DOE/CS/20289-10

STUDY OF THE IMPACTS OF REGULATIONS AFFECTING THE ACCEPTANCE OF INTEGRATED COMMUNITY ENERGY SYSTEMS

PRELIMINARY BACKGROUND REPORT

Public Utility, Energy Facility Siting and Municipal Franchising Regulatory Programs in Florida

DUANE A. FEURER
CLIFFORD L. WEAVER
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January, 1980

WORK PERFORMED UNDER DOE CONTRACT NO.

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UNITED STATES DEPARTMENT OF ENERGY

Division of Buildings and Community Systems
under Contract No. DE-AC02-78CS20289

ABSTRACT

This report is one of a series of preliminary reports describing the laws and regulatory programs of the United States and each of the 50 states affecting the siting and operation of energy generating facilities likely to be used in Integrated Community Energy Systems (ICES). Public utility regulatory statutes, energy facility siting programs, and municipal franchising authority are examined to identify how they may impact on the ability of an organization, whether or not it be a regulated utility, to construct and operate an ICES.

This report describes laws and regulatory programs in Florida. Subsequent reports will (1) describe public utility rate regulatory procedures and practices as they might affect an ICES, (2) analyze each of the aforementioned regulatory programs to identify impediments to the development of ICES and (3) recommend potential changes in legislation and regulatory practices and procedures to overcome such impediments.

CHAPTER 1

INTRODUCTION

One response to current concerns about the adequacy of the nation's energy supplies is to make more efficient use of existing energy sources. The United States Department of Energy (DOE) has funded research, development and demonstration programs to determine the feasibility of applying proven cogeneration technologies in decentralized energy systems, known as Integrated Community Energy Systems (ICES), to provide heating, cooling and electrical services to entire "communities" in an energy conserving and economic manner.

The relevant "community" which will be appropriate for ICES development will typically consist of a combination of current energy "wasters" -- i.e., installations with large energy conversion facilities which now exhaust usable amounts of waste heat or mechanical energy -- and current energy users -- i.e., commercial or residential structures which currently obtain electricity and gas from a traditional central utility and convert part of it on customer premises to space heating and cooling purposes.

In most current applications, energy conversion facilities burn fuels such as coal, oil or natural gas to produce a single energy stream, such as process steam or electricity, for various industrial processes or for sale to other parties. However, the technology exists to produce

more than one energy stream from most energy conversion processes so that the input of a given amount of fuel could lead to the production and use of far more usable energy than is presently produced. This technology is the foundation of the ICES concept. Current examples of the technology can be found on university campuses, industrial or hospital complexes and other developments where a central power plant provides not only electricity but also thermal energy to the relevant community.

It is generally assumed by DOE that ICES will be designed to produce sufficient thermal energy to meet all the demands of the relevant community. With a given level of thermal energy output, an ICES generation facility will be capable of producing a level of electricity which may or may not coincide with the demand for electricity in the community at that time. Thus, an ICES will also be interconnected with the existing electric utility grid. Through an interconnection, the ICES will be able to purchase electricity when its community's need for electricity exceeds the amount can be produced from the level of operations needed to meet the community's thermal needs. In addition, when operations to meet thermal needs result in generation of more electricity than necessary for the ICES community, the ICES will be able to sell excess electricity through the interconnection with the grid.

ICES may take a variety of forms, from a single owner-user such as massive industrial complex or university campus where all energy generated is used by the owner without sales to other customers, to a large residential community in which a central power plant produces heat and electricity which is sold at retail to residents of the community. Since successful operation of an ICES presupposes that the ICES will be able to use or sell all energy produced, it can be anticipated that all ICES will at some point seek to sell energy to customers or to the electric utility grid from which the electricity will be sold to customers. By their very nature ICES are likely to be public utilities under the laws of many, or even all, states.

The Chicago law firm of Ross, Hardies, O'Keefe, Babcock & Parsons has undertaken a contract with the Department of Energy to identify impediments to the implementation of the ICES concept found in existing institutional structures established to regulate the construction and operation of traditional public utilities which would normally be the suppliers to a community of the type of energy produced by an ICES.

These structures have been developed in light of policy decisions which have determined that the most effective means of providing utility services to the public is by means of regulated monopolies serving areas large enough to permit economies of scale while avoiding wasteful

duplication of production and delivery facilities. These existing institutional structures have led to an energy delivery system characterized by the construction and operation of large central power plants, in many cases some distance from the principal population centers being served.

In contrast, effective implementation of ICES depends to some extent upon the concept of small scale operations supplying a limited market in an area which may already be served by one or more traditional suppliers of similar utility services. ICES may in many instances involve both existing regulated utilities and a variety of non-utility energy producers and consumers who have not traditionally been subject to public utility type regulation. It will also require a variety of non-traditional relationships between existing regulated utilities and non-regulated energy producers and consumers.

Ross, Hardies, O'Keefe, Babcock & Parsons is being assisted in this study by Deloitte Haskins & Sells, independent public accountants, Hittman Associates, Inc., engineering consultants, and Professor Edmund Kitch, Professor of Law at the University of Chicago Law School.

The purpose of this report is to generally describe the existing programs of public utility regulation, energy facility siting and municipal franchising likely to relate to the development and operation of an ICES, and the construction of ICES facilities in Florida. Attention is given

to the problems of the entry of an ICES into a market for energy which has traditionally been characterized by a form of regulated monopoly where only one utility has been auth-implementation of the ICES concept and a series of recommendations for responding to those impediments. orized to serve a given area and to the necessary relationships between the ICES and the existing utility. In many jurisdictions legal issues similar to those likely to arise in the implementation of the ICES concept have not previously been faced. Thus, this report cannot give definitive guidance as to what will in fact be the response of existing institutions when faced with the issues arising from efforts at ICES implementation. Rather, this report is descriptive of present institutional frameworks as reflected in the public record.

Further reports are being prepared describing the determination and apportionment of relevant costs of service, rates of return and rate structures for the sale and purchase of energy by an ICES. Impediments presented by existing institutional mechanisms to development of ICES will be identified and analyzed. In addition to identifying the existing institutional mechanisms and the problems they present to implementation of ICES, future reports will suggest possible modifications of existing statutes, regulations and regulatory practices to minimize impediments to ICES.

