BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

UNDOCKETED

IN RE: PROPOSED NEW RULE 25-6.065, INTERCONNECTION OF SMALL PHOTOVOLTAIC SYSTEMS

NOTICE OF PROPOSED RULE DEVELOPMENT

TO

ALL INTERESTED PERSONS

ISSUED: November 15, 2000

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission staff has initiated the development of Rule 25-6.065, Florida Administrative Code, to adopt provisions relating to interconnection of small photovoltaic systems.

The attached Notice of Proposed Rule Development will appear in the November 22, 2000, edition of the Florida Administrative Weekly. A rule development workshop will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., Wednesday, January 10, 2001
Betty Easley Conference Center
Room 180, 4075 Esplanade Way
Tallahassee, Florida 32399-0850

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

By Direction of the Florida Public Service Commission, this 15th day of November, 2000.

BLANCA S. BAYÓ, Director
Division of Records & Reporting

(S E A L)

CTM

NOTICE OF PROPOSED RULE DEVELOPMENT

FLORIDA PUBLIC SERVICE COMMISSION

UNDOCKETED

RULE TITLE:	RULE NO.:
Interconnection of Small Photovoltaic Systems	25-6.065

PURPOSE AND EFFECT: To prescribe operating, safety, and insurance requirements to interconnect a small photovoltaic system to an investor-owned electric utility.

SUBJECT AREA TO BE ADDRESSED: Small photovoltaic system requirements for interconnection.

SPECIFIC AUTHORITY: 350.127(2), 366.05(1), FS

LAW IMPLEMENTED: 366.04(2)(c)(5)(6), 366.05(1), 366.81, FS

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 a.m. Wednesday, January 10, 2001

PLACE: Betty Easley Conference Center, Room 180, 4075 Esplanade Way, Tallahassee, Florida

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should

contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Lee Colson, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, 850-413-6682.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-6.065 Interconnection of Small Photovoltaic Systems

(1) A small photovoltaic system (SPS) is a solar generating system capable of producing no more than 10 kW peak rated output from solar energy and is primarily intended to offset part or all of a customer's current electricity requirements.

(2) Prior to operating an SPS in parallel with the host utility, a customer must:

(a) Demonstrate to the utility compliance with IEEE-929-2000 (Recommended Practice for Utility Interface of Photovoltaic (PV) Systems) before interconnection. Additionally, the customer must also demonstrate compliance with UL-1741 (Standard for Safety for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems) and installation in accordance with applicable local codes and the National Electric Code, NFPA 70.

(b) Install, at a location specified by the utility, a manual disconnect switch of the visible load break type to provide a

separation point between the SPS and the utility's system. The switch shall be mounted separate from the meter socket and shall be readily accessible to the utility and be capable of being locked in the open position with a utility padlock. The utility may reserve the right to open the switch, isolating the SPS, without prior notice to the customer. To the extent practicable, however, prior notice shall be given.

(c) Maintain and provide to the interconnecting utility proof of a general liability insurance policy for personal and property damage in the amount of no less than $100,000. A standard homeowner's policy in at least this amount shall be deemed suitable to meet this requirement.

(3) Any one of the following conditions shall be cause for disconnection:

(a) Utility system emergencies or maintenance requirements;

(b) Hazardous conditions existing on the SPS generating or protective equipment as determined by the utility;

(c) Adverse effects of the SPS to the utility's other electric consumers or system as determined by the utility; or

(d) Failure of the customer to maintain the required insurance.

(4) The utility shall have the right to inspect the SPS and

its component equipment to ensure compliance with the standards contained in subsection (2). The utility shall, within a reasonable time, inspect and approve the interconnection system after verification of compliance with the standards contained in subsection (2). The utility has the right to have personnel present at the initial testing of customer equipment and protective apparatus. The SPS shall not begin parallel operations until written approval is given by the utility and such approval shall not be unreasonably withheld.

