

## DISPUTES REVIEW RECOMMENDATION

May 22, 2002

Ms. Ronda S. Daniell  
Assistant Resident Engineer  
Florida Department of Transportation  
1217 S.W. 10<sup>th</sup> Street  
Ocala, Florida 34474

Ms. Cynthia Snow White  
White Construction Company, Inc  
P.O. Drawer 790  
Chiefland, Florida 32644

Mr. Kent A. Selzer  
Qualex Consulting Group  
4311 W. Waters Ave., Ste. 304  
Tampa, Florida 33614

RE: SR-500 (US-27) from CR-326 to CR-326-A  
Marion County, Florida  
F.P.ID 238679-1-52-01 & 238678-1-52-01  
SPN 36070-3501 & 36070-3503  
Contract 20605

**SUBJECT: Claim Issue No. 14, Conflict with Sheet Piling and City of Ocala Electric Pole at Pond E-2.**

To whom It May Concern:

The owner, Florida Department of Transportation (FDOT), requested a hearing to determine **Entitlement** of White Construction Company, Inc. (WCCI) to **additional contract time for delays encountered in driving Sheet Piling due to a utility conflict involving a City of Ocala power pole at Pond E-2.**

Correspondence and other information relating to FDOT's and WCCI's position were provided the DRB prior to the hearing for review with verbal presentations being made at the hearing held on May 15, 2002.

### **CONTRACTOR'S POSITION:**

*On July 15, 2000, WCCI filed a notice of intent to file claim due to a utility conflict with the sheet piling operation in pond E2. The conflict caused 3 days of delay to WCCI. In a unilateral payment dated January 14, 2002, the FDOT compensated WCCI for costs incurred and granted 2 days of contract time. This unilateral payment confirms that the contractor is entitled to time and money for this conflict. Below you will find a breakdown of events that occurred during the delay period. WCCI requests that the DRB rule on quantum for the number of days due for this delay.*

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Ocala Construction

*Delay Overview:*

July 15, 2000 *Conflict discovered - NOI letter wrote to FDOT (Saturday)*  
July 16, 2000 *No Work Scheduled (Sunday)*  
July 17, 2000 *No sheet piling installed (Monday) DELAY DAY"*  
July 18, 2000 *No sheet piling installed (Tuesday) DELAY DAY*  
July 19, 2000 *Utility Conflict resolved at 1:45 pm (Wednesday) DELAY DAY*  
July 20, 2000 *Sheet piling installation continues (Thursday)*

*Details of Requested Delay Days:*

July 17, 2000 *FDOT notified Ocala Electric of the conflict. The FDOT daily for this date states that Ocala Electric was onsite from 11:00 am through 2:25 pm with a pole setting truck. The same FDOT also notes that the Ocala Electric did not impede WCCI progress based on the fact that the 'driver' was broke down. This is a rented attachment for the trackhoe and could easily be replaced with a working unit. In fact, the unit was replaced as soon as the conflict was resolved. It is the contention of WCCI that it would not be feasible or safe to plan a sheetpiling operation in the same area that a utility company is scheduled to replace a power pole. The issue of mechanical problems, in this case, is not relevant because the equipment could have been easily replaced within 1/2 hour.*

July 18, 2000 *FDOT Daily Report of Construction states that Ocala Electric was onsite to replace the power pole. FDOT also requested a meeting with Ocala Electric officials to discuss the issue of guy wire anchor placement. The meeting was scheduled at 9:30 on 4-19-00.*

July 19, 2000 *FDOT Daily Report states that the piledriver and hammer remain idle through out the day. FDOT unilateral states that conflict was resolved at 1:38 p.m. 66% of the normal workday had expired by this time, not to mention the time it would take to mobilize the necessary equipment operators and crew back to the area. Upon notification of conflict resolution, the Project Superintendent prepared to resume sheetpiling operations the next morning.*

