

MINUTES OF December 19, 2006

COMMISSION CONFERENCE

COMMENCED: 11:45 a.m.

ADJOURNED: 1:15 p.m.

COMMENCED: 1:30 p.m.

ADJOURNED: 3:10 p.m.

COMMENCED: 3:25 p.m.

ADJOURNED: 4:20 p.m.

COMMISSIONERS PARTICIPATING: Chairman Edgar
Commissioner Deason
Commissioner Arriaga
Commissioner Carter
Commissioner Tew

Parties were allowed to address the Commission on items designated by double asterisks (**).

1

Approval of Minutes

November 21, 2006 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

2**

Consent Agenda

PAA

A) Applications for certificates to provide competitive local exchange telecommunications service.

DOCKET NO.

COMPANY NAME

060701-TX

Marco Island Cable, Inc.

060739-TX

InteraTel, LLC d/b/a InteraTone

060695-TX

Telecom Management, Inc. d/b/a Pioneer Telephone

Recommendation: The Commission should approve the action requested in the dockets referenced above and close these dockets.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

3**

Docket No. 060122-WU – Joint petition for approval of stipulation on procedure by Aloha Utilities, Inc. and Office of Public Counsel.

Critical Date(s): 12/19/06 (Deadline by which utility must pay County impact fees at lower rate.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Gervasi

ECR: Bulecza-Banks, Rendell

Issue 1: Should the Commission approve the Stipulation filed December 1, 2006, between Aloha and the Office of Public Counsel specifying the treatment of impact fees paid and related carrying costs for purchasing water from Pasco County?

Recommendation: Yes. The Stipulation should be approved in its entirety.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to allow Aloha the opportunity to file a Petition for Limited Proceeding.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

4**

Docket No. 060755-EU – Proposed amendment of Rule 25-22.081, F.A.C., Contents of Petition.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: GCL: Moore

ECR: McRoy, Hewitt

Issue 1: Should the Commission propose the adoption of an amendment to Rule 25-22.081, F.A.C., Contents of Petition, to prescribe the contents of a petition to determine need for a nuclear power plant?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

5**

Docket No. 060508-EI – Proposed adoption of new rule regarding nuclear power plant cost recovery.

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: GCL: Harris

ECR: Hewitt, Kummer, Lester, Lewis, McNulty, Slemkewicz

Issue 1: Should the Commission propose Rule 25-6.0423, Florida Administrative Code, Nuclear Power Plant Cost Recovery?

Recommendation: Yes.

DECISION: The recommendation was approved with a modification to staff's handout at the conference to change the word "limited" to "separate" on page 12, lines 19 and 20.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

6**

Docket No. 060554-TL – Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last-Resort; Multitenant Business and Residential Properties.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: GCL: Moore, Tan

CMP: Kennedy, Moses

ECR: Dickens, Hewitt

Issue 1: Should the Commission adopt Rule 25-4.084, F.A.C., Carrier-of-Last-Resort; Multitenant Business and Residential Properties, to implement section 364.025(6)(d), Florida Statutes?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Carter, Tew

ITEM NO.

CASE

7**PAA

Docket No. 060488-EI – Complaint No. 665167E of Streamline Hotel a/k/a Daytona Hostelry against Florida Power & Light Company regarding point at which FPL maintains and has responsibility for wiring.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Bennett

ECR: Kummer

RCA: Plescow

Issue 1: Were the Current Transformer Cabinet and the wiring inside the cabinet the property of FPL?

Recommendation: No. Pursuant to the tariff, the Commission’s rules, and common practice, the line of demarcation for determination of ownership and maintenance of electrical wiring is at a point exterior to the structure. This point is often referred to as “the weatherhead.” All wiring from the weatherhead into the building belongs to the property owner. FPL is not responsible for ownership or maintenance of any wiring inside of the building, including wiring inside a current transformer cabinet.

