

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

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

DATE: November 22, 2005

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

FROM: Division of Competitive Markets & Enforcement (Isler) *Dip*
Office of the General Counsel (Teitzman) *AT B/C* *[Signature]*

RE: Docket No. 050704-TI – Compliance investigation of Discount Utilities, LLC, IXC Registration No. TJ070, for apparent violation of Section 364.336, F.S.

AGENDA: 12/06/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050704.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission impose a penalty and a cost of collection, together totaling \$1,000, or cancel Discount Utilities, LLC's intrastate interexchange telecommunications company's (IXC) tariff and remove from the register with an effective date of December 31, 2005, for an apparent second violation of Section 364.336, Florida Statutes?

Recommendation: Yes, the company should be penalized \$1,000 or have its IXC tariff cancelled and its name removed from the register for nonpayment of the 2004 Regulatory Assessment Fee. (Isler, Teitzman)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 050704-TI
Date: November 22, 2005

Staff Analysis: See attached proposed Order. In Docket No. 050378-TP, Rule 25-4.0161, Florida Administrative Code, was amended effective October 6, 2005, to automatically impose a penalty for late payment of the Regulatory Assessment Fee. The amended rule does not apply to the 2004 Regulatory Assessment Fee but will apply to future Regulatory Assessment Fees.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company fails to pay the penalty and cost of collection, together totaling \$1,000, and Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's IXC tariff should be cancelled and its name removed from the register administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If the company's tariff is cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the penalty and cost of collection, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's IXC tariff and removal of its name from the register. (Teitzman)

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Discount Utilities, LLC, IXC Registration No. TJ070, for apparent violation of Section 364.336, F.S..	DOCKET NO. 050704-TI ORDER NO. ISSUED:
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING PENALTY AND COLLECTION COSTS, AND REQUIRING PAYMENT OF DELINQUENT REGULATORY ASSESSMENT FEE, OR CANCELLING IXC TARIFF AND REMOVING FROM THE REGISTER FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

The Division of the Commission Clerk & Administrative Services (CCA) advised our staff that Discount Utilities, LLC had not paid the Regulatory Assessment Fee (RAF) in full required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 2004. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the years 2001 and 2004 had not been paid. The company was scheduled to remit its 2004 RAF by January 31, 2005. In addition to RAF payment notices sent by CCA, on July 29, 2005, our staff wrote the company and advised that payment of the 2004 RAF should be paid by August 19, 2005, to avoid a docket from being established. As of November 15, 2005, the company has not paid the past due RAF, including statutory late payment charges, requested cancellation of its tariff and removal from the register as required by Rule 25-24.474, Florida Administrative Code, or proposed a settlement.

In addition, Discount Utilities, LLC has had a prior docket for the same rule violation in which the company proposed a settlement to resolve its docket. On September 1, 2000, Docket No. 001300-TI was established for nonpayment of the 1999 RAF. The company subsequently paid the past due RAF, including statutory late payment charges and proposed a settlement. On

April 16, 2001, Order No. PSC-01-0948-AS-TI was issued, which approved the company's settlement proposal. The company paid the settlement of \$100 and the docket was closed.

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a registration if a company refuses to comply with Commission rules, Orders, or Florida Statutes.

Pursuant to Section 364.336, Florida Statutes, intrastate interexchange telecommunications companies (IXCs) must pay a minimum annual Regulatory Assessment Fee (RAF) of \$50 if the registration was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for registration receive a copy of our rules governing intrastate interexchange telecommunications service.

Accordingly, we hereby find it appropriate to cancel Discount Utilities, LLC's tariff and remove its name from the register for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless the company pays a penalty and cost of collection, together totaling \$1,000, and remits all past due RAFs, along with accrued statutory late payment charges to the Florida Public Service Commission. The company must comply with these requirements within 14 days after the issuance of the Consummating Order, as explained in the Notice of Further Proceedings attached to this Order. The payment should be identified with the docket number and the company's name. For any payment (full or partial) of the penalty and cost of collection received, the cost of collection will be subtracted and will be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. Any monetary amount exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes.

When the appropriate fee, statutory late payment charges, penalty and collection costs are received, this docket shall be closed. Should the company fail to comply with this Order within 14 days after the issuance of the Consummating Order, Discount Utilities, LLC shall have its tariff cancelled and its name removed from the register, effective December 31, 2005. The collection of the past due RAF, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts, and the docket shall be closed. The cancellation of the tariff and removal from the register in no way diminishes the company's obligation to pay applicable delinquent RAFs and accrued statutory late payment charges. If the company's tariff is cancelled and its name removed from the register in accordance with this Order, the company shall immediately cease and desist providing intrastate interexchange telecommunications service in Florida. If the company has its tariff cancelled and its name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange telecommunications company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late

payment charges. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.02, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Discount Utilities, LLC shall pay a penalty and cost of collection, together totaling \$1,000, and the past due Regulatory Assessment Fee, including statutory late payment charges, to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within 14 days after the issuance of the Consummating Order. The cost of collection will be subtracted from any money collected as payment (full or partial) of the penalty and cost of collection, and will be deposited, along with the past due RAF, in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. The statutory late payment charge and any portion of the penalty exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that should Discount Utilities, LLC fail to comply with this Order, Discount Utilities, LLC's tariff shall be cancelled and its name removed from the register, effective December 31, 2005. It is further

ORDERED that the cancellation of the tariff and removal from the register in no way diminishes Discount Utilities, LLC's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If the company has its tariff cancelled and its name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange telecommunications company, that company shall be required to first pay any outstanding penalty and cost of collection and fees, including accrued statutory late payment charges. Any unpaid Regulatory Assessment Fees, and accrued statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Discount Utilities, LLC's tariff is cancelled and its name removed from the register in accordance with this Order, that entity shall immediately cease and desist providing intrastate interexchange telecommunications service in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon receipt of the imposed penalty and cost of collection, together totaling \$1,000, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the tariff and removal from the register.

By ORDER of the Florida Public Service Commission this ____ day of _____, _____.

BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

AT

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on _____.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.