

BEFORE THE 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
ORDER NO. PSC-06-0541-PCO-EI
ISSUED: June 26, 2006

ORDER GRANTING MOTION FOR STAY OF PROCEEDINGS

I. Background

On April 24, 2006, Florida Power & Light Company (FPL) filed its 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 completes its rulemaking in Dockets Nos. 060172-EU and 060173-EU, prohibiting wireless telecommunications attachments in the electric supply space of distribution poles. Alternatively, the Petition for Declaratory Statement requests 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 completes its rulemaking in Dockets Nos. 060172-EU and 060173-EU.

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 its Motion for Stay of Proceedings. 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.

II. FPL's Motion for Stay of Proceedings

In support of its motion, FPL states that it filed its Petition for Emergency Rule/Declaratory Statement because T-Mobile had threatened to file a formal complaint against FPL at the Federal Communications Commission (FCC) if FPL denied T-Mobile access to the electric supply space of its distribution poles. FPL states that this placed the company in the position of either implementing its policy of prohibiting pole attachments in the electric supply

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space of its distribution poles, a policy that it claims to have adopted in furtherance of its attempts to improve and strengthen its electric utility infrastructure, and defending against legal action by T-Mobile as a result of its policy, or delaying implementation of the policy, with potentially serious consequences to the public health, safety and welfare.

FPL states, however, that, in T-Mobile's Response to FPL's Petition for Rulemaking/Declaratory Statement, T-Mobile assured FPL that it will not seek FCC action at this time. The company further states that Commission staff appears to have established an accelerated schedule to develop rules addressing the hardening of the electric distribution system, including attachments to distribution poles. FPL states that due to T-Mobile's assurances and the Commission's accelerated rulemaking, FPL believes that it would be appropriate for the Commission to stay the proceedings in this docket pending the outcome of the rulemaking. FPL states that if a threat to the safety and reliability of its system and the public intensifies, it will file a motion to lift the stay. If the threat subsides as a result of the rulemaking, FPL will terminate this proceeding and request that this docket be closed.¹

III. Responses in Opposition to Motion for Stay of Proceedings

T-Mobile opposes FPL's Motion for Stay of Proceedings. T-Mobile states that, by requesting that this proceeding be stayed, FPL has admitted that there is no emergency compelling Commission action at this time. T-Mobile also asserts that FPL's failure to negotiate a pole attachment agreement falls within the confines of federal law, and, thus, FPL has brought this matter in the wrong forum. T-Mobile further states that FPL's request to hold this matter in abeyance to counter possible future action taken by either T-Mobile or the Commission has no factual basis and is not supported by any legal authority. It states that the implication that this docket should be held open so that FPL can request Commission action in this docket in the event that things do not go the way FPL wants in the rulemaking docket appears contrary to the proper procedure for challenging rules under section 120.56, Florida Statutes. T-Mobile also points out that, if this matter is placed in abeyance and then the abeyance is lifted, it is likely that FPL will have to amend its petition, creating additional work for the parties and the Commission. T-Mobile states that the Commission "should not waste any further time and energy with this docket and do the right thing – dismiss the Motion and Petition and close the docket."²

Sprint Nextel state that they also oppose the motion. Like T-Mobile, Sprint Nextel state that FPL admits in its motion that there is no emergency, and, thus, there is no basis for FPL's petition and no basis to stay the proceedings. Sprint Nextel also assert that jurisdiction over this

¹ In paragraphs 5 through 9 of its Motion for Stay of Proceedings, FPL sets forth a "number of erroneous statements in T-Mobile's May 12 pleading." This information is not relevant to FPL's Motion for Stay of Proceedings. Moreover, as the Florida Administrative Code does not contemplate replies to responses to petitions for emergency rulemaking or petitions for declaratory statement, this information will not be considered.

² T-Mobile also points out that a portion of FPL's Motion for Stay of Proceedings is an unauthorized reply to its Response in Opposition to FPL's Petition for Emergency Rulemaking/Declaratory Statement filed on May 12, 2006. T-Mobile sets forth in paragraphs 9 through 12 of its response to FPL's Motion to Stay Proceedings its response to FPL's allegations. As stated above, the portion of FPL's Motion for Stay of Proceedings that is a reply to T-Mobile's May 12 Response will not be considered. Likewise, the portion of T-Mobile's Response in Opposition to FPL's Motion for Stay that is a response to FPL's allegations will not be considered.

matter rests with the FCC. The companies, thus, argue that FPL's Petition for Emergency Rule/Declaratory Statement should be dismissed, and this docket should be closed.

IV. Findings and Conclusion

It does not appear that any party will be prejudiced if this matter is held in abeyance. It is true that, if this matter is stayed, FPL's Petition for Emergency Rule/Declaratory Statement will still be pending before the Commission. However, as the Commission will refrain from acting on the petition, no party will be adversely affected during the abeyance. Moreover, as the Commission could potentially resolve some or all of the issues set forth in FPL's Petition for Emergency Rulemaking/Declaratory Statement in Dockets Nos. 060172-EU and 060173-EU, proceeding with this matter may result in an unnecessary expenditure of time and resources.

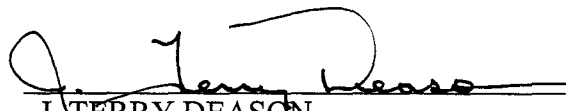
I find FPL's Motion for Stay of Proceedings to be reasonable. Accordingly, the motion is granted. If FPL has not taken action to terminate these proceedings prior to November 1, 2006, FPL shall file a report on November 1, 2006, indicating the status of its filing, which will be used to determine whether the stay should continue.

Therefore, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Florida Power & Light Company's Motion for Stay of Proceedings is granted. It is further

ORDERED that if Florida Power & Light Company has not taken action to terminate these proceedings prior to November 1, 2006, Florida Power & Light Company shall file a report on November 1, 2006, indicating the status of its filing.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 26th day of June, 2006.


J. TERRY DEASON
Commissioner and Prehearing Officer

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LDH/SMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.