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**DATE:** August 26, 2009

**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk

**FROM:** William C. Garner, Assistant to Chairman Carter *WCG*

**RE:** Off-The-Record Conversation With Steven Stewart During FPL Rate Proceeding

Please place this memorandum in the main docket file for dockets No. 080677-EI and 090130-EI and distribute it to all parties of record. The body of this memorandum contains the substance of a communication that passed between Steven Stewart (who is the qualified representative of intervener Unger) and myself, and which I communicated to the Chairman. Though Chairman Carter and I do not believe that this communication is an impermissible *ex parte* communication, We have treated it as such out of an abundance of caution, and to avoid any appearance of impropriety.

Communication with Steven Stewart

At approximately 11:15 a.m. on Wednesday, August 26, 2009, Mr. Steven Stewart approached me in the hearing room of the Public Service Commission. At the time, the Commission was off the record during the FP&L rate proceeding, and about to go back on the record. Mr. Stewart, who is acting as the qualified representative of intervener Unger, informed me that he had not been present for part of the proceedings that morning, that he understood that he had an obligation to be present, although he only had questions for specific witnesses. He said that out of respect for the tribunal he wanted to know if he needed to seek approval of the Chairman for his absences, and inquired whether the appropriate avenue for addressing this concern would be to address it during the hearing directly to the Chairman and on the record, or if it would be proper to handle the concern off the record with the Chairman through me.

I explained that I believed his concern involved a procedural matter that did not touch upon the merits of the proceeding, but that I would check with our legal counsel on whether he needed to be present for the entire proceeding, and whether it needed to be addressed to the Chairman on the record, or whether I could inquire on his behalf off the record.

Deputy General Counsel and advisor to the Commission, Mary Anne Helton, advised me that she could think of no specific requirement that Mr. Stewart be present at all times, and advised that he merely runs the risk of missing his opportunity to fully represent his client if circumstances arise requiring his participation, and he happens to not be present. She also agreed that the inquiry involved a procedural matter not touching upon the merits and did not think that my communicating directly with the Chairman would be an impermissible *Ex Parte* communication. She also advised that, given the amount of work to be done and the limited amount of time

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available to conduct the case, that it might be better to address the question directly to the Chairman rather than to disrupt the flow of the hearing to address it on the record.

I then found Mr. Stewart in the hearing room and explained to him what I learned from Ms. Helton. I told him that I believed it was okay for me to address the question to the Chairman on his behalf. Then informed the Chairman of the matter. The Chairman understood and agreed that it would not be necessary for Mr. Stewart to address him further to seek an approval or an accommodation. I then reported to Mr. Stewart what I had learned from the Chairman. He said Thank you and left the room.