

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination)
of Need for Collier-Orange River) DOCKET NO. 030084-EI
230kV Transmission Line in Collier,)
Hendry, and Lee Counties, by) FILED: March 28, 2003
Florida Power & Light Company)
_____)

BARRON COLLIER COMPANIES' MOTION TO COMPEL AND ALTERNATIVE MOTION
FOR CONTINUANCE OF HEARING IN PART

Barron Collier Companies ("Barron Collier"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby respectfully requests the Prehearing Officer to issue an order compelling Florida Power & Light Company ("FPL") to produce Mr. Martin Mennes for deposition no later than 9:30 a.m. on Monday, April 7, 2003, such deposition to be concluded by 4:30 p.m. on that date, or in the alternative, to continue that part of the hearing in which Mr. Mennes will testify to a date subsequent to April 9, so that Barron Collier may have an opportunity to depose Mr. Mennes and then conduct cross-examination of Mr. Mennes at the hearing. Barron Collier is entirely amenable to proceeding with the requested deposition on April 7 and to hearing on April 8 and 9 as scheduled, and only offers this alternative to address the possibility that FPL will not produce Mr. Mennes on April 7 as requested.

As grounds for this Motion, Barron Collier states as follows.

On March 18, 2003, Barron Collier learned that FPL had filed its petition for determination of need.

On March 19, 2003, Barron Collier petitioned to intervene in this proceeding. On March 20, Barron Collier served its first (and only) discovery requests on FPL. By the transmittal letter from the undersigned accompanying FPL's copies of Barron Collier's discovery requests, the undersigned requested that FPL identify dates on which its witnesses would be available for deposition. (A copy of the subject transmittal letter is attached to this motion.)

On March 24, 2003, the Prehearing Officer issued Order No. PSC-03-0414-PCO-EI, granting Barron Collier's petition to intervene.

On March 27, 2003, the undersigned called counsel for FPL to inquire as to the availability of FPL's witnesses for deposition. (On that date, the undersigned also advised FPL's counsel that Barron Collier does not need to take the deposition of FPL's witness Vicente Ordax.) FPL's counsel advised that Mr. Schoneck would be available on April 2, 3, or 4, but that Mr. Mennes was "gone" and would be "on vacation" until the day before the hearing. When the undersigned inquired about the prospect of deposing Mr. Mennes on April 7, FPL's counsel advised that FPL would oppose such a request. This Motion to Compel follows.

FPL knew from March 20, 2003, that Barron Collier desired to take Mr. Mennes's deposition, but never responded to Barron

Collier's specific request for availability. Only when the undersigned called FPL's counsel on March 27 was the undersigned notified that Mr. Mennes would not be available before April 7 (the day before the hearing) and that FPL would resist Barron Collier's efforts to depose him on that date.

Mr. Mennes's testimony is critical to FPL's case and to Barron Collier's positions on the key issues of cost and reliability of the proposed line. Mr. Mennes's testimony addresses FPL's claims regarding reliability of the proposed route. Barron Collier hopes to depose Mr. Mennes with regard to those claims and with regard to cost and cost-effectiveness issues relating thereto.

FPL should be required to produce Mr. Mennes for deposition prior to his testimony in the hearing. This is fair and consistent with due process requirements. The Order Establishing Procedure provides that discovery is not to be completed until April 4, fifteen days after Barron Collier asked FPL to identify the availability of its witnesses for deposition and eight days after Barron Collier's follow-up request to FPL. Admittedly, as an intervenor, Barron Collier takes the case as it finds it, but Barron Collier submits that this means the case and not Mr. Mennes's personal plans, and further that FPL had a reasonable obligation, having been asked, to notify Barron Collier of Mr. Mennes's pending unavailability the week before the hearing and to suggest a mutually workable alternative.

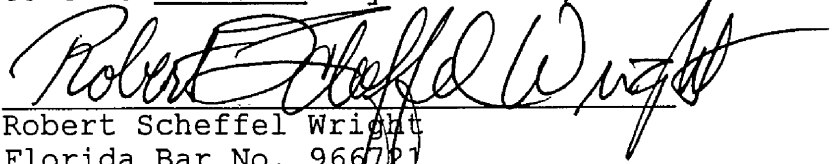
In the alternative, Barron Collier requests that FPL be required to make Mr. Mennes available as soon as practicable after April 7, e.g., on April 9, and that the hearing be continued until some reasonable time (e.g., one to three days) following the date on which Barron Collier is able to take Mr. Mennes's deposition and then resumed for the purpose of receiving Mr. Mennes's testimony and hearing cross-examination of Mr. Mennes.

Finally, if FPL simply refuses to accommodate this legitimate discovery request, Barron Collier would move that Mr. Mennes's testimony simply be expunged from the files and not admitted into the record of this proceeding. This would be an appropriate sanction for FPL's failure to make discovery via the requested deposition of Mr. Mennes.

Pursuant to Rule 28-104.204(3), F.A.C., the undersigned counsel for Barron Collier has conferred with counsel for the Commission Staff, who take no position on this motion, and with counsel for FPL, who oppose the motion. Given that none of the other "statutory" parties has filed any pleadings in this docket, the undersigned has not attempted to contact those parties.

WHEREFORE, Barron Collier Companies respectfully moves the Prehearing Officer for an order compelling FPL to make Mr. Martin Mennes available for deposition on April 7 or for alternative relief as set forth above.

Respectfully submitted this 28th day of March, 2003.

A handwritten signature in black ink, appearing to read "Robert Scheffel Wright". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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March 20, 2003

BY HAND DELIVERY

Kenneth A. Hoffman, Esquire
Rutledge Ecenia Purnell & Hoffman
P.O. Box 551
Tallahassee, Florida 32302

Re: PSC Docket No. 030084-EI, FPL's Petition for Determination
of Need for Collier-Orange River #3 Project Transmission
Line

Dear Ken,

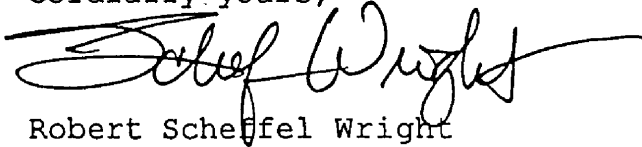
As we discussed earlier today, enclosed are your service
copies of Barron Collier Companies' Requests for Production of
Documents, and also our First Set of Interrogatories.

Also as we discussed earlier, I am requesting that you
identify dates on which each of FPL's three witnesses will be
available for deposition. At this point, of course, we do not
know if the Prehearing Officer is going to allow Mr. Armand's
testimony, but if he does, I will promptly find out about his
availability for deposition by FPL.

Finally, you will note that our production requests ask for
unredacted copies of the materials filed with the PSC, and I
expect that FPL will assert confidentiality with respect to some
of the other documents that we have requested. Accordingly, I am
requesting that you either (a) furnish a proposed confidentiality
agreement pursuant to which FPL would be willing to disclose
confidential information; (b) ask me to prepare such a proposed
confidentiality agreement, which I will be happy to do; or (c)
advise me if FPL intends to resist furnishing confidential
information at all. As indicated in our production requests, we
will be happy to execute a reasonable confidentiality agreement
and to support its incorporation into a confidentiality order if
FPL so desires.

Thanks in advance for your cooperation with regard to the above matters. Please advise when I can reciprocate.

Cordially yours,

A handwritten signature in cursive script, appearing to read "Robert Scheffel Wright". The signature is written in black ink and is positioned above the typed name.

Robert Scheffel Wright

Enclosures

CERTIFICATE OF SERVICE

DOCKET NO. 030084

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

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William Keating, Esq.
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