

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL FILE 0217

IN RE: Application for )  
Determination of Need for )  
Intrastate Natural Gas )  
Pipeline by SunShine )  
Pipeline Partners )

Docket No.: 920807-GP

INTERVENOR FLORIDA GAS TRANSMISSION COMPANY'S  
RESPONSE TO SUNSHINE PIPELINE PARTNERS' MOTIONS  
TO STRIKE DIRECT AND REBUTTAL TESTIMONY OF PAUL R. CARPENTER

Intervenor Florida Gas Transmission Company ("FGT"), by the undersigned attorneys and pursuant to Florida Administrative Code rule 25-22.037(2)(b), hereby files this response in opposition to the motions to strike the direct and rebuttal testimony of Dr. Paul R. Carpenter by SunShine Pipeline Partners ("SunShine") and in support thereof states:

1. As even SunShine's own motions reflect, the *sine qua non* of this proceeding is whether there is a "need" for SunShine's intrastate pipeline project within the contemplation of section 403.9422(1)(b), Florida Statutes (Supp.), which provides in relevant 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 well-being of the public; the appropriate commencement and terminus of the line; and other matters within its jurisdiction deemed relevant to the determination of need.

2. SunShine asserts that certain of Dr. Paul Carpenter's direct and rebuttal pre-filed testimony is not relevant to this determination of need. Before examining the testimony which, by

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PEEPLES, EARL & BLANK  
ATTORNEYS AT LAW

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SunShine's lights, is objectionable, it is first appropriate to determine by just what legal standards the relevance (and hence admissibility) of evidence is established under Florida law.

3. The Florida Evidence Code provides that "[a]ll relevant evidence is admissible, except as provided by law." § 90.402, Fla. Stat. Relevant evidence is defined as "evidence tending to prove or disprove a material fact." § 90.401, Fla. SStat.; accord, Brown v. State, 250 So. 2d 13 (Fla. 3d DCA 1971). Furthermore, the relevancy of a fact to the issue being tried is ordinarily a question of logic rather than one of law. It therefore follows that facts which on principles of sound logic tend to sustain or impeach a pertinent hypothesis of the issue are deemed relevant and admitted unless proscribed by some positive rule of law.\<sup>1</sup>

4. Of course, logical relevancy alone is not the sole test of admissibility. A fact offered in evidence must be legally relevant as well as logically relevant. See, e.g., Dwyer v. Burrell Leasing Co., 366 So. 2d 1253 (Fla. 3d DCA 1979). The test for legal relevance in this proceeding, of course, is whether the evidence relates to the central issue at hand, i.e., whether there is a "need" for SunShine's proposed intrastate pipeline project within the contemplation of section 403.9422(2)(b), Florida Statutes (quoted above).\<sup>2</sup> Therefore, one needs to examine whether the testimony of Dr. Paul Carpenter tends to prove or disprove any

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<sup>1</sup> There is clearly no other statutory proscription on the admissibility of this testimony.

<sup>2</sup> Also refer to Issues 2, 3, 5, 11 and 20 to the Draft Prehearing Order dated April 29, 1993.

fact material to that central issue. Stated differently, perhaps, does the testimony of Dr. Paul Carpenter, under principles of sound logic, address this central issue of whether there is a "need" for SunShine's proposed intrastate pipeline project?

5. When judged in this light, the testimony to which SunShine objects (see ¶ 7 of its motions to strike) is clearly "relevant" to this determination of whether there is a "need" for the proposed pipeline project. In evaluating this evidence to which SunShine objects, however, it is necessary to consider first just what it is that SunShine is attempting to prove in this proceeding, i.e., that its proposed pipeline project is needed by Florida's natural gas customers. Its need analysis, such as it is, employs a "market-based" or "let the market decide" approach which relies primarily on the executed precedent agreements with Florida Power Corporation ("FPC") and Peoples Gas ("Peoples") as the anchor loads for the pipeline. The precedent agreements with FPC, however, are confounded by the fact that FPC currently has a thirty-three and one third percent (33 1/3%) equity position in the proposed pipeline companies and is, moreover, requesting from the Commission in a separate docket a regulatory treatment whereby it would be allowed to pass through to its captive electric ratepayers its costs and risks in entering into this investment.

