

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Florida Power & Light Company regarding placement of power poles and transmission lines by Amy & Jose Gutman, Teresa Badillo, and Jeff Lessera.

DOCKET NO. 010908-EI  
ORDER NO. PSC-02-0788-PAA-EI  
ISSUED: June 10, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER FINDING TRANSMISSION FACILITIES IN COMPLIANCE WITH  
NATIONAL ELECTRICAL SAFETY CODE AND  
FINAL ORDER DISMISSING COMPLAINTS ON ALL OTHER GROUNDS FOR  
LACK OF JURISDICTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed in Part II of this Order is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

Three separate informal complaints have been filed with this Commission's Division of Consumer Affairs against Florida Power & Light Company (FPL) regarding the placement of a particular FPL transmission line. The named complainants are Jose and Amy Gutman (Request No. 366172E), Teresa Badillo (Request No. 344754E), and

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Jeff Lessera (Request No. 367987E). The line in question is a 230kV transmission line that runs 4.75 miles in length along the south bank of the South Florida Water Management District's (SFWMD) Hillsboro Canal and the north shoulder of Lox Road in northwest Broward County and southwest Palm Beach County, Florida. The line, known as the "Parkland Line," connects FPL's newly-constructed Parkland substation to FPL's existing transmission system. The land permit authorizing the line was granted by the Governing Board of the SFWMD at its July 2000 meeting, and construction of the line began in late October 2000.

In November 2000, the complainants contacted and met with FPL representatives to discuss their concerns with regard to the location of the Parkland Line and their desire to have the line relocated. Simultaneously, the complainants commenced discussions with the SFWMD. According to FPL, its representatives met twice with Mr. Gutman and other representatives of the Boca Winds neighborhood in November 2000 to discuss alternatives for re-routing the section of the Parkland Line located parallel to their neighborhood and approximately 150 to 190 feet from the backyards of certain homeowners. Mr. and Mrs. Gutman and Ms. Badillo are the named complainants from this neighborhood, although other homeowners have joined their efforts. FPL provided cost estimates for two alternative overhead alignments. An underground construction cost estimate was also provided but was deemed to be clearly cost prohibitive by both parties. The cost estimates for the two alternative overhead alignments were qualified by FPL to the homeowners with the following conditions: (1) the cost estimates were based on FPL's assessment of land values for the easements required; (2) the affected landowners would be willing to grant FPL the easements; (3) the homeowners would agree to pay for the full cost of the relocation of the affected portion of the line prior to its actual construction (\$1.5 to \$1.6 million); and (4) FPL required a \$20,000 engineering deposit to provide a detailed binding cost estimate for the work to be performed.

As an alternative to the two relocation options, FPL offered to provide landscaping to the northern portion of the right-of-way immediately adjacent to the Boca Winds neighborhood. According to FPL, the landscaping would consist of palm trees that would largely obscure the Parkland Line from view in the Boca Winds neighborhood. FPL has offered to perform this landscaping at no charge to the

customers, in settlement of the Gutman and Badillo complaints. Mr. Lessera's home and property sit across Lox Road and across the street from the Hillsboro Canal and, according to the complainants, 69 feet from one of the poles. Thus, FPL's proposed landscaping would not obscure the line from view of his property.

This Commission received additional information from the Boca Winds homeowners (represented by the Gutmans) on March 7, 2001, and from Mr. Lessera on April 2, 2001, describing in detail their concerns with the Parkland Line. FPL provided response comments to each complaint. In June 2001, our staff conducted two mediation sessions with FPL and complainants to explore the possibility of settlement, but no resolution of the complaints was reached. Since that time, our staff has made additional attempts to informally resolve this matter through agreement among the parties, but those attempts were not successful.

By letter dated April 5, 2002, our staff provided the parties with its proposed resolution of these complaints, pursuant to Rule 25-22.032, Florida Administrative Code. The proposed resolution concluded that the transmission line in question is in compliance with the National Electric Safety Code, which this Commission enforces, but that the remaining concerns involve subjects not within our jurisdiction and thus should be dismissed. By letter dated April 24, 2002, FPL concurred with the proposed resolution and requested that a recommendation concerning these complaints be submitted for consideration by this Commission. On May 2, 2002, the complainants filed their response to the proposed resolution, requesting that they be heard before this Commission on this matter.

