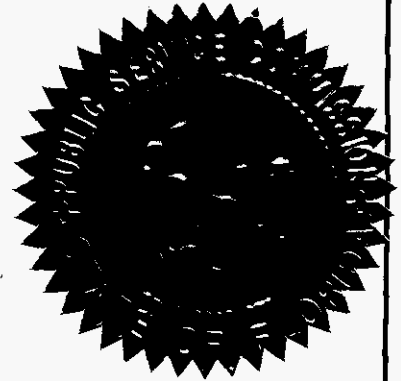


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080318-GU

In the Matter of:

PETITION FOR RATE INCREASE BY
PEOPLES GAS SYSTEM.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 11

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, May 19, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER - DATE

05455 JUN 28

FPSC-COMMISSION CLERK

P R O C E E D I N G S

* * * * *

1
2
3 **COMMISSIONER EDGAR:** That brings us to the
4 last item on our agenda today, Item 11.

5 **CHAIRMAN CARTER:** Madam Chairman.

6 **COMMISSIONER EDGAR:** Commissioner Carter.

7 **CHAIRMAN CARTER:** As we get ready for Issue,
8 excuse me, for Item 11, I have some grave concerns about
9 the rider. So when staff gets to that -- I don't -- I
10 think that's Issue -- it's not in sequential order. I
11 think it's --

12 **COMMISSIONER EDGAR:** Right. That would be
13 Issue 54, I believe, and we will make sure to come to
14 you for questions, comments, discussion. And we are
15 just, as you mentioned, kind of letting people switch
16 out chairs, so just bear with us.

17 **CHAIRMAN CARTER:** Okay. Thank you.

18 **COMMISSIONER EDGAR:** You're welcome.

19 (Pause.)

20 Okay. Commissioners, just to note for the
21 record and as a refresher, this is a posthearing
22 decision, Item 11, participation limited to
23 Commissioners and staff. We have three substantive
24 issues and the close the docket issue, as Commissioner
25 Carter noted. The numbers are not exactly in order, so

1 it's Issues 49, 50, 54 and 59. And we'll begin by
2 asking our staff to give us a brief overview.

3 **MS. DRAPER:** Elisabeth Draper with staff.
4 Item 11 is Peoples Gas System's petition for a rate
5 increase. At the May 5th agenda conference you approved
6 a \$19 million increase in operating revenues. This
7 recommendation addresses the remaining three issues that
8 were not voted on May 5th. They are Issues 49 and 50,
9 which are the final rates, and Issue 54, the Gas System
10 Reliability Rider.

11 The vote on Issue 54 was deferred, and during
12 discussion of that issue a question was raised whether
13 the Commission has authority to establish the rider. We
14 can proceed issue by issue or pick up Issue 54 first,
15 whatever your preference is.

16 **COMMISSIONER EDGAR:** Okay. Thank you,
17 Ms. Draper.

18 Commissioners, what I'm going to propose is
19 that we address Issues 49 and 50 as those are, you know,
20 follow-on issues from the decisions that we made prior
21 on this docket. And then I would ask that then we get
22 into a discussion on Issue 54 since in my mind they can
23 be pretty easily separated.

24 So at this point, Commissioners, any questions
25 or discussion on Issues 49 and/or 50? I have none. I'm

1 hearing none.

2 Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, Madam Chair.

4 I would move to approve staff recommendation
5 as to Issues 49 and 50.

6 **COMMISSIONER McMURRIAN:** Second.

7 **COMMISSIONER EDGAR:** Commissioners, we have a
8 motion and a second to approve the staff recommendation
9 on Issues 49 and 50. Any further discussion? Hearing
10 none, all in favor of the motion, say aye.

11 (Unanimous affirmative vote.)

12 Opposed? Show Issues 49 and 50 adopted per
13 the motion.

14 And that brings us to Issue 54. Commissioner
15 Carter, this is the rider issue that you had mentioned.
16 Our staff discussed it briefly in their overview.
17 Commissioner Carter, would you like to pose a question
18 or start off our discussion?