DECISION: The recommendation was approved with an oral modification by staff at the conference.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a consummating order unless a person whose substantial interests are affected by the Commission’s decision files a protest within 21 days of the issuance of the proposed agency action.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

8

Docket No. 060598-TL – Petition to recover 2005 tropical system related costs and expenses, by BellSouth Telecommunications, Inc.

Critical Date(s): 1/18/07 (120-Day Statutory Deadline For Commission action)

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: CMP: Wright, Broussard, Lee, Maduro, Mann, Ollila, Watts

GCL: Teitzman, Tan, Wiggins

Issue 1: What amount of any storm damage reserve fund should be considered when determining the amount of tropical-system-related intrastate costs and expenses to be recovered?

Stipulated Language: By agreement of the parties, this issue does not need to be voted on by the Commission. The issue of any storm damage reserve fund can be raised in a future docket and addressed by the Commission at that time. In so doing, the parties expressly reserve the right to make any and all arguments regarding the existence or nonexistence of the storm reserve in a future storm recovery proceeding.

DECISION: The issue was stipulated.

Issue 2: What is the appropriate amount of intrastate costs and expenses related to damage caused during the 2005 tropical storm season, if any, that should be recovered by BellSouth, pursuant to Section 364.051(4), Florida Statutes?

Stipulated Language: For the sole purpose of this case, the maximum amount of intrastate costs and expenses related to the damage caused during the 2005 tropical storm season that BellSouth incurred and is entitled to recover is \$75.271 million.

DECISION: The issue was stipulated.

Issue 5 (in part): If a line item charge is approved for retail customers in Issue 4, on what date should the charge become effective, and on what date should the charge end?

Stipulated Language: If a charge is approved in Issue 4 for BellSouth retail customers, the charge may be assessed at BellSouth's earliest convenience, but no earlier than 30 days from the date of the Commission vote. The charge should be effective for 12 consecutive months. BellSouth should provide staff the wording to be used on its bills regarding the storm charge prior to issuance.

DECISION: The issue was stipulated.

ITEM NO.

CASE

8

Docket No. 060598-TL – Petition to recover 2005 tropical system related costs and expenses, by BellSouth Telecommunications, Inc.

(Continued from previous page)

Issue 6: Should this docket be closed?

Stipulated Language: If a charge is not approved, this docket should be closed. If a charge is approved, then the docket should remain open. At the end of the collection period, BellSouth shall file a report on the amount collected. If the collections exceed the amount authorized by the Commission in Issue 2, BellSouth shall refund the excess.

DECISION: The issue was stipulated.

Issue 3A: What is the appropriate type and number of retail access lines, basic and nonbasic, to which any storm damage recovery may be assessed?

Recommendation: Staff recommends that for purposes of assessing a line-item storm recovery charge, customer or access line should be defined as the number of activated channels. As of June 2006, BellSouth had approximately 4.9 million retail access lines. The line-item recovery charge should be assessed per access line for retail basic and nonbasic local exchange service lines, including residential and business lines, payphone lines, PBX trunk lines, Network Access Registers (NARs) (including NARs used in conjunction with BellSouth ESSX[®] Service and MultiServ Plus Service), and B Channels of both Basic ISDN and ISDN PRI. Residential lines should exclude Lifeline customers; business lines should exclude Official lines. For retail customers obtaining high-capacity or channelized services, BellSouth should assess the charge only on the actual activated channels. Additionally, staff recommends that BellSouth's general billing database should be used in determining the access lines to be assessed.

DECISION: The recommendation was approved.

ITEM NO.

CASE

8

Docket No. 060598-TL – Petition to recover 2005 tropical system related costs and expenses, by BellSouth Telecommunications, Inc.

(Continued from previous page)

Issue 3b: Is a line item charge on BellSouth's wholesale UNE loops appropriate pursuant to section 364.051(4)(b)6, Florida Statutes and Federal Law? If yes, on which types of lines should the charge be assessed and how should the lines be counted? What is the total number of UNE loops to be assessed, if any?

