

MINUTES OF January 6, 2009
COMMISSION CONFERENCE
COMMENCED: 11:10 am
RECESSED: 12:53 pm
RECONVENED: 1:18 pm
RECESSED: 3:08 pm
RECONVENED: 3:20 pm
ADJOURNED: 5:52 pm

COMMISSIONERS PARTICIPATING: Chairman Carter
Commissioner Edgar
Commissioner McMurrian
Commissioner Argenziano
Commissioner Skop

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

1

Approval of Minutes
December 2, 2008 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

2**

Consent Agenda

PAA

A) Request for approval of transfer and name change on a pay telephone company.

DOCKET NO. **COMPANY NAME**

080368-TC	Mansour Industries, Inc. d/b/a GPE Southeast GPE Southeast, Inc.
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Recommendation: The Commission should approve the action requested in the dockets referenced above and close these dockets.

DECISION: The recommendation was approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

3**

Docket No. 080641-TP – Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.

Docket No. 080159-TP – Joint petition to initiate rulemaking to adopt new rule in Chapter 25-24, F.A.C., amend and repeal rules in Chapter 25-4, F.A.C., and amend rules in Chapter 25-9, F.A.C., by Verizon Florida LLC, BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Embarq Florida, Inc., Quincy Telephone Company d/b/a TDS Telecom, and Windstream Florida, Inc.

Critical Date(s):	None
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Skop (080641-TP) McMurrian (080159-TP)
Staff:	GCL: Miller, Cibula, Cowdery RCP: Mailhot, Salak, Simmons, Kennedy, Harvey ECR: Hewitt SSC: Moses

Issue 1: Should the Commission propose the repeal of Rules 25-4.046, 25-4.071, 25-4.072, and 25-4.108?

Recommendation: The Commission should propose repeal of Rules 25-4.046 and 25-4.108 as set forth in Attachment A of staff’s memorandum dated December 23, 2008. However, the Commission should not propose the repeal of Rules 25-4.071 and 25-4.072. Staff also recommends that the notice of rulemaking contain language stating that none of the rule repeals are intended to impact in any way wholesale service or the SEEM (Self-Effectuating Enforcement Mechanism) plan, the SEEM metrics or payments, or the type of data that must be collected and analyzed for purposes of the SEEM plan.

DECISION: The recommendation was approved by Chairman Carter and Commissioners Edgar, Skop, and Argenziano. Commissioner McMurrian dissented in part.

Issue 2: Should the Commission propose the amendment of Rules 25-4.002, 25-4.0185, 25-4.023, 25-4.066, 25-4.067, 25-4.070, 25-4.071, 25-4.073, 25-4.074, 25-4.083, 25-4.107, 25-4.109, and 25-4.110?

Recommendation: The Commission should propose the amendment of Rules 25-4.002, 25-4.0185, 25-4.023, 25-4.066, 25-4.067, 25-4.070, 25-4.071, 25-4.073, 25-4.074, 25-4.083, 25-4.107, 25-4.109, and 25-4.110, as set forth in Attachment B of staff’s memorandum dated December 23, 2008. Staff recommends that the notice of rulemaking contain language stating that none of the rule amendments are intended to impact the type of data that must be collected and analyzed for purposes of the SEEM (Self-Effectuating Enforcement Mechanism) plan. Staff recommends that the notice of rulemaking also

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3**

Docket No. 080641-TP – Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.

Docket No. 080159-TP – Joint petition to initiate rulemaking to adopt new rule in Chapter 25-24, F.A.C., amend and repeal rules in Chapter 25-4, F.A.C., and amend rules in Chapter 25-9, F.A.C., by Verizon Florida LLC, BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Embarq Florida, Inc., Quincy Telephone Company d/b/a TDS Telecom, and Windstream Florida, Inc.

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contain language stating that the amendments to Rules 25-4.002, 25-4.0185, 25-4.023, 25-4.067, 25-4.071, 25-4.074, 25-4.083, 25-4.107, 25-4.109, and 25-4.110 are not intended to impact wholesale service or the SEEM plan, or the SEEM metrics or payments.

DECISION:* The recommendation was approved for 25-4.002, 25-4.0185, 25-4.023, 25-4.071, 25-4.073, 25-4.074, 25-4.083, 25-4.107, 25-4.109, and 25-4.110 and the following rules are modified:

25-4.066 - ADOPTED with the exception that installation time will remain at 3 days.

25-4.067 - REPEAL RULE.

25-4.070 - ADOPTED STAFF RECOMMENDATION WITH THESE EXCEPTIONS:

25-4.070(1) - not combine out of service and service affecting troubles into one standard of 48 hours and 25-4.070(3) – the service standard for trouble reports for residential service shall be moved to 90 percent. The service interruption shall be 90 percent within 24 hours of report and the service affecting standard shall be 90 percent within 72 hours of the report.

