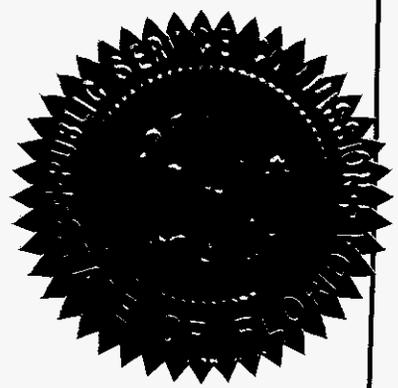


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090172-EI

In the Matter of:

PETITION TO DETERMINE NEED FOR
FLORIDA ENERGYSECURE PIPELINE
BY FLORIDA POWER & LIGHT COMPANY./



PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER PARTICIPATING: COMMISSIONER LISA POLAK EDGAR
PREHEARING OFFICER

DATE: Monday, July 6, 2009

TIME: Commenced at 1:35 p.m.
Concluded at 1:55 p.m.

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

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

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

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 07108 JUL 14 8

FPSC-COMMISSION CLERK

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

PARTICIPATING:

JOHN T. BUTLER, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420, representing Florida Power & Light Company.

GARY V. PERKO, ESQUIRE, Hopping Law Firm, Post Office Box 6526, Tallahassee, Florida 32314, representing Florida Power & Light Company.

FLOYD R. SELF, ESQUIRE, and ROBERT J. TELFER, III, ESQUIRE, Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, Florida 32308, representing Florida Gas Transmission, LLC.

MARTHA CARTER BROWN, ESQUIRE, and ANNA WILLIAMS, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, representing the Commission Staff.

JENNIFER BRUBAKER, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing as advisor to the Commission.

P R O C E E D I N G S

1
2 **COMMISSIONER EDGAR:** Good afternoon. I call
3 this prehearing to order. I'll begin by asking our
4 staff to read the notice.

5 **MS. BROWN:** By notice issued June 17th, 2009,
6 this time and place was set for a Prehearing Conference
7 in Docket Number 090172-EI, petition to determine need
8 for Florida EnergySecure Pipeline by Florida Power &
9 Light Company. The purpose of the Prehearing Conference
10 is set out in the notice.

11 **COMMISSIONER EDGAR:** Thank you. And we'll
12 take appearances.

13 **MR. BUTLER:** Thank you. Excuse me.
14 Commissioner, I'm John Butler, Florida Power & Light
15 Company, appearing on behalf of Florida Power & Light.
16 And with me is Gary Perko of Hopping, Green & Sams, also
17 appearing on behalf of Florida Power & Light Company.

18 **COMMISSIONER EDGAR:** Thank you.

19 **MR. SELF:** Good afternoon, Commissioner.
20 Floyd Self and Robert J. Telfer of the Messer, Caparello
21 & Self Law Firm appearing on behalf of Florida Gas
22 Transmission, LLC.

23 **COMMISSIONER EDGAR:** Thank you. And staff.

24 **MS. BROWN:** Martha Carter Brown and Anna
25 Williams on behalf of the Public Service Commission.

1 **MS. BRUBAKER:** And the part of Mary Ann Helton
2 today is being played by Jennifer Brubaker, advisor to
3 the Florida Public Service Commission.

4 **COMMISSIONER EDGAR:** Thank you.

5 Okay. Staff, any preliminary matters?

6 **MS. BROWN:** Staff is not aware of any, but
7 perhaps Florida Power & Light might want to bring
8 something up at this time about the jurisdiction.

9 **MR. PERKO:** Yes. Regarding the -- in the
10 Draft Prehearing Order there's a statement regarding
11 jurisdiction that includes Chapter 368, *Florida*
12 *Statutes*.

13 Respectfully we don't believe that that is
14 appropriate because this proceeding, the jurisdiction of
15 the Commission was invoked under the Natural Gas
16 Pipeline Citing Act, and although there's an issue
17 related to Chapter 368, it's not really -- there's a
18 question as to the applicability of that statute. And
19 as such, we don't think that that should be included in
20 the statement of jurisdiction.

