

MINUTES OF February 8, 2011
COMMISSION CONFERENCE
COMMENCED: 9:34
ADJOURNED: 10:34

COMMISSIONERS PARTICIPATING: Chairman Graham
Commissioner Edgar
Commissioner Brisé
Commissioner Balbis
Commissioner Brown

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

1 **Docket No. 090538-TP** – Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLECs whose true names are currently unknown) for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10, F.S.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Edgar

Staff: GCL: Tan
RAD: Gowen, Trueblood

(Oral Argument Not Requested; Participation is at the Discretion of the Commission.)

Issue 1: Should the Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds be granted?

Recommendation: No. The Commission should deny the Movants' Motion to Dismiss because Qwest has stated a cause of action for which relief may be granted.

Issue 2: 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 a final order issued. If the Commission denies staff's recommendation in Issue 1 and grants the Movants' Motion to Dismiss, the Movants should be removed as parties and the docket should remain open.

DECISION: This item was deferred to the February 22, 2011, Commission Conference.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

2**

Docket No. 100175-TL – Complaint against AT&T d/b/a BellSouth for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and AT&T regulations pertaining to billing of charges and collection of charges, fees, and taxes.

Docket No. 100312-EI – Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes. (Deferred from the October 26, 2010 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Teitzman

ECR: Kummer

RAD: Beard

Issue 1: Should AT&T's Motion to Dismiss be Granted?

Recommendation: Yes. Petitioner's Complaint fails to state a claim upon which this Commission can grant relief. Accordingly, the Complaint should be dismissed with prejudice.

Issue 2: Should Florida Power & Light Company's Motion to Dismiss be Granted?

Recommendation: Yes. Petitioner's Complaint fails to state a claim upon which this Commission can grant relief. Accordingly, the Complaint should be dismissed with prejudice.

Issue 3: Should these dockets be closed?

Recommendation: If the Commission agrees with staff in Issues 1 and 2, then Petitioner's Complaints should be dismissed with prejudice, and these dockets should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

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 December 14, 2010 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Graham

Staff: GCL: Bennett

RAD: Graves, Matthews

ECR: Lee, Roberts

(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.

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 December 14, 2010 Commission Conference.)

(Continued from previous page)

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.

DECISION: The recommendations were approved.

Commissioner participating: Edgar

ITEM NO.

CASE

4**

Docket No. 100459-EI – Petition for authority to implement a demonstration project consisting of proposed time-of-use and interruptible rate schedules and corresponding fuel rates in the Northwest Division on an experimental basis and request for expedited treatment, by Florida Public Utilities Company.

Critical Date(s): 02/14/11 (60-Day Suspension Date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Draper, Lee

GCL: Fleming

Issue 1: Should the Commission approve FPUC's proposed new experimental TOU and interruptible rate schedules and corresponding fuel rates?

Recommendation: Yes. FPUC shall also file annual reports with the Commission providing an evaluation of the proposed rate schedules.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, the tariffs should become effective on February 8, 2011. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved with the modification that the pilot program is to end within four years of the Commission's approval.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

5**

Docket No. 090441-WU – Application for amendment of Certificate No. 430-W to add territory in Duval County by Neighborhood Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: ECR: Walden

GCL: A. Williams

Issue 1: Should the Commission approve Neighborhood's application for amendment of Certificate No. 430-W?

Recommendation: Yes. The Commission should approve the application for amendment of Certificate No. 430-W filed by Neighborhood Utilities, Inc. to include new territory and delete other territory as reflected on Attachment A of staff's memorandum dated January 27, 2011. The resultant order should serve as Neighborhood's amended certificate and should be retained by the Utility. The Utility should charge the customers in the amended territory the rates and charges contained in its current tariff until authorized to be changed by the Commission.

Issue 2: Should Neighborhood Utilities, Inc. be required to show cause, in writing, within 21 days why it should not be fined for its apparent violation of Section 367.045, F.S.?

Recommendation: No. A show cause proceeding should not be initiated.

Issue 3: Should this docket be closed?

Recommendation: Yes, if staff's recommendations in Issues 1 and 2 are approved, no further action is required, and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

6**PAA

Docket No. 100326-SU – Application for staff-assisted rate case in Duval County by Commercial Utilities, Division of Grace & Co., Inc.

Critical Date(s): 11/14/11 (15-Month Effective Date (SARC))

Commissioners Assigned: All Commissioners

Prehearing Officer: Graham

Staff: ECR: Smith, Fletcher, Hudson, Maurey, Simpson

GCL: Murphy, Brown

(Proposed Agency Action Except for Issues 9, 11, and 12.)

Issue 1: Is the quality of service provided by the Utility satisfactory?