6. Dr. Carpenter's testimony essentially explains how this equity ownership position and proposed regulatory treatment of FPC's participation in the SunShine project "affects the determination of need in this proceeding" and "how the Commission

might appropriately respond." [Carpenter Direct Testimony, p.2, lines 23-25] Dr. Carpenter's testimony can perhaps best be summarized by the following quotation from his direct testimony:

FPC's equity ownership in the project creates a conflict between its role as a project sponsor and its role as a customer of the project on behalf of its electric ratepayers. This conflict makes it very difficult for the FPSC to rely on a market-based standard for need determination in this case. FPC's equity ownership position creates incentives for project costs and risks to be allocated involuntarily to FPC's ratepayers, violating the requirement under a market-based approach that only project sponsors are to bear project risks and that cross-subsidies from ratepayers are to be avoided because they unfairly and inefficiently tilt the competitive playing field toward the subsidized project. FPC's proposed regulatory treatment for the pass-through of project costs and guaranteed rate of return is an example of just such a shift in project risks to rate payers and cross-subsidy to the project. [Carpenter's Direct Testimony, p.4, lines 3-15]

7. Surely, this testimony is directly related and hence legally relevant to a determination of whether there is a need for the SunShine pipeline project, for it expressly and unequivocally is related to that issue and the "market-based" approach being employed by SunShine in its affirmative case. How then can anyone rationally argue that it is not "relevant" to the central issue of this case, i.e., that it does not tend to disprove a material fact the affirmative resolution of which is crucial to SunShine's burden of demonstrating its entitlement to the requested certification? One might differ with that testimony, one might find it unpersuasive or contradicted by other evidence, but one surely cannot say that it is wholly irrelevant, especially since the

admissibility of evidence does not depend on its sufficiency, standing alone, to prove the issue being tried. In other words, neither the sufficiency nor the insufficiency of the proof being offered has any effect on its admissibility. See, e.g., Mitchell v. Gillespie, 164 So. 2d 867 (Fla. 1st DCA 1964). The issue is whether it is relevant and Dr. Carpenter's pre-filed testimony has been tailored expressly and specifically to be relevant to the germane issues!

8. SunShine argues, however, that since there is no provision in 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, and since this point has been conceded by Dr. Carpenter and will allegedly be addressed elsewhere, his testimony as to FPC's equity position and the proposed regulatory treatment has been somehow rendered irrelevant. So what! This argument entirely misses the point. The fact remains that FPC still has an equity position in the proposed pipeline and is seeking a proposed regulatory treatment from the Commission to pass along the costs and risks of this investment to its captive electric ratepayers. Indeed, by letter agreement dated March 16, 1993, FPC has reserved unto itself the right and opportunity to opt out of its equity ownership position as late as December 1, 1993, should it not obtain approval of this regulatory treatment by the Commission. Therefore, even if FPC can opt out of its equity position in the pipeline company, and even if the Commission does not approve of



the proposed regulatory treatment, these facts and the need-related consequences of these facts still remain a link, indeed a crucial link, in the evidentiary chain of whether there is a demonstrated need for this proposed project and, more importantly, whether these facts have some distorting influence on this putative demonstration of need by SunShine.

WHEREFORE, in light of the foregoing, Intervenor Florida Gas Transmission Company respectfully requests that the motions to strike the direct and rebuttal testimony of Dr. Paul R. Carpenter be denied in their entirety.

PEEPLES, EARL & BLANK, P.A.  
Attorneys for Florida Gas  
Transmission Company  
215 S. Monroe Street  
Suite 350  
Tallahassee, Florida 32301  
(904) 681-1900

William L. Hyde  
William L. Hyde  
Fla. Bar No. 265500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing have been served by HAND DELIVERY on Steve Tribble, Director, Division of Records and Reporting, Florida Public Service Commission, Fletcher Building, 111 East Gaines Street, Tallahassee, Florida 32399-0850 and that copies have been furnished by Facsimile/U. S. Mail to the following persons this 3rd day of May, 1993:

James P. Fama, Esquire  
Florida Power Corporation  
Post Office Box 14042  
3201 34th Street South  
St. Petersburg, FL 33733

Barrett G. Johnson, Esquire  
Johnson and Associates  
315 S. Calhoun Street  
750 Barnett Bank Bldg.  
Tallahassee, FL 32301

Martha Carter Brown, Esquire  
Staff Counsel  
Florida Public Service  
Commission  
111 East Gaines Street  
Tallahassee, FL 32399-0850

Ansley Watson, Jr., Esquire  
MacFarlane Ferguson  
P. O. Box 1531  
Tampa, FL 33601

Peter M. Dunbar, Esquire  
Bram Canter, Esquire  
Haben, Culpepper, Dunbar and  
French, P.A.  
306 North Monroe Street  
Tallahassee, FL 32301

James D. Beasley, Esquire  
Ausley, McMullen, McGehee,  
Carothers & Proctor  
P. O. Box 391  
Tallahassee, FL 32302

Gary C. Smallridge  
Assistant General Counsel  
Florida Department of  
Environmental Protection  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

C. Everett Boyd, Jr., Esquire  
Ervin, Varn, Jacobs, Odom &  
Ervin  
P. O. Drawer 1170  
Tallahassee, FL 32302

Wayne L. Schiefelbein, Esquire  
Gatlin, Woods, Carlson &  
Cowdery  
1709-D Mahan Drive  
Tallahassee, FL 32308

Kenneth L. Warnstadt, Esquire  
20 N. Main Street  
Room 462  
Brooksville, FL 34601

Anthony V. Policastro, Esquire  
Assistant County Attorney  
Room 203  
7530 Little Road  
New Port Richey, FL 34654

David S. Sadowsky, Esquire  
Assistant County Attorney  
315 Court Street  
Clearwater, FL 34616

Edward P. de la Parte, Esquire  
Micahel A. Skelton, Esquire  
de la Parte & Gilbert, P.A.  
P. O. Box 172537  
Tampa, FL 33672-0537

William L. Hyde  
William L. Hyde

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Docket No.: 920807-GP  
Filed: May 3, 1993

AMENDED NOTICE OF INTENT TO REQUEST CONFIDENTIAL CLASSIFICATION

SunShine Pipeline Partners, ("SunShine"), pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, hereby amends its notice filed on April 30, 1993, of its intent to request confidential classification of information contained in Mr. Judah Rose's Late-Filed Deposition Exhibit No. 2 requested by counsel for the Commission at a deposition conducted on April 28, 1993.

The previous notice only requested confidential classification of Attachment 1 to the above-referenced Late-Filed Exhibit No. 2. SunShine now intends to request confidential classification of the entire exhibit, including attachments.

SunShine shall file its Request for Confidential Classification prior to the final hearing in this docket.

RESPECTFULLY SUBMITTED this 3rd day of April, 1993.

HABEN, CULPEPPER, DUNBAR  
& FRENCH, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302  
(904) 222-3533

By: 

PETER M. DUNBAR

Counsel for: SunShine Pipeline  
Partners



**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 3rd day of May, 1993, to the following parties of record:

\*William L. Hyde, Esq.  
Peeples, Earl & Blank, P.A.  
215 South Monroe Street  
Suite 350  
Tallahassee, FL 32301

Mr. James P. Fama  
Florida Power Corporation  
Post Office Box 14042  
3201 34th Street South  
St. Petersburg, FL 33733

\*Martha Carter Brown  
Florida Public Service Comm.  
101 East Gaines Street  
Tallahassee, FL 32399-0863

Gary C. Smallridge  
Assistant General Counsel  
Department of  
Environmental Regulation  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

Wayne L. Schiefelbein  
Gatlin, Woods, Carlson  
& Cowdery  
1709-D Mahan Drive  
Tallahassee, FL 32308

Anthony V. Policastro  
Assistant County Attorney  
Pasco County  
Room 203, 7530 Little Road  
New Port Richey, FL 34654

Samuel P. Steffey, II  
Growth Management Administrator  
Pasco County Sterling Center  
7432 Little Road  
New Port Richey, FL 34654

Barrett G. Johnson  
Rebecca S. Conlan  
315 S. Calhoun Street  
750 Barnett Bank Bldg.  
Tallahassee, FL 32301

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs, Odom  
& Ervin  
Post Office Drawer 1170  
Tallahassee, FL 32302

Patrick Pope  
Assistant General Counsel  
SONAT Services, Inc.  
Post Office Box 2563  
Birmingham, AL 35202

Mr. Jack Langer, President  
City Gas Company of Florida  
955 East 25th Street  
Hialeah, FL 33013-3498

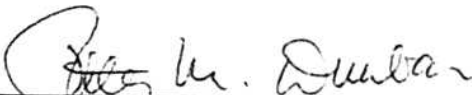
Mr. James D. Beasley  
Ausley, McMullen, McGehee,  
Carothers & Proctor  
Post Office Box 391  
Tallahassee, FL 32302

Jerry Greif  
Hernando County Planning Dept.  
20 N. Main Street  
Brooksville, FL 34601

Kenneth L. Warnstadt  
Staff Attorney  
20 N. Main Street, Rm. 462  
Brooksville, FL 34601

Ansley Watson, Jr., Esq.  
Macfarlane, Ferguson, Allison  
& Kelly  
Post Office Box 1531  
Tampa, FL 33601

Edward P. de la Parte, Jr.  
Michael A. Skelton  
de la Parte & Gilbert, P.A.  
One Tampa City Center  
Suite 2300  
Tampa, Florida 33672-0537

  
PETER M. DUNBAR