21 **COMMISSIONER EDGAR:** Mr. Self.

22 **MR. SELF:** I think, Commissioner, that so long
23 as there's at least a colorable claim that the
24 Commission may have jurisdiction, it would be
25 appropriate to list the statute there.

1 **COMMISSIONER EDGAR:** Ms. Brubaker, any
2 comments?

3 **MS. BRUBAKER:** I'm sorry. I would just
4 comment that there is a disputed issue about whether
5 Chapter 368 is applicable to this proceeding. Frankly,
6 whether it is in this Prehearing Order under the
7 jurisdictional section or not, it either applies or it
8 doesn't. I don't think there's any harm in including it
9 in the Prehearing Order; however, if it is your pleasure
10 to remove it if it does apply to this proceeding, I
11 think that would be the case in any regard.

12 **COMMISSIONER EDGAR:** Mr. Butler, my leaning at
13 this time is to include it. I am more persuaded by the
14 comments of Mr. Self and Ms. Brubaker, but I'll allow
15 you a further comment, if you would like, at this time.

16 **MR. BUTLER:** A brief comment, if I may. The
17 statute in question deals with, you know, rate
18 regulation of a natural gas transmission pipeline. And
19 whether that statute applies or not, as Ms. Brubaker
20 indicated, is one of the issues in the proceeding, Issue
21 14. But if it does, it applies for the purpose of, you
22 know, determining the tariffs, the rates that FPL would
23 file for the gas pipeline, assuming it's approved and
24 built. This proceeding is about proving the need for
25 the pipeline, and none of the need determination

1 provisions are in Chapter 368. So I would continue to
2 contend that it really isn't appropriate as
3 jurisdictional for this proceeding. If you feel more
4 comfortable leaving it in, I think we would just want to
5 clarify on the record that we don't believe it governs
6 the determination of need and that, you know, we do have
7 the live issue as to the definitional applicability of
8 it for the rate regulatory authority.

9 **COMMISSIONER EDGAR:** All right. Thank you.

10 Mr. Self, anything further?

11 **MR. SELF:** I think, Commissioner, that we've
12 got several issues in the proceeding that go beyond the
13 determination of need: For example, the treatment of
14 whether it should be in the rate base or not. So I
15 think so long as there's a claim that it may apply, that
16 it's better to just leave it in.

17 **COMMISSIONER EDGAR:** Okay. I am comfortable
18 that I understand the points that have been raised, and
19 I will give it some further thought, take it under
20 advisement.

21 Anything else that we could say at this time
22 as preliminary?

23 **MS. BROWN:** Not that I'm aware of,
24 Commissioner.

25 **COMMISSIONER EDGAR:** Okay. Mr. Self?

1 **MR. SELF:** Thank you, Commissioner. As you
2 know, FPL filed testimony on Thursday, which was the day
3 that the prehearing statements were due, and I have two
4 brief comments. One is it was our intent to have more
5 developed position statements available here at the
6 Prehearing Conference today, and because we're still
7 trying to digest the rebuttal testimony that was filed,
8 I don't have those with me today. I hope to have them
9 to the parties no later than tomorrow morning.

10 The second issue is because FPL did in fact
11 file rebuttal testimony on Thursday, we believe that
12 there are some new issues that have -- not issues as in
13 our issues list issues, but new points that have been
14 raised in the testimony. And, quite frankly, we're
15 trying to ascertain the best way to respond to that. So
16 all I'd like to do is simply put you and the other
17 parties on notice that we could potentially ask for the
18 opportunity to file surrebuttal testimony to address
19 those, or potentially in lieu of filing surrebuttal to
20 perhaps afford a little leeway at the hearing itself for
21 the witnesses to address some of those additional points
22 that, that we believe are new or changed from what we
23 had seen previously in the direct testimony. And what I
24 would do is certainly talk with staff counsel and FPL
25 before we would make a formal request with respect to

1 either of those.

