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MEMORANDUM

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COMMISSION
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TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: OFFICE OF THE GENERAL COUNSEL (STERN) *MKS*

RE: DOCKET NO. 010908-EI - COMPLAINT AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING PLACEMENT OF POWER POLES AND TRANSMISSION LINES BY AMY & JOSE GUTMAN, TERESA BADILLO, AND JEFF LESSERA.

Please place the attached letter in the above-referenced docket file. Thank you.

MKS/anc
Attachment

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FFSC-COMMISSION CLERK.

STATE OF FLORIDA

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Public Service Commission

April 5, 2002

Jose and Amy Gutman
12643 Little Palm Lane
Boca Raton, FL 33428

Teresa Badillo
12280 St. Simon Drive
Boca Raton, FL 33428

Jeff Lessera
7200 Loxahatchee Drive
Pompano Beach, FL 33067

RE: Docket No. 010908/Complaint against Florida Power & Light Company regarding placement of power poles and transmission lines by Amy and Jose Gutman, Teresa Badillo and Jeff Lessera.

Dear Mr. & Mrs. Gutman, Ms. Badillo and Mr. Lessera:

By means of this letter, the Staff of the Public Service Commission (staff) proposes a resolution of your complaint concerning the 230 kV transmission line constructed by Florida Power & Light Company (FPL) adjacent to the Hillsboro canal in Palm Beach and Broward counties. Staff proposes that the complaint be dismissed.

The line serves to extend the grid to include FPL's newly constructed Parkland substation. The complainants are homeowners whose homes are located in close proximity to the line. The line was constructed after the complainants purchased their homes. In essence, the complainants' concerns fall into two categories.

First, the complainants assert that the line was not constructed in a manner consistent with the requirements of the National Electric Safety Code (NESC), which governs the construction of utility distribution and transmission systems. The Florida Public Service Commission (Commission) enforces the NESC.

DOCUMENT NO. 06828-03 7.29.03

The complainants specific concerns include the minimum clearance of the lines above the canal; the proximity of one of the poles to Mr. Leserra's residence; and the design standard of the line with respect to expected windstorms. Staff considered the complainants concerns, reviewed information supplied by the utility, and physically inspected the line. It appears that the line was constructed and is being maintained in compliance with the National Electric Safety Code.

Second, the complainants object to the location of the transmission line. The complainants assert that the placement of the line required a waiver of Rule 40E-6.011(4),(5) and (6), Florida Administrative Code, which governs the placement of permanent and semi-permanent encroachments in the vicinity of the top of canal bank within Works and Lands of South Florida Water Management District (SFWMD). The complainants assert that adequate notice of the waiver was not provided. The sufficiency of this notice is not a matter within the jurisdiction of the Public Service Commission and as noted above, was thoroughly litigated with an ALJ's recommended order adverse to the complainants in DOAH case 01-1504; as of this writing, the WMD has not yet adopted the ALJ's recommended order.

In addition, the complainants assert that the deed restrictions in the deed to the predecessor in interest to the SFWMD do not allow for the construction of a transmission line in that location. However, the determination of property rights and the extent of the allowable uses are issues not within the jurisdiction of the Florida Public Service Commission. The circuit courts of Florida are the courts of competent jurisdiction when property rights involving real estate are at issue.

The complainants assert that the permit granted to FPL by the SFWMD is a non-assignable license. Again the nature of the interest(s) in real estate granted by means of license or easement, whether transferable or non transferable is a matter beyond the jurisdiction of the Commission. The Commission is an administrative agency, a creature of statute with only those powers specifically enumerated in the statutes or strictly related thereto.

The complainants assert that they had no advance notice of the construction of the line. They assert that as soon as they saw the first poles being placed they voiced their concerns to FPL. They state that FPL has indicated that its sunk costs at that point in time were somewhere between 300-500 thousand dollars. Since this line does not fall within the ambit of the Transmission Line Siting Act, FPL is compelled neither by any statute administered by the Commission nor by any rule adopted thereunder to provide notice under such circumstances. Whether the complainants were entitled to any other notice, and if so, what constitutes sufficient notice beyond the authority of the FPSC to determine.

Next, the complainants allege that FPL failed to choose the least-cost alternative for the construction of this line. They allege that FPL identified an alternative route slightly to the south of Loxahatchee Road which traverses what is now agricultural land under cultivation. While not definitively located, future transportation plans for Broward County include the extension of Hillsboro Boulevard across this land in the same direction as the transmission line. FPL rejected this alternative because of objections by the landowners and the expense of obtaining the necessary easements. FPL estimated that this would increase the cost of the line by approximately \$1,000,000.

The complainants respond that had they known of the proposed route they would have objected, and indeed, did so as soon as they were aware of FPL's plans. Moreover, the complainants note that siting the transmission line along what is now agricultural land, but will be a major east-west arterial roadway, would afford prospective occupants the opportunity to make a conscious decision to locate near the line.

In addition, the complainants note that the agricultural landowners will likely be required to make certain dedications of land for streets, roadways, and utilities as a condition for permitting the subdivision and development of the area. They assert that the placement of this line along a future commercial corridor is a more appropriate location than adjacent to an existing residential neighborhood.

Whether FPL has in fact invested prudently in this transmission line is a matter for traditional regulatory scrutiny in which traditional regulatory remedy is appropriate. Without addressing the merits of the issue, staff notes that the Commission, should it find that FPL has incurred unnecessary investment by following an improvident and expensive route, is empowered by statute and case law to disallow such imprudent expenses as appropriate. The Commission is not empowered to order FPL to relocate a transmission line of this size for the reasons urged by the complainants.

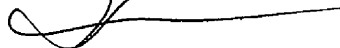
Finally, the complainants assert that the presence of this 230 kV line adjacent to their neighborhood has diminished property values by as much as 12 million dollars. FPL has confirmed that it did not study or consider any diminution in value in reaching its decision to site this line.

Determining the diminution of the value of Complainants' property, if any, is not a matter entrusted to the Commission by the Legislature. The civil courts of our state are thoroughly equipped to resolve such matters, both in terms of providing procedural safeguards to litigants as well as enforcement mechanisms for their benefit. The Commission currently is empowered to provide somewhat pervasive economic regulation of FPL and other investor owned utilities, the focus of which is to protect utility consumers from the potential for monopolistic pricing. Although the Commission has specific authority regarding transmission lines under the Grid Bill, the jurisdictional limits are clearly set forth in that statute and simply do not address the transmission line addressed here.

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Accordingly, Staff proposes that the above referenced complaint be dismissed with prejudice.

Sincerely,



Harold McLean
General Counsel

Notice of Rights

If any party objects to this proposed resolution it may request consideration by the Commission at a regularly scheduled agenda conference. Any request for Commission consideration shall be filed with the Clerk of the Florida Public Service Commission within 30 days of the date of this proposed resolution.

HMCL:vw

cc: Steel Hector & Davis LLP
c/o John T. Butler, P.A.
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200 South Biscayne Boulevard
Miami, FL 33131-2398