Primary Recommendation: No. Primary staff believes that applying a line-item charge to wholesale loop unbundled network element customers violates the TELRIC pricing rules, and therefore, is preempted by Federal Law.

DECISION: The primary recommendation was denied.

Alternative Recommendation: Alternative staff recommends that the Commission authorize BellSouth to impose a line-item charge on the wholesale UNE loop customer.

If the Commission determines that a line item charge on BellSouth's wholesale UNE loops is appropriate pursuant to Section 364.051(4)(b)6, Florida Statutes, then staff recommends that BellSouth use the 47% utilization factor in calculating the number of storm recovery line item surcharges applied to each high capacity loop. Staff also recommends that BellSouth recalculate the factor monthly, using its most recently available retail billing data, and use the recalculated factor when applying storm recovery line item surcharges to high capacity loops.

Staff recommends a single storm recovery line item surcharge be applied to each of the following loops:

- 4-wire 19.2, 56 or 64 Kbps Digital Grade Loop
- 2-wire Analog Voice Grade Loop – Service Level 2
- 4-wire Analog Voice Grade Loop
- 2-wire ISDN Digital Grade Loop
- 2-wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loop
- 2-wire Asymmetrical Digital Subscriber Line (ADSL) Compatible Loop
- 2-wire Analog Voice Grade Loop – Service Level 1
- 2-wire and 4-wire Unbundled Copper Loop
- 2-wire Unbundled Copper Loop – Non-designed

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CASE

8

Docket No. 060598-TL – Petition to recover 2005 tropical system related costs and expenses, by BellSouth Telecommunications, Inc.

(Continued from previous page)

Staff recommends that the 47% factor, updated monthly, be applied to the following high capacity loops so that, using the 47% factor, 11 storm recovery line item surcharges will be assessed to each DS1 loop and 315 storm recovery line item surcharges will be assessed to each DS3 loop. The updated factor should be rounded in a consistent manner with the methodology used in computing the 11 and 315 surcharges, that is for a DS1, 47 percent x 24 channels = 11.28 surcharges, rounded down to 11. For a DS3, 47 percent x 672 channels = 315.84 surcharges, rounded down to 315. Following are the high capacity loops:

4-wire Unbundled DS1/ISDN Digital Grade Loop

4-wire Unbundled DS1/ISDN Digital Grade Loop in EEL Combination

DS3 Unbundled Digital Loop

DS3 Unbundled Digital Loop in EEL Combination

The total number of line item surcharges (or loop equivalents) to be assessed as of June 2006 is 477,648.

DECISION: The alternative recommendation was approved with the understanding that all the language associated with this alternative recommendation is included in the approval.

Issue 4: What is the appropriate line item charge per access line, if any?

Recommendation: Staff recommends that the appropriate monthly line item charge per access line is the amount approved in Issue 2 divided by the appropriate number of access lines, approved in Issues 3A and 3B, divided by 12, as long as this amount does not exceed the statutory limitation of \$0.50 per month per customer line as defined in Section 364.051(4), Florida Statutes. Therefore, the appropriate line item charge per access line is \$0.50 per month for 12 months.

DECISION: The recommendation was approved.

ITEM NO.

CASE

8

Docket No. 060598-TL – Petition to recover 2005 tropical system related costs and expenses, by BellSouth Telecommunications, Inc.

(Continued from previous page)

Issue 5: If a line item charge is approved in Issue 4 for UNE wholesale customers, on what date should the charge become effective and on what date should the charge end?

Recommendation: If a charge is approved in Issue 4 for BellSouth wholesale UNE Loops, the charge may be assessed at BellSouth's earliest convenience, but no earlier than 30 days from the date of the Commission vote. The charge should be effective for 12 consecutive months. BellSouth should provide staff the wording to be used on its bill regarding the storm charge prior to issuance.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Deason, Carter, Tew

ITEM NO.

