

FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION CONFERENCE AGENDA

CONFERENCE DATE AND TIME: Tuesday, November 9, 2010, 9:30 a.m.

LOCATION: Betty Easley Conference Center, Joseph P. Cresse Hearing Room 148

DATE ISSUED: October 29, 2010

NOTICE

Persons affected by Commission action on certain items on this agenda may be allowed to address the Commission, either informally or by oral argument, when those items are taken up for discussion at this conference. These items are designated by double asterisks (**) next to the agenda item number.

To participate informally, affected persons need only appear at the agenda conference and request the opportunity to address the Commission on an item listed on agenda. Informal participation is not permitted: (1) on dispositive motions and motions for reconsideration; (2) when a recommended order is taken up by the Commission; (3) in a rulemaking proceeding after the record has been closed; or (4) when the Commission considers a post-hearing recommendation on the merits of a case after the close of the record. The Commission allows informal participation at its discretion in certain types of cases (such as declaratory statements and interim rate orders) in which an order is issued based on a given set of facts without hearing.

See Rule 25-22.0021, F.A.C., concerning Agenda Conference participation and Rule 25-22.0022, F.A.C., concerning oral argument.

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ITEM NO.

CASE

1

Approval of Minutes

September 14, 2010 Regular Commission Conference

September 28, 2010 Regular Commission Conference

2**

Consent Agenda

A) Docket No. 100422-GU – Application for authority to issue debt security, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida City Gas.

Florida City Gas seeks authority to finance its on-going cash requirements through its participation and borrowings from and investments in AGL Resources Inc.'s ("AGLR") Utility Money Pool during 2011. Florida City Gas is a division of Pivotal Utility Holdings, Inc., which is a wholly-owned subsidiary of AGLR. The maximum aggregate short-term borrowings by Pivotal Utility Holdings, Inc.'s three utilities (Elizabethtown Gas, Elkton Gas, and Florida City Gas) from the Utility Money Pool during 2011 will not exceed \$800 million. Florida City Gas states that its share of these borrowings will not exceed \$250 million.

Recommendation: The Commission should approve the action requested in the docket referenced above, for monitoring purposes, this docket should remain open until April 27, 2012, to allow the Company time to file the required Consummation Report.

ITEM NO.

CASE

3

Docket No. 090505-EI – Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light Company's electrical system. (Deferred from the October 26, 2010 Commission Conference)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Skop

Staff: GCL: Bennett

ECR: Lee, Roberts

RAD: Graves, Matthews

(Oral Argument Not Requested - Participation at the Discretion of the Commission. Pursuant to Section 350.01, F.S, only Commissioners who voted on the final order may vote on reconsideration.)

Issue 1: Should the Commission reconsider its decision to credit FPL with 27 hours of time associated with the repair of the rod position indication system at Turkey Point Unit 3?

Recommendation: No. The Commission considered and evaluated all the record evidence in reaching its conclusion that the incremental time associated with the repair of the rod position indication system was 27 hours and not 126 hours. Because the Commission did not overlook or fail to consider the evidence in the record, FPL's motion for reconsideration should be denied.

Issue 2: Should the Commission reconsider its decision to require Florida Power & Light Company to refund the full 107 hours of outage at Turkey Point Unit 4, without giving credit for the time required to replace and test a malfunctioning relay in at the reverse power protection system?

Recommendation: No. The Commission did not overlook or fail to consider Order No. 23232, issued July 20, 1990, in Docket No. 090001-EI (Order No. 23232), in requiring a refund for the full outage time at Turkey Point Unit 4. The repair for the relay was not a planned outage. In Order No. 23232, a portion of the outage coincided with a planned outage.

Issue 3: Should the Commission make any corrections to the refund amount established in Order No. PSC-10-0381-FOF-EI?

Recommendation: No. The Commission did not overlook or fail to consider the factual and legal issues raised by FPL in reaching the Commission's decision to require a refund of \$13,854,054 to ratepayers as a result of the February 26, 2008 outage.

Issue 4: Should this docket be closed?