19 **CHAIRMAN CARTER:** Yes, ma'am. Before my
20 question I just wanted to say to all parties concerned,
21 which would be the five of us, I have heartburn, this
22 gives me really heartburn about this new reliability
23 rider. And the reason it gives me heartburn is that if
24 there is a requirement by a federal government, local
25 government, whatever the case may be for them, for

1 Peoples to move these mains and pipelines and things of
2 that nature, then it seems to me from my reading of the
3 case that they still have an opportunity to recover
4 those costs and all. And this rider would -- I'm not
5 sure if it's permanent or if it's automatic, and I would
6 rather them come back to us for that so that we can
7 true-up the costs and make sure that they are reasonable
8 costs and not give them an automatic -- these are my
9 terms, not staff's terms, not give them an automatic get
10 out of jail free card to where they can just continue to
11 do things. But I would like to see some kind of
12 transparency in this process. That's my concern about
13 this rider. And I just -- it gives me grave concern and
14 I just don't -- I look, I read staff's recommendation on
15 it, I listened to it when we went over it before, but
16 I've got some grave concerns about that.

17 And I don't know where the rest of my
18 colleagues are, Madam Chairman, but I do have grave
19 concerns for it because I believe that with these kind
20 of costs, particularly if they're going to say that the
21 federal government made me do this or the local
22 government made me do this or the Department of
23 Transportation made me do this, then they should be able
24 to come back to the Commission and say because of
25 something outside of the scope of our, of our normal

1 operating costs, a governmental entity required us to do
2 this. Therefore, we think we're entitled to these
3 costs, and these costs are X and here's what's incumbent
4 within these costs: Construction, reengineering, safety
5 concerns, those kinds of things. I just think that I
6 would want more transparency in this process.

7 **COMMISSIONER EDGAR:** Thank you, Commissioner.

8 Commissioner McMurrian, you had a question, I
9 think.

10 **COMMISSIONER McMURRIAN:** Thank you. And I
11 know we discussed this a lot last time and we've got
12 essentially the same recommendation but with a lot of
13 additional analysis particularly with respect to
14 authority and some past Commission proceedings that were
15 similar in a way. And I agree with Commissioner Carter,
16 Chairman Carter with respect to the utility still having
17 an opportunity to recover, but I don't agree with the
18 characterization it would be automatic. And I'd, and
19 I'd like staff to speak to that because I think it's
20 important that no matter how the Commission votes on the
21 ultimate issue, that I don't believe we would be setting
22 up if we were to vote this issue an automatic -- I'm not
23 really sure what's meant by that term. But I guess to
24 me when I hear it, it suggests that whatever they file
25 they just automatically get a rate increase associated

1 with that. In my opinion --

2 **CHAIRMAN CARTER:** That's what I meant when I
3 said it. That's what I meant.

4 **COMMISSIONER McMURRIAN:** Okay. And the way I
5 read it, there would still be -- they would file actual
6 costs for expenditures and then we would review whether
7 or not we thought that those met some sort of list of
8 criteria which I think are embedded in a lot of the
9 staff analysis about how they would have to be actual
10 costs and verifiable. I think they would have to be
11 subject to an actual requirement. I think that Peoples
12 Gas would have to provide some kind of documentation, I
13 suppose, that they were subject to a requirement with
14 respect to whatever request they put forward. And to
15 the extent they couldn't meet whatever that full list of
16 criteria were, then it certainly would not be automatic.
17 We would have an ability to adjust that and perhaps deny
18 the whole request if they don't meet the requirement.

19 **CHAIRMAN CARTER:** My concern -- excuse me.
20 Excuse me for cutting you off, Commissioner. But my
21 concern is that creating this new concept, I think that
22 the arrows within our quiver as they currently exist
23 allow us to do this. I have concerns about creating
24 this rider. The whole concept of the rider itself gives
25 me grave concern.

1 **COMMISSIONER ARGENZIANO:** I agree, and I'd
2 like to jump in there, if possible. Hello?

