

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint by DPI-Teleconnect, L.L.C.
against BellSouth Telecommunications, Inc.
for dispute arising under interconnection
agreement.

DOCKET NO. 050863-TP
ORDER NO. PSC-07-0015-PCO-TP
ISSUED: January 4, 2007

ORDER GRANTING MOTION TO LIFT STAY

On November 10, 2005, DPI-Teleconnect, L.L.C. (DPI) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for a dispute arising under their interconnection agreement. On December 6, 2005, BellSouth filed its response to DPI's complaint.

Subsequently, on January 23, 2006, DPI and BellSouth filed a Joint Motion for Abatement (Joint Motion). In their Joint Motion, parties state a case between the parties with similar issues as the instant case is currently being addressed by the North Carolina Utilities Commission (NCUC), Docket No. P-55, SUB 1577, *In the Matter of DPI-Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.* The parties assert that they have reached an agreement to abate or suspend this case until 30 days after a dispositive order is issued in the case pending before the NCUC. The Joint Motion was granted by Order No. PSC-06-0185-PCO-TP, issued March 8, 2006.

On June 7, 2006, the NCUC issued an Order Dismissing Complaint. On July 21, 2006, the NCUC issued an Order Dismissing DPI's Motion for Emergency Relief and/or Stay and on October 12, 2006, issued an Order Denying DPI's Motion to Reconsider.

On November 1, 2006 DPI filed a letter advising that DPI has appealed the NCUC Order and asserted that "[n]o action should be taken on this case until a final decision is rendered in this appeal."

On November 6, 2006, BellSouth filed a Response in Opposition to DPI's letter and a Motion to Lift Stay and Establish Procedural Schedule. In its Response, BellSouth argues that the Order limited the stay "until 30 days after a dispositive order is issued in the case pending before the NCUC." In addition, BellSouth notes that this proceeding has been pending for nearly a year and that DPI should either act on its complaint or dismiss it. BellSouth contends that it should not be delayed further in bringing this matter to resolution. BellSouth requests that the Commission "establish a procedural schedule providing for additional limited discovery (if necessary), the filing of testimony, timeframes for filings motions for summary dispositions and hearing dates."

Pursuant to Rule 28-106.305, Florida Administrative Code, a prehearing officer before whom a case is pending may issue any orders necessary to promote just, speedy, and inexpensive determination of all aspects of the case. In the Joint Motion the parties represented that "a similar case presenting the same issues is being litigated [before the NCUC]. In addition, the parties

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requested that this case be abated pending a dispositive order by the NCUC. Consequently, I find that it appears to be in the best interest to lift the stay imposed during the pendency of the NCUC proceeding and require the parties to file, within 30 days, memorandas of law addressing the preclusive effect, if any, of the NCUC decision on the matter pending before this Commission. *See, e.g., Reese v. Damato*, 44 Fla. 692, 33 So. 462, 464 (Fla. 1902) (an appeal does not have the effect of suspending the effect of the judgment); *Capital Assurance Co. v. Margolis*, 726 So.2d. 376, 377 (Fla. 3d DCA 1999) (pendency of an appeal does not diminish the res judicata effect of the dismissal); *Nixon v. Richey*, 513 F.2d 430, 438 n.75 (D.C. Cir. 1975) (prior judgment will support claim of collateral estoppel even where it has been stayed pending appeal).

Based on the foregoing, it is

ORDERED by Commissioner Isilio Arriaga, as Prehearing Officer, that the Motion to Lift Stay filed by BellSouth Telecommunications, Inc., is hereby granted. It is further

ORDERED that the parties shall file, within 30 days, memorandas of law addressing the preclusive effect, if any, of the NCUC decision on the matter pending before this Commission.

By ORDER of Commissioner Isilio Arriaga, as Prehearing Officer, this 4th day of January, 2007.



ISILIO ARRIAGA
Commissioner and Prehearing Officer

(S E A L)

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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.