This report is one of a series of preliminary reports covering the laws of all 50 states and the federal government. In addition to the reports on individual states, Ross, Hardies, O'Keefe, Babcock & Parsons is preparing a summary report which will provide a national overview of the existing regulatory mechanisms and impediments to effective implementation of the ICES concept and a series of recommendations for responding to those impediments.

CHAPTER 2

REGULATION OF PUBLIC UTILITIES IN FLORIDA

I. PUBLIC AGENCIES WHICH REGULATE PUBLIC UTILITIES

The authority to regulate public utilities is vested generally in the Florida Public Service Commission (Commission). The Commission is comprised of five members appointed by the governor with the approval of the senate.[1] The governor must choose his appointees from a list of persons recommended by the nine-person Florida Public Service Commission Nominating Council.[2] Commissioners serve either three- or four-year terms.[3] They must be free from any employment or pecuniary interests in any utility subject to the jurisdiction of the Commission.[4]

Within the purview of its powers, the authority of the Commission supersedes that of local governments. The statute provides specifically that the Commission's jurisdiction:

> shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages or counties, and in case of conflict therewith, all lawful acts, orders, rules and regulations of the commission shall in each instance prevail. 5/

Local governments do retain, however, the power to regulate the use of streets and other public places by public utilities.[6] In addition, the Commission has only limited authority over municipally-owned utilities.[7]

II. JURISDICTION OF THE COMMISSION

The jurisdiction of the Commission extends to all "public utilities," which are defined to include:

> . . . every person, corporation, partnership, association or other legal entity and their lessees, trustees or receivers, now or thereafter either owning, operating, managing or controlling any plant or other facility supplying electricity or gas (natural, manufactured or similar gaseous substance) to or for the public within this state, directly or indirectly for compensation; 8/

The Commission also has jurisdiction over any person, corporation or other entity owning a "water system" which is defined to include:

> any real estate, attachments, fixtures, . . . or other property, real or personal, used or having the present capacity for future use in connection with the obtaining, treatment, supplying and distribution of water to the public for human consumption [or] consumption by business or industry 9/

The definition does not delineate specifically the particular activities which are subject to the Commission's jurisdiction. The term "supplying," however, is broad enough to provide the Commission with statutory authority to regulate all activities of a jurisdictional utility. The definition states specifically that the jurisdiction of the Commission extends to "any plant or other facility."

Several utility operations are specifically excepted from the definition of public utility. These include:

> . . . a cooperative now or hereafter organized and existing under the rural electrification cooperative law of the state . . . . a municipality . . . any natural gas pipe line transmission company making only sales of natural gas at wholesale and to direct industrial consumers, . . . [and] a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such a person also supplies electricity, manufactured or natural gas. 10/

The Commission does, however, have certain regulatory authority with respect to electric cooperatives and municipal electric utilities. It may prescribe uniform systems of accounts, regulate rates, approve territorial agreements and resolve territorial disputes. 11/

The Commission has statutory authority over persons, corporations, partnerships, associations and other legal entities. 12/ This provision is broad enough to extend the Commission's jurisdiction to all conventional forms of utility ownership (with the exception of those specifically excepted).

The Commission has jurisdiction only over utility services provided "for compensation." 13/ Its jurisdiction extends to sales directly or indirectly to the public. 14/ Thus, the Commission may regulate wholesale sales of energy. However, the Florida Attorney General issued an opinion in which he stated that a corporation which sold gas, oil and petroleum products to public utilities on a wholesale basis was not a public utility. In this instance, the corporation sold to no ultimate consumers. 15/

The statutory definition of public utility does require that the services be provided "to or for the public." While there is no statutory definition of "public" the Florida courts have considered the question of what constitutes service to the public. In Village of Virginia Gardens v. City of Miami Springs,[16/] the court held that a city which had contracted to provide water to a second city, which then distributed the water to its residents, was not a public utility. The court reasoned that, in order to be considered a public utility, a business must hold itself out to serve all members of the public in the area served and that all such members of the public must have an enforceable right to demand service. The business must be impressed with a public interest.

A more recent case discussed the concept of public utility as opposed to private utility with respect to a sales tax exemption.[17/] In Dept. of Revenue v. Merit Square Corp., the defendant owned and operated a shopping center and generated electricity for use by its tenants and to supply the common areas of the shopping center. The court noted that a public utility, for purposes of regulation by the Commission, must hold itself out to serve the general public. By way of contrast, a private utility must be one which provides service only to a "limited segment or group, such as its own tenants, and not to the public at large."[18/]

The statutory requirement that a public utility provide service to the public clearly excludes furnishing of service for private use from the Commission's regulatory authority. In addition, the interpretation of this requirement expressed in the above-described cases indicates that an entity furnishing service to its tenants is not a public utility subject to Commission regulation.

III. POWERS OF THE COMMISSION

The Commission has "jurisdiction to regulate and supervise each public utility with respect to its rates, service and the issuance and sale of its securities . . . ."[19/] However, the Commission possesses few specifically enumerated powers. It is empowered specifically to establish reasonable rates, to prescribe a uniform system of accounts, to require that public utilities maintain adequate and fair depreciation accounts and to set standards of service.[20/] The Commission's broad general regulatory power, however, should provide a sufficient basis for regulating most aspects of public utility operations.

IV. AUTHORITY TO ASSIGN RIGHTS TO PROVIDE SERVICE IN A GIVEN AREA

A. Generally

There is no specific statutory requirement that a public utility obtain Commission approval before constructing

facilities or initiating or extending service. The Commission has been given:

> jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.21/

In addition, a member of the Commission's Legal Research Department stated that, under the Commission's general supervisory power, it has general authority over service areas and requires that a public utility planning to extend service to any area apply to the Commission for approval.22/

Florida courts have also indicated that the Commission has the power to regulate service areas. In Gainesville-Abucha County Regional Electric, Water and Sewer Utilities Bd. v. Clay Electric Cooperative, Inc.,23/ the court held that the Commission could order an interlocal utility system to develop a territorial agreement with a rural electric cooperative. The court also stated that the Commission had the power to order the interlocal utility to refrain from offering electric service or constructing duplicate facilities in the disputed territory.