Recommendation: Yes. Upon expiration of the time for appeal, if no appeal has been taken, this docket should be closed.

ITEM NO.

CASE

4**

Docket No. 100065-SU – Application for certificate to provide wastewater service in Monroe County by Venture Out at Cudjoe Cay, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Skop

Staff: GCL: Bennett

ECR: Golden, Kaproth, Slemkewicz, Williams

Issue 1: Does the Commission have jurisdiction to issue an original certificate to Venture Out at Cudjoe Cay, Inc.?

Recommendation: No. Venture Out at Cudjoe Cay, Inc. is exempt from Commission jurisdiction, pursuant to Section 367.022(7), Florida Statutes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission agrees with staff's recommendation in Issue 1, this docket should be closed upon expiration of the time for appeal.

ITEM NO.

CASE

5**PAA

Docket No. 100155-EG – Petition for approval of demand-side management plan of Florida Power & Light Company. (Deferred from the October 26, 2010 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: RAD: Garl, Brown, Harlow, Lewis

GCL: Fleming, Saylor

Issue 1: Does FPL's proposed 2010 Demand-Side Management (DSM) Plan satisfy the Company's numeric conservation goals set by the Commission in Order No. PSC-09-0855-FOF-EG?

Recommendation: No. FPL's proposed DSM Plan fails to meet its residential goals in at least one category for eight years. Similarly, the Company's Plan does not meet all the annual commercial/industrial goals for eight years of the ten-year period. FPL's failure to meet its annual conservation goals may result in financial penalties or other appropriate action.

Consistent with Section 366.82(7), F.S., staff recommends that FPL file specific program modifications or additions that are needed for the 2010 DSM Plan to be in compliance with Order No. PSC-09-0855-FOF-EG within 30 days of the Commission's Order in this docket. The compliance filing should not include savings associated with FPL's solar pilot programs.

Issue 2: Are the programs contained in FPL's proposed 2010 DSM Plan cost-effective as this criterion is used in Commission Order No. PSC-09-0855-FOF-EG?

Recommendation: Yes. All programs in FPL's proposed 2010 DSM Plan pass the E-TRC and Participants tests. Audits, Pilot Programs, and Research & Development Programs are not included in this evaluation because they are not required to pass cost-effectiveness testing. FPL should be required to file program standards within 30 days of the Commission's Order in this docket.

The Commission should approve cost-effective programs to allow FPL to file for cost recovery. However, FPL must still demonstrate, during the cost recovery proceeding, that expenditures in executing its DSM Plan were reasonable and prudent. In addition, the Commission will evaluate FPL's compliance filing and make a final determination at that time regarding the cost-effectiveness of any modified or new programs.

ITEM NO.

CASE

5**PAA

Docket No. 100155-EG – Petition for approval of demand-side management plan of Florida Power & Light Company. (Deferred from the October 26, 2010 Commission Conference.)

(Continued from previous page)

Issue 3: Does FPL’s proposed 2010 DSM Plan include pilot programs that encourage the development of solar water heating and solar PV technologies consistent with Commission Order No. PSC-09-0855-FOF-EG?

Recommendation: Yes. The cost of the proposed pilot programs is within the annual expenditure cap of \$15,536,870 specified by Commission Order No. PSC-09-0855-FOF-EG. However, the allocation of funds to: (1) solar thermal vs. solar PV, (2) private customers vs. public institutions, and (3) low-income residential varies widely among the investor-owned utilities. If the Commission desires to have more uniformity among the IOUs’ programs, then the Commission should initiate public workshops to explore that issue further.

Issue 4: Do any of the programs in FPL’s proposed Demand-Side Management Plan have an undue impact on the costs passed on to customers?

Recommendation: No. The proposed program costs are not undue because the increase in program costs correlates with the increase in goals. The Commission should evaluate the Company’s compliance filing and make a final determination in the ECCR proceedings regarding the appropriateness of incentive levels.

Issue 5: Should this docket be closed?