(5) It is the responsibility of the customer who operates an SPS to protect its generating equipment, inverters, protection devices, and other system components from damage from the normal and abnormal conditions and operations which occur on the utility system in delivering and restoring system power.

(6) The utility shall have the option of installing at its own expense an additional meter on the customer's premises capable of measuring any excess kilowatt-hours produced by the SPS and delivered back to the utility. The value of such excess generation shall be credited to the customer's bill based on the average monthly fuel charge and variable operating and maintenance expenses as provided for under the COG-1 tariffs. Alternatively, the utility shall have the option to permit the customer to net meter

any excess power delivered to the utility by use of a single standard watt-hour meter capable of reversing directions to offset recorded consumption by the customer. If the energy produced by the SPS exceeds the customer's load for any billing period, then in no event shall the customer be paid for excess energy delivered to the utility.

Specific Authority: 350.127(2), 366.05(1), F.S.

Law Implemented: 366.04(2)(c) (5) (6), 366.05(1), 366.81, F.S.

History--New _____.

State of Florida

Public Service Commission

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

DATE: November 14, 2000

TO: J. TERRY DEASON, CHAIRMAN
E. LEON JACOBS, COMMISSIONER
LILA A. JABER, COMMISSIONER
BRAULIO L. BAEZ, COMMISSIONER
WILLIAM TALBOTT, EXECUTIVE DIRECTOR
JAMES WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.
MARY BANE, DEPUTY EXECUTIVE DIRECTOR/TECH.
CATHY BEDELL, GENERAL COUNSEL
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DAN HOPPE, DIRECTOR OF REGULATORY OVERSIGHT
BLANCA BAYO, DIRECTOR OF RECORDS & REPORTING
CHUCK HILL, DIRECTOR OF POLICY ANALYSIS & INTERGOVERNMENTAL

FROM: DAVID E. SMITH, DIRECTOR OF APPEALS DES

RE: N. DIST. FLA'S ORDER ON AT&T'S MOTION TO ALTER OR AMEND JUDGMENT IN 4:97-CV-262-RH, AT&T v. BELLSOUTH AND PSC (SEPTEMBER 28, 2000)

After Judge Hinkle issued his opinion in the above case (see memo and attached opinion distributed Sept. 29, 2000), AT&T filed a Motion to Alter or Amend Judgment based on the fact that the Eighth Circuit had stayed its ruling overturning the FCC's TELRIC methodology. AT&T asked the court to declare TELRIC the current law of the land and order the Commission to revisit its arbitration decision using TELRIC. This, notwithstanding the judge's ruling that TSLRIC was a valid methodology in the face of the Eighth Circuit's overturning of the FCC's TELRIC rule.

On November 9, 2000, the court issued its order. Although somewhat confusing for the uninitiated, the court basically said it was not going to change anything at this point. It did not grant AT&T's request to make the Commission go back and apply TELRIC in the AT&T - BellSouth arbitration, but did enter an order granting the Motion to Alter or Amend so that any appeal of the decision could go forward. The court recognized that the Eighth Circuit's stay simply maintained the status quo pending a ruling from the U. S. Supreme Court. Thus, those states that had used TELRIC could stick with it, and the judge reasoned, Florida, having applied the TSLRIC methodology he found valid under the Act, should also be able to maintain the status quo. He also recognized

that what the U. S. Supreme Court does will have an effect the Commission will want to consider. He explained as follows:

I decline to alter or amend my substantive ruling. I will, however direct the clerk to enter an amended judgment making clear that, upon further consideration of this matter by the Florida Public Service Commission, it appropriately may consider any further ruling by the United States Supreme Court in Iowa Utilities. . . .

A copy of the Order is attached.