*Commissioner McMurrian dissented in part.

Issue 3: Should these dockets be closed?

Recommendation: Yes. Docket No. 080159-TP should be closed for administrative efficiency. If no requests for hearing or comments are filed, the rules proposed by the Commission may be filed with the Department of State, and Docket No. 080641-TP may be closed.

DECISION: The recommendation was approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

4**PAA

Docket No. 080579-TI – Compliance investigation of Astrocom Corporation for apparent violation of Rule 25-24.470, F.A.C., Registration Required.

Critical Date(s):	None
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Administrative
Staff:	RCP: Curry GCL: Brooks

Issue 1: Should the Commission impose a penalty in the amount of \$25,000 upon Astrocom Corporation for its apparent violation of Rule 25-24.470, F.A.C., Registration Required, to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order?

Recommendation: Yes, the Commission should impose a penalty in the amount of \$25,000 upon Astrocom Corporation for its apparent violation of Rule 25-24.470, F.A.C., Registration Required, to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission’s decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute should be deemed stipulated. If Astrocom fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If payment of the penalty is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the penalty should be referred to the Department of Financial Services for collection, and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. This docket should be closed administratively upon receipt of the company’s current contact information, tariff, and payment of the penalty, or upon the referral of the penalty to the Department of Financial Services.

DECISION: The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

5**PAA

Docket No. 080674-TP – Compliance investigation of Effectel Corp for apparent failure to accurately disclose information on application.

Critical Date(s):	None	
Commissioners Assigned:	All Commissioners	
Prehearing Officer:	Administrative	
Staff:	RCP: Kennedy	GCL: Brooks

Issue 1: Should the Commission accept Effectel Corp’s offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company’s apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange company?

Recommendation: Yes, the Commission should accept Effectel Corp’s offer to voluntarily forfeit CLEC Certificate No. 8716 and IXC Registration No. TJ982 to resolve the company’s apparent failure to accurately disclose information in Docket No. 070670-TX, application for a certificate of public convenience and necessity to provide telecommunications services within the State of Florida as a competitive local exchange company.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission’s decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the Commission accepts Effectel’s offer of forfeiture of CLEC Certificate No. 8716 and IXC Registration No. TJ982, the company should also be required to immediately cease and desist providing all intrastate telecommunications services in Florida, and the CLEC certificate and IXC registration should become inactive on December 31, 2008. If there is no protest, this docket should be closed upon issuance of the Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

6

Docket No. 070293-SU – Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

Critical Date(s):	Utility has waived all dates through January 6, 2009
Commissioners Assigned:	Carter, Argenziano, Skop
Prehearing Officer:	Argenziano
Staff:	ECR: Fletcher, Bulecza-Banks, Roberts, Reiger GCL: Jaeger

(Post Hearing Decision - Participation is limited to Commissioners and staff)

Issue 1: Is the quality of service provided by K W Resort Utilities Corp. Satisfactory?

Recommendation: The overall quality of service provided by the Utility should be considered satisfactory. However, KWRU should provide monthly reports concerning the connection status of the remaining 350 equivalent dwelling units left to be connected until the conditions of the Utility’s 2002 contract with Monroe County have been fully satisfied.

Issue 2: Should KWRU’s test year rate base be adjusted for Keys Environmental hook-up fees?

Recommendation: Yes. Plant should be reduced by \$252,690 to remove an apparent duplication of contractual operation service fees. In addition, corresponding adjustments should be made to reduce accumulated depreciation and depreciation expense by \$10,983 and \$3,021, respectively.

Issue 3: Should KWRU’s test year rate base be adjusted for KWRU’s contribution to the decommissioning of jail facilities?

Recommendation: To remove non-utility investment, plant should be reduced by \$10,000. Accordingly, accumulated depreciation and depreciation expense should be decreased by \$1,259 and \$315, respectively.

Issue 4: Should KWRU’s test year rate base be adjusted for Green Fairways Jail Project management fee?

Recommendation: Staff recommends that plant be reduced by \$32,198. Accordingly, accumulated depreciation and depreciation expense should be decreased by \$2,823.

Issue 5: Should KWRU’s test year rate base be adjusted for Green Fairways SSI Project management fee?

Recommendation: Staff recommends that plant be reduced by \$301,180. Accordingly, accumulated depreciation and depreciation expense should be decreased by \$26,406.

Issue 6: Should KWRU’s test year rate base be adjusted for Smith, Hemmesch, and Burke legal fees?

Recommendation: Staff recommends that plant should be reduced by \$25,000 to remove unsupported legal fees. Accordingly, accumulated depreciation and depreciation expense should be decreased by \$2,192.

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Docket No. 070293-SU – Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

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Issue 7: Should KWRU's test year rate base be adjusted for Mr. Johnson's moving expenses?