In Storey v. Mayo,24/ the court held that the Commission did possess the power to regulate service areas and, in the exercise of this power, could approve a service area agreement between a regulated public utility and a municipally-owned utility. The court noted that:

> The powers of the Commission over these privately-owned utilities is omnipotent within the confines of the statute and the limits of organic law. Because of this, the power to mandate an efficient and effective utility in the public interest necessitates a correlative power to protect the utility against unnecessary, expensive competitive practices. While in particular locales such practices might appear to benefit a few, the ultimate impact of repetition occurring many times in an extensive system-wide operation could be extremely harmful and expensive to the utility, its stockholders and the great mass of its customers. . . . It was a recognition of this basic concept that led us to approve territorial service agreements between two regulated utilities. 25/

Similarly, in City Gas Co. v. Peoples Gas Systems, Inc., 26/ the court recognized that the Commission had no specific authority to require that public utilities obtain certificates of public convenience and necessity but suggested that the Commission could exercise essentially the same type of power because of the overall extent of its authority. "No one who contemplates the extensive powers granted to the commission under ch. 366 can doubt that it has effective control over areas of service." 27/

B. Competition

There is no statutory provision prohibiting competition among public utilities and the Commission has no specific statutory authority to assign exclusive service areas. Both the Florida legislature and the Florida courts, however, have expressed a policy against compettion among utilities. 28/ In Storey v. Mayo, the court stated that:

> . . . we recognized the importance of the regulatory function as a substitute for unrestrained competition in the public utility field. We . . . [have] noted that often a regulated or measurably controlled monopoly is in the public interest, and that in the area of public utility operations competition alone has long since ceased to be a potent or even a reasonably efficient regulatory factor.29/

In addition, the Commission has been empowered to develop and maintain a "coordinated electric power grid" in order to avoid "further uneconomic duplication of generation, transmission, and distribution facilities."30/ Exercising this general authority and the implied authority to require and approve service area agreements among utilities, the Commission is in a position to effectuate the policy against competition expressed by the Florida Supreme Court.

C. Certificating Procedure

The Commission has no specific certificating authority and, therefore, no procedure for obtaining permission to initiate or extend service is provided by statute. Neither has the Commission established any specific procedure with respect to the exercise of its implied power to approve service extensions. The Commission may approve service area agreements between jurisdictional utilities,31/ or a jurisdictional utility and a non-jurisdictional utility.32/ In addition, the Commission may order two utilities to negotiate such an agreement.33/

In determining which service area agreements should be approved and in what circumstances utilities should be required to negotiate a service area agreement, the Commission applies a broad public convenience and necessity criterion.

D. Service Area Disputes

The Commission is authorized to resolve service area disputes among electric cooperatives, municipal utilities and jurisdictional utilities.[35/] No specific procedure has been established with respect to the exercise of this power, however. In resolving these disputes, the Commission is to consider:

> . . . the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population and the degree of urbanization of the area and its proximity to other urban areas and the present and reasonably foreseeable future requirements of the area for other utility services. [36/]

V. APPEALS OF COMMISSION DECISIONS

Any person who is dissatisfied with any order of the Commission may seek review in the supreme court by certiorari.[37/] Neither mandatory nor permissive rehearing are provided for by statute. The petition for certiorari must be filed within thirty days of entry of the order to be reviewed.[38/]

On review, the court may not reweigh or reevaluate evidence presented to the Commission. It must only examine the record to determine whether the Commission order is in accord with the essential requirements of the law and that there is no substantial evidence to support the Commission's decision.[39/]

VI. REGULATORY REFORM ACT

The Regulatory Reform Act of 1976, Laws 1976, ch. 76-168, s. 3, repealed numerous statutory regulatory schemes, including the statutes governing the regulation of public utilities. With respect to the regulation of public utilities, the repeal is effective on July 1, 1980.[40/]

The purpose of this Act is to force the legislature to periodically review all regulatory schemes. After reviewing the regulatory scheme for public utilities, the legislature, may terminate, modify or reestablish the program.[41/] In making its determination, the legislature is to consider the following factors:

> (a) Would the absence of regulation harm or endanger the public health, safety, or welfare?
> (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?
> (c) Is there another, less restrictive method of regulation available which could adequately protect the public?
> (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
(f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

FOOTNOTES

1. Fla. Stat. Ann. §§ 350.01, 350.031 (Supp. 1979).

2. Id., § 350.031.

3. Id., § 350.01.

4. Id., § 350.04 (1968).

5. Id., § 366.04(1) (Supp. 1979).

6. Id., § 366.11.

7. Id., §§ 366.02, 04(2).

8. Id., § 366.02 (1968).

9. Id., § 367.02(4) (Supp. 1979)

10. Id., § 366.02 (1968)

11. Id., § 366.04(2).

12. Id., § 366.02 (1968).

13. Ibid.

14. Ibid.

15. 1951 Op. Att'y Gen. 500 (Fla. 1951).

16. Village of Virginia Gardens v. City of Miami Springs, 171 So.2d 199 (Fla. App. 1965).

17. Dept. of Revenue v. Merrit Square Corp., 334 So.2d 351 (Fla. App. 1976).

18. Id. 334 So.2d at 354.

19. Fla. Stat. Ann. § 366.04 (Supp. 1979).

20. Id., § 366.05 (1968).

21. Id., § 366.04(3) (Supp. 1979).

22. Mr. Prentice Pruitt, Legal Research Dept., Commission Telephone conversation 6/5/78.

23. Gainesville-Abucha County Regional Electric Water and Sewer Utilities Bd. v. Clay Electric Coop., Inc., 340 So.2d 1159 (Fla. 1977).

24. Storey v. Mayo, 217 So.2d 304 (Fla. 1968), cert. denied, 395 U.S. 909 (1969).

25. Id., 217 So.2d at 307.

26. City Gas Co. v. Peoples Gas Systems, Inc., 182 So.2d 429 (Fla. 1965).

27. Id., 182 So.2d at 436.

28. Storey v. Mayo, 217 So.2d 304 (Fla. 1968), cert. denied, 395 U.S. 909 (1969).

29. Id. 217 So.2d at 307.

30. Fla. Stat. Ann. § 366.04 (Supp. 1979).

31. City Gas Co. v. Peoples Gas System, Inc., 182 So.2d 429 (Fla. 1965).

32. Storey v. Mayo, 217 So.2d 304 (Fla. 1968), cert. denied, 395 U.S. 909 (1969).

33. Gainesville-Abuchua County Regional Electric, Water and Sewer Utilities Bd. v. Clay Electric Cooperative, Inc., 340 So.2d 1159 (Fla. 1977).

