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**IN THE SUPREME COURT OF FLORIDA**

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

**FLORIDA GAS TRANSMISSION COMPANY, )**

Appellant, )

v. )

**FLORIDA PUBLIC SERVICE COMMISSION, )**

et al., )

Appellees. )

**CASE NO. 82,171**  
**PSC Docket No. 920807-GP**

**ON APPEAL FROM A FINAL ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**ANSWER BRIEF OF APPELLEE  
FLORIDA POWER CORPORATION**

James P. Fama  
Senior Counsel  
**FLORIDA POWER CORPORATION**  
3201 34th Street South  
St. Petersburg, Florida 33711  
Bar No. 0797812

Dated: November 8, 1993

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## STATEMENT OF THE CASE AND FACTS

Florida Power Corporation ("Florida Power") adopts as its own the Statement of the Case and of the Facts set forth by SunShine Pipeline Partners ("SunShine Pipeline"). In addition, Florida Power submits the following facts.

In 1991 Florida Power made a strategic decision to increase its use of natural gas a fuel for its electric power generating facilities. As part of this strategy, Florida Power concluded that it would be able to obtain gas supply and gas transportation at the lowest cost and on the most favorable terms and conditions if there were pipeline competition in the Florida gas market. In order for this competition to exist, a new gas pipeline must be constructed so that peninsular Florida is no longer served only by the Appellant. In order to induce development of a second Florida pipeline, there had to exist a significant quantity of gas to commit to the new pipeline-- an "anchor load." (TR. 401). Florida Power provided this anchor load by contracting to purchase gas transportation from the SunShine Pipeline and committing the gas needs of its Anclote and Polk County generating facilities. (Ex. 5). It is these commitments that formed the basis of the Florida Public Service Commission (the "Commission") need certificate being challenged in this docket.

## SUMMARY OF ARGUMENT

Section 403.9422(1)(b) Fla. Stat. (1991 & Supp. 1992) meets the constitutional requirements for a legislative delegation of authority to an administrative agency. The statute plainly sets out standards to guide the Commission's determination of need, particularly the requirement that the Commission evaluate whether the "economic well-being of the public" is served. The

Commission more than adequately set forth and supported its determination that issuance of a need certificate would meet the economic well-being standard.

### ARGUMENT

I. **COMPETITION IS THE MOST IMPORTANT PRINCIPAL INHERENT IN THE STATUTORY STANDARD OF ASSURING THE ECONOMIC WELL-BEING OF THE PUBLIC.**

In seeking to preserve its single-pipeline market dominance, Appellant presses its constitutional argument that the standards contained in the Natural Gas Transmission Pipeline Siting Act (the "Act"), including the standard of assuring the economic well-being of the public, constitute unlawful delegations of legislative authority because they provide "no meaningful standard or limitation upon the PSC's powers." (Appellant Br. 19). Because of the importance of pipeline competition to the fortunes of Florida Power, as well as to the fortunes of its ratepayers, this Appellee will focus mainly on the economic well-being standard.

The Commission is an agency charged with the economic and other regulation of industries, such as gas pipeline industry, which affect the public interest. Having regulated the gas industry since 1953, the Commission has developed significant expertise. Therefore, it is neither surprising nor inappropriate that the legislature did not provide any more specificity or definition to the statutory standards set forth in § 403.9422 Fla. Stat. (1991 & Supp. 1992) .

In a sweeping argument, the Appellant complains that none of the statutory standards at issue in this case contain sufficient definition (Appellant Br. 18). Focusing on the economic well-bring standard demonstrates the fundamental flaw of the Appellant's approach. It defies common sense to argue that the legislature must provide additional specific definition in order

for the Commission to know whether the economic well-being of the public is being served. It is only reasonable for an agency primarily charged with regulating the economic activities of public utilities and protecting the economic well-being of the public to consider issues such as competition when asked to evaluate the outcome of a proposed action. Competition is the single most important principal inherent in the notion of the economic well-being because competition fosters the provision of abundant goods and services at low cost. Virtually every modern regulatory scheme fosters competition, either explicitly or implicitly. Indeed, the idea of competition necessarily lies at the heart of the Act, because the Act is the vehicle created by the legislature to allow an orderly and timely method by which intrastate pipeline developers can enter into and compete in the Florida gas market. *See* § 403.9402 Fla. Stat. (1991 & Supp. 1992).

**II. THE COMMISSION'S ORDER AND THE RECORD OF THE CASE PROVIDE OVERWHELMING SUPPORT FOR THE DETERMINATION THAT PIPELINE COMPETITION ENHANCES THE ECONOMIC WELL BEING OF THE PUBLIC.**

In another sweeping argument, Appellant complains that the Commission's order fails to show the agency's rationale for its policies and deprives the Court of a complete record for review. (Appellant Br. 22). This claim does not withstand scrutiny. Again, Florida Power will focus on the economic benefit standard.