Recommendation: Yes. An adjustment of \$8,602 should be made to remove Mr. Johnson's capitalized moving expenses. Corresponding adjustments should be made to reduce accumulated depreciation and depreciation expense of \$1,075 and \$269, respectively.

Issue 8: Should KWRU's test year rate base be adjusted for Johnson Constructors charges for JAS Corp.?

Recommendation: Yes. KWRU's test year rate base should be reduced by \$34,650. Corresponding adjustments should be made to decrease accumulated depreciation and depreciation expense both by \$1,925.

Issue 9: Should KWRU's test year rate base be adjusted for Mr. London's consulting fees?

Recommendation: Yes. KWRU's test year rate base should be reduced by \$32,500 to remove unsupported consultant fees paid to Mr. London. Corresponding adjustments should be made to accumulated depreciation and depreciation expense of \$6,145 and \$855, respectively.

Issue 10: Should KWRU's test year rate base be adjusted for White and Case legal charges related to Monroe County Audit Report?

Recommendation: Yes. KWRU's test year rate base should be reduced by \$27,230 to remove legal fees associated with the response to the Monroe County Audit Report. Corresponding adjustments should also be made to decrease accumulated depreciation and depreciation expense by \$1,814 and \$907, respectively.

Issue 11: Should KWRU's test year rate base be adjusted for the Key West Citizen PR Advertisement?

Recommendation: Yes. KWRU's test year rate base should be reduced by \$422 to remove costs associated with a media advertisement. Accordingly, corresponding adjustments should be made to decrease accumulated depreciation and depreciation expense by \$117 and \$23, respectively.

Issue 12: Should adjustments be made to the Utility's pro forma plant additions?

Recommendation: Yes. To remove administration fees paid to Green Fairways and to remove cost incurred for not obtaining the necessary permits in a timely manner, pro forma plant should be reduced by \$124,921. Accordingly, corresponding adjustments should also be made to decrease accumulated depreciation and depreciation expense both by \$6,940. In addition, a corresponding adjustment should be made to decrease property taxes by \$1,027.

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Issue 13: What are the used and useful percentages of the Utility's wastewater treatment plant and collection and reuse systems?

Recommendation: The Utility's wastewater treatment plant and collection and reuse systems should all be considered 100 percent used and useful.

Issue 14: What is the appropriate test year balance of accumulated depreciation?

Recommendation: Consistent with staff's previously recommended plant adjustments, the appropriate test year balance of accumulated depreciation is \$2,674,088.

Issue 15: What are the appropriate test year balances of contributions-in-aid of construction (CIAC) and accumulated amortization of CIAC?

Recommendation: The appropriate test year balances of CIAC and accumulated amortization of CIAC are \$5,563,429 and \$726,153, respectively.

Issue 16: What is the appropriate working capital allowance?

Recommendation: The appropriate working capital allowance is \$464,578. Accordingly, working capital should be decreased by \$32,269.

Issue 17: What is the appropriate rate base?

Recommendation: Consistent with other recommended adjustments, the appropriate 13-month average rate base is \$127,795.

Issue 18: What is the appropriate return on common equity?

Recommendation: The appropriate return on common equity is 12.67 percent based on the Commission's leverage formula approved at the December 16, 2008 agenda conference and an equity ratio of 27.34 percent. Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes.

Issue 19: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure?

Recommendation: Based on the resolution of the previous issues, the appropriate weighted average cost of capital, including the proper components, amounts, and cost rates associated with the capital structure, is 8.62 percent.

Issue 20: Should any adjustments be made to test year revenues?

Recommendation: Yes. To reflect the appropriate annualized revenue adjustment, revenues should be increased by \$6,264. Second, revenues should be increased by \$14,600 to reflect the appropriate rental fee. Finally, test year revenues should be increased by \$19,575 to include income related to the County lift stations.

Issue 21: Should any adjustments be made to sludge removal expenses?

Recommendation: Yes. To reflect the amortization of non-recurring amounts incurred during the test year, sludge removal expense should be reduced by \$9,129.

Issue 22: Should any adjustments be made to chemicals expense?

Recommendation: Yes. Based on the Utility's three-year average of indexed costs, test year chemical expense should be reduced by \$16,117.

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Issue 23: Should KWRU's test year expenses be adjusted for the reduction of infiltration and inflow related to the re-sleeving of its lines?

Recommendation: No.

Issue 24: Should KWRU's test year expenses be adjusted to remove any markup in pro forma expenses?

Recommendation: To remove expenses associated with an unsupported mark-up by a related party, chemicals, sludge hauling, and materials and supplies should be reduced by \$7,913, \$2,690, and \$23,224, respectively.

Issue 25: Should any adjustments be made to insurance – general liability?

Recommendation: No. KWRU's decision to spread the payments over a 12-month period appears to be reasonable based on the amount of the premiums and the associated finance charges.