34. Mr. Prentice Pruitt, Legal Research Dept., Commission, Telephone conversation, 6/5/78.

35. Fla. Stat. Ann. § 366.04(2)(3) (Supp. 1979).

36. Ibid.

37. Id., § 360.10 (1968).

38. Rules of App. Pro., 9.120.

39. General Telephone Co. of Fla. v. Carter, 115 So.2d 554 (Fla. 1959).

40. 1976 Fla. Laws, ch. 76-168, s. 3(2)(m).

41. Fla. Stat. Ann. § 11.61(2)(c) (Supp. 1979).

42. Id., § 11.61(4).

CHAPTER 3

SITING OF ENERGY FACILITIES IN FLORIDA

I. PUBLIC AGENCIES WHICH ADMINISTER SITING LAWS

The Florida Electrical Power Plant Siting Act,[1] (the Siting Act), preemptively governs the siting of electric power plants. Florida also has a separate power plant planning statute, the substance of which is incorporated into the Siting Act.[2]

Responsibility for the overall administration of the Siting Act is vested in the Department of Environmental Regulation (Department). The Governor and his cabinet (the Board) have final authority. In addition, other state and local agencies are required to participate in the certification process.

A. Department of Environmental Regulation

The Department is headed by a Secretary appointed by the Governor, subject to approval by the state senate. The Secretary serves at the pleasure of the Governor.[3] The Department's Division of Environmental Permitting has responsibility for processing applications for electrical power plant site certification.[4]

The Department's Environmental Regulation Commission has responsibility for setting standards for the Department.

The Commission is composed of seven persons appointed by the Governor. The members are "representative" of, but not limited to, interested groups including agriculture, real estate, environmentalists, the construction industry, and lay citizens.[5/]

Responsibility for field services and inspections in support of Department decisions is delegated to the local Environmental District to the maximum extent possible.[6/] In addition, appropriate responsibilities and functions of the Department may be delegated to the local Water Management District by the Secretary of the Department.[7/] In particular, the local Water Management District is required to submit a report for each application for power plant site certification within the district concerning the impact of the proposed plant on water resources of the district.

B. The Board

As mentioned, the final authority to certify power plant sites and also to grant zoning variances for power plant sites, under the Siting Act, is given to the Board. The Board is composed of the Governor and his cabinet.[9/]

C. Public Service Commission

The Siting Act requires that the Public Service Commission submit a report to the Department of Environmental Regulation for each application for power plant site certification, concerning the present and future need for electrical generating capacity.[10/]

D. Division of State Planning

The Siting Act requires that the Division of State

Planning of the Department of Administration submit a report for each application for power plant site certification concerning the compatibility of the proposed power plant with the state comprehensive plan.[11/]

II. SCOPE OF SITING JURISDICTION OF THE DEPARTMENT AND BOARD

The Siting Act provides that no construction of any new electrical power plant and no expansion in the steam generating capacity of any existing electrical power plant may be undertaken without first obtaining certification. An exception is made for plants operating, under construction, or for which a permit application was made under prior requirements before the effective date of the act, July 1, 1973. No exception is made for small capacity facilities. However, modification of non-nuclear fuels, internal related hardware, or operating conditions, which merely increase electrical output up to the maximum generating capacity of existing generators at the site are exempted from the act, if consistent with prior certification conditions.[12/]

The scope of jurisdiction under the act is further clarified by the definitions of terms in the act. "Site" is defined to mean "any proposed location wherein an electrical power plant or an electrical power plant alteration or addition resulting in an increase in generating capacity, will be located, including offshore sites within state jurisdiction."[13/]

"Electrical power plant" means "any steam or solar electrical generating facility using any process or fuel, including nuclear materials, and includes associated facilities and those directly associated transmission lines required to connect the electrical power plant to an existing transmission network or rights of way to which the applicant intends to connect."[14/]

"Applicant" means any electric utility which makes application for an electric power plant site certification.[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/] While this definition does not explicitly encompass privately-owned energy projects not yet in the business of generating, transmitting or distributing electricity, a spokesman for the Department has indicated that the Department would exercise jurisdiction over any project involving the distribution of electricity outside the producing plant.[17/]

The Department has jurisdiction to implement the provisions of the Siting Act.[18/] The provisions of the act supercede all conflicting laws, regulations, and rules, and generally preempt the regulation and certification of elec-

trical power plants and sites.[19] Other agencies and parties have authority to participate in the land use hearing and certification hearing; however, there is no provision concerning the weight to be given to their recommendations and reports. The Department is also given board rule-making authority.[20] Thus far, rules promulgated by the Department have been procedural.[21]

Final certification authority, and authority to grant zoning variances, is in the Board. There is no provision concerning the weight the Board must give to the Department's recommendation, or to the recommendation of the hearing officer appointed by the Department to conduct the land use and certification hearings. The Board also has authority to adopt "reasonable, procedural rules."[22] Thus far, none have been promulgated.

Department rules require that the certification contain a post-certification monitoring provision which may include: geological information, environmental effects of air and water contamination, radiation hazards and contamination, meteorological conditions, hydrology including surface runoff, water use and consumption ecological effects, impact on animal, fish, plant and aquatic life, archaeological or historic site deposits invaded or distrubed during construction or excavation, noise levels at the site boundary or within adjacent residential areas.[23]

Other provisions of the act deal with supplemental applications for power plants to be located at sites previously certified at a maximum capacity,[24] amendment or modification of certification[25] revocation or suspension of certification[26] and the abandonment of the site by the applicant.[27]

No reported cases deal with either the Department or Board's jurisdiction under the Siting Act.

III. CERTIFICATION PROCESS

A. Procedural Requirements to be Satisfied by the Applicant

The form, content, necessary supporting documentation, studies, and application fee, for electric power plant site certification are prescribed by the Department.[28] Department regulations require that the format, supporting information, and studies be as prescribed by Form PERM 19-1, as amended. Or, alternatively, the application may be in the format required by the U.S. Nuclear Regulatory Commission for a nuclear power plant as outlined in 10 CFR, Parts 50 and 51, as amended, or any substantially similar format approved by the Department.

