

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
determination of need for
Collier-Orange River 230 kV
transmission line in Collier,
Hendry, and Lee Counties, by
Florida Power & Light Company.

DOCKET NO. 030084-EI
ORDER NO. PSC-03-0414-PCO-EI
ISSUED: March 25, 2003

ORDER GRANTING PETITION TO INTERVENE AND
GRANTING MOTION FOR LEAVE TO FILE TESTIMONY OUT OF TIME

On March 19, 2003, the Barron Collier Companies (Barron Collier) filed a Petition to Intervene in this docket, along with a Motion for Leave to File Testimony out of Time. Florida Power & Light Company (FPL) has not filed a response to the Motion to Intervene; FPL's response to the Motion for Leave to File Testimony was filed March 21, 2003.

Barron Collier states it is a business customer of FPL, and that it will be substantially affected by any action the Commission takes in this docket, as the cost of electricity to Barron Collier in the future will depend upon whether the Commission grants FPL's need determination petition for the transmission line in a new right of way, in the existing Collier-Orange River right of way, or denies the Petition.

Barron Collier asserts that the material issues of fact in this proceeding include the following: 1) whether there is a need for additional transmission facilities in the area and in the time frame proposed by the Petition; 2) whether the proposed route is the most cost-effective alternative; 3) whether the proposed route will adequately and cost-effectively meet the reliability, integrity, and safety needs of FPL's transmission system; 4) whether the proposed route would constitute an uneconomic addition to the transmission system; and 5) any other issues which may be identified through discovery. Barron Collier asserts as ultimate facts that at least one alternative route exists which will adequately meet all of the statutory requirements for transmission lines, which will adequately meet all reasonable needs for system reliability and integrity and safety, and which is more cost effective.

DOCUMENT NUMBER-DATE

02837 MAR 25 8

FPSO-COMMISSION CLERK

INTERVENTION

To have standing in an administrative proceeding, a party must show that its substantial interests will be determined in the proceeding. See Section 120.569(1), Florida Statutes. To have a substantial interest determined in a proceeding, a party must show: 1) it will suffer actual and immediate injury; and 2) that the injury falls within the zone of interest of the statute being applied in the proceeding. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981).

Section 403.537, Florida Statutes, is the applicable statute governing determinations of need for electrical transmission lines. Findings which the Commission must make include the need for electric system reliability and integrity; the need for abundant, low-cost energy to assure the economic well-being of the citizens of the state; and whether the Orange River and Collier substations are the appropriate starting and ending points of the proposed transmission line.

According to Rule 25-22.039, Florida Administrative Code, intervenors must:

[D]emonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

Barron Collier asserts that the Commission's decision in this docket will affect the rates it pays to FPL for electricity, and therefore it has an interest in the Commission's determination whether FPL has proposed the most-cost effective means to develop additional transmission lines. It appears that Barron Collier has adequately alleged that its substantial interests may be affected by the Commission's decision in this docket, and that those interests are the type of interest this need determination proceeding is designed to protect. For the foregoing reasons, Barron Collier Companies' Petition to Intervene is granted.

LATE FILED TESTIMONY

In its Motion for Leave to File Testimony Out of Time, Barron Collier asserts that it only learned of this pending transmission line need determination proceeding on March 18, 2003. Barron Collier states that while it was aware of FPL's intention to seek permission of a new transmission line, it believed the process would not start until approximately April, 2003. Barron Collier states that once it learned of this pending docket, it filed the Motion to Intervene, accompanied by direct, pre-filed testimony, in an expeditious manner.

In its Response, FPL states that it published extensive notice of this proceeding, as required by law, in newspapers of general circulation and the Florida Administrative Weekly. FPL also states that it engaged in extensive outreach activities, including community open houses, in which representatives of Barron Collier participated. As a result, FPL asserts that Barron Collier knew or reasonably should have known of this need determination proceeding well before March 18, 2003, contrary to Barron Collier's assertions.

I have reviewed the direct testimony Barron Collier seeks permission to file. I note that it consists of eight (8) pages, six (6) pages of which contain the witness's qualifications and experience. While this testimony is indisputably late, given its brevity and the fact it raised no issues other than those which are set forth by Section 403.537, Florida Statutes, I believe allowing the filing of this testimony will not prejudice any party, will allow development of a more comprehensive record, and assist the Commission in the determination of this Petition. Accordingly, Barron Collier's Motion for Leave to File Testimony Out of Time is granted.

I also note that the date established for the filing of Rebuttal Testimony was March 19, 2003. FPL shall have the opportunity to file Rebuttal Testimony, should it so choose. Mindful of the extremely short time remaining until hearing, FPL shall have until Monday, March 31, 2003 at 10:00 A.M. to file and serve Rebuttal Testimony. The Testimony shall be provided to the parties by 10:00 A.M. in order to allow time for review prior to the Prehearing, which is scheduled at 1:30 P.M. on that date.

ORDER NO. PSC-03-0414-PCO-EI
DOCKET NO. 030084-EI
PAGE 4

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Barron Collier Companies' Petition to Intervene is granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

Robert Scheffel Wright, Esq.
Landers and Parsons, P.A.
P.O. Box 271
Tallahassee, FL 32302


Thomas W. Sansbury
Barron Collier Companies
2600 Golden Gate Parkway
Naples, Florida 34105

It is further

ORDERED that the Barron Collier Companies' Motion for Leave to File Testimony Outside of Time Limits is granted. It is further

ORDERED that Florida Power & Light Company shall have until Monday, March 31, 2003, at 10:00 A.M. to file Rebuttal Testimony, which shall be served upon all parties by that date and time.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 25th day of March, 2003.

 for Commissioner
Braulio L Baez

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LDH

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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.