Recommendation: Yes. The quality of service provided by Commercial is satisfactory.

Issue 2: What are the used and useful percentages for this Utility?

Recommendation: The collection system should be considered 100 percent used and useful (U&U).

Issue 3: What is the appropriate average test year rate base for the Utility?

Recommendation: The appropriate average test year rate base for Commercial is \$377,598.

Issue 4: What is the appropriate rate of return on equity and overall rate of return for this Utility?

Recommendation: The appropriate return on equity (ROE) is 8.82 percent with a range of 7.82 percent to 9.82 percent. The appropriate overall rate of return is 8.78 percent.

Issue 5: What is the appropriate amount of test year revenues in this case?

Recommendation: The appropriate test year revenue for this Utility is \$244,798.

Issue 6: What is the appropriate amount of operating expense?

Recommendation: The appropriate amount of operating expenses for this Utility is \$255,714.

Issue 7: What is the appropriate revenue requirement?

Recommendation: The appropriate revenue requirement is \$288,867.

ITEM NO.

CASE

6**PAA

Docket No. 100326-SU – Application for staff-assisted rate case in Duval County by Commercial Utilities, Division of Grace & Co., Inc.

(Continued from previous page)

Issue 8: What are the appropriate rates for this Utility?

Recommendation: The appropriate monthly wastewater rates are shown on Schedule No. 4 of staff's memorandum dated January 27, 2011. The recommended rates should be designed to produce revenue of \$288,867, excluding miscellaneous service charges. The appropriate rate structure for Commercial's general service customers is a continuation of the BFC/uniform gallonage charge rate structure. Commercial should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 9: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, F.S.?

Recommendation: The wastewater rates should be reduced as shown on Schedule No. 4 of staff's memorandum dated January 27, 2011, to remove rate case expense grossed up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. The Utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If Commercial files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

ITEM NO.

CASE

6**PAA

Docket No. 100326-SU – Application for staff-assisted rate case in Duval County by Commercial Utilities, Division of Grace & Co., Inc.

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Issue 10: Should Commercial's request to amend the Utility's customer deposits tariff and establish non-sufficient funds (NSF) fees be approved?

Recommendation: Yes. Commercial's request to amend the Utility's customer deposits and establish non-sufficient funds (NSF) fees should be approved. The Utility should file revised tariff sheets and a proposed customer notice consistent with the Commission's vote. Staff should be given administrative authority to approve the revised tariff sheets upon staff's verification that the tariffs are consistent with the Commission's decision. The tariff sheets containing customer deposits and non-sufficient funds fees should become effective for services rendered on or after the stamped approval date on the tariff, pursuant to Rule 25-30.475, F.A.C. In addition, the approved customer deposits and NSF fees should not be implemented until staff has approved the proposed customer deposits and NSF fees notice and the notice has been received by the customers. This notice may be combined with the notice required in Issue 8.

Issue 11: Should the recommended rates be approved for the Utility on a temporary basis, subject to refund, in the event of protest filed by a party other than the Utility?

Recommendation: Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility. Commercial should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the Utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed in the analysis portion of staff's memorandum dated January 27, 2011. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

ITEM NO.

CASE

6**PAA

Docket No. 100326-SU – Application for staff-assisted rate case in Duval County by Commercial Utilities, Division of Grace & Co., Inc.

(Continued from previous page)

Issue 12: Should the Utility be required to provide proof, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all applicable NARUC USOA primary accounts associated with the Commission-approved adjustments?

Recommendation: Yes. To ensure that the Utility adjusts its books in accordance with the Commission’s decision, Commercial should provide proof, within 90 days of the final order in this docket, that the adjustments for all applicable NARUC USOA primary accounts have been made.

Issue 13: Should this docket be closed?

Recommendation: No. The docket should remain open until a final order has been issued, staff has approved the revised tariff sheets and customer notices, the Utility has sent the notices to its customers, and staff has received proof that the customers have received notice within 10 days after the date of the notice. Once staff has verified all of the above actions are complete, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

ITEM NO.

CASE

7**

Docket No. 100456-WS – Application for transfer of water and wastewater facilities to North Sumter County Utility Dependent District, and cancellation of Certificate Nos. 618-W and 532-S, by North Sumter Utility Company, L.L.C.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

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

GCL: Klancke

Issue 1: Should the transfer of NSU’s water and wastewater facilities and territory to NSCUDD be acknowledged as a matter of right and Certificate Nos. 618-W and 532-S be cancelled?

Recommendation: Yes. The transfer of NSU’s water and wastewater facilities and territory to NSCUDD should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 618-W and 532-S should be cancelled effective December 7, 2010.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown