with final design plans to the Village of the (a) gross acreage of the site; (b) all calculations and descriptions prepared by a Florida registered professional engineer need to show evidence of compliance with stormwater management including the percentage of all impervious surface located on lots; (c) if the right-of-way is located in a flood way, all calculations and descriptions prepared by a Florida registered professional engineer need to demonstrate compliance with applicable flood plain management requirements; and (d) location, description and term of any proposed easements, reservations or dedications, together with any necessary legal instruments. FPL is to comply with Chapter 15, Article III relating to "Stormwater Management." (Ord. No. 06-07, § 2(1), 5-1-2006).

5.7 FPL is to comply with the Village of Palmetto Bay Comprehensive Plan, as delineated herein. The policies of the Comprehensive Plan were adopted via Ordinance on August 1, 2005.

5.7.1 Policy 1.1.6 of the Village's Future Land Use Element indicates that "[s]mall scale public facilities and utilities intended to serve the immediate needs of the residential community continue to be permitted on compatible sites in all residential land use categories subject to adequate design and buffering as determined by the Village." The utility corridor is not intended to serve the immediate needs of the residential community, but rather the entire state of Florida and beyond.

5.7.2 Large scaled institutional and public facilities are governed by Policy 1.1.1, and designated the area the utility is to be located, and US Highway 1 or the bus way adjacent to US Highway 1 is not designated for "Institutional and Public Facilities."

5.7.3 Policy 1.1.9 of the Future Land Use Element indicates that it is the policy to "discourage land use patterns indicative of urban sprawl in the Future Land Use Map and any amendment applications by dictating compact development, mixed-use where appropriate and efficient use of public facility capacity and resources, while protecting single family neighborhoods."

5.7.4 Policy 1.3.3 requires the Village to work with county and regional utility service providers, as needed, to help locate suitable land for expansion of their operations and services. The Village believes that the suitable land for expansion of operations and services is proposed in the Village of Pinecrest/City of Coral Gables's alternate corridor (PAC).

5.7.5 Policy 8.2.1 requires the Village to "work with officials at the FDOT, Miami-Dade County MPO, and Miami-Dade County to promote the inclusion of projects in their plans, programs and development regulations that adequately provide future capacity for moving people safely and efficiently through Palmetto Bay." Currently the bus way passes through Palmetto Bay and is proposed to be an

extension of the Metro-Rail system to Homestead. FPL has addressed the possibility of modifying the bus way to a Metro-Rail system and the effects of the transmission lines as it relates to the proximity of an elevated rail provider.

5.7.8 Additionally, the Metro-Rail and bus way extensions provide for continuous pedestrian and bicycle linkages. Policy 8.2.3 requires the Village to “Coordinate with officials ... to ensure that safe, continuous pedestrian and bicycle linkages are provided with all future projects within one-quarter mile of transit stops located within the Village to connect residents and visitors with public transit for completing higher order trips. FPL has not addressed whether the transmission line corridor will impact the “safe, continuous pedestrian and bicycle linkages”. This directly impacts the Villages, Palmetto Bay and Pinecrest, transit stop at SW 136th Street and the bus way. Based upon this Policy, FPL will minimize impacts to the safe and continuous pedestrian and bicycle linkages within ¼ mile of the Village’s transit stop to extent practicable and possible and will restore the conditions of the area impacted upon completion of construction. FPL shall not have permanent impacts to this area.

5.7.9 Policy 8.2.10 requires the Village to coordinate the implementation of a master landscape plan for the US 1 transportation corridor within municipal boundaries to further reinforce the character of Palmetto Bay through urban design.

5.7.10 FPL shall ensure that adjacent properties are not impacted by wind erosion, or emissions of unconfined particulate matter in accordance with Rule 62-296.320(4)(c)1., Florida Administrative Code, by taking appropriate measure to stabilize affected areas. Rule 62-296.320, Florida Administrative Code (FAC).