Recommendation: No. This docket should remain open for FPL to refile its demand-side management plan within 30 days from the date of this Order. In addition, if the Commission approves any programs, the programs should become effective on the date of the Consummating Order. If a protest is filed within 21 days of the issuance of the Order, the programs should not be implemented until after the resolution of the protest.

ITEM NO.

CASE

6**PAA

Docket No. 100404-EI – Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause or fuel cost recovery clause. (Deferred from the October 26, 2010 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Brisé

Staff: ECR: Wu, Franklin

GCL: Brown, Bennett, Saylor

Issue 1: Is FPL's Scherer Unit 4 steam turbine upgrade project eligible for cost recovery through the ECRC?

Recommendation: No. The project does not meet established criteria for cost recovery through the ECRC.

Issue 2: Is FPL's Scherer Unit 4 steam turbine upgrade project eligible for cost recovery through the Fuel Clause?

Recommendation: No. The project does not meet established criteria for recovery through the Fuel Clause.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no person whose interests are substantially affected files a timely protest of the Commission's Proposed Agency Action, this docket may be closed upon issuance of a Consummating Order.

ITEM NO.

CASE

7**

Docket No. 100396-WS – Request for approval of increase in miscellaneous service charges by Heather Hills Estates Utilities, LLC.

Critical Date(s): 11/09/10 (60-day Suspension Date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Bruce, Stallcup

GCL: Saylor

Issue 1: Should the Commission approve the Utility's request to increase its miscellaneous service charges for its water and wastewater tariffs and its request for after hour charges?

Recommendation: Yes. The Commission should approve the Utility's request to increase its miscellaneous service charges for its water and wastewater operations and its request for after-hour charges. Within five working days of the issuance of the order, staff recommends that the Utility be required to provide a proposed customer notice of the approved charges for staff's review and approval. Once staff has approved the proposed customer notice, the Utility may choose to either mail the notice separately to customers or insert it with the next billing cycle. Within five days after the notice is given, the Utility should be required to file an affidavit affirming that the notice has been given to customers of the approved charges. The tariff sheets containing the approved miscellaneous service charges and the after hour charges should become effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475, Florida Administrative Code (F.A.C.).

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, the docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. The revised tariff sheets should become effective on or after the stamped approval date on the revised tariff sheets, pursuant to Rule 25-30.475, F.A.C. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with all increased charges held subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, a consummating order should be issued and, once staff verifies that the notice of the change in miscellaneous service charges and after hour charges has been given to customers, the docket should be administratively closed.

ITEM NO.

CASE

8**

Docket No. 100387-SU – Application for transfer of wastewater facilities to City of Avon Park, in Highlands County, and cancellation of Certificate No. 423-S, by C & H Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Jones-Alexis, Golden, Hillier, Marsh

GCL: Fleming

Issue 1: Should the transfer of the wastewater facilities and territory from C & H Utilities, Inc. to the City of Avon Park be acknowledged as a matter of right and Certificate No. 423-S be cancelled?

Recommendation: Yes. The transfer of C & H's wastewater facilities and territory to the City should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate No. 423-S should be cancelled effective September 28, 2010.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, the docket should be closed as no further action is required.

ITEM NO.

CASE

9

Docket No. 100330-WS – Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

Critical Date(s): 11/9/10 (60-day Suspension Date - As Extended by the Utility)

Commissioners Assigned: All Commissioners

Prehearing Officer: Skop

Staff: ECR: Mouring, Cicchetti, Fletcher, Maurey, Rieger, Simpson, Springer, Walden, Williams

GCL: Fleming, Jaeger, Klancke

(Participation is at the Discretion of the Commission)

Issue 1: Should the Utility's proposed final water and wastewater rates be suspended?

Recommendation: Yes. The Utility's proposed final water and wastewater rates should be suspended.

Issue 2: Should the Commission approve the Utility's limited interim rate methodology?

