

**Ruth Nettles**

090172-EI

**From:** Butler, John [John.Butler@fpl.com]  
**Sent:** Friday, October 02, 2009 10:37 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Martha Brown; 'gperko@hgslaw.com'; 'fself@lawfla.com'  
**Subject:** Electronic Filing / Docket 090172-EI / Florida EnergySecure Pipeline / FPL's Amended Response in Opposition to FGT's Motion to Terminate case or M/Transfer  
**Attachments:** 10.2.09.FPL's Amended Opposition to FGT Motion to Terminate w.exh.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090172 - EI  
In RE: Florida Power & Light Company's Petition to Determine Need for FPL Florida EnergySecure Pipeline

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 Amended Response in Opposition to FGT's Motion to Terminate Case or, in the Alternative, Motion to Transfer (Amended to attach exhibit)

It has come to my attention that the Response FPL filed yesterday did not have the Inspector General's report attached as an exhibit, which was contemplated in the Response. This filing is amended to include the Inspector General's report.

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DOCUMENT NUMBER-DATE

10182 OCT-2 09

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to determine need for Florida )  
EnergySecure Pipeline by )  
Florida Power & Light Company )

Docket No: 090172-EI  
Filed: October 2, 2009

**FLORIDA POWER & LIGHT COMPANY'S AMENDED RESPONSE IN  
OPPOSITION TO FGT'S MOTION TO TERMINATE CASE OR, IN THE  
ALTERNATIVE, MOTION TO TRANSFER**

Florida Power & Light Company ("FPL"), hereby files this Response in Opposition to the Florida Gas Transmission Company, LLC's ("FGT's") Motion to Terminate Case or, in the Alternative, Motion to Transfer ("FGT's Motion"), and states:

1. On July 27 and 28, 2009, the Commission conducted an evidentiary hearing in this proceeding. On August 10, 2009, parties submitted post-hearing briefs. On September 24, 2009, Staff issued their recommendations on the issues.

2. On September 16, 2009, the Commission's Inspector General ("IG") issued a report to the Commission, discussing an investigation into allegations of undue influence and bias on the part of staff members of Commission's Office of Strategic Analysis and Governmental Affairs ("SGA") in making recommendations in this docket (the "IG Report"). The IG Report, attached as Exhibit A, stated in no uncertain terms, that "[w]e found no basis to question the motivation of SGA staff or to support allegations of bias."

3. On September 30, 2009, FGT filed its Motion, seeking to either terminate the proceedings or transfer the docket to the state's Division of Administrative Hearings ("DOAH"). FGT's alleged basis for its Motion is the appearance of impropriety and prejudice on the part of Commission Staff as evidenced by the IG Report.

DOCUMENT NUMBER-DATE

10182 OCT-28

FPSC-COMMISSION CLERK

4. FGT's Motion is utterly without merit. There is absolutely no basis for either terminating this case or transferring it to DOAH. As noted above, the IG Report concluded that there is "no basis to question the motivation of SGA staff or to support allegations of bias." The report did not find one single instance of impropriety or any evidence of undue influence or bias. For FGT to rely on a report that finds no evidence of undue influence or bias, as its sole basis for a Motion predicated upon undue influence and bias, is baffling at best.

5. Regarding FGT's criticism of the Commission's internal processes for Staff making recommendations in this docket, the IG Report makes it clear that "it is not unusual in this process for staff to take adversary positions and to argue forcefully that their view should be incorporated in the proposed recommendation to the Commission." The IG Report further found that "all staff said that, despite their disagreements in this docket, they did not have any indication that SGA staff were acting out of bias or improper motivation or took positions that were untenable." Finally, regarding Staff's proposed recommendations, the IG Report found that, regardless of sharp differences of opinion on substance, "all staff interviewed indicated that they were generally satisfied with the status of the draft recommendation...."