**WCCI requests a total of 3 days** for this conflict.

## **DEPARTMENT'S POSITION:**

*The contractor is requesting \$8,919.18 and three days for impacts to the sheet piling operation at pond E-2. The Department has analyzed this issue in conjunction with Unilateral Supplemental Agreement #7, and determined independently that the issue impacted the critical path only 2 days, and, based on the assumptions made in the Department's analysis, was valued at \$8,647.20. A majority of the request (over \$7,000) was for indirect impacts for the requested three days, for which there is no support or justification provided for the requested costs. Based upon additional review, the amount determined by the Department to be fair and equitable is more than fair, and no additional time or money is due for this issue. Claim is being paid at an amount determined by the Department as fair and equitable as part of Unilateral Supplemental Agreement #7.*

Excerpts from the Department's Daily Report of Construction include the following:

*Pile Driving operation at Pond E-2: The contractor continued on with driving piles and was not impacted because they were still 36 feet away from the power pole in conflict. Four members of pipe crew were at the site this morning moving 2 sections of pipe previously placed that were placed before the sheet piles were driven, and this particular section of pipe was designed to go through the sheet piling on the East side of the pond. (J-9 to J-10). Also, approximately one hour was spent by the pile crew this morning setting the final elevations on some piles that were set Friday, and were never driven to final plan elevation.*

*City of Ocala Electric Utilities engineer Mike Poucher on site at Pond E-2 at 10:22 AM to 10:42 AM. City of Ocala Electric utility crew arrived at 11:00 AM to begin adjusting guy wires that were close to the working area of the hammer, while the hammer and crew continued to drive piles and move towards the power pole in conflict. At 12:50 PM, the pile hammer blew a hydraulic hose and was down until 2:20 PM. At that time, the operation continued until 2:25 PM when the City of Ocala Utility crew left the job at 2:25 P.M. At 3:00 PM, the pile driving operation was stopped due to the crew arriving at the power pole in conflict, and could no longer continue on without the power pole being removed.*

*Below is a list of the delays that occurred during today's pile driving operation:*

*7:00 AM - 7:30 AM: White's crew servicing hammer and power unit  
8:45 AM - 9:45 AM: Power unit to hammer down for mechanical problems  
12:50 PM - 2:20 PM: Hydraulic hose breaks on hammer  
1:00 PM - 1:32 PM: Rain, lightning delay (hammer was already down)  
3:00 PM: Operation halted due to conflict with power pole*

**BOARD'S FINDINGS:**

The difference of opinion between the two parties involves the day of Monday, July 17, 2000. The Department granted two days of time prior to this date but believes that the utility pole did not impact WCCI on the day in question due to equipment breakdowns. In verbal testimony, WCCI argued that the pile hammer could have been repaired within 30 minutes and that they utilized their crew on other work in order to mitigate the damages to the Department. From a review of the Department's records it appears that pile driving was only delayed due to the fault of the utility from 3:00 P.M. until the end of the work day on the date in question, July 17, 2000. Other delays were created due to repairs of equipment and a brief rain period. WCCI did not present records contradicting the Department's records/diaries.

**BOARD'S RECOMMENDATION:**

Based on materials supplied to the Board prior to the hearing and presentations to the Board during hearing, the Board recommends that the Contractor is **not entitled** to the additional day requested.

The Board sincerely appreciates the cooperation of all parties involved in preparing the presentations prior to and during the hearing in making this recommendation.

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days after receipt of the document. Failure to respond constitutes acceptance of this recommendation by the non-responding party.

I certify that I have participated in all meetings of this DRB regarding this issue and concur with the findings and recommendation.

Respectfully Submitted,  
Disputes Review Board  
E.K. Richardson, Chairman  
A.R. Cone, Member  
Sam Thurmond, Member

**SIGNED for and WITH a CONCURRENCE of All MEMBERS:**



E.K. Richardson, DRB Chairman