Recommendation: Yes. However, the final Commission decision on the rate structure and rates, as well as any possible interim refunds, may require the regulatory asset to be offset by regulatory liabilities. As discussed in the Case Background in staff's memorandum dated October 28, 2010, the Utility has proposed to limit interim rates at approximately the level of the final rates for the requested consolidated rate structure. Delaying full implementation of the interim increase and extending the payment period without interest will benefit some customers and cause no harm to others. Some customers would receive the benefit of having to pay interim rates at a much later date without interest (and over a two-year period) and would not be subjected to what could have been a significantly larger initial interim rate increase.

Issue 3: Should an interim revenue increase be approved?

Recommendation: Yes. The appropriate interim revenue requirements are shown on Attachment A of staff's memorandum dated October 28, 2010.

Issue 4: What are the appropriate interim water and wastewater rates?

Recommendation: The appropriate respective rate band and stand-alone system interim rates should be the lower of staff's unlimited calculated rates or the Utility's limited rates as shown on Schedule Nos. 4-A and 4-B of staff's memorandum dated October 28, 2010, for water and wastewater, respectively. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1)(a), F.A.C., provided customers have received notice. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission decision, the proposed customer notice is adequate, and the required security has been filed. The Utility should provide proof of the date notice was given within 10 days after the date of notice.

ITEM NO.

CASE

9

Docket No. 100330-WS – Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

(Continued from previous page)

Issue 5: What is the appropriate security to guarantee the interim increase?

Recommendation: A corporate undertaking is an acceptable security contingent upon receipt of the written guarantee of the parent company, Aqua America, Inc. (AAI or Company), and written confirmation that AAI will not assume outstanding guarantees on behalf of AAI-owned utilities in other states in excess of \$51 million (inclusive of AUF). AAI should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of revenues collected under interim conditions. AAI's total guarantee should be in the amount of \$586,514. Pursuant to Rule 25-30.360(6), F.A.C., the Utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

Issue 6: Should this docket be closed?

Recommendation: No. The docket should remain open pending the Commission's final action on the Utility's requested rate increase.

ITEM NO.

CASE

10**

Docket No. 080677-EI – Petition for increase in rates by Florida Power & Light Company.

Docket No. 090130-EI – 2009 depreciation and dismantlement study by Florida Power & Light Company. (Deferred from the October 26, 2010 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: Edgar, Skop

Prehearing Officer: Skop

Staff: ECR: Slemkewicz, Cichetti, Draper, P. Lee, Lester

GCL: Kiser, Hilton, Bennett

Issue A: Should the Commission grant the Joint Petition to Assign Settlement Agreement to the Full Commission for Decision?

Recommendation: Yes. Pursuant to Section 350.01(6), Florida Statutes (F.S.), the full Commission should consider whether to approve the Stipulation and Settlement Agreement. The full Commission should also consider whether to approve Mr. Saporito's base rate petition.

Issue 1: Should the Commission approve the proposed Stipulation and Settlement?

Recommendation: Yes, the Commission should approve the proposed Stipulation and Settlement.

Issue 2: Should the Commission grant Thomas Saporito's Petition for Base Rate Proceeding?

Recommendation: No. The Commission should not grant the Petition for Base Rate Proceeding. The petition does not meet the requirements of Rule 28-106.201, F.A.C., because it fails to allege any material issue of disputed facts.

Issue 3: Should these dockets be closed?

Recommendation: Yes. These dockets should be closed upon the expiration of the time for appeal.

ITEM NO.

CASE

11**PAA

Docket No. 100410-EI – Review of Florida Power & Light Company's earnings.
(Deferred from the October 26, 2010 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Slemkewicz, Maurey, Cicchetti, Springer, Willis
GCL: Bennett

Issue 1: Should the Commission initiate a review of Florida Power & Light Company's earnings?

Recommendation: Yes.

Issue 2: Should the Commission order FPL to hold earnings, for the 12-month period ending March 31, 2011, in excess of the authorized 11.00 percent maximum of the ROE range subject to refund under bond or corporate undertaking?

Recommendation: Yes. The Commission should order FPL to hold earnings, for the 12-month period ending March 31, 2011, in excess of the authorized 11.00 percent maximum of the ROE range subject to refund under a corporate undertaking.