3 **COMMISSIONER EDGAR:** Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** Yes. You know, I
5 raised concerns about our statutory authority and I
6 don't believe we have that. And it is not the
7 recoveries for expenses incurred in the provision of the
8 product to which the regulated industry, utilities are
9 entitled and which clauses providing them are legally
10 expedient, I guess. What I see is a chronic drift to
11 expand the exercise of our presumed unlawful discretion.
12 And that is putting, it's the same thing as putting,
13 that old saying, the camel's nose in the tent, and that
14 disturbs me. And what I look, when I look at the
15 statutes, we have a mechanism, a limited proceeding,
16 which in the absence of any other statutorily
17 orchestrated procedure is yet an alternative to a
18 full-blown rate case.

19 So what I would like to do is move to deny
20 staff's recommendation and not approve the Gas System
21 Reliability Rider as requested by PGS, and move that
22 they can file for a limited proceeding and don't, don't
23 need the annual proceeding to do it. Those statutory
24 authority and bad policy is not the way to go. So
25 that's the motion on the table. And if y'all want to

1 disagree with it, that's fine.

2 **CHAIRMAN CARTER:** Madam Chairman, when we get
3 to the point, when we get to the point of taking the
4 motion, I'll be willing to second Commissioner
5 Argenziano's motion to that effect.

6 **COMMISSIONER ARGENZIANO:** I think I made the
7 motion.

8 **COMMISSIONER EDGAR:** Commissioner Argenziano,
9 could you --

10 **COMMISSIONER ARGENZIANO:** Restate the motion?

11 **COMMISSIONER EDGAR:** That's just what I was
12 going to ask. Yes.

13 **COMMISSIONER ARGENZIANO:** Sure. Okay. I will
14 do it as best as I can. And I move to deny staff's
15 recommendation and not approve the Gas System
16 Reliability Rider.

17 **COMMISSIONER EDGAR:** That works.

18 **CHAIRMAN CARTER:** I second it.

19 **COMMISSIONER EDGAR:** Commissioners, we have a
20 motion and we have a second to deny the staff
21 recommendation on Issue 54. I'd like to just make a
22 comment and then we'll see if we have any further
23 discussion or clarification. I -- and Commissioner
24 Argenziano, I thank you for the motion and I can support
25 it as well.

1 I, I have a little different thought process.
2 I do believe we have the statutory jurisdiction and that
3 the case law supports that, and I am open to on a
4 case-by-case basis considering, you know, cost recovery
5 mechanisms perhaps in the future if indeed a request
6 comes before us. However, in this instance I do think
7 that there are -- I agree with some of the concerns that
8 have been raised and that in this instance at the point
9 that we are at that it is perhaps too speculative as to
10 the amounts, and, and I also have some questions about
11 whether the magnitude of the amounts that would
12 potentially go through this process merit the process
13 that has been requested. So, so with that, I can
14 support the motion. Again, a little different rationale
15 perhaps, but bringing to the same result, I believe.

16 Commissioners, any other questions?

17 Commissioner Skop.

18 **CHAIRMAN CARTER:** Commissioner, Madam
19 Chairman.

20 **COMMISSIONER EDGAR:** Commissioner Carter.

21 **CHAIRMAN CARTER:** I hate to just jump out
22 there, but on this -- we talked about this before. I
23 had concerns then, I have concerns now. I think that we
24 have, as I said earlier, we have enough arrows in our
25 quiver already to deal with issues like this. And so I

1 just don't think that this rider is appropriate for us.
2 I think we can get where we need to get to based upon
3 what's currently available to us. We have sufficient
4 authority, sufficient jurisdiction, sufficient authority
5 to make rules based upon companies coming before us
6 asking for cost recovery based upon reasonable costs and
7 based upon whether or not these costs are justifiable
8 and legitimate. But I just, I just think that we don't
9 need to create a new system when we already have a
10 process in place to deal with that.

11 **COMMISSIONER ARGENZIANO:** And just a comment,
12 please.

13 **COMMISSIONER EDGAR:** Okay. And that is in
14 keeping with the motion and your second, Commissioner
15 Argenziano.

