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b. Docket No. 130198 - EI
In RE: FPL's Petition for Prudence Determination Regarding New Pipeline System

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 8 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Motion to Dismiss Protest.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's
Petition for Prudence Determination Regarding
New Pipeline System

Docket No. 130198-EI

Filed: November 20, 2013

FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS PROTEST

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.201 and 28-106.204, Florida Administrative Code (F.A.C.), moves to dismiss the Petition for Formal Evidentiary Proceeding Based on Disputed Issues of Fact ("Protest Petition") filed by Beth M. Gordon, Arlene Bell and Freddie Bell, Mian J. Matvejs and Gertrude C. Dickinson (collectively, the "Landowners") on November 15, 2013.¹ The Landowners are not FPL customers, and their Protest Petition alleges speculative harm based on matters that are outside the scope of the Commission's proposed agency action and beyond the Commission's jurisdiction. In support of this motion, FPL states:

1. On July 26, 2013, FPL filed a petition requesting a determination by the Commission that FPL's decision to enter into long-term contracts for natural gas transportation on the Sabal Trail Transmission, LLC ("Sabal Trail") and Florida Southeast Connection ("FSC") pipelines is prudent, and that the costs associated with those contracts are eligible for recovery through the Fuel and Purchased Power Cost Recovery Clause.

2. By Order No. PSC-13-0505-PAA-EI ("Order 13-0505"), dated October 28, 2013, the Commission took proposed agency action on FPL's petition, in which it determined that:

¹ The caption of the Landowners' Protest Petition mistakenly names Sabal Trail Transmission, LLC as a "Respondent." This docket was initiated by a petition filed solely by FPL, and it involves only determinations with respect to FPL's purchase of gas transportation capacity. Sabal Trail is not, and does not need to be, a party to this proceeding.

- FPL adequately demonstrated a need for an additional 400 million cubic feet per day of firm natural gas transmission capacity by 2017. (p. 9).
- FPL’s decision to enter into long term natural gas transportation contracts with Sabal Trail and FSC was based on a fair and open Request for Proposals. (p. 15)
- The natural gas transportation contracts with Sabal Trail and FSC are projected to save up to \$450 million over the term of the contracts when compared to the next most cost-effective proposal. (p. 15); and
- FPL is eligible to seek recovery of costs associated with the firm natural gas transportation contracts in the fuel clause, where they will be reviewed annually. (p. 15).

Page 16 of Order 13-0505 provided that a “person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding . . . by the close of business on November 18, 2013.”

3. On November 15, 2013, Beth M. Gordon, Arlene Bell and Freddie Bell, Mian J. Matvejs and Gertrude C. Dickinson filed the Protest Petition. Gordon, the Bells and Matvejs allege that they own property located in Levy County, and Dickinson alleges that she owns property in Sumter County, through which the Sabal Trail pipeline is proposed to run. For ease of reference, Gordon, the Bells, Matvejs and Dickinson will be referred to collectively as the “Landowners.” In describing how their substantial interests are impacted by the PAA, the Landowners allege that they are very concerned about the safety of the pipeline, the effect upon the aquifer, the potential pollution of the aquifer and soil and the effects upon the drinking water and agricultural industry. Protest Petition at p. 2.

4. Even if all of their allegations were accepted as true (FPL believes that they are not), the Landowners have failed to allege a valid protest of Order 13-0505. The Landowners lack standing to protest the Commission's order. Moreover, none of the disputed issues stated in the Protest Petition falls within either the scope of Order 13-0505 or the Commission's jurisdiction. Accordingly, the Protest Petition should be dismissed. Each ground for dismissal is explained below.

A. The Landowners Lack Standing

5. When a petitioner's standing in an action is contested, the burden is upon the petitioners to demonstrate that they do have standing to participate in the case. *Department of Health and Rehabilitative Servs. v. Alice P.*, 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979). To prove standing, petitioners must demonstrate first that they will suffer an injury in fact which is of sufficient immediacy to entitle them to a hearing pursuant to Section 120.57, Florida Statutes (2013). Second, the petitioners must demonstrate that the substantial injury is of a type or nature which the proceeding in question is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981).

6. The Landowners have failed to show how their substantial interests will be affected by the Commission's proposed agency action, *i.e.*, a determination that the costs associated with the Sabal Trail and FSC natural gas transportation contracts are prudently incurred and eligible for recovery through FPL's Fuel Clause. The Landowners do not allege that they are customers of FPL, and FPL's records confirm that they are not. Therefore, they have no economic stake in whether or not the natural gas transportation costs are recovered through FPL's Fuel Clause.

7. Instead, the Landowners allege that their substantial interest is based on concerns over safety of the pipeline, the effect upon the aquifer, the potential pollution of the aquifer and soil and the effects upon the drinking water and agricultural industry. These concerns, even if one assumed that they are well founded, clearly would not be within the Commission's jurisdiction. Because the alleged injuries are not of the type that can be redressed by the Commission, the Landowners do not meet the *Agrico* test. See *In re Application for Certificate to Provide Alternative Local Exchange Telecommunications Service by American Phone Corp.*, Docket No. 981016-TX, Order No. PSC-99-0146-FOF-TX (F.P.S.C. Jan 25, 1999) (hereinafter "*In re APC*") (party lacked standing to protest because Commission proceedings were not designed to address alleged misuse of proprietary information for competitive economic gain).

