State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 1, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Harris, Cibula) ~~SCH~~ S.M.C. DS ALT
Division of Economic Regulation (Trapp)

RE: Docket No. 060355-EI – Petition for emergency rule or, alternatively, for declaratory statement prohibiting wireless attachments in electric supply space, by Florida Power & Light Company.

AGENDA: 03/13/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: ~~Edgar~~ Pending -ac

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060355.RCM.DOC

Case Background

On April 24, 2006, Florida Power & Light Company ("FPL") filed a Petition for Emergency Rule, or Alternatively, Petition for Declaratory Statement ("Petition for Emergency Rule/Declaratory Statement"). By its Petition for Emergency Rule, FPL requested that the Commission issue an emergency rule, to remain in effect until the Commission completed its rulemaking in Dockets Nos. 060172-EU and 060173-EU (the "storm hardening dockets"), prohibiting wireless telecommunications attachments in the electric supply space of distribution poles. Alternatively, the Petition for Declaratory Statement requested the Commission issue a declaratory statement that prohibits T-Mobile from attaching wireless telecommunications devices at the top of FPL's electric distribution poles until the Commission completed its rulemaking in the storm hardening dockets.

On May 3, 2006, T-Mobile South LLC ("T-Mobile") filed a Petition to Intervene and Notice of Opposition to FPL's Petition. T-Mobile was granted intervention by Order No. PSC-06-0523-PCO-EI, issued June 20, 2006. On May 4, 2006, Sprint Spectrum Limited Partnership, d/b/a Sprint PCS, and Nextel South Corporation (collectively referred to as "Sprint Nextel") filed their Petition to Intervene. Sprint Nextel was granted intervention by Order No. PSC-06-0524-PCO-EI, issued June 20, 2006. On May 12, 2006, T-Mobile filed its Response in Opposition to FPL's Petition for Emergency Rulemaking/Declaratory Statement. On May 22, 2006, Sprint Nextel filed their Adoption of T-Mobile's Response in Opposition.

On May 22, 2006, FPL filed a Motion for Stay of Proceedings. In its Motion for Stay, FPL stated that the pleadings filed by T-Mobile indicated that T-Mobile had no plans to pursue a complaint at the Federal Communications Commission ("FCC") seeking access to FPL's poles. FPL further stated that it appeared the draft rule language in the storm hardening dockets would alleviate many of FPL's concerns. Therefore, FPL believed it appropriate to stay the proceedings in this docket pending the outcome of the storm hardening dockets. On May 30, 2006, T-Mobile filed its Response in Opposition to FPL's Motion to Stay Proceeding and Sprint Nextel filed a Response to FPL's Motion for Stay of Proceedings. T-Mobile and Sprint Nextel continued to believe the Petition for Emergency Rule/Declaratory Statement should be dismissed.

By Order No. PSC-06-0541-PCO-EI, issued June 26, 2006, the Prehearing Officer granted the Motion for Stay of Proceedings. Pursuant to the order, FPL was required to file a report by November 1, 2006, indicating the status of the docket, which would be used to determine whether the stay should continue.

In compliance with Order No. PSC-06-0541-PCO-EI, FPL filed its Status Report Related to Stay of Proceedings (Status Report) on November 1, 2006. In the Status Report, FPL requested the stay be continued pending the resolution of the storm hardening dockets. Both T-Mobile and Sprint Nextel filed responses in opposition to FPL's request that the stay be continued.

On November 21, 2006, Order No. PSC-06-0970-PCO-EI was issued, continuing to hold this proceeding in abeyance. The order required FPL file an additional status report by March 1, 2007, if FPL had not taken action to terminate this proceeding prior to that date.

On February 8, 2007, FPL filed a Notice of Withdrawal of the Petition. FPL states that the adoption of the storm hardening rules in Dockets 060172 and 060173 have resolved some or all of FPL's concerns, but that if FPL feels that the safety and reliability of its system or of the public is threatened by a wireless attachment, it will seek appropriate relief.

Discussion of Issues

Issue 1: Should this docket be closed?

Recommendation: Yes. With the withdrawal of the Petition, no further action needs to be taken and the docket should be closed. (Harris)

Staff Analysis: On February 8, 2007, FPL filed a Notice of Withdrawal of the Petition for Emergency Rule/Declaratory Statement. In its Notice, FPL states that the rules resulting from the storm hardening dockets, 060172-EI and 060173-EI, resolve all or some of FPL's concerns, and that FPL was withdrawing its Petition for Emergency Rule/Declaratory Statement. With the withdrawal of the Petition, no further action needs to be taken and this docket should be closed.