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090172-EI

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Sent: Thursday, October 01, 2009 4:58 PM
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Subject: Electronic Filing / Docket 090172-EI / Florida EnergySecure Pipeline / FPL's Response in Opposition to FGT's M/Terminate Case or M/Transfer
Attachments: FPL's Opposition to FGT Motion to Terminate FINAL.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 4 pages

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to FGT's Motion to Terminate Case or, in the Alternative, Motion to Transfer

Note: per request, the signature has been conformed to Commission e-filing requirements.

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DOCUMENT NUMBER-DATE

10169 OCT-18

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 1, 2009

**FLORIDA POWER & LIGHT COMPANY'S 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 Appendix 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.

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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 1st day of October, 2009.

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By: /s/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 1st day of October, 2009, to the following:

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