DES
Attachment
cc: Sally Simmons
David Dowds
Diana Caldwell
Attorneys

ALTER262.DES

Pensacola Division
Room 226
1 N. Palafox Street
Pensacola, FL 32501
(850)435-8440 Fax 433-5972

Gainesville Division
Room 243
401 SE First Avenue
Gainesville, FL 32601
(352)380-2400 Fax 380-2424

Northern District of Florida
OFFICE OF THE CLERK
Robert A. Mossing, Clerk
110 E. Park Avenue, Room 122
Tallahassee, FL 32301-7795
(850)-942-8826 Fax 942-8830

11/09/00

DAVID E SMITH
2540 SHUMARD OAK BLVD

TALLAHASSEE, FL 32399

4:97-cv-00262

Notice of Orders or Judgments
Fed. R. Civ. P. 77(d)

Date:

To:

Re: Case Number: **Instrument Number:**

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Number of pages including cover sheet:

The mission of the Office of the Clerk is to provide the highest quality support to the judges and chambers staff of the Northern District of Florida in their role of administering justice to the citizens of this district.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC.,

Plaintiff,

v.

CONSOLIDATED
CASE NO. 4:97cv262-RH

BELLSOUTH TELECOMMUNICATIONS,
INC., et al.,

Defendants.

_____/

ORDER ON MOTION TO ALTER OR AMEND JUDGMENT

These consolidated actions present a challenge under the Telecommunications Act of 1996, 47 U.S.C. §§ 251-52, to a decision of the Florida Public Service Commission with respect to the terms and conditions under which the defendant incumbent local exchange carrier must provide services and make facilities and network elements available

to the plaintiff competitor. By order docketed September 28, 2000 (document 105), I upheld the Florida Commission's basic pricing methodology but vacated its decision in certain respects for further explanation or consideration. I directed the clerk to enter judgment, which the clerk did. (See document 106).

Parts of my order were based on Iowa Utilities Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000). In that opinion, entered on remand from the decision of the United States Supreme Court in AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 835 (1999), the Eighth Circuit ruled on the validity of certain FCC regulations addressing some of the matters at issue in the case at bar. The Eighth Circuit had exclusive jurisdiction to address the validity of those regulations.

The plaintiff competitor now has moved to alter or amend the judgment in the case at bar on the grounds that, some six days before entry of the judgment, the Eighth Circuit stayed a portion of its ruling in Iowa Utilities Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), pending disposition of

petitions for *certiorari* seeking review of that ruling by the United States Supreme Court. Those petitions for *certiorari* remain pending. In the part of the ruling that has been stayed, the Eighth Circuit invalidated 47 C.F.R. § 51.505(b)(1), the FCC's rule adopting the pricing methodology known as Total Element Long-Run Incremental Cost (or "TELRIC").

I decline to alter or amend my substantive ruling. I will, however, direct the clerk to enter an amended judgment making clear that, upon further consideration of this matter by the Florida Public Service Commission, it appropriately may consider any further ruling by the United States Supreme Court in Iowa Utilities. The reasons for this result are as follows.

The obvious purpose of the Eighth Circuit's stay was to maintain the status quo - and prevent upheaval - pending possible review of its pricing methodology decision by the Supreme Court. That makes sense. The FCC and state commissions around the country have taken actions on the basis of the FCC rule. Invalidation of that rule by the

Eighth Circuit will cause significant disruption; at least some actions taken in reliance on the FCC rule will be vacated. By granting a stay, the Eighth Circuit has determined that that disruption should not occur until the ruling becomes final, that is, until the Supreme Court either denies review or rules on the merits.

In the case at bar, however, this court's opinion on the merits, standing alone, will work no disruption.

First, with respect to overall pricing methodology, the Florida Commission's adoption of the alternative Total Service Long-Run Incremental Cost (or "TSLRIC") methodology was not based on the FCC rule but instead was a product of the Florida Commission's own independent analysis. I upheld that decision, thus in effect leaving the status quo intact. Disruption would occur only from invalidating the Florida Commission's ruling. The Eighth Circuit's stay order was certainly not intended to produce any such disruption. So long as the issue remains open for appropriate adjustment in the event of any further ruling by the Supreme Court in Iowa Utilities, there is no reason to alter or amend my

substantive ruling at this time.