CASE

9**PAA

Docket No. 060619-TX – Compliance investigation of North American Telecommunications Corporation for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry, Ollila

GCL: McKay, Tan

Issue 1: Should the Commission accept North American Telecommunications Corporation's proposed settlement offer of \$3,500 to be paid in seven equal monthly payments of \$500 each for deposit into the General Revenue Fund to resolve the apparent violation of Section 364.183(1), F. S., Access to Company Records?

Recommendation: Yes. The Commission should accept North American Telecommunications Corporation's proposed settlement offer of \$3,500 to be paid in seven equal monthly payments of \$500 for deposit into the General Revenue Fund to resolve the apparent violation of Section 364.183(1), F.S., Access to Company Records.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should remain open pending the receipt by the Commission of the seven monthly payments of \$500, for a total of \$3,500. The payments should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of each payment, the Commission shall forward the contribution to the Division of Financial Services to be deposited into the General Revenue Fund. North American Telecom shall submit the first payment of \$500 no later than February 15, 2007. Each subsequent payment shall be due on the 15th day of each month thereafter until the balance is paid in full. If the 15th of a given month is on a weekend or holiday, the payment shall be due on the next business day. If the company fails to submit one of its payments, the company's Certificate No. 7864 should be cancelled. If the company's certificate is cancelled the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively if North American Telecom timely submits all payments and pays the \$3,500 settlement in full or upon the cancellation of the company's certificate.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

10**

Docket No. 060625-TX – Compliance investigation of Telephone One Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry, Ollila

GCL: McKay, Tan

Issue 1: Should the Commission accept Telephone One's proposed settlement offer of \$3,500 for deposit into the General Revenue Fund to resolve the apparent violation of Section 364.183(1), F. S., Access to Company Records?

Recommendation: Yes. The Commission should accept Telephone One's proposed settlement offer of \$3,500 for deposit into the General Revenue Fund to resolve the apparent violation of Section 364.183(1), F.S., Access to Company Records.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should remain open pending the receipt of the \$3,500 settlement payment. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of payment, the Commission shall forward the contribution to the Division of Financial Services to be deposited into the General Revenue Fund. Telephone One's settlement payment should be received by the Commission no later than February 15, 2007. If the company fails to submit the payment, the company's Certificate No. 5806 should be cancelled. If the company's certificate is cancelled the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively upon either the receipt of the settlement payment or upon cancellation of the company's certificate.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

11**PAA

Docket No. 050381-EI – Depreciation and dismantlement study at December 31, 2005, by Gulf Power Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: ECR: Gardner, Springer, Kyle

GCL: Brown

Issue 1: Should the Commission permit Gulf Power Company to implement its proposed change in depreciation rates and provision for dismantlement for the coal fired generating Plant Crist Units 4, 5, 6, and 7; Plant Smith Units 1 and 2, and Plant Smith Unit 3 combined cycle?

Recommendation: Yes. The Commission should approve the Company's revised lives, net salvages, reserves, resulting depreciation rates, and provision for dismantlement as shown on Attachments A, B, and C of staff's December 7, 2006 memorandum.

Issue 2: What should be the implementation date for the new depreciation rates and provision for dismantlement accruals?

Recommendation: January 1, 2007, should be the implementation date for Gulf Power's revised depreciation rates and provision for fossil dismantlement as shown on Attachments A, B, and C of staff's memorandum.

Issue 3: Should the Commission change the depreciation rates?

Recommendation: Yes. The Commission should approve the change in the lives, net salvages, reserves, and resulting depreciation rates as shown on Attachment B of staff's memorandum. These rates result in a decrease in annual depreciation expense by \$7,526,991 based on January 1, 2007, investments. Gulf Power concurs with staff's recommendation.

Issue 4: Should the Commission permit the change in the currently approved annual provision for fossil dismantlement?

