

ORIGINAL

Timolyn Henry

From: Ann Bassett [abassett@lawfla.com]
Sent: Monday, November 13, 2006 4:52 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 0606355-EI
Attachments: 2006-11-13, 0606355 T-Mobile's Response.pdf

The person responsible for this electronic filing is:

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The Docket No. is 060355-EIPetition for emergency rule or, alternatively, for declaratory statement prohibiting wireless attachments in electric supply space by Florida Power & Light Company

This is being filed on behalf of T-Mobile South, LLC

Total Number of Pages is 5

T-Mobile's Response in Opposition to FPL's Statyus Report Related to Stay of Proceedings

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---> Please note our new building address effective September 1, 2006:

Messer, Caparello & Self, P.A.
 2618 Centennial Place
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And our new post office box address for the firm:

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DOCUMENT NUMBER-DATE

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November 13, 2006

ELECTRONIC FILING

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 060355-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of T-Mobile USA, Inc. is an electronic version of T-Mobile's Response in Opposition to FPL's Status Report Related to Stay of Proceedings in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

FRS/amb
Enclosure

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for emergency rule or, alternatively,)
for declaratory statement prohibiting wireless)
attachments in electric supply space by Florida)
Power & Light Company)
_____)

Docket No. 060355-EI
Filed: November 13, 2006

**T-MOBILE'S RESPONSE IN OPPOSITION TO FPL'S
STATUS REPORT RELATED TO STAY OF PROCEEDINGS**

T-MOBILE SOUTH LLC ("T-Mobile"), pursuant to Rules 28-103.006, 28-105.001-105.003, and 28-106.204, Florida Administrative Code, hereby responds in opposition to the Florida Power and Light Company ("FPL") Status Report Related To Stay of Proceedings (hereinafter, "Report"). T-Mobile respectfully requests that the Florida Public Service Commission ("Commission") deny the continued stay requested by FPL and that the Commission proceed to address and grant T-Mobile's prior pleadings to dismiss the original Petition for Emergency Rule or, Alternatively, Declaratory Statement (hereinafter, "Petition"), as the ultimate relief being sought, the issuance of an emergency rule, has never been, and remains, unnecessary and inappropriate. As grounds for denying the continued stay, T-Mobile states:

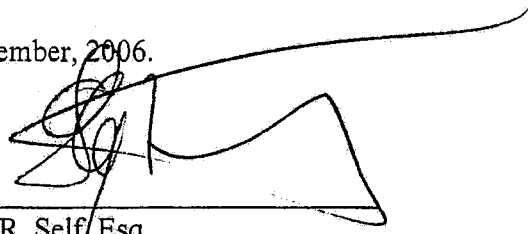
1. We are now more than six months downstream from FPL's original Petition for Emergency Rulemaking in this matter. As is clear from the face of FPL's Report, there is no more emergency or any other circumstance compelling any action by this Commission today than there was at the time of the original Petition in April. Without rearguing the substance of T-Mobile's May 30, 2006, Response to FPL's Motion for Stay, or its Response to the Petition filed on May 12, 2006 (both of which T-Mobile incorporates by reference), there is absolutely no reason or basis for continuing this docket seeking the issuance of an emergency rule or a declaratory statement. FPL has never proven or even

sufficiently pled any basis for this docket, and its Motion admitted that the “threat” that compelled its initial Petition is nonexistent. Indeed, T-Mobile has not, and will not, do anything to “threaten” FPL’s system.

2. The Report FPL filed on November 1, 2006, which undersigned counsel did not receive until November 8th, does not provide any new information of any kind regarding any threat to the safety or reliability of its system meriting the continuation of this docket. The only thing FPL has said is that it would like to keep this docket open in case it needs it. That is simply not a legitimate basis for continuing this docket any further. If it was, then T-Mobile would be justified in filing its own presumptive complaint against FPL for failure to negotiate in good faith just to maintain a placeholder docket. This is simply not authorized by or within the scope and intent of the rules.
3. Finally, FPL has asserted that the ongoing rulemaking proceeding, Docket Nos. 060172-EI and 060173-EI “could potentially resolve some or all of the issues in this proceeding.” Report, at 5. Again, the procedural posture of this docket is an emergency rulemaking, which requires “an immediate danger to the public health, safety, or welfare” requiring “emergency action.” It is simply not permissible to hold open an emergency rulemaking request for six months or more while the Commission proceeds in due course with its rulemaking and then use the emergency rulemaking docket to collaterally attack the results of the rulemaking or a third party, such as T-Mobile.

WHEREFORE, T-Mobile respectfully requests that the Commission deny FPL’s request to continue the Stay of Proceedings and that the Commission proceed to address the merits of the original Petition and deny the Petition for Emergency Rulemaking and Alternative Request for Declaratory Statement, and that this docket be closed.

Respectfully submitted this 13th day of November, 2006.

A handwritten signature in black ink, appearing to be 'F. Self', written over a horizontal line.

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and

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Attorneys for T-Mobile South, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by electronic mail this 13th day of November, 2006.

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