Issue 26: Should any adjustments be made to advertising expenses?

Recommendation: Yes. Advertising expenses should be reduced by \$26,653 to remove cost related to public relation functions.

Issue 27: Should KWRU's test year expenses be adjusted for Mr. Smith's Management Fees Charged by Green Fairways?

Recommendation: Yes, KWRU's expenses should be reduced by \$30,000.

Issue 28: Should test year expenses be adjusted for certain transactions between Keys Environmental (KEI) and KWRU?

Recommendation: Yes, test year expenses should be reduced by \$71,053 (\$1,313+\$15,000+\$51,663+\$3,077) for certain transactions between KEI and KWRU. Additionally, plant in service should be increased by \$66,663 (\$15,000+51,663). Accordingly, accumulated depreciation and depreciation expense should be increased by \$3,086.

Issue 29: Should any other adjustments be made to contractual services – other expenses?

Recommendation: Yes. The test year balance for contractual services – other should be reduced by \$12,038 to remove bonuses paid to non-utility employees.

Issue 30: Should any adjustments be made to miscellaneous expenses?

Recommendation: Yes. Miscellaneous expense should be reduced by \$22,132.

Issue 31: What is the appropriate amount of rate case expense?

Recommendation: The appropriate amount of rate case expense is \$466,615. The four-year amortization results in test year rate case expense of \$116,654, which increases the MFR amortization amount by \$66,654.

Issue 32: Should any adjustment be made to test year net depreciated expense?

Recommendation: Yes. Based on the resolution on previous recommended plant adjustments, the depreciation expense should be reduced by \$48,759.

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Issue 33: What is the test year wastewater operating income or loss before any revenue increase?

Recommendation: The test year operating loss is \$132,988 for wastewater before any revenue increase.

Issue 34: What is the appropriate revenue requirement?

Recommendation: The following revenue requirement should be approved:

	<u>TOTAL</u>	<u>\$ INCREASE</u>	<u>% INCREASE</u>
Wastewater	\$1,328,524	\$241,771	22.25%

Issue 35: What is the appropriate rate structure for this Utility?

Recommendation: The Utility's rate structure should be changed from the current flat rate structure, to the base facility and gallonage charge rate structure. In addition, the residential monthly wastewater gallonage cap should set at 10,000 gallons.

Issue 36: What are the appropriate monthly residential and general service rates?

Recommendation: The appropriate wastewater monthly rates are shown on Schedule No. 4 of staff's memorandum December 23, 2008. Excluding miscellaneous service charge, reuse, and other revenues, the recommended wastewater rates are designed to produce revenues of \$1,222,064. The Utility should file revised wastewater tariff sheets and a proposed customer notice to reflect the Commission-approved rates for the wastewater system. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets, 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. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 37: What are the appropriate monthly bulk and reuse service rates?

Recommendation: The appropriate wastewater monthly rates are shown on Schedule No. 4 of staff's memorandum December 23, 2008. The Utility should file revised wastewater tariff sheets and a proposed customer notice to reflect the Commission-approved rates for the wastewater system. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets, 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. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

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Docket No. 070293-SU – Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

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Issue 38: In determining whether a portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

Recommendation: The proper refund amount should be calculated by using the same data used to establish final rates, excluding rate case expense and other items not in effect during the interim period. This revised revenue requirement for the interim collection period should be compared to the amount of interim revenue requirement granted. Based on this calculation the Utility should be required to refund 1.85 ~~2.14~~ percent of wastewater revenues collected under interim rates. The refund should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility should be required to submit proper refund reports, pursuant to Rule 25-30.360(7), F.A.C. The Utility should treat any unclaimed refunds as CIAC, pursuant to Rule 25-30.360(8), F.A.C. Further, the corporate undertaking should be released upon staff's verification that the required refunds have been made.

Issue 39: 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, Florida Statutes?

Recommendation: The wastewater rate should be reduced as shown on Schedule No. 4 of staff's memorandum December 23, 2008, to remove \$122,151 of wastewater rate case expense, grossed up for regulatory assessment fees, which is being 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 30 days prior to the actual date of the required rate reduction. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets, pursuant to Rule 25-40.475(1), F.A.C. The rates should not be implemented until staff has approved the proposed customer notice. KWRU should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 40: 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 the 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, KWRU should provide proof, within 90 days of the final order issued in this docket, that the adjustments for all the applicable NARUC USOA primary accounts have been made.

ITEM NO.

CASE

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Docket No. 070293-SU – Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

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Issue 41: Should this docket be closed?

Recommendation: If the Commission's final order is not appealed, this docket should be closed upon staff's approval of the tariffs, verification of the required refunds, and the expiration of the time for filing an appeal.

DECISION: The recommendations were approved. Staff's oral modification to Issue 38 was approved.

Commissioners participating: Carter, Argenziano, Skop

