



Florida Department of Environmental Protection

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Carlos Lopez-Cantera
Lt. Governor

Ryan E. Matthews
Interim Secretary

FINAL ORDER GRANTING VARIANCE

PETITIONER:

Lee County Electric Cooperative, Inc. (LCEC)
P.O. Box 3455
North Fort Myers, FL 33918

AGENT:

Ayres Associates
c/o Jan Ash
5802 Benjamin Center Drive, Suite 101
Tampa, FL 33634
AshJ@AyresAssociates.com

PROJECT INFORMATION:

Date of Issue: February 10, 2017
Expiration Date: February 9, 2019
County: Lee
Project: 0340508-002-EV
OGC NO. 16-0080

FINAL ORDER BY THE DEPARTMENT:

The Department of Environmental Protection (Department) hereby grants, to Lee County Electric Cooperative, Inc. (LCEC), a variance (File No. 0340508-002-EV) from the requirements of Florida Administrative Code Rule 62-330.302(1)(c) and section 10.2.5 of the Applicant's Handbook Volume I (Volume I), referenced therein, to allow for the installation of 30,055 linear feet of new electrical cable between Captiva Island and North Captiva Island via jet plow in Pine Island Sound, Class II, Outstanding Florida Waters, conditionally approved for shellfish harvesting, Pine Island Sound Aquatic Preserve in Lee County. This variance is sought in conjunction with the activities necessary to construct the proposed project as described in Environmental Resource Permit Application No. 0340508-001-EI for the installation of the cable.

This variance will permanently allow the installation of 30,055 linear feet of new electrical cable between Captiva Island and North Captiva Island via jet plow, located within waters classified as conditionally approved for shellfish harvesting. This variance shall only be valid for a period 24 months from the date of this final order authorizing the variance from the above-referenced rule.

The associated Environmental Resource Permit Application No. 0340508-001-EI is for installation of 30,055 linear feet of new electrical cable between Captiva Island and North Captiva Island via jet plow in Pine Island Sound, Class II, Outstanding Florida Waters, conditionally approved for shellfish harvesting, Pine Island Sound Aquatic Preserve in Lee County.

After reviewing the Petition for Variance, the Department concluded the Petitioner demonstrated that the hardship asserted as a basis for the need for a variance is peculiar to the affected property and not self-imposed and that the grant of this variance is consistent with the general intent and purpose of Chapter 403, Florida Statutes. Additionally, the Petitioner demonstrated that there is a need to relieve or prevent hardship of another kind. Specifically, the Petitioner demonstrated that the proposed project is necessary to provide reliable electrical services to the residents of North Captiva Island. The Petitioner has shown that the existing subaqueous cable is deteriorating and needs to be replaced. The existing power line provides power to North Captiva Island and needs to be maintained to avoid future power outages. The Petitioner demonstrated that the activity will not have a negative effect on the Class II Outstanding Florida Waters and will not result in violations of water quality standards in the Class II Outstanding Florida Waters.

The Notice of Intent to Issue a Variance from Rule 62-330.010, F.A.C., notified the Petitioner of the Department's proposed agency action and advised them of their right to a hearing pursuant to sections 120.569 and 120.57, Florida Statutes. On December 28, 2016, notice was given in Sanibel-Captiva Islander and on November 21, 2016 notice was given in the Florida Administrative Register informing the public of the Department's intended action and offering an opportunity for hearing pursuant to sections 120.569 and 120.57, Florida Statutes.

The Petitioner and interested parties having been advised of their rights under chapter 120, Florida Statutes, and having failed or declined to file a Petition pursuant to sections 120.569 and 120.57, Florida Statutes, are hereby deemed to have waived those rights. Acceptance of the variance constitutes notice and agreement that the Department will periodically review this variance for compliance, including site inspections where applicable, and may initiate enforcement action for violation of the conditions and requirements thereof. It is therefore:

ORDERED by the State of Florida, Department of Environmental Protection, that the Petition of Lee County Electric Cooperative, Inc. (LCEC) requesting a variance be and is hereby granted.

The variance shall be subject to the following conditions:

- a. This variance is only valid in conjunction with the issuance of Environmental Resource Permit No.0340508-001-EI, and is subject to all conditions of the permit.
- b. The variance is granted under section 403.201(1)(c), Florida Statutes, which limits the duration of the variance to a period of 24 months. Therefore, this variance shall be valid for a period 24 months from the date of the final order authorizing the variance from the above-referenced rule.
- c. The construction may not begin until the Department issues a final order granting the variance from the above-referenced rule and the associated Environmental Resource Permit No. 0340508-001-EI authorizing the project.

Any Party to this Order has the right to seek judicial review of the Order Pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of the Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by

filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Order is filed with the clerk of the Department.

DONE AND ORDERED this 10th day of February, 2017, in Tallahassee, Florida.

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**



**Administrators Name
Title**

**Copies furnished to:
Bonnie Malloy, FDEP OGC Attorney**

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



Deputy Clerk

February 10, 2017

Date

Prepared by: Patricia Clune