

REDACTED - FOR PUBLIC INSPECTION

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Before the
Federal Communications Commission
Washington, DC 20554

_____)
VERIZON FLORIDA LLC,)
)
Complainant,)
)
v.)
)
FLORIDA POWER AND LIGHT)
COMPANY,)
)
Respondent.)
_____)

File No. EB-14-MD-003

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**VERIZON FLORIDA’S OPPOSITION TO
FLORIDA POWER AND LIGHT COMPANY’S MOTION FOR LEAVE TO FILE**

The Commission should deny FPL’s request for leave to file its proposed motion. FPL has already fully briefed the issues that it again seeks to litigate in its motion.¹ Just as it did in a recent similar Pole Attachment Complaint proceeding, the Enforcement Bureau should here rely on the sufficiency of a party’s Pole Attachment Complaint Response and deny leave to file the proposed motion.² As the Bureau has previously recognized in similar circumstances, the Response makes “separate motions practice about the . . . issue . . . unnecessary.”³ FPL made its arguments eight months ago. It has not shown good cause to brief them again.⁴

¹ Compare, e.g., Response at 31 with Proposed Motion ¶ 7 (making identical argument).

² Compare Letter Ruling Denying Leave to File Motion at 2, *Frontier Commc’ns of the Carolinas v. Duke Energy Carolinas*, No. EB-14-MD-001 (EB/MDRD Feb. 13, 2014).

³ See *id.*

⁴ See 47 C.F.R. § 1.1407(a) (limiting motions, other than for extension of time, in Pole Attachment Complaint proceedings to those “authorized by the Commission”).

The sole change since FPL filed its Response is the stay entered in the state court litigation.⁵ But that stay provides no basis for the Enforcement Bureau to grant leave for FPL's unnecessary motion. The state court stayed the case because it recognizes – as has FPL – that the Commission's decision is critical to all of the issues before the court and will determine how FPL's claims and Verizon's counterclaims are tried, if they are tried at all. FPL has acknowledged that the Commission's decision will be “a binding determination of the appropriate rate” and that the Commission may “prescribe different rates” than those that FPL seeks in state court.⁶ As a result, the Commission's decision will affect FPL's claim that it has a contractual right to the invoiced rental rates, Verizon's defense that neither the contract nor the Commission's rules authorize the unjust and unreasonably high rates FPL seeks, and Verizon's counterclaims that FPL unreasonably refused to renegotiate the contract's rate provision upon request. The FCC should act first. Doing so will simplify the parties' dispute and permit its most efficient resolution.

Make no mistake: Verizon continues to support the expeditious resolution of this matter, as it will be advantageous for all concerned. It will resolve the core issues in dispute between FPL and Verizon. It will provide needed guidance to the industry on issues of far-reaching importance. And it will assist the state court, which has requested a status update in February regarding this matter and left open the possibility of reconsidering its stay decision thereafter.⁷

⁵ See Proposed Motion ¶ 4.

⁶ See Reply Ex. 1 at 11; FPL's Opp. to Mot. to Stay at 3, *Verizon Florida v. FPL*, No. 3D13-2789 (Fla. 3d DCA Dec. 11, 2013).

⁷ FPL's motion to reconsider the Court's stay order, see Proposed Motion ¶ 4, was based on essentially the same arguments it includes in its proposed motion. At a December 9, 2014 motions hearing, the trial court denied FPL's motion without prejudice to refile after the February status conference.

But a sure-fire way to prolong this dispute is to accept FPL's invitation to engage in futile motion practice or stay or dismiss Verizon's Pole Attachment Complaint. Indeed, it will only prolong the delay FPL has already brought on itself here: abandoning [REDACTED] in favor of a suit in state court; opposing referral to the Commission; and then delaying its response to Verizon's Complaint here by 30 days.⁸ The FCC's decision is needed to resolve the dispute with finality. FPL's proposed motion seeks only a preliminary decision.⁹ FPL's state court action similarly seeks a temporary resolution that may be overridden by the FCC's ultimate decision.¹⁰ In the end, it is the Commission's decision on Verizon's Complaint that is needed to resolve this dispute. Accepting FPL's proposed motion will only prolong this dispute.

Nonetheless, the Commission should take the time it requires to reach the right result. FPL will not be harmed in the meantime. The state court has already considered and rejected FPL's same arguments about prejudice when it rejected FPL's request to reconsider the stay decision. Nor is there reason for the Commission to rush its decisionmaking because of any alleged hardship that FPL will endure until that time – FPL is a multi-billion dollar company that

⁸ Because the resolution of this dispute turns on the Commission's expertise, Verizon has long sought the Commission's assistance. Verizon began the pre-FCC Complaint process almost immediately after the *Pole Attachment Order* was issued. See Compl. Exs. 4, 5, 7. When FPL then abruptly terminated the process by filing its state court complaint, Verizon quickly asked the state court to refer the matter to the FCC. See Compl. Ex. 12. As Verizon then explained, "[e]ach of FPL's claims . . . requires a decision on the meaning or interpretation of the *Pole Attachment Order*" and so should be considered by the Commission, which "has the expertise and policy-making authority to interpret and apply its own *Order*." *Id.* at 8, 12.

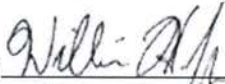
⁹ See Proposed Motion ¶ 17 (requesting relief "subject to any adjustment that may be ultimately required by any order deciding the merits of this proceeding").

¹⁰ See, e.g., FPL's Opp. to Mot. to Stay at 2, *FPL v. Verizon Florida*, No. 13-014808 (Fla. 11th Cir. Ct. Mar. 27, 2014) (conceding that FPL may need to "reimburse Verizon for any overpayment resulting from th[e State] Court's ruling" if the FCC "determines at some later date that Verizon is entitled to pay less.").

has already received payment from Verizon at the rate that applies to other attachers for use of the same utility poles. Leave to file FPL's unnecessary motion should be denied.¹¹

Respectfully submitted,

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Dated: December 11, 2014

¹¹ Should the Commission grant FPL leave to file its motion, Verizon reserves the right to oppose the motion on the merits.

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2014, I caused a copy of the foregoing to be served on the following (service method indicated):

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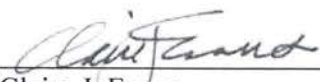
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