16 **COMMISSIONER ARGENZIANO:** Yes. And while I
17 agree and, I agree with what Commissioner Carter just
18 said, I do have to reiterate I do not believe we have
19 statutory authority. And I have gone through case law
20 and find that if not all of the case law that's
21 presented was before -- many of it was before the
22 Administrative Procedures Act was established which
23 changed that result of those opinions in the case law
24 because the statutory, the intent of the Legislature was
25 very different after that. And also that when I look at

1 the case law, it is not the same as what we're dealing
2 with in this particular case. It's very, very
3 different. And so I just wanted to get that on record.
4 I do not believe that we have statutory authority. I
5 respect everyone's opinion and I'll leave it at that.

6 **COMMISSIONER EDGAR:** Thank you.

7 Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

9 Like you say, there's a motion and a second on
10 the table. I respect that. I would like to have the
11 ability to interject some of my views --

12 **COMMISSIONER EDGAR:** Absolutely. You're
13 recognized.

14 **COMMISSIONER SKOP:** -- with respect to this.

15 I guess on the issue of jurisdiction, staff
16 had provided some documentation, and one of the cases
17 that they cited was the *Action Group v. Deason*, Florida
18 Supreme Court, 615 So.2d 683, and it was decided in
19 1993. And basically the court referencing a prior
20 decision in *Fort Pierce Utility Authority v. The Florida*
21 *Public Service Commission* in 1980, the only issue that
22 was presented in the *Action Group* case was whether the
23 Public Service Commission had subject matter
24 jurisdiction to approve the proposed Sebring rider. And
25 then the court held that the Commission's authority to

1 set rates, charges, fares, tolls or rentals is to be
2 construed liberally.

3 Staff has also provided a prior Commission
4 order that was PSC Order 05-0748, which basically speaks
5 to the Commission's approval of temporary surcharges and
6 such and the decision to approve temporary surcharges
7 and distinguishing how, as Commissioner Argenziano has
8 appropriately pointed out, the cost recovery clauses
9 were designed to recover costs which are volatile and
10 unpredictable. But then it goes on to talk about the
11 two-year limitation in that particular instance was a
12 temporary surcharge. I think that kind of goes to the
13 rationale that staff was trying to apply in their view
14 of looking at the rider.

15 I also find the rider to be somewhat
16 problematic but on a, on a separate and distinct basis
17 from the concerns that Commissioner Argenziano and
18 Commissioner Carter have raised.

19 Generally speaking, I see the merit in
20 creating a rider but there are some unknowns. But
21 beyond that, I guess I looked at the existing proposed
22 rider versus staff's concerns expressed in the
23 recommendation and there was disagreement to the extent
24 that the tariff did not comport with the eligible
25 replacements envisioned by staff as reflected in the

1 recommendation. And so at a minimum it would require a
2 modification at least to gain my support of the language
3 in the existing tariff to make it comport with staff's
4 view. Because, again, the tariff as it reads now is
5 very generic and, you know, captures everything in terms
6 of safety requirements; whereas, at hearing the witness
7 articulated two safety standards as well as some new.

8 So it seems to me that the language in the
9 tariff really isn't tight enough to encompass what would
10 be staff's view of what should be recoverable. I think
11 staff addressed the issue that the costs would be
12 limited to actual costs so there wouldn't be a true-up.
13 It would be just actual costs each year. But also too
14 on top of the tariff language issue there's also the
15 issue of is there a need for this to go on forever or is
16 it more limited in scope; i.e., driven by a federal
17 mandate that is an extraordinary circumstance that may
18 cause some, some near-term increases and what's
19 historically, I mean what's been typically historical
20 costs.

21 So I have a problem with that. And just based
22 on what I hear the consensus to be, there does not seem
23 to be at this point majority in favor of going forth
24 with the rider even beyond me speaking. It seemed to me
25 that there -- I've already counted three that said no

1 way, I'm not going to go there. I don't want to read
2 anyone's mind, but I thought that's what I heard.