5.8 FPL shall coordinate with the Village during times of emergency. Sec. 14-84, of the Village’s Code of Ordinances entitled “Utility Emergencies,” which states that an emergency may be declared because of utility conditions when the public works director, or designee, or the authorized representative of the relevant utility certifies to the Village manager the following: (1) A condition exists or is imminent that endangers the safety, potability, quantity, availability, collection, conveyance, transmission, distribution, treatment, or storage of water or waste through or within the Village; or (2) A condition exists or is imminent that endangers the safety, quality, quantity, availability, transmission, distribution, or storage of gas or electricity through or within the Village. The Village requires FPL to submit emergency response plans to assist the Village should an emergency arise relating to local contacts for FPL, and local plan of action to ensure the safety to the community, including evacuation of the area, and/or diligent repair of downed lines and/or plants, amongst other criteria.

5.9 FPL shall comply with the Village’s noise ordinance. Section 15-54 of the Village’s Code of Ordinances, entitled “Maximum permissible sound” requires compliance with the Village’s sound code. In short, no person shall cause, suffer, allow, or permit the operation of any source of sound in such a manner as to create a sound level that exceeds the sound level limits listed in Table 1 when measured at, across or within the real

- property line of the receiving property land use designation. Sound pressure levels in excess of those established in Table 1 would constitute a noise disturbance and be in violation of this Code.
- 5.10 These noise limits may not be exceeded by any single incident representing the normal, usual operation of the sound source, during any three sampling intervals, the duration of which shall be no less than one-half minute, within any one-hour period.
- 5.11 If the sound source under investigation is a mechanical device, and is in the investigating officer's opinion emitting a sound with a steady tonal quality, the permissible sound level limits in Table 1 shall be reduced by ten dBA. The sound emissions must be comprised of a single frequency or a narrow cluster of frequencies, which may be referred to as a whine, hum or buzz. The measured sound levels of such a source must not fluctuate by more than plus or minus three dB. Such sound sources include, but are not limited to, heating, ventilating or air-conditioning units, refrigeration units and transformers.
- 5.12 On an ordinary basis, FPL shall comply with the Village's requirements relating to hours of work. However, should an order issue from FDOT and/or the state for evening work, the Village shall coordinate such night time operations with the Village and provide the Village with reasonable prior notice of said work. Pursuant to the noise code, operating or causing the operation of any tools used in construction, drilling, repair, alteration or demolition work between the hours of 7:00 p.m. and 7:00 a.m. on weekdays, or between 7:00 p.m. and 9:00 a.m. on weekends or Village recognized holidays in or within 50 yards of any residential area or noise-sensitive zone, except for emergency work by public service utilities or by special permit approved by the Village. All construction sites shall comply with the Village's noise code. Construction activity is limited between the hours from 7:00 a.m. [to] 6:00 p.m., Monday thru Friday. Saturday hours shall be from 9:00 a.m. to 5:00 p.m. No construction activity is permitted on Sunday – unless superseded by state law requirements. (Ord. No. 09-24, § 1, 11-2-2009).
- 5.13 FPL shall comply with Sec. 29-53. Vegetation standards for proximity to electric facilities. (Ord. No. 06-04, § 1(.3), 3-6-2006). At all times during the year, FPL shall cause all vegetation to be maintained and trimmed so that no trees branches, palm fronds, vines, bushes or other vegetative matter shall be situated at any point any closer than six feet from any overhead electric utility facilities, in order to ensure that all lines are clear.
- 5.14 New plantings of vegetation: The Village shall monitor all future landscaping shall require to ensure compliance with the Village's Planning & Zoning Department to ensure conformance not only with the Village's landscaping plans, but also with subsection (b)(4), "Right Tree - Right Place Guidelines". No vegetation shall be planted where at mature height it may conflict with overhead electric facilities. Large trees (trees with a mature height of 30 feet or more) shall be planted no closer than a horizontal distance of 30 feet from any overhead electric facility. Medium size trees (trees with a mature height of 20 to 30 feet) shall be planted no closer than a horizontal distance of 20 feet from any overhead electric facility. Small trees and shrubs, with a mature height of less than 20 feet, may be planted adjacent to electric power facilities. Palm trees shall be planted at a distance from overhead electric facilities not less than the mature maximum frond length

plus three feet. FPL's Right Tree - Right Place Guidelines shall be used to facilitate the selection of trees to be planted in proximity to electric power facilities; and nothing herein shall be construed to permit planting of exotic species of vegetation.

