




## 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

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. McMurrin  
Commissioner Nancy Argenziano  
Commissioner Nathan A. Skop  
Mary A. Bane  
Charles Hill  
Booter Imhof