The Commission's order enumerates multiple economic benefits, most of which are the direct result of pipeline competition:

1. The threat of competition from SunShine Pipeline caused Appellant to lower its rates and offer more favorable terms and conditions in order to retain its largest customer, Florida Power & Light Company. (Order at 11; Tr. 424).
2. Conversely, the threat of competition from FGT caused SunShine Pipeline to lower its rates and improve its terms and conditions of service, resulting in a \$111 million savings to Florida Power and its ratepayers. (Order at 11; Ex. 19).
3. Peoples Gas Company, another customer of the SunShine Pipeline, obtained numerous benefits from the SunShine-FGT competition, including the flexibility to take different amounts of gas transportation during different seasons, access to various gas supplies in Texas and Louisiana, and the flexibility to receive gas at differing "gate station" points of receipt. (Order at 11; Tr. 464, 471-476).
4. The SunShine Pipeline will bring additional gas supplies. (Order at 11; Tr. 51, 52, 104).
5. The gas supplies transported by the new pipeline will result in "cleaner" electric generation. (Order at 11). Compliance with the strictures of the new federal Clean Air Act is motivating Florida Power and other electric utilities to increasingly rely on natural gas in lieu of other fuels that pose environmental problems. (42 U.S.C. §§ 7401 *et. seq.*; Tr. 417-418; 434).
6. There is a significant economic multiplier effect of this large, \$600 million pipeline project. (Order at 11; Tr. 53-54).

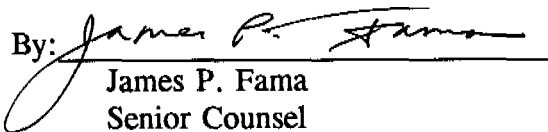
As the Court can see from the citations noted above, there is an extensive record supporting the Commission's determination that issuance of a need certificate is in the economic best interest of the citizens of Florida.

**CONCLUSION**

Appellant's attacks on the Act and the Commission's order would thwart the natural gas pipeline competition the legislature intended to foster through enactment of the Act. The statutory standards at issue need no further definition and the Commission's exhaustive record needs no further development. The relief requested by the Appellant should be denied.

Respectfully submitted,

FLORIDA POWER CORPORATION  
OFFICE OF THE GENERAL COUNSEL

By:   
James P. Fama  
Senior Counsel  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733  
(813) 866-5786  
Bar No. 0797812

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by U.S. Mail this 8th day of November, 1993:

Peter Dunbar, Esquire  
SunShine Pipeline Partners  
Haben, Culpepper, Dunbar  
& French, P.A.  
306 N. Monroe Street  
Tallahassee, Florida 32302

Margaret Bollinger, Esquire  
ANR Southern Pipeline Co.  
9 E. Geenway Plaza  
Houston, Texas 77046-0995

Mr. Daniel F. Collins  
Mr. Richard W. Miller  
ANR Southern Pipeline Company  
2000 M Street N.W., Suite 300  
Washington, D.C. 20036

Gary C. Smallridge, Esquire  
Florida Department of  
Environmental Regulation  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

John P. Fons, Esquire  
South Georgia Natural Gas  
Ausley, McMullen, McGehee  
Carothers & Proctor  
P.O. Box 391  
Tallahassee, Florida 32302

Mr. James D. Beasley, Esquire  
City Gas Company of Florida  
Ausley, McMullen, McGehee  
Carothers & Proctor  
P.O. Box 391  
Tallahassee, Florida 32302

William L. Hyde, Esquire  
Florida Gas Transmission Company  
Peeples, Earl & Blank  
215 S. Monroe Street  
Suite 350  
Tallahassee, Florida 32301

Martha Carter Brown, Esquire  
Florida Public Service Comm.  
111 E. Gaines Street  
Tallahassee, Florida 32399

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

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

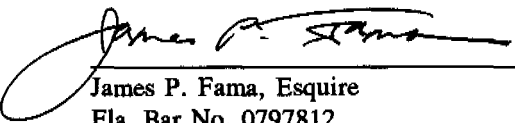
Ansley Watson, Jr., Esq.  
Peoples Gas System  
Macfarlane Ferguson  
P.O. Box 1531  
Tampa, Florida 33601

Kenneth L. Warnstadt  
Board of Hernando County Commissioners  
20. N. Main Street, Rm. 462  
Brooksville, Florida 34601

Barrett G. Johnson, Esquire  
Florida Cities  
315 South Calhoun Street  
750 Barnett Bank Building  
Tallahassee, Florida 32301

Edward P. de la Parte, Jr., Esquire  
West Coast Regional Water Supply Auth.  
One Tampa City Center, Suite 2300  
Tampa, Florida 33672-0537

Norman H. Horton, Jr.  
Chevron U.S.A. Inc.  
Oertel, Hoffman, Fernandez & Cole, P.A.  
P.O. box 6507  
Tallahassee, Florida 32314-6507

  
James P. Fama, Esquire  
Fla. Bar No. 0797812