- 5.15 FPL shall not affect the Village's public rights-of-way. Should FPL do so, it shall comply with Section 30-60.1, of the Village's Code of Ordinances. Public rights-of-way, requires that the swale area (depression in a stretch of flat land associated with drainage and is that land dedicated or designated as part of the official right-of-way) be permeable to ensure proper drainage. Any landscaping in the public rights-of-way area shall be in accordance with Division 30-100. Public rights-of-way areas shall be designed to retain runoff water in accordance with the Public Works Manual. The ground shall be graded away from the building and foundation, but not so as to cause water to drain onto adjoining property(ies) or public rights-of-way. FPL is to ensure that drainage is properly maintained within the swale areas and not causing spill over of drainage onto US Highway 1 or the bus way, but is properly maintained on the area to be utilized by FPL for the transmission line corridor.
- 5.16 The Village shall monitor FPL's work to ensure compliance with Section 30-60.11 relating to pre-construction and construction standards for sites provides that no construction may occur within the Village. If there is a staging area within the Village for staging of work, storing of supplies, etc., FPL shall be required to submit a site management plan shall be submitted to the Village's Building Department for review. The site management plan shall include a plan of the structure to be constructed, location of utilities, material storage location and mechanism for securing same, location of dumpsters and method of securing trash during Hurricane Season, if applicable, tree identification and protection, site grading, sidewalk protection and measures to control pedestrian access around the site, runoff control, weed control, fencing or screening, site appearance control, and a construction schedule. All construction sites shall be maintained free of debris and scrap materials. Additionally, for any work in the Village that is to occur during hurricane season (June thru November), the construction/staging site shall be maintained cleaned of loose debris and/or secured in accordance with the Village's Code of Ordinances and the Florida Building Code. All construction/staging sites readily accessible to the public not already providing site conditions that fence or wall off the area from the public, shall be enclosed with a temporary six-foot fence which shall be installed prior to starting the construction activity, unless exempt by the Village's Building Official. Construction shall be defined to include new construction of structures, additions to existing structures, renovation of existing structures, and any construction that shall include excavation or exposure of the interior of an existing structure. Construction shall not include paving or repaving of a driveway, or other re-surfacing and/or minor interior renovations or construction which is not exposed to the elements.
- 5.17 If a staging area is located within the Village, FPL shall be required to pull a fence permit, and the fence installed, inspected, and permit closed-out by the building department prior to initiating construction. Each site, must additionally comply with Section 1.1 [Florida Building Code], above, relating to demolition permit requirements if demolition permit is needed. The required perimeter fence shall be chain link, covered

with green or black nylon material screening the construction from view, and installed on the front, side and rear lot lines. The fence shall be installed so as not to create a public hazard and the fence gate shall be locked during nonworking hours. The fence shall remain in place through completion of construction, unless exempt by the Village's Building Official.