2 **COMMISSIONER EDGAR:** Mr. Butler.

3 **MR. BUTLER:** I think we'll need to see what we
4 see before we can be very definitive on it. But I would
5 just as a general principle say that some form of
6 addressing those points, if there indeed is something,
7 that it makes sense to be addressed in writing before
8 the hearing I think would be our preference rather than
9 having something where it's live testimony at the
10 hearing on points that have not previously been
11 disclosed. That doesn't seem very consistent with the
12 general practice of trying to keep the direct testimony
13 on prefiled to the greatest extent possible.

14 **COMMISSIONER EDGAR:** So with, with that
15 comment, am I to understand that from what Mr. Self
16 described, your preference would be the filing of
17 surrebuttal testimony?

18 **MR. BUTLER:** If it is warranted, I think that
19 would be my preference. We'd have to see what issues
20 they feel warrant either treatment. But if one of them
21 was warranted, the surrebuttal would be my preference.

22 **COMMISSIONER EDGAR:** Okay. And, and in this
23 instance I agree with what Mr. Butler has said. That
24 would, I think, be my preference as well just for
25 clarity that everybody is looking at the same thing at

1 the same time in advance, but again realizing that, as
2 you have said, we kind of need to see where we go and
3 where it takes us.

4 As to the submission of more detailed or
5 additional or however you described it position
6 statements, within -- did you say a time?

7 **MR. SELF:** By noon tomorrow.

8 **COMMISSIONER EDGAR:** By noon tomorrow?

9 Mr. Butler, that works for you?

10 **MR. BUTLER:** That's fine.

11 **COMMISSIONER EDGAR:** And staff?

12 **MS. BROWN:** Yes, that's fine.

13 **COMMISSIONER EDGAR:** Okay. And, of course, I
14 realize the compressed timeline that we are all working
15 under, so. Okay. Any other matters at this time?

16 **MR. SELF:** Thank you.

17 **COMMISSIONER EDGAR:** Thank you.

18 **MS. BROWN:** Yes, Commissioner. I guess we're
19 ready to go through the Draft Prehearing Order.

20 **CHAIRMAN EDGAR:** Okay. Then I assume that
21 everyone has the draft that Ms. Brown put together and I
22 believe circulated. And, yes, I do. So as always, just
23 like we always do, we'll go through them slowly section
24 by section. Just speak up and let me know if there's
25 something that you would like us to address.

1 Section I, case background.

2 Hearing none, Section II, conduct of
3 proceedings.

4 Section III, jurisdiction, we have previously
5 discussed. Anything additional?

6 Hearing none, Section IV, procedure for
7 confidential information.

8 **MR. PERKO:** Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Yes.

10 **MR. PERKO:** I would just point out that that
11 provision also includes a reference to Chapter 368. So
12 if your ruling on Category 3 is that that should come
13 out, then we believe it should come out in Section IV as
14 well.

15 **COMMISSIONER EDGAR:** All right. Thank you. I
16 appreciate that point and would agree with the internal
17 consistency one way or the other.

18 Okay. Section V, prefiled testimony and
19 exhibits, witnesses.

20 **MS. BROWN:** Commissioner?

21 **COMMISSIONER EDGAR:** Yes, ma'am.

22 **MS. BROWN:** We expect that at least some
23 witnesses can be excused from the hearing. We, we hope
24 anyway. And if they can, if the Commissioners don't
25 have any questions for them, the Prehearing Order will

1 state that staff will notify the parties by July 21st,
2 2009, if they have been excused.

3 **COMMISSIONER EDGAR:** To state the obvious, it
4 looks by quick count to me that we have 11 witnesses on
5 direct and five, six, six on rebuttal and two days of
6 hearing; obviously a number of technical issues and
7 perhaps subissues or points within. Is there the
8 opportunity at this time to request that any witnesses
9 be stipulated?

