

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of George and) DOCKET NO. 930807-EI
Irene Tabor against Florida) ORDER NO. PSC-93-1382-FOF-EI
Power and Light Company) ISSUED: 9/21/93
regarding relocation of)
facilities not on an easement.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING RELIEF

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission (PSC) that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Irene and George Tabor filed this complaint against the Florida Power and Light Company (FPL or utility). The Tabors seek to have FPL electrical facilities relocated from their property, but argue that they should not be charged by FPL for the relocation costs. The Tabors assert that an FPL power line improperly occupies their property and must be removed. FPL claims a prescriptive easement across the Tabors' property and asserts that relocation costs must be borne by the Tabors.

The Tabors contacted the PSC's Division of Consumer Affairs on December 28, 1992, seeking to have FPL remove at its own cost a power line which crossed their property. FPL was unwilling to relocate the electrical facilities without charging the costs to the Tabors. The Tabors and FPL met several times informally under the procedures prescribed by Rule 25-22.032, Florida Administrative Code, but were unable to resolve their differences. The Tabors' complaint was formally docketed on August 5, 1993.

The Tabors allege that the power line in question is unsafe and hazardous, prompting their request for relocation. The Tabors argue that FPL does not have permission to have the disputed line cross their property. The Tabors state FPL does not have a platted easement, nor has FPL obtained consent from the Tabors for the

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disputed line's location. Consequently, the Tabors argue that they should not be charged relocation costs for a line which they characterize as illegally located.

FPL concedes that the line in question does not occupy a platted easement. FPL further concedes that it did not obtain the Tabors' consent for the lines' present location. However, FPL counters that it has a prescriptive easement for the location of the line. FPL records indicate that the power lines crossing the Tabors' property were installed in 1959 and 1960. FPL asserts that the lines have been in place for longer than twenty years and therefore are covered by prescriptive rights.

We note that the FPL line in question is affixed to telephone poles which are the property of Southern Bell Telephone Company (Southern Bell). We also note that the records of Southern Bell indicate that these poles were installed in 1959.

Commission Staff conducted a safety inspection of the power line in question on August 5, 1993. Staff found that the line complies with the National Electrical Safety Code.

We note that the facts as alleged by FPL satisfy the legal requirements for the acquisition of an easement by prescription. However, the Tabors dispute the installation date of the line in question. The Tabors assert that the disputed line did not cross their property in 1968, when they purchased the property, although the Tabors do not state a specific date when they allege the line was installed.

FPL's tariff, section 5.3, provides:

When there is a change in the Customer's operation or construction which, in the judgment of the Company, makes the relocation of Company's facilities necessary, or if such relocation is requested by the Customer, the Company will move such facilities at the Customer's expense to a location which is acceptable to the Company.

The purpose of this tariff is to assure that the customer causing a cost bears the burden of that expense, rather than the expense being passed on to the general body of ratepayers. We find that FPL is in compliance with its tariffs in advising the Tabors that if the facilities are relocated, it will be at the Tabor's expense. We also find that the line in question is in compliance

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with the National Electrical Safety Code, as indicated by Commission Staff.

We find that this controversy presents issues of property law which do not fully lie within the Commission's jurisdiction. The Commission lacks the power to issue and enforce the appropriate remedies which would resolve the easement dispute. Consequently, any examination of the factual issues or the legal arguments relating to the easement dispute would be futile. We believe the easement dispute must be addressed by a court of competent jurisdiction, should the parties wish to pursue the matter.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Florida Power and Light Company has not violated its tariff in advising George and Irene Tabor that if the facilities are relocated, it will be at their expense. It is further

ORDERED that all other issues of this controversy are dismissed, as more appropriate to adjudication by a court of law. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 21st day of September, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kary Flynn
Chief, Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 12, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.