3 But what I do recognize though, which may be
4 more convenient for the Commission to address all the
5 concerns I've heard from Commissioner Argenziano as well
6 as Chairman Carter, is to -- staff has recommended an
7 alternative, and I think I brought this up last time, to
8 allow the utility, if they incur such extraordinary
9 costs, to come forth in a limited proceeding for
10 recovery of those costs on a case-by-case specific
11 basis. And what I wanted to do as a point of
12 clarification on the motion on the table, I know that
13 the motion that's been properly seconded denies the
14 staff recommendation as to the rider, but does it leave
15 open the ability for the company to come in and seek a
16 limited proceeding on a case-by-case basis?

17 **COMMISSIONER ARGENZIANO:** I have a comment to
18 that, please.

19 **COMMISSIONER SKOP:** I was asking the --

20 **COMMISSIONER ARGENZIANO:** I'm sorry. When
21 you're done. When you're done.

22 **COMMISSIONER SKOP:** No. I was asking
23 Commissioner Argenziano as well as Chairman Carter as to
24 whether the motion as it's envisioned, although it
25 denies the rider, does it leave open the possibility for

1 Peoples to come in on a limited proceeding as staff has
2 recommended in the alternative?

3 **COMMISSIONER ARGENZIANO:** Well, I don't see
4 where it precludes that. That's something that's a
5 mechanism available in Chapter 366. That's what I just
6 finished saying a little while ago is what I think
7 should have been done rather than create something I
8 don't believe we have statutory authority to do. So I'm
9 not -- I don't think -- you know, I'm not going to
10 change the motion, but I don't think the motion at hand
11 precludes them from coming in with a limited proceeding.

12 **COMMISSIONER SKOP:** Okay. That's fine. Thank
13 you.

14 **CHAIRMAN CARTER:** I don't think it does
15 either. And that's what I was saying about we have
16 plenty of arrows in our quiver already to deal with
17 that.

18 **COMMISSIONER ARGENZIANO:** And if I could just
19 make another comment to something that Commissioner Skop
20 had mentioned.

21 **COMMISSIONER EDGAR:** Commissioner Argenziano.

22 **COMMISSIONER ARGENZIANO:** Thank you.

23 Commissioner Skop, when you talk about liberal
24 discretion, that does not mean boundless discretion.
25 And since that case that you've cited and many others

1 that have been cited, the Legislature has relooked at
2 this situation and APA was created. And there's been,
3 there's been many changes in regards to the problem that
4 the Legislature saw as far as agencies going beyond what
5 they had statutory authority to do. So using case law
6 that's outdated doesn't work, and I just want to make
7 that perfectly clear.

8 **COMMISSIONER SKOP:** And I appreciate that and
9 I understand that there have been changes to the APA and
10 I respect those. I didn't take the time to Shepardize
11 those cases or determine the impact on the APA on those
12 holdings. But it would seem to me just as a general
13 proposition that the Commission has jurisdiction under
14 the statutes until such time as it's overruled by a
15 court of competent jurisdiction. So I would equally say
16 we have broad powers. And at times if those powers were
17 challenged and we're overruled, then we were outside our
18 jurisdiction. But I think jurisdiction generally, as
19 you have mentioned, should not be used completely
20 outside the bounds, but I think it should be used with
21 prudence and wisely. And I think that there are certain
22 things that the Commission historically has done at
23 least as far as the case law is concerned. I wish that
24 we would have been able to get a direct opinion from
25 JAPC but that was not possible in the time frame that we

1 had before us. But at least in terms --

2 **COMMISSIONER ARGENZIANO:** Commissioner Skop,
3 can I interject? Are you saying we can abuse the power
4 until it goes to court?

5 **COMMISSIONER SKOP:** I'm not saying that at
6 all. I'm saying that we can use our ability, the
7 jurisdiction afforded to the Commission as the
8 Commission interprets it which is afforded great
9 deference by the appellate courts to rule on a matter.
10 And if the court decides we're outside our jurisdiction,
11 we'll be overturned.

12 **COMMISSIONER ARGENZIANO:** Unfortunately that's
13 okay when you're citing cases that still pertain. If
14 they don't pertain any longer, then that doesn't work.
15 And if the Legislature has told us through APA that that
16 shall not happen, that an agency shall not go beyond
17 legislative delegated authority, then we have no reason
18 to go forward if we don't have authority.