Second, with respect to other issues affected by the FCC's rules (including 47 C.F.R. § 51.505(b)(1)) or Eighth Circuit decision, I directed the Commissioners of the Florida Commission to conduct further proceedings. Those further proceedings of course may appropriately take into account any further ruling of the Supreme Court in Iowa Utilities. Thus, again, there is no reason to alter or amend my substantive ruling at this time.

It is true, of course, that I could delay final disposition of the case at bar pending a ruling by the Supreme Court. But pricing methodology is not the only issue in this case. Whatever happens in the Supreme Court, further consideration of this matter will be necessary in the Florida Commission on other issues. And there may also, of course, be an appeal to the Eleventh Circuit, which may address issues other than pricing methodology. I conclude that, on balance, an (amended) final judgment should be entered at this time, so that further proceedings may commence in the Eleventh Circuit or before the Florida

Commission as may be appropriate.

For these reasons,

IT IS ORDERED:

Plaintiff's motion (document 107) to alter or amend the judgment of September 28, 2000 (document 106) is GRANTED. The clerk shall enter an amended judgment stating, "The Florida Public Service Commission's Final Order on Arbitration, as amended, is affirmed with respect to its overall pricing methodology and adoption of statewide averaged rates for local loops on a transitional basis; declared invalid with respect to the failure to exclude the avoided cost of operator services from wholesale rates for local service; and vacated for further explanation or consideration with respect to the per-message charge for local switching, continuing effects of averaged rates for local loops, and combining of network elements, all as set forth in the Order on Merits entered September 28, 2000, and Order on Motion To Alter or Amend Judgment entered November 9, 2000. Defendant Commissioners of the Florida Public Service Commission shall conduct further proceedings

consistent with the Court's Order on Merits, Order on Motion To Alter or Amend Judgment, this Amended Judgment, and any decision of the United States Supreme Court on review of Iowa Utilities Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000)."

The clerk shall close the file.

SO ORDERED this 9th day of November, 2000.

Robert L. Hinkle
United States District Judge

Pensacola Division
Room 226
1 N. Palafox Street
Pensacola, FL 32501

(850)435-8440 Fax 433-5972

Gainesville Division
Room 243
401 SE First Avenue
Gainesville, FL 32601

(352)380-2400 Fax 380-2424

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC.,

VS

CASE NO. 4:97cv262-RH

BELLSOUTH TELECOMMUNICATIONS, INC.,
et al.,

JUDGMENT

This action came before the Court for consideration with the Honorable Robert L. Hinkle presiding. The Florida Public Service Commission's Final Order on Arbitration, as amended, is affirmed with respect to its overall pricing methodology and adoption of statewide averaged rates for local loops on a transitional basis; declared invalid with respect to the failure to exclude the avoided cost of operator services from wholesale rates for local service; and vacated for further explanation or consideration with respect to the per-message charge for local switching, continuing effects of averaged rates for local loops, and combining of network elements, all as set forth in the Order on Merits entered September 28, 2000, and Order on Motion To Alter or Amend Judgment entered November 9, 2000. Defendant Commissioners of the Florida Public Service Commission shall conduct further proceedings consistent with the Court's Order on Merits, Order on Motion To Alter or Amend Judgment, this Amended Judgment, and any decision of the United States Supreme Court on review of Iowa Utilities Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000).

ROBERT A. MOSSING, CLERK

November 9, 2000
DATE

Deputy Clerk: Pamela Lourcey

Entered On Docket 11/9 By Lh
Rules 58 & 79(a) FRCP or 32(d)(1) & 55 FRCRP
Copies mailed to Diaco, Hatch, Hoffman, Allen, Bell, Bellegg, Parsons, Smith, Beaureau

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