6. Furthermore, as FGT should well know, the Commission is not bound by Staff's recommendations. The Commissioners all heard the evidence in the proceeding directly and participated in testing that evidence. Their decisions are not bound by the recommendations of their Staff, provided the decisions are otherwise based on record evidence in the proceeding. Moreover, Staff provided the Commission with both primary

and alternate recommendations that expressed drastically differing opinions on the key issues for decision. For FGT to claim that its views and position are not fairly addressed or presented in the Staff recommendation or that the Commissioners would feel constrained somehow by the recommendation is preposterous and insulting to the Commissioners, and FGT provides no evidence to support its implausible claim.

7. For these reasons, FGT's Motion should be summarily denied. In fact, although FPL is not moving to strike, FGT's Motion clearly reaches the level of a sham pleading as contemplated by Rule 1.150, Florida Rules of Civil Procedure. FGT's Motion is nothing more than forum shopping, in yet another attempt by FGT to gain procedurally what it could not achieve in competitive bidding. Once again, FGT is grasping at straws to protect its stranglehold on gas transportation into the state of Florida, to the detriment of FPL customers and the state as a whole.

WHEREFORE, FPL respectfully requests that the Commission deny FGT's Motion.

Respectfully submitted this 2nd day of October, 2009.

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By: /s/John T. Butler  
John T. Butler  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 1<sup>st</sup> day of October, 2009, to the following:

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State of Florida




## Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

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**DATE:** September 16, 2009  
**TO:** Matthew M. Carter II, Chairman  
**FROM:**  Steven J. Stolting, Inspector General  
**RE:** Review of conflicts among staff on FPL Pipeline Docket #090172 (OIG #09/10-20)

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The purpose of this review is to examine the actions of staff in development of recommendations in the above docket. It has been alleged that some staff in the Office of Strategic Analysis and Governmental Affairs (SGA) attempted to exert undue influence on the recommendations and to intimidate other staff to adopt their position. It was alleged that the positions advanced were consistent with those preferred by Florida Power and Light (FPL), and that staff were biased in favor of those positions for unknown reasons. This review is intended to determine whether there is evidence of possible misconduct on the part of any staff and whether further action or investigation is warranted.

To assess this situation, we conducted interviews with staff involved in the docket and reviewed relevant documentation in the docket file and Commission policies governing docket assignment and duties. Commission policy provides that for each docket an Office of Primary Responsibility (OPR) and, when appropriate, Office(s) Collateral Responsibility (OCR) are to be designated. Selection of the OPR office generally depends on the subject matter of the docket. The OPR "leads staff action on each assigned matter, item, task, or case from assignment or receipt to final disposition.....The OCR(s) participates in staff actions, under the leadership of the OPR, to the full extent of the knowledge, expertise, and capability which resides in the OCR(s) division/office" [APM Section 2.02(C)].

The docket in question was opened on April 7, 2009. SGA was designated as the OPR. OCRs were the Division of Economic Regulation (ECR) and the Division of Service, Safety, and Consumer Assistance (SSC). As is typical, staff from the Office of General Counsel (OGC) were also assigned to the docket. Each of the assigned entities designated staff to work on this docket.

Staff interviewed agreed that this docket represented a new type of issue because it involved a utility proposing to construct and operate a gas pipeline. They also stated that the issues in this docket were complex and evolving throughout the process. They said it became evident in initial meetings that staff differed significantly in their views. Stated very generally, SGA staff took the position that costs of pipeline construction should be incorporated in FPL electric rates, which was more consistent with FPL's position. According to staff, this is analogous to how costs of constructing an electric transmission line would be recovered. Other staff generally took

EXHIBIT "A"

the position that the pipeline should be within a separate affiliate that would not include costs in the FPL electric rate base.

A number of meetings were held among staff during development of the recommendation. Staff said some of these, reportedly held in about late July and involving Commission staff and management, became very contentious and heated. Staff interviewed agreed that it is not unusual in this process for staff to take adversary positions and to argue forcefully that their view should be incorporated in the proposed recommendation to the Commission. Some staff interviewed said their prior experience with one SGA manager participating in the meetings was that he would often take an adversary or argumentative approach in these types of discussions.