10 **MR. SELF:** We're not ready to do that yet.

11 **COMMISSIONER EDGAR:** Not there yet?

12 **MR. PERKO:** Nor are we.

13 **COMMISSIONER EDGAR:** Okay. Okay. Well, then
14 I would just encourage consideration of that and
15 continued discussion.

16 Okay. That brings us to Section VII, basic
17 positions, we also have discussed with the understanding
18 that Mr. Self and FGT will give us additional statements
19 to be put into the appropriate places by our staff.

20 Section VIII.

21 **MR. PERKO:** Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Yes.

23 **MR. PERKO:** We'd request the same courtesy,
24 that we'd be able to refine our positions up 'til noon
25 tomorrow, if that would be appropriate.

1 **COMMISSIONER EDGAR:** Mr. Self is nodding and I
2 agree. That's fine. Thank you. Just work with our
3 staff, of course.

4 I believe that brings us to Section IX,
5 exhibit list.

6 **MR. SELF:** Commissioner, I'm sorry.

7 **COMMISSIONER EDGAR:** Yes. That's okay.

8 **MR. SELF:** Back on the order of witnesses.

9 **COMMISSIONER EDGAR:** Okay.

10 **MR. SELF:** The draft says, "Those preceded by
11 a plus sign will present direct and rebuttal together."
12 There are no plus signs. Is it the intent to just have
13 each witness up one time?

14 **MR. BUTLER:** It is not FPL's intent. I mean,
15 our preference would be to present the witnesses as
16 shown in the Prehearing Order, you know, separately for
17 direct and rebuttal. And that's kind of the usual
18 Commission practice, my experience, if there is not some
19 special circumstance of timing or otherwise that it
20 makes sense to do it. And here we've got -- our
21 rebuttal testimony is specifically addressing, you know,
22 the testimony of FGT's witnesses. It's focused on it.
23 It seems like it would be more productive to leave it as
24 it is.

25 **COMMISSIONER EDGAR:** And in my time here,

1 which is probably not as long as yours, Mr. Butler, but
2 I think we've done it many times both ways, and my
3 general thinking is that we certainly try to accommodate
4 the schedules of witnesses when that comes into play,
5 especially with a proceeding that lasts over the course
6 of a week or two weeks. This one we have two days, so
7 less of an issue, I would think.

8 And my preference is then to try to have, of
9 course, the record be in, flow in the matter easiest for
10 all. So my thinking would be at this point to take the
11 witnesses in, in the order that they are with rebuttal
12 at the end, especially if we're considering maybe
13 surrebuttal just to keep things orderly. But if there
14 is a reason that somebody needs to be accommodated out
15 of order or put together, I mean, I certainly will
16 consider that, and my expectation would be the Chair
17 would as well at hearing.

18 **MR. SELF:** That's fine, Commissioner. You're
19 right. I've seen it done both ways many times. My only
20 concern was just, again, trying to be efficient. The
21 subject of some of the rebuttal testimony obviously
22 includes stuff that was covered in the direct testimony
23 of the witness. You know, I don't want to get into a
24 disagreement at the hearing about, no, that's proper for
25 rebuttal only versus direct. I just think it's more

1 efficient if we do them together, but obviously the
2 Commission's preference.

3 **COMMISSIONER EDGAR:** Okay. Then what I would
4 say is let's leave it as it is for now. There's always
5 the opportunity to make a request at hearing. But prior
6 to that, before this is finalized, I'm also hoping we
7 may have some witnesses stipulated and we can perhaps
8 address it that way as well. And that I think takes us
9 back to Section IX, exhibits.

10 **MS. BROWN:** Commissioner?

11 **COMMISSIONER EDGAR:** We were still back on
12 issues, weren't we? I blew right through there. Okay.
13 Let's go back to issues.

14 **MS. BROWN:** May I just say that we really have
15 not had a lot of discussions about stipulations of
16 issues so far, but we have some time before the hearing
17 and we'll try to see what we could come up with, if
18 anything.