19 **COMMISSIONER SKOP:** I understand that. But I
20 think that's a separation of powers issue that gets
21 resolved by the judicial branch ultimately.

22 **COMMISSIONER ARGENZIANO:** No. No. No. I
23 think that you don't move forward and say let's test it
24 if you know that the Legislature -- unless, unless
25 you're citing something that's current. But when you're

1 using case law that's old and doesn't pertain anymore,
2 it kills your argument and that's what I'm trying to
3 say. And I wouldn't, I would not want to be one to
4 turn around and say, well, let's test it even though,
5 na, na, na, na, na, na, the Legislature has said we
6 shall not do that. Now if I have case law that says you
7 can do that, that specifically, and is specifically the
8 same as what we're dealing with here today, then that's
9 a different story.

10 **COMMISSIONER SKOP:** I wholeheartedly agree and
11 I would hope that staff in terms of providing its legal
12 research would have taken the time to Shepardize the
13 cases, so.

14 **CHAIRMAN CARTER:** Commissioner Argenziano, was
15 that a legal term, na, na, na, na, na, na?

16 **COMMISSIONER ARGENZIANO:** Well, yes. That's
17 my legal term. I have a different law of school --
18 school of law that I go to. It's very, very clear and
19 it's just one of those things, Commissioner.

20 (Laughter.)

21 **COMMISSIONER SKOP:** Commissioner Argenziano,
22 is that the Brooklyn school of law?

23 **COMMISSIONER ARGENZIANO:** No. That's just the
24 I'm 54 years old and been through a lot and participated
25 personally in the legislative process. So that's that

1 kind of school of law.

2 **COMMISSIONER SKOP:** Very well. We appreciate
3 your insight. Thank you.

4 **COMMISSIONER ARGENZIANO:** Thanks.

5 **COMMISSIONER EDGAR:** Okay. Commissioners, we
6 are on Issue 54, which in my mind is pretty, pretty
7 specific as to whether or not to approve the request for
8 a rider. We have a motion and we have a second and we
9 were having some discussion. I want to make sure that
10 we close that out. Commissioner McMurrin.

11 **COMMISSIONER McMURRIAN:** Thank you, Chairman.
12 I can count too, so I, and not to be flippant about it,
13 I think that you all have raised some important concerns
14 and I'd like to think that, you know, whether I come in
15 here with a certain mind-set or not, that I, that I
16 listen to you all and take that into account. And I
17 think a lot of the concerns I've heard are valid. I
18 still don't agree that it would be set up as an
19 automatic. I also agree that, with a couple of you that
20 I believe that we do have statutory jurisdiction. And I
21 guess as long as the motion does not suggest that we do
22 not have statutory jurisdiction to put in place such a
23 rider, notwithstanding individual Commissioner's
24 positions that we, that we may not, as long as the
25 motion doesn't include a statement or a suggestion that

1 we lack statutory jurisdiction to do it or that, you
2 know, suggesting that it's automatic or those kinds of
3 terms, then I can vote along with my colleagues with
4 respect to that motion, given the concerns that you all
5 have raised. And I do agree that there are other
6 options for the utility to seek out and make a case for
7 the Commission. And if they demonstrate whatever those
8 criteria are, then, then they are allowed to seek it in
9 a different manner. So I guess I should seek
10 clarification with respect to the motion.

11 **COMMISSIONER EDGAR:** Commissioner Argenziano,
12 let me try, and then I'd like you to respond. And this
13 is for very similar reasons, Commissioner McMurrian, the
14 reason I had asked her to restate. And, of course,
15 we've got the court reporter recording.

16 **COMMISSIONER ARGENZIANO:** Can you hear me,
17 Madam Chair?

18 **COMMISSIONER EDGAR:** Just, just a moment.

19 **COMMISSIONER ARGENZIANO:** I have to call back
20 in as my phone battery is dying. Can you give me a
21 minute?

22 **COMMISSIONER EDGAR:** We will take a couple of
23 moments in place.

24 **COMMISSIONER ARGENZIANO:** Sorry. Sorry.
25 Thank you.