Some staff said that the discussions among staff in this case were unnecessarily hostile. One said, while conceding that arguments among staff are common, in this case SGA staff seemed to be trying to "censor" views that differed from theirs, and that the forceful tone of their argument was unprecedented. However, all staff said that, despite their disagreements in this docket, they did not have any indication that SGA staff were acting out of bias or improper motivation or took positions that were untenable.

SGA staff agreed that they had taken strong positions on the recommendation issues and had at times been confrontational. They denied any improper motivation, and said that adversary discussions can be an effective means of testing arguments and developing the best recommendation. They also said they were cognizant of deadlines to advance the process and produce a work product, and needed to finalize the positions that would be included.

Staff were also asked about the role of the former Director of SGA, who resigned effective September 8, 2009, after an investigation of his attendance at a social function hosted by an FPL executive (see OIG #09/10-15). Prior to that, he was removed from participation in all dockets concerning FPL effective August 25, 2009. SGA staff said the former Director was at no time heavily involved in the docket or in formulation of the SGA proposed position, nor did he attempt to pressure or influence his staff. No staff interviewed from other offices said that they perceived him as inappropriately advocating positions or pressuring staff.

According to staff, in an effort to make progress in drafting the recommendation, at one point SGA staff volunteered to draft the executive summary. SGA staff said initially they offered to let other staff draft versions of the executive summary that would reflect their views, but only SGA ultimately did so. That draft generally reflected their position on the issues. Staff said that subsequently OGC staff added language reflecting their concerns, which was largely removed by SGA staff in a later revision. This was viewed by some as SGA staff suppressing alternative views, while SGA staff said the additions were notes that were removed because they were too far apart from the positions in the draft to incorporate. They said there needed to be a management determination of what positions or alternatives would be included in the final recommendation, and the form in which they would be reflected.

Another issue involved the practice in many dockets of including alternative recommendations to offer differing arguments to the Commission for consideration. In other cases, options are

offered within the text of the recommendation. Generally, options are viewed as having less viability than presentation of an alternative. Some staff said they were unclear as to whether they would be able to include their viewpoints and in what form. Other staff and managers said that typically the process of negotiation and development of positions demonstrates whether alternatives or options should be included. At the time of our interviews, the draft included alternative recommendations, and all staff interviewed indicated that they were generally satisfied with the status of the draft recommendation at that point although sharp differences of opinion remained.

**Conclusions:** It is clear that the development of the recommendation in this docket was contentious and difficult, as is often the case among staff holding differing or conflicting viewpoints. However, we found no basis to question the motivation of SGA staff or to support allegations of bias. Based on this conclusion, no recommendation is offered.

cc: Commissioner Lisa Polak Edgar  
Commissioner Katrina J. McMurrian  
Commissioner Nancy Argenziano  
Commissioner Nathan A. Skop  
Mary A. Bane  
Charles Hill  
Booter Imhof



**CERTIFICATE OF SERVICE**

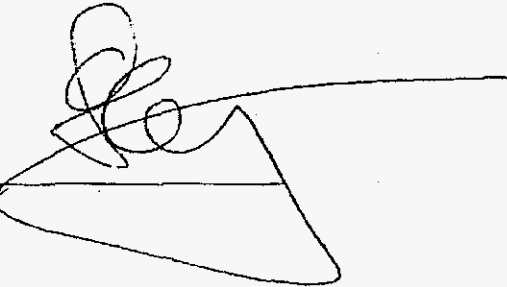
I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail and/or U. S. Mail this 30<sup>th</sup> day of September, 2009 upon the following:

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Floyd R. Self

A handwritten signature in black ink, appearing to be 'Floyd R. Self', is written over a horizontal line. The signature is stylized and extends to the right of the line.