The Department's form provides a 70-page detailed explanation of technical information required, including, for example, load characteristics and analysis, demand projections, system capacity, reserve margins, alternative sites, alternative fuels analysis, and plant design alternatives. The applicant must furnish any additional information, studies, and data that

may be required by the Department, Division of State Planning, Public Service Commission, and local Water Management District. Application fees, from which the Department is required to draw its costs, range from $15,000 for gas fired plants to $50,000 for nuclear plants.[29/]

At least 15 days prior to the land use hearing, the applicant must submit to the Department and hearing officer a compilation of information specifying procedures taken to comply with existing land use plans and zoning ordinances, and copies of those plans and ordinances. Copies of the compilation must be made available for public inspection.[30/]

It should be noted that the Division of State Planning is required to prepare a report for the Department concerning the compatibility of the proposed plant with the state comprehensive plan.[31/] Part of the Division's planning function under the Florida State Comprehensive Planning Act of 1972 is to review the suitability of ten-year site plans for electric utilities.[32/] An application for certification of an electrical power plan site under the Siting Act, which is not designated in the current ten-year plan, is treated as an amendment to the plan.

Each electric utility must submit a ten-year site plan estimating its power-generating needs and the general location of its proposed power plant sites not less frequently than every two years.[33/] The division makes a preliminary study and classi-

fies it as "suitable" or "unsuitable." Criteria for determining whether a plan is suitable include the need for power, environmental impact, possible alternatives, and locale. The statute expressly recognizes that the plan is for planning purposes only, and may be amended at any time.

B. Procedural Requirements to be Satisfied by the Department and Board

With seven days following the receipt of an application, "whether complete or not," the Department is required to request the Division of Administrative Hearings to designate a hearing officer to conduct hearings.[34/] Within ten days following the receipt of an application, the Department must file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to completeness, not sufficiency, of the application. The Department is required to identify sections considered incomplete, and present a short statement of reasons for its position.[35/] If the application is declared incomplete, then within 15 days following the receipt of the original application by the Department, the applicant must file a statement with the Department, and the Division either withdrawing the application or contesting the Department's declaration. If the declaration is contested, the hearing officer sets a hearing on the statement of completeness, which must be held within 30 days after receipt of the original application. The Department has, by rule, shortened

this to 20 days.[36]

The hearing officer is required to make his decision on completeness of the application within ten days after the hearing. If his decision is that the application is incomplete, it must be withdrawn. If his decision is that the application was complete when filed, all dates in the act refer back to the date of the original filing.[37]

Within 15 days after receiving the application, the Department must notify all affected agencies.[38] "Affected agencies" is not defined. However, the provision dealing with parties to the certification hearing suggests that affected agencies would include the Public Service Commission, Division of State Planning, local Water Management District, local government units in whose jurisdiction the proposed site is located, other state agencies as to matters within their jurisdiction, and any agency whose authority over the licensing or granting of easements for connections or crossings of its property or works has been preempted by the Board.[39]

The Department must also provide adequate public notice of the filing of the application and of proceedings conducted.[40] Details regarding the form and content of public notices for the land use hearing, certification hearing, completeness hearing, supplemental application, supplemental hearing, and any necessary zoning variance hearing, as well as particular parties to whom such notice must be directed, are set forth in Rules 17-17.06(2)-(5).

Within 30 days after the receipt of a complete application, the Department is required to commence or contract for studies to aid in the evaluation of the site. The studies must include, but are not limited to: cooling system requirements for maximum proposed steam or solar electrical generating capacity; technical sufficiency of proposed construction and operation safeguards for the protection of human health, wildlife and aquatic life; proximity to navigable water and other transportation systems and the expected impact on such systems; soil and foundation conditions; impact on suitable present and projected water supplies for this and other competing uses; impact on surrounding land uses and population density; accessibility to transmission corridors, both existing and proposed; environmental impacts of maximum proposed steam or solar electrical generating capacity; impact on air quality and water quality of maximum proposed steam or solar electrical generating capacity; specific studies concerning the site because of its particular nature; impact on public lands, and submerged lands; impact on terrestial and aquatic plant and animal life, with special emphasis on endangered or threatened species; impact on known archaeological sites and historic preservation areas.[41/]

If, within 45 days after initiation of the studies required by the Siting Act,[42/] the Department determines that the applications is so insufficient as to prevent proper evaluation of the proposed site, it is required to consult with the

applicant to determine whether the insufficiency can be timely rectified. If that determination is negative, the Department must notify the applicant, and then advise the hearing officer and other parties. Within 15 days of being so advised, the hearing officer is required to schedule a hearing on the issue, to be held no later than 30 days following his receipt of the Department's position. Within ten days following the hearing, the hearing officer must make his decision. If the application is found sufficient, times provided in the act run from the date of the original filing of the application. If found insufficient to allow proper evaluation of the site, the applicant must correct the deficiency, and the time limits will be adjusted accordingly.[43/]

Within 90 days following receipt of a complete application by the Department, the designated hearing officer is to conduct a land use hearing in the county of, and as close as possible to the proposed site. At least 45 days before the hearing, the Department is required to publicize the hearing and to set and publicize a deadline for filing notice of intent to be a party to the hearing.

The sole issue at the land use hearing is whether the proposed site is consistent and in compliance with existing land use plans and zoning ordinances of any governmental unit concerning the proposed site.

The hearing officer is required to recommend an order to the Board within 30 days of completion of the hearing, and the Board must complete its review of the recommendation within 45 days after receiving it.[44/] Once the Board determines that the site conforms to land use and zoning plans, no change in the land use laws and zoning ordinances may be made so as to affect the proposed site.[45/]

If the Board determines that the proposed site does not conform to existing land use plans or zoning ordinances, the applicant must make any necessary application for rezoning. If rezoning is denied, the applicant may appeal that decision to the Board, which may grant a variance if found to be in the public interest after notice and a hearing. The appeal includes the record of any land use hearings, the record of the applicant's hearings before the local zoning or land use agency, and a statement of steps taken in seeking the rezoning or change in land use and the results therefrom.[46/] If the Board denies a variance, no further action may be taken on the application until the proposed site conforms to existing land use plans or zoning ordinances.[47/]

Within eight months after the completed application is filed with the Department,[48/] and no later than 30 days before the certification hearing,[49/] the Department must file with the hearing officer and serve on all parties a written analysis which includes:

(a) A statement indicating whether the proposed electrical power plant and proposed site capacity will comply with the Department's rules.

