

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for)
Determination of Need for)
an Intrastate Natural Gas)
Pipeline by SunShine)
Pipeline Partners)
_____)

Docket No.: 920807-GP
Filed: April 28, 1993

**SUNSHINE PIPELINE PARTNERS' MOTION TO STRIKE
REBUTTAL TESTIMONY OF PAUL R. CARPENTER**

COMES NOW, SunShine Pipeline Partners, a Florida General Partnership ("SunShine"), pursuant to Rule 25-22.037, Florida Administrative Code, and herewith files its Motion to Strike Rebuttal Testimony of Paul R. Carpenter and states in support thereof:

1. On March 5, 1993, SunShine filed its Application with the Florida Public Service Commission ("Commission") for a determination of need for an intrastate natural gas pipeline in Florida.

2. The Commission's review of SunShine's Application is governed by Section 403.9422, Florida Statutes, which provides in pertinent part:

In the determination of need, the Commission shall take into account the need for natural gas delivery reliability, safety, and integrity; the need for abundant, clean-burning natural gas to assure the economic wellbeing of the public; the appropriate commencement and terminus of the line; and other matters within its jurisdiction deemed relevant to the determination of need.

3. At the Issue Identification Conference held on March 29, 1993, the parties and Commission staff identified issues that they determined to be appropriate in this docket and that further

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defined the scope of this proceeding and the matters deemed relevant thereto.

4. Intervenor Florida Gas Transmission Company ("FGT") seeks to raise a series of issues concerning the regulatory treatment for certain potential ownership interests of Florida Power Corporation ("FPC") which are being considered in a separate docket before this Commission, Docket No. 930281-EI.

5. The regulatory treatment of FPC's potential equity interests in SunShine has no relevancy to these determination of need proceedings, has no relevancy to any document, precedent agreement or other material in these proceedings. Mr. E. J. Burgin testified at pages 117, 118 and 165 of the transcript of his deposition taken on April 7, 1993, that there was no provision of the precedent agreement between ANR Pipeline Company and FPC that conditioned FPC's purchase of natural gas transmission capacity on FPC's equity participation in SunShine Pipeline Partners. Mr. Carpenter admitted at page 83 of his transcribed deposition taken on April 20, 1993, that he was unaware of any provision of FPC's precedent agreement that made FPC's commitment to transportation capacity on SunShine contingent on FPC maintaining an equity interest in SunShine Pipeline Partners or approval of the equity treatment FPC is seeking in Docket No. 930281-EI.

6. SunShine does not contest the right of any party to present admissible evidence regarding the issues concerning regulatory treatment of FPC's potential equity interest at the appropriate time and in the appropriate docket. To permit the

introduction of evidence with respect to matters that are not before the Commission in this docket will not aid or further the Commission's determination of those issues which are properly before it, and the introduction of such irrelevant evidence has the potential of prejudicing the proper consideration of matters which are relevant.

7. Specifically, the irrelevant testimony offered by Paul R. Carpenter is found on the following pages of his rebuttal testimony filed by FGT:

- p. 2, all after the word "distortions" on line 19 and all of lines 20 through 21
- p. 3, all of lines 7 through 21
- p. 6, the sentence beginning on line 7 and all of lines 8 through 25
- p. 7, all of lines 1 through 7
- p. 10, all of lines 4 through 7
- p. 15, all of lines 5 through 16

8. The Florida Evidence Code defines relevant evidence as evidence tending to prove or disprove a material fact. §90.401, Fla. Stat. (1991). Matters related to the equity participation of FPC in SunShine Pipeline Partners do not tend to prove nor disprove any of the factors which the Commission is required by Section 403.9422 to take account of in its determination of need.

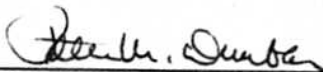
9. The Rules of the Commission specifically provide for the exclusion of irrelevant testimony. Rule 25-22.048(3), F.A.C. Further, evidence is properly stricken when it has no relevancy to any issue in a proceeding. *Oil Conservationists, Inc. v. Gilbert*,

471 So.2d 650 (Fla. 4th DCA 1985). *Zabner v. Howard Johnson's Inc. of Florida*, 227 So.2d 543 (Fla. 4th DCA 1969).

WHEREFORE, for the reasons set forth above, SunShine respectfully requests that said rebuttal testimony described above be stricken from this proceeding.

RESPECTFULLY SUBMITTED this 28th day of April, 1993.

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CERTIFICATE OF SERVICE
DOCKET NO. 920807-GP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery(*) on this 28th day of April, 1993, to the following parties of record:

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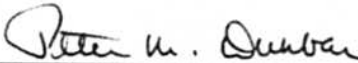
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