1 **COMMISSIONER EDGAR:** Okay. We are on an
2 unofficial -- officially an unofficial break in place.

3 (Pause.)

4 Okay. We are back on the record.
5 Commissioner Argenziano, I believe you're with us again.

6 **COMMISSIONER ARGENZIANO:** Yes. Can you hear
7 me?

8 **COMMISSIONER EDGAR:** Okay. Yes. Thank you.

9 And while we were taking that kind of moment
10 break in place, I did check with our court reporter.
11 And from her transcript exactly from Commissioner
12 Argenziano, quote, and I move to deny staff's
13 recommendation and not approve the Gas System
14 Reliability Rider. And that's what we had a second to.

15 **COMMISSIONER ARGENZIANO:** Correct.

16 **COMMISSIONER EDGAR:** Thank you. So
17 Commissioner Argenziano concurs with that. I think that
18 responds, Commissioner McMurrian, to your question.

19 Commissioners, any other questions or
20 discussion? Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you. Just a brief
22 discussion. I just want to say, I guess Commissioner
23 McMurrian had made some comments and I agreed with some
24 of those and I wanted to express my own views briefly.

25 In principle, I was generally open-minded to

1 the concept of the proposed rider, but making sure it
2 had appropriate safeguards, and that would include
3 limited to actual costs, limited to perhaps a sunset
4 provision so this thing did not go on forever and was
5 only there for its useful purpose.

6 I do also agree that the Commission had
7 jurisdiction, but as it stands I could not approve the
8 tariff language as it was proposed and written. I have
9 some significant problems with the language as I've
10 previously discussed. So with that understanding and so
11 long as Peoples retains the ability to petition for a
12 limited proceeding pursuant to *Florida Statute 366.076*
13 to seek to recover costs on a case-by-case basis, I will
14 support the staff -- the motion.

15 **COMMISSIONER ARGENZIANO:** And, Madam Chair.

16 **COMMISSIONER EDGAR:** Commissioner Argenziano.

17 **COMMISSIONER ARGENZIANO:** As I stated before,
18 I don't see where it precludes them from that. That's
19 inherent in the statute and I don't see where the motion
20 would preclude them at all from that.

21 And to just reiterate something said,
22 Commissioner McMurrian had said before in having
23 jurisdiction, I see jurisdiction and authority as two
24 very separate things. Jurisdiction is, enables you to
25 enhance or to embrace or to, not enhance, excuse me,

1 embrace or address the situation. Authority means you
2 can compel a decision. And the difference I see as what
3 the statutes don't give me according to case law and
4 everything that's been in front of me is that we don't
5 have the authority. Absolutely probably have the
6 jurisdiction to embrace but not the authority, and
7 that's where I draw the line of distinction.

8 **COMMISSIONER EDGAR:** Okay. Commissioners, any
9 further comments at this time? Hearing none, all in
10 favor of the motion, say aye.

11 (Unanimous affirmative vote.)

12 Opposed? Show it adopted. Thank you.

13 Commissioners, that leaves us with Issue 59.

14 **COMMISSIONER SKOP:** Move to approve the staff
15 recommendation as to Issue 59.

16 **COMMISSIONER McMURRIAN:** Second.

17 **COMMISSIONER EDGAR:** We have a motion and a
18 second to close the docket. All in favor, say aye.

19 (Unanimous affirmative vote.)

20 Opposed? Show it adopted.

21 Commissioners, staff, that concludes our
22 discussions on this item.

23 **CHAIRMAN CARTER:** Madam Chairman.

24 **COMMISSIONER EDGAR:** Commissioner Carter.

25 **CHAIRMAN CARTER:** If you would permit me

1 before we close out today, I would just like to say to
2 you, my fellow Commissioners, and all our staff and
3 friends at the PSC, thank you for your condolences on
4 the passing of my sister last Friday.

5 **COMMISSIONER EDGAR:** Thank you, Commissioner
6 Carter. Our thoughts are with you and your family. And
7 with that, we are adjourned.

8 (Agenda conference adjourned at 4:13 p.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 2nd day of June, 2009.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734