(b) A report from the Public Service Commission concerning the present and future need for electrical generating capacity. The Commission must submit a preliminary report within 60 days, and a final report within five months, following receipt of a copy of the complete application.

(c) A report from the Division of State Planning concerning the compatibility of the proposed electrical power plant with the state comprehensive plan. A preliminary report is to be filed within 60 days, and a final report within five months, following receipt of the complete application.

(d) A report from the local Water Management District concerning the impact of the proposed plant on water resources of the district. A preliminary report is to be filed within 60 days, and a final report within five months,[50/] following receipt of the complete application.

(e) Studies concerning the proposed plant and site including, but not limited to, the following: cooling system, construction and operational safeguards, proximity to transportation systems, soil and foundation conditions, impact on suitable present and projected water supplies for this and competing uses, impact on surrounding land uses, accessibility to transmission corridors, environmental impacts. These studies must be completed within seven months after the completed application was filed.

(f) Comments received from any other agency.

(g) Final recommendation.

Within ten months after the completed application is filed, a certification hearing must be held by the hearing officer. Parties to the certification hearing include:

(a) The applicant

(b) Public Service Commission

(c) Division of State Planning

(d) The water management district, as defined in ch. 373, in whose jurisdiction the proposed electrical power plant is to be located.[51/]

(e) The Department

(f) Upon filing with the Department a notice of intent to be a party at least 15 days prior to the date set for the land use hearing, various other interested parties including: any county or municipality within which the proposed electrical power plant is to be located; any additional state agency as to matters within its jurisdiction; any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation, natural beauty, protect the environment, personal health, or biological values, preserve historical sites, promote consumer interests, to represent labor, commercial, or industrial groups, or promote orderly development of the area of the proposed site.

(g) Persons who failed to file a timely notice of intent to be a party, and whose substantial interests are affected by the proceeding, may intervene at the discretion of the hearing officer.

(h) Any agency (defined to include municipalities and counties) whose works or properties are being affected may be made a party upon request of the Department or the applicant.[52/]

(i) In addition, any person may present oral or written communications to the hearing officer, subject to cross-examination, challenge, or rebuttal by any other party.[53/]

The hearing officer must submit a recommended order to the Board, within two months after the certification hearing if concluded.

Within 60 days following receipt of the hearing officer's recommended order, the Board must act upon the application by written order, approving, in whole or with modifications, or denying the issuance of a certificate and stating the reasons for issuance or denial. If denied, the Board must indicate what steps must be taken for approval. The issuance or denial constitutes the final administrative action.[54/]

C. Intra-Departmental Review

The applicant may seek review of final actions taken by the Department before the Department's Environmental Regulation Commission.[55/]

D. Judicial Review

Before judicial review is available, the applicant must first exhaust his intra-departmental remedy of review by the Environmental Regulation Commission.[56/]

Judicial review generally is to be in accordance with the Florida Administrative Procedure Act.[57/] Under that Act, judicial review is available to any party adversely affected by a final agency action and is instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where the party resides.

The scope of judicial review is limited to the record transmitted, which consists of the agency's written order, the reasons therefore, if issued, as well as the records of any proceedings conducted pursuant to §120.57 (standard rules for proceedings), or if no such proceedings were held, any written documents identified by the agency as having served as a basis for its action.[58/]

The reviewing court must deal separately with disputed issues of agency procedure, interpretations of law, and those determinations of fact or policy which were properly within the agency's exercise of delegated discretion. For procedural errors which caused procedural unfairness or an incorrect action, the court will remand the case to the agency. For erroneous interpretations of the law, the correct interpretation of which would

compel a particular action, the court will either set aside or modify the agency action, or remand the case to the agency. For mistakes of fact, the court will set aside the action or remand the case, but only if the agency's action depends on any finding of fact not supported by competent substantial evidence in the record.[59/] The latter rule concerning the scope of judicial review of mistakes of fact is supported by Florida case law.[60/]

In addition, the reviewing court must remand the case where the agency's exercise of discretion was beyond the range delegated by law, or inconsistent with an agency rule, official agency policy, or prior agency practice (if the deviation is not explained by the agency), or otherwise in violation of constitutional or statutory provision.[61/]

The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and will provide whatever relief is appropriate irrespective of the original form of the petition.[62/]

IV. CERTIFICATION STANDARDS

The Siting Act sets broad goals to be achieved. First, the Act is designed to achieve an efficient, centrally coordinated system for processing applications for electrical power plant sites. In addition, the Act is designed.

> (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 of the state.

(3) To provide abundant, low-cost electrical energy. 63/

The Siting Act provides no specific criteria for implementing these goals. However, the Department's application form, DER Form PERM 19-1, contains extensive detailed requirements for technical information. The extent to which these requirements must be satisfied, and the standards applied in evaluating the information supplied, are not indicated. Rather, the Department evaluates all this information in light of the broad goals of the Siting Act.

The broad standards of the Act apply to all facility sitings. Portions of the Department's application form deal specifically with associated transmission facility construction; however, these requirements are essentially applications of the Siting Act's broader goals to the transmission line context, for example, information concerning permanent changes to vegetation and wildlife, impact on sensitive areas, new roads, erosion, impact on agriculture, and mitigative measures. 64/

No other agency has veto authority. But, of course, final certification authority under the Siting Act is in the Board, rather than the Department or hearing officer. The reports received from other agencies are merely advisory. No particular weight is assigned to them. Nor is there any standard

to be followed in overriding the negative recommendation of another agency.

No published administrative decisions have developed or applied any standards relating to the certification process. Also, no reported cases have raised issues as to applicable standards.