19 **COMMISSIONER EDGAR:** Okay. And I understand,
20 as is reflected in this draft, that Issue 12 is under
21 consideration for a proposed stipulation. Is that still
22 where we are?

23 **MS. BROWN:** Yes.

24 **COMMISSIONER EDGAR:** Okay. And, Ms. Brown, we
25 were going to discuss, I think, some language, potential

1 changes on Issue 11.

2 **MS. BROWN:** Yes. I think Mr. Butler had --
3 did you have something to --

4 **MR. BUTLER:** I was just going to say that FPL
5 is prepared to stipulate Issue 12, if the other parties
6 are. And if we want to knock it out today, that's fine
7 with me. It doesn't seem like there's any disagreement.

8 **COMMISSIONER EDGAR:** Mr. Self?

9 **MR. SELF:** I think that's fine.

10 **COMMISSIONER EDGAR:** Okay.

11 **MS. BROWN:** Staff will reflect that in the
12 Prehearing Order.

13 **COMMISSIONER EDGAR:** Thank you.

14 **MS. BROWN:** Now as to Issue 11, I've had
15 discussions with both parties, and they have agreed to
16 reword that issue to state, "Is it appropriate for
17 Florida Power & Light Company to recover the cost
18 associated with its proposed EnergySecure natural gas
19 transmission pipeline through its electric utility rate
20 base?" And I think everyone is amenable to that change.

21 **COMMISSIONER EDGAR:** Okay. To our staff,
22 thank you for raising that and working with the parties.
23 Mr. Butler --

24 **MR. BUTLER:** Yes.

25 **COMMISSIONER EDGAR:** -- you're fine with that

1 rewording?

2 Mr. Self?

3 **MR. SELF:** Yes, ma'am.

4 **COMMISSIONER EDGAR:** Okay. Good. Thank you
5 to both parties and to our staff. We will show Issue
6 11 to be reworded as Ms. Brown has read.

7 Anything else on issues?

8 **MS. BROWN:** And then, of course, with respect
9 to the more detailed positions from the parties, that'll
10 be taken care of by tomorrow.

11 **COMMISSIONER EDGAR:** All done with issues?

12 **MS. BROWN:** Yes.

13 **COMMISSIONER EDGAR:** Okay. I'm not aware of
14 anything else either. Okay.

15 Again, Section IX, exhibits.

16 Section X, proposed stipulations, which we
17 have, I believe, addressed. Let me get caught up.

18 Okay. So Section X obviously will be revised

19 --

20 **MS. BROWN:** Yes.

21 **COMMISSIONER EDGAR:** -- to reflect our
22 discussion this afternoon.

23 Section XI, pending motions.

24 **MR. SELF:** Commissioner, may I jump back just
25 one second, please, to the exhibits? There's been a lot

1 of discovery in the docket so far. We've got some
2 depositions scheduled for next week. I just wanted to
3 see what the sense or intent was with respect to putting
4 some, potentially all of that discovery, probably not
5 all of it but at least some of it into the record by way
6 of stipulation.

7 **MS. BROWN:** Commissioner, I'll certainly have
8 those discussions with the parties because I have a
9 couple of ideas on how to do it that might be efficient.
10 So I'll get with the parties on that and have -- if you
11 want, I can have the Prehearing Order reflect that, or,
12 if not, we'll just go with our usual Comprehensive
13 Exhibit List and our stipulated discovery exhibits, if
14 that's all right with everyone, at the hearing.

15 **MR. SELF:** Whatever works.

16 **MS. BROWN:** Okay.

17 **COMMISSIONER EDGAR:** Mr. Butler?

18 **MR. BUTLER:** That would be fine.

19 **COMMISSIONER EDGAR:** Okay. Good. Again,
20 absolutely want to take advantage of all of the work
21 that has been done, give us a full record, give us
22 clarity, and I would be hopeful that the discovery
23 process incorporating some of that will help us to get
24 there. So Ms. Brown will continue to work with the
25 parties for an orderly exhibit record for all of our

1 edification.