8. In sum, the Landowners fail to meet the *Agrico* test. They are not FPL customers whose interests are substantially affected by fuel clause recovery of costs associated with natural gas transportation contracts. Nor are the Landowners' alleged concerns related to subject matters that the Commission's proceedings are designed to address. Accordingly, the Commission should dismiss the Landowners' protest for lack of standing.

9. Though the availability of an alternative forum is not relevant to the determination of standing, there is an available forum that is well suited – in fact, designed -- to addressing the sorts of concerns that the Landowners allege. The Sabal Trail pipeline will be an interstate natural gas pipeline regulated by the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act ("NGA") (15 U.S.C. §§717 et seq.). Sabal Trail needs to obtain a certificate of public convenience and necessity from FERC pursuant to Section 7(c) of the NGA to construct and operate the pipeline.² FERC will determine Sabal Trail's route and evaluate the

² 15 U.S.C. § 717f(c).

associated impacts on environmental resources and landowner interests as part of the FERC certificate process.³ FERC also considers the need for the pipeline and the general safety concerns of the type expressed by Petitioners in its certificate process.⁴

B. The Protest Petition Fails To Address Issues or Facts That Were Determined in Order 13-0505 or Are Within the Commission’s Jurisdiction

10. Section 120.80(13)(b), Florida Statutes, prescribes the scope applicable to protests of proposed agency action: “a hearing on an objection to proposed action of the Florida Public Service Commission may *only address the issues in dispute*. Issues in the proposed action which are not in dispute are deemed stipulated.” (Emphasis added).

11. The Landowners’ alleged disputed issues of material fact, statements of ultimate facts and prayers for relief may be summarized as follows:

- *Disputed Issues of Fact.* The Landowners allege that issues of disputed issues of material fact consist of: (i) whether the pipeline, and its compressor stations and turbines are safe; (ii) whether Spectra Energy⁵ complied with statutes governing certification proceedings; (iii) whether other existing rights of way are feasible; (iv) whether Spectra Energy disclosed its safety records; (v) whether Spectra has addressed farm burning; and (vi) whether Sabal Trail can safely relocate endangered species.
- *Statements of Ultimate Fact.* The Landowners’ statements of ultimate fact allege, in short, that no environmental impact studies have been performed by the EPA or Florida DEP, and that Spectra has not performed certain studies related to lime rock or sink holes or is otherwise not qualified; and

³ Sabal Trail has started the FERC process and information regarding Sabal Trail can be found in FERC Docket No. PF14-1-000.

⁴ Pipeline safety of interstate natural gas pipelines is subject to the jurisdiction of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to the Pipeline Safety Act (49 U.S.C. §§60101 et seq.).

⁵ The Landowners’ assertion that Spectra Energy is the parent company of Sabal Trail is not accurate.

- *Relief Sought.* The Landowners’ request for relief consists of an evidentiary hearing that to present facts related to their “wish to avoid the pollution of our Florida aquifer and soils . . . to continue to enjoy [their] farms, homes, and the unique Florida wildlife

12. From this summary, one can readily see that the Landowners’ Protest Petition does not address a single issue that was in dispute in this docket. As explained above, FPL seeks a determination that its decision to enter into long-term natural gas transportation contracts is prudent, and that the costs associated with those contracts are eligible for recovery through the Fuel Clause. The Landowners do not raise a single question regarding FPL’s need for incremental gas transportation, the timing of that need, the fairness of FPL’s RFP process, whether the Sabal Trail and FSC projects represent the most cost-effective natural gas transportation projects or whether the costs associated with those contracts are eligible for clause recovery. Rather, the Landowners focus on pipeline safety, environmental studies and Spectra’s specific safety and environmental record. These matters were not addressed in this docket, are not covered by Order 13-0505, and fall outside the jurisdiction of the Commission.

13. Thus, the Landowners fail to satisfy section 120.80(13)(b), Florida Statutes, because the Protest Petition fails to “address the issues in dispute.” For this reason, their protest must be dismissed. *See In re Matrix Telecom, Inc.*, Docket No. 050200-TX, Order No. PSC-05-1126-FOF-TX (F.P.S.C. Nov. 8, 2005) (dismissing protest that failed to raise issues that were disputed in the proceeding); *In re APC*, Order No. PSC-99-0146-FOF-TX, *supra* (dismissing protest that raised only issues outside Commission’s jurisdiction and failed to comply with Section 128.80(13)).

WHEREFORE, for the foregoing reasons, Florida Power & Light Company respectfully requests that the Commission dismiss the Landowners' Protest Petition because the Landowners lack standing and they fail to address issues and determinations within the scope of the Commission's proposed agency action and its jurisdiction.

Respectfully submitted this 20th day of November, 2013.

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**CERTIFICATE OF SERVICE
DOCKET NO. 130198-EI**

I HEREBY CERTIFY that a true and correct copy of this Motion to Dismiss Protest was served electronically this 20th day of November 2013, to the following:

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