FOOTNOTES

1. Fla. Stat. Ann. §§403.501-403.517 (West Supp. 1979).
2. Id. §§23.011-23.019.
3. Id. §20.261.
4. Id. §403.808.
5. Id. §20.261.
6. Id. §403.809.
7. Id. §403.812.
8. Rules of the Department of Environmental Regulation, Rule 17-17.04(5).
9. Fla. Stat. Ann. §403.503(9) (West Supp. 1979).
10. Id. §403.507(1)(b).
11. Id. §403.507(a).
12. Id. §403.506(2).
13. Id. §403.506(5).
14. Id. §403.503(7).
15. Id. §403.503(1).
16. Id. §403.503(4).
17. Mr. B. Oven, Department, Telephone conversation, 5/25/78.
18. Fla. Stat. Ann. §403.504 (West Supp. 1979)
19. Id. §§403.510, 403.511.
20. Id. §403.504(1).
21. Rules of the Department of Environmental Regulation, (hereinafter cited as Rules of the Department), Chapter 17-17.
22. Fla. Stat. Ann. §403.510(3) (West Supp. 1979).

23. Rules of the Department, Rule 17-17.13.

24. Id., Rule 17-17.21, Fla. Stat. Ann. §403.517 (West Supp. 1979).

25. Rules of the Department, Rule 17-17.17, Fla. Stat. Ann. §403.516 (West Supp. 1979).

26. Rules of the Department, Rule 17-17.18, Fla. Stat. Ann. §403.512 (West Supp. 1979).

27. Rules of the Department, Rule 17-17.14(2).

28. Fla. Stat. Ann §403.504(2), (3)(West Supp. 1979).

29. Rules of the Department, Rule 17-17.04.

30. Id., Rule 17-17.09.

31. Fla. Stat. Ann §403.507(1)(a)(West Supp. 1979).

32. Id. §23.0191(2)(c).

33. Id. §23.0191(1).

34. Id. §408.5065(1).

35. Rules of the Department, Rule 17-17.19(2).

36. Id., Rule 17-17.19(4).

37. Fla. Stat. Ann §403.5065(2)(West Supp. 1979).

38. Id. §403.504(6).

39. Id. §403.508(4).

40. Id. §403.504(9).

41. Rules of the Department, Rule 17-17.05.

42. Fla. Stat. Ann. §403.507(3)(West Supp. 1979).

43. Rules of the Department, Rule 1-17.20.

44. Fla. Stat. Ann §403.5081(2)(West Supp. 1979).

45. Ibid.

46. Rules of the Department, Rule 17-17.10.

47. Fla. Stat. Ann §403.508(1)(West Supp. 1979).

48. Id. §403.504(8).

49. Rules of the Department, Rule 17-17.14(1).

50. Rules of the Department, Rule 17-17.04(5).

51. Fla. Stat. Ann §403.508(4)(a)(West Supp. 1979).

52. Id. §403.508(4)(b).

53. Id. §403.508(5).

54. Id. §403.509(1).

55. Id. §403.804(1).

56. Id. §403.804(1); Peterson v. Florida Department of Environmental Regulation, 350 So. 2d 544 (Fla. Dist. Dt. App. 1977).

57. Fla. Stat. Ann §§120 (West 1973), 403.513 (West Supp. 1979).

58. Id. §120.68(West Supp. 1979).

59. Id. §120.68(7)-(10).

60. Boyette v. State of Florida Professional Practices Council, 346 So. 2d 598 (Fla. App. 1977)(reviewing an order of the State Board of Education which revoked petitioner's teaching certificate).

61. Fla. Stat. Ann §120.68(12)(West Supp. 1979).

62. Id. §120.68(13).

63. Id. §403.502.

64. Rules of the Department, Rules 4.3.1-4.3.6.

CHAPTER 4

FRANCHISING OF PUBLIC UTILITIES IN FLORIDA

I. GENERAL PREEMPTION BY THE SITING ACT

Local franchising of new electric power plants has been preempted by the Florida Electrical Power Plant Siting Act.[1] The certificate issued by the Board "shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed power plant."[2] However, "electrical power plant" is defined to include only electrical generating facilities, associated facilities and "those directly associated transmission lines required to connect the electrical power plant to an existing transmission network or right-of-way which the applicant intends to connect."[3] Local franchises must, therefore, still be granted for the construction and maintenance of distribution lines. The Act provides the Board with the authority to decide issues relating to the use of, connection to or crossing of properties and works of any agency which was a party to the certification proceeding by electric power plant facilities. In addition, the Board is authorized to direct any such agency to execute within 30 days of the entry of certification, the necessary license or easement, subject only to conditions set forth in the certification.[4]

"Agency" is defined in the Act to include any unit or entity of government, including a regional or local government. This would include municipalities. The term "license" is defined to include franchises.[5/] Either the Department of Environmental Regulation or the applicant may join any agency whose property or works will be affected as an involuntary party to the certificate proceeding.[6/] Thus, a municipality could not avoid the effect of the Act by refusing to intervene in certificating proceedings.

The procedure to be followed in obtaining a certificate under the Act is discussed in Chapter 3.

II. LOCAL FRANCHISING RULES WHERE FRANCHISING NOT PREEMPTED BY THE SITING ACT

A. Authority to Grant Franchises

The Siting Act does not apply to electric distribution lines or to public utilities other than electric utilities. Local authorities retain franchising powers with respect to these operations.

The Municipal Home Rule Powers Act[7/] repealed the Florida statutes that had granted municipalities express authority to franchise utilities.[8/] However, authority to franchise is included in the broad powers granted to municipalities under the Home Rule Act. The act provides

municipalities with "the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services . . .," and provides that they ". . . may exercise any power for municipal purposes, except when expressly prohibited by law."[9] "Municipal purpose" is defined as any activity or power which may be exercised by the state or its political subdivisions.[10]

While Florida courts have not addressed the question of whether the authority to issue franchises to public utilities can be implied from the broad grant of powers in the Home Rule Act, the Florida Attorney General has issued an opinion that a municipality may grant a franchise to a public utility corporation to erect, maintain and operate a community antenna television system under the home rule authority.[11] Furthermore, an implied municipal authority to grant utility franchises was established in case law before the now repealed franchising statutes were originally enacted.[12]

B. Procedure for Obtaining Utility Franchises

No specific statutory procedures have been established for obtaining utility franchises. Because the franchising power is derived from the Home Rule Act, the procedure to be followed will necessarily be found in municipal and county charters and ordinances. Cases prior to the Home Rule Act

indicate that utility franchises were granted by municipal ordinance. Although no cases decided since the passage of the Home Rule Act became effective indicate the particular procedure for franchising utilities, there is nothing to suggest that franchising under the act will be other than by municipal ordinance. Therefore, the general procedures for adopting ordinances under the Home Rule Act should apply to the franchising of utilities.