- 5.18 If a staging/construction site is located within the Village, the Village may require additional protective safeguards may be required where the Village identifies an attractive nuisance. "Readily accessible to the public" shall mean a "Level Three" alterations of existing residential buildings as defined under the Florida Building Code at section 405.1 (exceeds 50 percent of the aggregate area of the building within any 12-month period). Level One [Florida Building Code section 403.1] and Level Two [Florida Building Code section 404.1] residential alterations shall not be considered readily accessible. Levels Two and Three of Construction for commercial properties [as defined at 404.1 of the Florida Building Code] shall be considered readily accessible.
- 5.19 All FPL staging/construction sites within the Village shall be monitored for dust control by hosing of debris with water. All pavement, surfacing, driveways curbs, walks, buildings, utility poles, fences, and other surface structures affected by the construction operations, together with all sod and shrubs in yards, parkways, and medians shall be restored to their original conditions, whether within or outside the easement right-of-way. All replacements shall be made with new materials.
- 5.20 The Village adopts by reference the report of Miami-Dade County, particularly relating to Department of Environmental Resource Management (DERM) review, as DERM administers environmental programs on the Village's behalf.
- 5.21 The Village adopts by reference the report of South Florida Regional Planning Council as it relates to the South Florida Regional issues.
- 5.22 The Village adopts the economic study of the City of South Miami as conducted by economist Dr. Richard Weisskoff of the University of Miami.
- 5.23 In the event that the completion of the corridor for the proposed transmission line requires that FPL acquire property and/or property rights not located within Village or Miami-Dade County ROW, FPL shall comply with Chapters 361, 73 and 74, Florida Statutes, to exercise the power of eminent domain for a public purpose if necessary. Further, FPL shall fully compensate the Village for any property and/or property rights taken from it. (Supporting Regulation(s): Chapters 361, 73 and 74, Florida Statutes).
- 5.24 Due to safety and public health and welfare issues, FPL should either underground the facilities. In the alternative, FPL should co-locate the lines with the Busway and Metro-rail system.

5.25 FPL shall minimize the impacts of the transmission line on intersection improvements by locating all proposed transmission line poles outside the ultimate configuration for all current and potential future signalized intersections. FPL should agree to a condition of certification requiring that the transmission poles be located longitudinally along the ROW outside of the intimate configuration for all currently designed and acquired future traffic infrastructure projects to the extent practicable. (Section 403.5317(2), Florida Statutes; Rule 62.17.665, F.A.C. Nonprocedural requirements-permitting, etc.).

5.26 FPL will design the proposed transmission line to meet or exceed the following safety and design standards, including but not limited to:

(a) National Electrical Safety Code (NESC), adopted by the Florida Public Service Commission (see Section 366.04, Fla. Stat., and Rule 25-6.0345(1), FAC);

(b) Occupational Safety and Health Administration (OSHA) rules providing requirements for safe minimum approach distances;

(c) American Society of Civil Engineers (ASCE) Manual 74, Guidelines for Electrical Transmission Line Structural Loading, and Standard 48-05, Design of Steel Transmission Pole Structures;

(d) FAA guidelines involving requirements in the vicinity of airports (if applicable);

(e) FDOT Utility Accommodation Manual;

(f) Chapter 62-814, Fla. Admin. Code (FDEP rule regarding electric and magnetic fields);

(g) National Electrical Reliability Corporation (NERC) standard FAC-003-1; and

(h) American National Standards Institute (ANSI) standards A300 (Part I)-2001 and Z133.1-2000.

5.27 To the fullest extent permitted by Laws and Regulations, FPL shall indemnify and hold harmless the Village of Palmetto Bay and its consultants, agents and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury and (b) is caused in whole or in part by any willful or negligent act or omission of FPL, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable,

regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

In any and all claims against the Village of Palmetto Bay or any of its consultants, agents or employees by any employee of FPL, any subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for FPL or any such subconsultant or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

In performance of the services, FPL will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of FPL to obtain and maintain, at no cost to the Village of Palmetto Bay, any and all license and permits required to complete the services provided in the certification.

To the extent which any other similarly situated community, or other governmental entity subject to this application, seeks or obtains mitigations, accommodations, terms, benefits or other conditions of approval or agreements or concessions agreed to or granted by FPL (hereafter "conditions") the Village of Palmetto Bay seeks the same such conditions. Should FPL enter into any subsequent agreement with any other governmental entity, during the term of this project, which provides for conditions, and conditions more favorable than those contained in this agency report and/or any agreement between FPL and the Village of Palmetto Bay, then this agency report and any subsequent agreements between FPL and the Village shall be deemed to be modified to provide the Village of Palmetto Bay with those more favorable conditions. FPL shall notify the Village of Palmetto Bay promptly of the existence of such more favorable conditions, and the Village shall have the right to receive the more favorable conditions immediately. If requested in writing by the Village, FPL shall amend its agreement with the Village of Palmetto Bay, the certification, or any other applicable agreement, approval, document, permit, etc. to contain the more favorable conditions.