Because two informal mediation sessions with the parties have already been conducted, an informal conference is not necessary and would not be productive. Further, neither FPL nor the complainants have requested an informal conference, and both have asked that this matter be brought to this Commission for resolution. Accordingly, we heard from the complainants and FPL on this matter at our May 21, 2002, Agenda Conference. Our findings are set forth below.

II. COMPLIANCE WITH NATIONAL ELECTRICAL SAFETY CODE

This Commission, as required by Chapter 366.04(6)(b), Florida Statutes, has adopted and incorporated by reference in Rule 25-6.0345, Florida Administrative Code, the 1997 edition of the National Electrical Safety Code (NESC) (ANSI C-2), published August 1, 1996. This is the applicable safety standard for electrical transmission and distribution facilities under our safety jurisdiction.

The complainants raised the following specific safety concerns: (1) lack of guide wires supporting the poles; (2) the facilities' ability to withstand high winds, including the depth at which the poles were buried; (3) the minimum clearance of the lines above the canal; (4) the proximity of the poles to the road; and (5) the proximity of one of the poles to Mr. Lessera's residence. Our electrical safety engineers have evaluated FPL's Parkland Line for compliance with the NESC. Several site visits were made to evaluate the construction and address concerns raised by the complainants. Based on this evaluation, our staff engineers found that the Parkland Line's construction and related facilities comply with the NESC as adopted by this Commission.

Our engineers determined that the design of the line and the type of concrete poles used for the Parkland Line do not require any guide wires under the NESC. Further, our engineers determined that the Parkland Line was designed and built to handle 110 mile per hour winds based on a formula set for South Florida for Extreme Wind Loading in the NESC. Our engineers found that all poles were installed at the appropriate depth based on an examination of depth markers placed on the poles by the manufacturer, and that FPL provided additional depth for poles installed close to the canal slope. In addition, our engineers determined that the lines' clearance met NESC standards. We note that the clearance of the lines above the canal is subject to additional requirements established and enforced by the South Florida Water Management District.

The NESC is mostly silent regarding the location of poles. The few references in the NESC do not apply to this installation. The NESC, in section 231 (B)(4), refers to the governmental permitting authority exercising jurisdiction as having the

authority to set distances and specific locations. Specifically, section 231 (B) (4) provides:

Where the governmental authority exercising jurisdiction over structure location has issued a permit for, or otherwise approved, specific locations for the supporting structures, that permit or approval shall govern.

The permitting authority in this matter is the South Florida Water Management District. We note that the SFWMD's right-of-way easement given for the Parkland line parallels a part of Lox Road that is maintained by the county, that this section has a guardrail barrier installed by the county that preexisted the construction of the transmission line, and that the power line is located behind the guardrail away from the road. The county's barrier was designed to stop vehicles from entering the canal that parallels Lox Road.

The complainants have also raised concerns about potential health effects of electromagnetic fields (EMF) associated with the Parkland Line. Section 366.04(6), Florida Statutes, which establishes the Commission's jurisdiction to enforce the NESC, provides that the statute "shall not be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10)." Section 403.523(10), Florida Statutes, provides the Department of Environmental Protection (DEP) with the power and duty "to set requirements that reasonably protect the public health and welfare from the electric and magnetic fields of transmission lines" which require its certification. Although the Parkland Line did not require DEP certification, Section 403.061(30), Florida Statutes, grants DEP "exclusive jurisdiction in the regulation of electric and magnetic fields associated with all electrical transmission and distribution lines and substation facilities." We note that consistent with this grant of jurisdiction and applicable DEP rules, DEP has evaluated documentation provided by FPL showing the predicted magnetic field at the maximum current rating for the line and found that the line is within compliance limits.

In summary, based on the evaluations of our electrical safety engineers, we find that the power poles and other facilities associated with FPL's Parkland transmission line are constructed in compliance with the National Electrical Safety Code.

III. AUTHORITY TO REQUIRE RELOCATION OF PARKLAND LINE ON OTHER  
GROUNDS ASSERTED

This Commission is an administrative agency created by the legislature. Accordingly, this Commission has only those powers, duties, and authority that are conferred expressly or impliedly by statute. See City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So.2d 493, 496 (Fla. 1973); Rolling Oaks Utilities v. Florida Public Service Commission, 533 So.2d 770, 773 (Fla. 1<sup>st</sup> DCA 1988). The mere fact that an action is filed by an FPL customer does not relegate it to the exclusive jurisdiction of this Commission. Trawick v. Florida Power & Light Company, 700 So.2d 770 (Fla. 2<sup>nd</sup> DCA 1997).