Those procedures require that the ordinance be introduced in writing, and embrace only one subject matter. The subject must be clearly stated in the title. The proposed ordinance may be read by title, or in full, and must be read on at least two separate days. In addition, notice of the ordinance must appear in a newspaper of general circulation at least seven days prior to adoption. The notice must state the date, time and place within the municipality where the proposed ordinance may be inspected by the public and must state that interested parties may appear at the meeting and be heard with respect to the ordinance.[13/] An affirmative vote of a majority of the members of the governing body is necessary to enact a non-emergency ordinance.[14/]

The procedures of the Home Rule Act nullify any conflicting procedures in a municipality's charter existing when the act was adopted.[15/] However, where the procedures of the act are merely cumulative rather than conflicting

with existing municipal procedures, the existing procedures are not nullified. Furthermore, municipalities may subsequently enact new procedures more restrictive than those of the act.[16/] Some municipal charters, for example, have required freeholder approval before a utility franchise may be granted.

There are no judicial decisions which add to the general procedural requirements for adopting ordinances.

C. Criteria Applied to Requests for Utility Franchises

There are no statutory criteria to be applied to requests for utility franchises. However, the Home Rule Act provides that municipal powers may only be exercised for "municipal purposes," which are defined as "any activity or power which may be exercised by the state or its political subdivisions."[17/] Although there have been no interpretive cases under the Home Rule Act, a utility franchise will probably be required to have some public purpose.[18/] Neither the statutes nor the courts have established any other criteria. Criteria for granting franchises may be found in individual home rule charters.

D. Characteristics of the Francise

1. Duration and Termination

The Home Rule Act repealed the express franchising statute which had imposed a 30 year limitation, and repealed other statutory provisions for termination by forfeiture.[19/]

Those repealed statutes had also provided that after termination, a municipality could purchase the facilities, or force the utility to remove them. No judicial opinions since the repeal of those statutes have dealt with duration and termination of franchises. These issues could be dealt with in individual home rule charters.

Case law before those statutes were originally enacted, however, imposed a "reasonable time" limitation on utility franchises. For example, in State ex rel. Buford v. Pinellas County Power Co.,[20/] the state brought by quo warranto proceedings to terminate a 99 year franchise granted to an electric utility by a municipality. The court sustained the validity of the ordinance, finding that the municipality had authority to grant franchises and that the 99 year term was not unreasonable. Ninety-nine years was not unreasonable because the state retained general powers over the regulation of the business.

2. Exclusivity

An opinion of the Attorney General issued subsequent to the enactment of the Home Rule Act states that prior to the enactment of the Home Rule Act, Florida municipalities had no power to grant exclusive franchises to use the streets unless the power not only to grant a franchise, but also to grant an exclusive franchise has been delegated to it by the legislature either expressly or by necessary implication

Furthermore, principles of strict statutory construction greatly limit, if not exclude, an implied authority to grant an exclusive franchise.[21] However, where a municipality has been incorporated pursuant to a special act of the Florida legislature, and the special act expressly or necessarily implies authorization to establish or grant an exclusive franchise for utility lines, the municipality may validly do so.[22] In addition, under the new Home Rule Act,[23] a municipality may grant an exclusive franchise, according to the Florida Attorney General.[24]

3. Other Characteristics

The grant of authority to municipalities in the Home Rule Act is broadly phrased, and contains no provision limiting franchising to particular utility services. Nor is there any statutory provision for abandonment of a franchise. However, in Leonard v. Baylen Street Wharf Co.,[25] the court, in dictum, stated that cessation of the use of the grantee of a franchise would permit the municipality to grant the use to others.

Florida municipalities are not authorized to impose a franchise tax. However, they may require a franchise fee as consideration for granting a franchise.[26]

There are no Florida statutes or cases dealing with the question whether a municipality can preclude the operation of a utility which has been authorized by the Pubic Service Commission to provide service by refusing to grant a franchise.

FOOTNOTES

1. Fla. Stat. Ann. §§403.501-.517 (West Supp. 1978).

2. Id. §403.511(1) (West Supp. 1979).

3. Id. §403.503(7) (West Supp. 1979).

4. Id. §403.509(2).

5. Id. §403.503.

6. Id. §403.508(4)(e).

7. Id. §§166.011-166.411 (West Supp. 1978).

8. Id. §§167.22-167.27 (West 1966).

9. Id. §166.021(1). (West Supp. 1978).

10. Id. §166.021(2).

11. 1973 Op. Att'y. Gen., 073-375 (Fla., Oct. 8, 1973).

12. State ex rel Buford v. Pinellas County Power Co., 100 So. 504 (Fla. 1924) (holding that general grants of authority to cities and towns including power over the lighting of streets, were a sufficient basis for an ordinance granting a franchise to an electric company).

13. Fla. Stat. Ann. §§166.041(2), (3) (West Supp. 1978).

14. Id. §§166.041(4), (5).

15. Id. §166.021(4), (5); 1974 Op. Att'y Gen., 074-371 (Fla., Dec. 4, 1974).

16. Id. §166.041(6).

17. Id. §§166.021(1), (2).

18. See, Leonard v. Beylen Street Wharf Co., 52 So. 2d 718 (Fla. 1910); Brandon v. County of Pinellas, 141 So. 2d 278 (Fla. Dist. Ct. App. 1962).

19. Fla. Stat. Ann. §§167.22-167.27 (West 1966).

20. State ex rel. Buford v. Pinellas County Power Co., 110 So. 504 (Fla. 1924).

21. 1973 Op. Att'y Gen., 073-375 (Fla., Oct. 8, 1973).

22. St. Joseph Natural Gas Co. v. City of Ward Ridge, 265 So. 2d 714 (Fla. Dist. Ct. App. 1972); Grova v. Baran, 134 So. 2d 25 (Fla. Dist. Ct. App. 1961).

23. Fla. Stat. Ann. §§166.011-166.411 (West Supp. 1978).

24. 1973 Op. Att'y Gen., 073-375 (Fla., Oct. 8, 1973).

25. Leonard v. Baylen Street Wharf Co., 52 So. 718 (Fla. 1910).

26. See Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976).