

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-07-0254-FOF-EI
ISSUED: March 23, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER CLOSING DOCKET

BY THE COMMISSION:

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 that we issue an emergency rule, to remain in effect until we completed the 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 that we issue a declaratory statement that prohibits T-Mobile from attaching wireless telecommunications devices to the top of FPL's electric distribution poles until the rulemaking in the storm hardening dockets is completed.

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.

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FPSC-COMMISSION CLERK

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 both stated that the Petition for Emergency Rule/Declaratory Statement should be dismissed.

By Order No. PSC-06-0541-PCO-EI, issued June 26, 2006, the Motion for Stay of Proceedings was granted. 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 to file another 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 for Emergency Rule/Declaratory Statement. FPL states that the adoption of the storm hardening rules in Dockets Nos. 060172-EU and 060173-EU have resolved some or all of FPL's concerns. It further states that if FPL believes that the safety and reliability of its system or of the public is threatened by a wireless attachment, it will seek appropriate relief.

With the withdrawal of the Petition for Emergency Rule/Declaratory Statement, no further action needs to be taken in this docket. Thus, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of March, 2007.



ANN COLE
Commission Clerk

(S E A L)

SMC/LDH

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.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.