Recommendation: Yes. The Commission should approve a total annual provision for fossil fuel dismantlement of \$5,239,243, as shown on Attachment A of staff's memorandum. This represents a decrease in the annual provision for fossil fuel dismantlement accruals of \$647,417 for Plant Crist, Plant Smith, and Plant Smith Unit 3 combined cycle. These accruals reflect current estimates of dismantlement cost on a site-specific basis using the latest inflation forecasts and a 10% contingency factor. The Company concurs with staff's recommendation.

ITEM NO.

CASE

11**PAA

Docket No. 050381-EI – Depreciation and dismantlement study at December 31, 2005, by Gulf Power Company.

(Continued from previous page)

Issue 5: Should the current amortization of investment tax credits and flow back of excess deferred income taxes be revised to reflect the approved depreciation rates?

Recommendation: Yes. The current amortization of investment tax credits (ITC) and the flowback of excess deferred income taxes (EDIT) should be revised to match the actual recovery periods for the related property. The utility should file detailed calculations of the revised ITC amortization and flowback of EDIT at the same time it files its surveillance report covering the period ending December 31, 2006.

Issue 6: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

12

Docket No. 060658-EI – Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Tew

Staff: ECR: Lester

GCL: Bennett

Issue 1: Should PEF's Request for Oral Argument be granted?

Recommendation: Yes. Oral argument should be granted. Staff believes that, although PEF's motion and OPC and AARP's responses are clear and fully discuss the case law, there is a large volume of information provided and legal argument may be helpful to understanding each party's position. However, if the Commission believes that oral argument would not be helpful, it has the discretion to deny the request. If the Commission grants oral argument, each party should be limited to five minutes.

DECISION: The recommendation was approved as modified. Oral argument was granted, with each side given 12 minutes for argument.

Issue 2: Should the Commission grant PEF's Motion to Dismiss OPC's Petition to recover \$143 million in allegedly imprudent expenditures for coal purchased between the years 1996 and 2005?

Recommendation: No. The Motion to Dismiss should be denied. The Commission should hear OPC's Petition in a full evidentiary proceeding and determine the prudence of PEF's actions based on the evidence and testimony adduced at the hearing.

DECISION: The recommendation was approved.

Issue 3: Should this docket be closed?

Recommendation: No. If the Commission accepts staff's recommendation, this docket should not be closed until after an evidentiary hearing has been held and final order issued.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Deason, Carter, Tew

ITEM NO.

CASE

13**

Docket No. 980876-WS – Application for certificates to operate a water and wastewater utility in Marion County by Ocala Springs Utilities Inc.

Docket No. 060749-WS – Request for approval of transfer of Ocala Springs Utilities Inc. in Marion County to Board of Trustees of Internal Improvement Trust Fund of State of Florida, and for cancellation of Certificate Nos. 604-W and 520-S.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason (980876-WS)
Administrative (060749-WS)

Staff: ECR: Brady, Rieger, Romig
GCL: Fleming

Issue 1: Should the transfer of Ocala Springs to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida be approved as a matter of right?

Recommendation: Yes. The transfer should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate Nos. 604-W and 520-S should be cancelled effective the date of the closing on the Option Agreement and Phase I of the Purchase Agreement. Ocala Springs will continue to be responsible for water and wastewater RAFs up to the date its certificates are cancelled. Further, if Ocala Springs is still jurisdictional as of December 31, 2006, and December 31st of any future year, the utility will be responsible for filing an Annual Report.

Issue 2: Should ~~this~~ these dockets be closed?

Recommendation: No. The dockets should remain open and the certificates remain active pending confirmation of the closing on the Option Agreement and Phase I of the Purchase Agreement. Once confirmation of the closing has been received, the certificates should be cancelled effective the date of the closing and the dockets should be administratively closed, ~~along with Docket No. 980876-WS.~~

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew