



Public Service Commission  
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COMMISSION CLERK

DATE: MAY 9, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (MCLEAN C. KEATING) *WCK*  
DIVISION OF AUDITING & SAFETY (MILLS) *AM*  
DIVISION OF CONSUMER AFFAIRS (RASPBERRY) *BSO*

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.

AGENDA: 05/21/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010908.RCM

CASE BACKGROUND

Three separate complaints have been filed with the Division of Consumer Affairs (CAF) against Florida Power & Light Company (FPL) regarding the placement of power poles and transmission lines. The named complainants are Jose and Amy Gutman (No. 366172E), Teresa Badillo (No. 344754E), and Jeff Lessera (No. 367987E). The line in question is a 230 kV 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 SFWMD at its July 2000 meeting and construction of the line began in late October 2000.

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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 landowner 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.

FPL and the 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, staff conducted two mediation sessions with FPL and complainants to explore the possibility of settlement, but no resolution of the complaints was

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reached. Since that time, 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, staff provided the parties with its proposed resolution of these complaints. Staff's proposed resolution concluded that the transmission line in question is in compliance with the National Electric Safety Code, which the Commission enforces, but that the remaining concerns involve subjects not within the Commission's jurisdiction and thus should be dismissed. By letter dated April 24, 2002, FPL concurred with staff's proposed resolution and requested that staff submit a recommendation concerning these complaints to be considered by the Commission. On May 2, 2002, the complainants filed their response to staff's proposed resolution, requesting a hearing before the Commission on this matter.

Because staff has already conducted two informal mediation sessions with the parties, staff believes that 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 the Commission for resolution. Accordingly, staff brings this recommendation to the Commission for resolution of these complaints.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Are the power poles and other facilities associated with Florida Power & Light Company's Parkland transmission line constructed in compliance with the National Electric Safety Code?

**RECOMMENDATION:** Yes. The power poles and other facilities associated with Florida Power & Light Company's Parkland transmission line are constructed in compliance with the National Electric Safety Code.

**STAFF ANALYSIS:** The Commission, as required by Chapter 366.04(6)(b), Florida Statutes, has adopted and incorporated by

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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 the Commission's 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. The Commission's 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, the staff engineers found that the Parkland Line's construction and related facilities comply with the NESC as adopted by the Commission.

Staff's 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, staff's 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. Staff's 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, staff's engineers determined that the lines' clearance met NESC standards. Staff notes 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, that section provides:

231 (B)(4) Where the governmental authority exercising jurisdiction over structure location has issued a permit for, or otherwise approved, specific locations for the

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supporting structures, that permit or approval shall govern.

The permitting authority in this matter is the South Florida Water Management District. The SFWMD's right-of-way easement given for the power line parallels a part of Lox Road that is maintained by the county. This section has a guardrail barrier installed by the county that preexisted the construction of the transmission line. 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. While the Parkland Line did not require DEP certification, it is staff's understanding that FPL has provided documentation to DEP, pursuant to DEP rules, showing the predicted magnetic field at the maximum current rating for the line, and that the line is within compliance limits. DEP's review of the line is consistent with its authority under Section 403.061(30), Florida Statutes, over issues of EMF effects from transmission lines.

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**ISSUE 2:** Does the Commission have the authority to require Florida Power & Light Company to relocate its Parkland Line based on the concerns raised by the complainants, other than the safety concerns addressed in Issue 1?

**RECOMMENDATION:** No. Based on the concerns raised by the complainants, other than concerns related to safety matters within the Commission's jurisdiction which are addressed in Issue 1, the Commission does not have the authority to grant the requested relief, i.e., to require Florida Power & Light Company to relocate its Parkland Line. Therefore, the complaints should be dismissed.

**STAFF ANALYSIS:** The Commission is an administrative agency created by the legislature. Accordingly, the 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 the Commission. Trawick v. Florida Power & Light Company, 700 So.2d 770 (Fla. 2<sup>nd</sup> DCA 1997).

The complainants ask the Commission to require FPL to relocate its Parkland Line based on safety and health concerns, which are addressed in Issue 1, 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, the 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

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authorized this Commission to undertake. Likewise, the legislature has not authorized the Commission to enforce issues of aesthetics. The courts and the Commission have recognized these limitations. See, e.g., Trawick (Commission did 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 did 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 the Commission's authority to address and remedy their concerns. Section 366.04(5), Florida Statutes, provides that the 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 the 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. The Commission's 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 Issue 1, 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. Staff notes 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.

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The complainants asserts 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 the Commission's jurisdiction. The Commission has 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 did 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 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 the Commission were to find that FPL has imprudently incurred expenses associated with the Parkland Line, it 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. Staff notes 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, staff believes a few additional points merit the Commission's attention in this case. First, staff notes 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 the 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). Staff believes 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, the Commission required FPL to relocate the facilities at issue. The Commission did not, however, require FPL to relocate facilities in the Acosta case. Rather, the Commission required FPL to further negotiate with the residents to attempt to seek a mutually acceptable resolution. The Commission was later presented with a proposed confidential settlement of the complaint, which the Commission approved by Order No. PSC-01-0491-AS-EI, issued February 27, 2001.

Finally, notwithstanding the Commission's lack of authority to grant the relief requested by the complainants, staff believes 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 Commission-regulated utilities and, in turn, could impose considerable expense to 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

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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.

For the foregoing reasons, staff recommends that the Commission find it does not have the authority to grant the relief requested by the complainants, i.e., to require FPL to relocate its Parkland Line. Therefore, the complaints should be dismissed.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

**STAFF ANALYSIS:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.