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open until staff has reviewed FPL's historical earnings data for the year ending March 31, 2011, and the Commission has determined the amount and appropriate disposition of overearnings.

ITEM NO.

CASE

12

Docket No. 090501-TP – Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC.

Critical Date(s): None

Commissioners Assigned: Edgar, Skop, Brisé

Prehearing Officer: Skop

Staff: RAD: Bloom, Gowen, Hawkins, Trueblood

GCL: Murphy

(Participation is Limited to Commissioners and Staff.)

Issue 7: Should Verizon be allowed to cease performing duties provided for in this agreement that are not required by applicable law?

Recommendation: Yes. Verizon should be allowed to cease performing duties provided for in this agreement that are not required by applicable law; this should be handled pursuant to the “Applicable Law” provisions in the General Terms and Conditions of the ICA. Proposed §50 to the General Terms and Conditions entitled “Withdrawal of Services” is unwarranted and should be stricken.

Issue 13: What time limits should apply to the Parties’ right to bill for services and dispute charges for billed services?

Recommendation: A one year time limit should apply for a party to render a bill for services, dispute charges for billed services, and to back-bill for services rendered but not billed.

Issue 24: Is Verizon obliged to provide facilities from Bright House’s network to the point of interconnection at total element long run incremental cost (“TELRIC”) rates?

Recommendation: No. Bright House has failed to demonstrate that the access toll connection trunks at issue in this proceeding should be priced according to TELRIC principles.

Issue 32: May Bright House require Verizon to accept trunking at DS-3 level or above?

Recommendation: The parties have settled Issue 32 for the current interconnections, as such, the Commission should not rule on this issue at this time.

Issue 36: What terms should apply to meet-point billing, including Bright House’s provision of tandem functionality for exchange access services?

Recommendation: The terms proposed by Verizon should apply to meet-point billing, including Bright House’s functionality as a competitive tandem provider for exchange access services.

ITEM NO.

CASE

12

Docket No. 090501-TP – Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC.

(Continued from previous page)

Issue 36A: Should Bright House remain financially responsible for the traffic of its affiliates or other third parties when it delivers that traffic for termination by Verizon?

Recommendation: No. Bright House should not remain financially responsible for the traffic of its affiliates or other third-party carriers when it delivers that traffic to Verizon for termination. The originating carrier is the party that initiates the call and under the normal industry-accepted “cost causer” concept the calling party pays. Therefore, the third-party carrier should be financially responsible.

Issue 36B: To what extent, if any, should the ICA require Bright House to pay Verizon for Verizon-provided facilities used to carry traffic between interexchange carriers and Bright House’s network?

Recommendation: The ICA should require Bright House to pay Verizon for the access toll connecting (ATC) trunks and any other facilities that Bright House purchases from Verizon to carry traffic between interexchange carriers (IXCs) and Bright House’s network.

Issue 37: How should the types of traffic (e.g. local, ISP, access) that are exchanged be defined and what rates should apply?

Recommendation: The types of traffic (e.g. local, ISP, access) that are exchanged between the parties should be classified as either local traffic (compensated at reciprocal compensation rates) or interexchange traffic (compensated at access rates) based on the ILEC’s basic local exchange areas.

Issue 41: Should the ICA contain specific procedures to govern the process of transferring a customer between the parties and the process of local number portability (“LNP”) provisioning? If so, what should those procedures be?

Recommendation: Yes. The ICA should contain specific procedures to govern the process of transferring a customer between parties and the process of number portability provisioning. In addition, staff believes the parties should be compensated for providing “coordination.”

Issue 49: Are special access circuits that Verizon sells to end users at retail subject to resale at a discounted rate?

Recommendation: No. Special access circuits that Verizon sells to end users at retail are not subject to resale at a discounted rate.

Issue 50: Should this docket be closed?

Recommendation: No. The parties should be required to submit a signed final interconnection agreement. Staff recommends that the docket remain open for the parties to file the final interconnection agreement for staff approval within 45 days of issuance of the Final Order.