2 And that brings us back to pending motions.

3 **MS. BROWN:** I'm not aware of any pending
4 motions, Commissioner.

5 **COMMISSIONER EDGAR:** Nor am I. Any, any about
6 to be pending?

7 **MR. SELF:** Maybe.

8 **COMMISSIONER EDGAR:** Okay. Fair enough.

9 Section XII, pending confidentiality matters.
10 I understand that we have two pending here, maybe a
11 third; is that correct?

12 **MR. PERKO:** That's correct, Commissioner
13 Edgar. On Thursday, July 2nd, FPL filed a request for
14 confidentiality and will be filing a request for
15 confidentiality in accordance with the notices of intent
16 that are referenced in the order. So if those are filed
17 before the Prehearing Order, we'll make sure that's
18 reflected.

19 **COMMISSIONER EDGAR:** Okay. And my desire is
20 to try to address all of those issues prior to hearing,
21 and my commitment is to turn an order back around to the
22 parties so that we can do that on our end.

23 Okay. And that brings us to XIII, posthearing
24 procedures.

25 **MR. PERKO:** Commissioner Edgar?

1 **COMMISSIONER EDGAR:** Yes.

2 **MR. PERKO:** One thought on the posthearing
3 procedures is that, due to the complexity of this case,
4 we may need some relief from the 40-page limit on the
5 posthearing statements and briefs. Our thinking is 50
6 to 60 may be appropriate.

7 **COMMISSIONER EDGAR:** Mr. Self?

8 **MR. SELF:** I would agree.

9 **COMMISSIONER EDGAR:** Anything from staff?

10 **MS. BROWN:** Staff will -- whatever. We're
11 comfortable with whatever the parties want to do.

12 **COMMISSIONER EDGAR:** How about 55?

13 **MR. PERKO:** Excuse me?

14 **COMMISSIONER EDGAR:** 55?

15 **MR. PERKO:** That would be fine.

16 **MR. SELF:** Do I hear 60?

17 **COMMISSIONER EDGAR:** No, not from me. Okay.
18 Then please change the draft to reflect a total page
19 limit for briefs at 55 pages.

20 **MS. BROWN:** All right.

21 **COMMISSIONER EDGAR:** And that brings us to
22 Section XIV, rulings, opening statements. I am hopeful
23 for opening statements.

24 **MS. BROWN:** Commissioner, I had proposed to
25 you earlier five minutes. The Prehearing Order reflects

1 ten. I will change that, if you would like me to.

2 **COMMISSIONER EDGAR:** Well, let me hear from
3 the parties. What is your desire? Does five minutes do
4 it, succinct, to the point, or --

5 **MR. BUTLER:** It would be succinct and to the
6 point. I guess I would prefer ten, but we can, we can
7 live with five, if that's your preference, but ten would
8 be better.

9 **COMMISSIONER EDGAR:** Mr. Self?

10 **MR. SELF:** I can make five work.

11 **COMMISSIONER EDGAR:** All right. I tell you
12 what. Let's leave it at ten. I happen to be a big fan
13 of opening statements. And if you can do it in five, do
14 it in five -- back to my earlier comment about how many
15 witnesses in two days that we have. But we'll give you
16 the latitude to have the time that you need to lay
17 things out for us.

18 Okay. Any other matters?

19 **MS. BROWN:** I'm not aware of any,
20 Commissioner.

21 **COMMISSIONER EDGAR:** Nor am I. Anything else
22 from either of the parties?

23 **MR. BUTLER:** No.

24 **MR. SELF:** No. Thank you.

25 **COMMISSIONER EDGAR:** No? All right. Thank

1 you. Once again, I appreciate all of you working
2 together, and I look forward to hearing. We are
3 adjourned.

4 (Prehearing Conference adjourned at 1:55 p.m.)
5
6
7
8
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 14th day of July, 2009.

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