The complainants ask us to require FPL to relocate its Parkland Line based on safety concerns, which are addressed above, in Part II of this Order, and also based on the following concerns: (1) diminished property values; (2) loss of quiet enjoyment of their property; (3) improper notice of the SFWMD's permitting and rule waiver proceedings; (4) restrictions in the deed to the predecessor in interest to the SFWMD; and (5) whether the Parkland Line was the least-cost alternative. As discussed in detail below, this Commission is not the appropriate forum to address the first four of these concerns, and requiring relocation of an installed transmission line is not the proper remedy for an imprudent investment in the line.

The complainants assert that the presence of the Parkland Line adjacent to their neighborhood has diminished property values by as much as 12 million dollars and has caused them to lose the quiet enjoyment of their property. FPL has confirmed that it did not study or consider any diminution in value in reaching its decision to site this line. However, determining and remedying any diminution of the complainants property values or loss of enjoyment of their property are not matters that the legislature has authorized this Commission to undertake. Likewise, the legislature has not authorized this Commission to enforce issues of aesthetics. The courts and this Commission have recognized these limitations. See, e.g., Trawick (Commission does not have jurisdiction over a complaint that trimming of a customer's trees by FPL was unnecessarily severe); In re: Complaint and petition of John Charles Heekins against FPL, Order No. PSC-99-1054-FOF-EI, Docket

No. 981923 (May 23, 1999) (Commission does not have jurisdiction over complaint that amounted to a claim for damages for alleged improper entry onto customer's property). The civil courts of this state are thoroughly equipped to resolve such matters.

The complainants cite portions of the Grid Bill to support this Commission's authority to address and remedy their concerns. Section 366.04(5), Florida Statutes, provides that this Commission shall have jurisdiction over the planning, development, and maintenance of a coordinated electric grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of facilities. Section 366.05(8), Florida Statutes, authorizes this Commission to require installation or repairs of facilities upon a finding that inadequacies exist with respect to the energy grids developed by the electric utility industry. Our authority over transmission facilities pursuant to these statutes is clearly related to achieving and maintaining an adequate and reliable source of power for this state. Aside from concerns about a potential collapse or wind-related failure of the facilities comprising the Parkland Line, which are addressed among the safety concerns in Part II of this Order, the complainants have not raised a concern about the line's contribution to system reliability or adequacy.

The complainants note that FPL was required to obtain a waiver from SFWMD rules to place the Parkland Line in the vicinity of the top bank of the Hillsboro Canal. The SFWMD granted FPL's request for a waiver. The complainants assert that adequate notice of the waiver request was not provided. However, the sufficiency of notice of a request for waiver of a SFWMD rule is a matter for the SFWMD to address and is not within this Commission's jurisdiction. We note that this issue has been litigated at DOAH, and, according to the complainants, the ALJ has issued a recommended order finding inadequate notice but finding that the complainants lacked standing.

The complainants assert that restrictions in the deed to the predecessor in interest to the SFWMD do not allow for construction of a transmission line in that location. The complainants also assert that the permit granted to FPL by the SFWMD is a non-assignable license. However, the determination of property rights

and the extent of allowable property uses are not within this Commission's jurisdiction. We have previously recognized this limitation. See In re: Complaint of George and Irene Tabor against Florida Power & Light Company regarding relocation of facilities not on an easement, Order No. PSC-93-1382-FOF-EI, Docket No. 930807-EI (Sept. 21, 1993) (Commission does not have authority to resolve claim that FPL lacked a prescriptive easement over customer's property). Florida's civil courts are the courts of competent jurisdiction to resolve real property rights issues.

The complainants assert that FPL failed to choose the least-cost alternative for the construction of this line. The complainants assert that FPL identified an alternative route slightly south of Lox Road that would traverse agricultural land and may track a future extension of Hillsboro Boulevard. FPL states that it rejected this alternative because of landowner objections and the expense of obtaining the necessary easements, which FPL estimates would increase the cost of the line by approximately \$1,000,000. Whether FPL has in fact invested prudently in this transmission line is a matter for traditional regulatory scrutiny in which traditional regulatory remedies are appropriate. If we were to find that FPL has imprudently incurred expenses associated with the Parkland Line, we may disallow any imprudent expenses as appropriate. Such a finding would not, however, serve as a basis to require FPL to relocate the line. Indeed, requiring FPL to relocate the line would lead to the incurrence of additional expense. We note that FPL was not required to have the Parkland Line certified under the Transmission Line Siting Act, pursuant to the exceptions listed in Section 403.524, Florida Statutes. Accordingly, a Commission proceeding to determine the need for the line, including a review of the project's cost-effectiveness, was not required.

Having addressed the complainants' concerns, a few additional points merit discussion. First, we note that Section 5.3 of FPL's tariff provides a means for customers to resolve personal or aesthetic concerns over the location of FPL facilities. This tariff provision provides that FPL will relocate facilities when requested by a customer at the customer's expense to a location acceptable to FPL. This tariff provision is consistent with this Commission's policy that, where practical, the additional costs of requests for special services, such as facilities relocation,



should be borne by those customers who request such services and thus cause those costs. Otherwise, other customers who have not requested such services and do not receive the benefit of such services would be required to subsidize those services. See, In re: Complaint of Mr. Paul Leon and Mr. Joseph Olazabel against Florida Power & Light Company regarding tariff for moving electric light poles, Order No. PSC-98-1385-FOF-EI, Docket No. 981216-EI (Oct. 15, 1998); In re: Complaint of Rich and Carol Samale against Florida Power & Light Company regarding utility pole relocation charges, Order No. PSC-93-1029-FOF-EI, Docket No. 930361-EI (July 13, 1993). We find that FPL is acting in compliance with its tariff and consistent with Commission policy by advising the complainants that relocation of the Parkland Line would be done at the requesting customers' expense.

Second, in seeking relief before this Commission, the complainants rely in part on a recent case involving a complaint and request by residents of a Miami neighborhood for FPL to relocate new transmission lines that were placed along streets and near homes in the neighborhood. In re: Complaint against Florida Power & Light Company regarding placement of power pole and lines by Pablo Acosta, Docket No. 000678-EI. The complainants assert that in Acosta, this Commission required FPL to relocate the facilities at issue. We did not, however, require FPL to relocate facilities in the Acosta case. Rather, we required FPL to further negotiate with the residents to attempt to seek a mutually acceptable resolution. We were later presented with a proposed confidential settlement of the complaint, which we approved by Order No. PSC-01-0491-AS-EI, issued February 27, 2001.

Finally, notwithstanding our lack of authority to grant the relief requested by the complainants, we find that granting the relief requested would create a poor policy precedent. Such a precedent could lead to numerous similar requests from ratepayers of FPL and other regulated electric utilities and, in turn, could impose considerable expense on the general body of ratepayers of these utilities. Certainly, as FPL has suggested in this case, it may be impossible to satisfy every customer who wishes to have nearby facilities relocated. Further, numerous additional requests may impact utilities' ability to satisfy their statutory duty to provide adequate and reliable electric service to meet the needs of this state.

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For the foregoing reasons, we find that this Commission does not have the authority to grant the relief requested by the complainants, i.e., to require FPL to relocate its Parkland Line, based on the concerns raised by the complainants other than those safety concerns, excluding EMF concerns, addressed in Part II of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the power poles and other facilities associated with Florida Power & Light Company's Parkland transmission line, as described in the body of this Order, are hereby found to be constructed in compliance with the National Electrical Safety Code. It is further

ORDERED the complaints of Jose and Amy Gutman, Teresa Badillo, and Jeff Lessera concerning the placement of Florida Power & Light Company's Parkland transmission line are dismissed on all other grounds for lack of jurisdiction. It is further

ORDERED that the provisions of Part II of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this Docket shall be closed after the time for filing an appeal of Part III has run or upon issuance of a Consummating Order on part II, whichever occurs later.

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By ORDER of the Florida Public Service Commission this 10th  
day of June, 2002.



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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

As identified in the body of this order, our action in Part II of this order is preliminary in nature. Any person whose substantial interests are affected by the action proposed in Part II of this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of

business on July 1, 2002. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, Part II of this order shall become effective and final upon the issuance of a Consummating Order.

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.

Any party adversely affected by the Commission's final action in Part III of this order may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 the Commission Clerk and Administrative Services 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 after the issuance 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.