

**MINUTES OF July 15, 2008
COMMISSION CONFERENCE**

COMMENCED: 9:35 a.m.
RECESSED: 10:10 a.m.
RECONVENED: 10:23 a.m.
ADJOURNED: 10:36 a.m.

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** **Consent Agenda**

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
080251-TX	Clertech.com, Inc.
080306-TX	VoDa Networks, Inc.
080314-TX	TeleDias Communications, Inc.

PAA B) Request for approval of transfer and name change on a shared tenant services certificate.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
080316-TS	Accent Property Management, LLC d/b/a The Centers of Westshore J.F.G. Associates, Inc.

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

2

Docket No. 070691-TP – Complaint and request for emergency relief against Verizon Florida, LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC.

Docket No. 080036-TP – Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Mann

CMP: Beard, Casey, Hallenstein

(Oral Argument Requested)

Issue 1: Should the Commission grant Verizon's Request for Oral Argument on its Motion for Reconsideration?

Recommendation: No. Staff recommends that the Commission deny Verizon's Request for Oral Argument on its Motion for Reconsideration.

Issue 2: Should the Commission grant Verizon's Motion for Reconsideration of Commission Order No. PSC-08-0344-PCO-TP, Second Order Modifying Procedure?

Recommendation: No. Staff recommends that the Commission deny reconsideration of Order No. PSC-08-0344-PCO-TP, Second Order Modifying Procedure.

Issue 3: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 2, this Docket should remain open pending further proceedings.

DECISION: This item was deferred to the July 29, 2008 Commission Conference.

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

ITEM NO.

CASE

3**

Docket No. 070408-TP – Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution. (Deferred from the May 20, 2008 and withdrawn from the June 17, 2008 Commission Conferences – new staff recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: McMurrian

Staff: GCL: Mann, Teitzman

CMP: Lee, King

Issue 1: Should the Commission accept Neutral Tandem's Notice of Voluntary Dismissal?

Recommendation: Yes. The Commission should accept Neutral Tandem's Notice of Voluntary Dismissal and the hearing should be cancelled.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved, there is nothing further for the Commission to consider in this docket. Therefore, staff recommends that Docket No. 070408-TP should be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

4

Docket No. 080148-EI – Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

Critical Date(s): 07/24/08 (135 day deadline for final decision per Statute)

Commissioners Assigned: All Commissioners

Prehearing Officer: McMurrin

Staff: ECR: Graves, Bulecza-Banks, Clemence, Colson, Garl, Hewitt, Kyle, Lester, Maurey, McNulty, Springer, Stallcup, Wu
GCL: Fleming, Klancke, Young

(Post-Hearing Decision)

Issue 1: Is there a need for the proposed generating units, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(4), Florida Statutes?

Recommendation: Yes. PEF has demonstrated a capacity need by 2016 in order to maintain system reliability and integrity based on a 20 percent reserve margin criteria. The addition of Levy Units 1 and 2 is projected to satisfy PEF's capacity needs through 2023.

DECISION: The recommendation was approved.

Issue 2: Is there a need for the proposed generating units, taking into account the need for fuel diversity, as this criterion is used in Section 403.519(4), Florida Statutes?

Recommendation: Yes. If natural gas generation alternatives were to be added to PEF's system, as opposed to Levy Units 1 and 2, PEF would rely on natural gas and fuel oil for more than 50 percent of its energy generation. The addition of Levy Units 1 and 2 would allow PEF to maintain a diverse fuel mix and reduce Florida's dependence on natural gas and fuel oil, thus shielding ratepayers from price volatility and enhancing its system reliability. The addition of Levy Units 1 and 2 would also provide a significant source of non-carbon emitting base load generation.

DECISION: The recommendation was approved.

ITEM NO.

CASE

4

Docket No. 080148-EI – Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

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Issue 3: Is there a need for the proposed generating units, taking in account the need for base-load generating capacity, as this criterion is used in Section 403.519(4), Florida Statutes?

Recommendation: Yes. Levy Units 1 and 2 are intended to help meet PEF's growing need for additional base-load capacity. By 2015, PEF will have approximately 3,070 MW of existing or certified generation capacity which operates at a capacity factor of 80 percent or greater which is typical for a base-load generation unit. PEF's base-load needs are projected to increase to approximately 5,000 MW by the year 2015. The addition 2,200 MW from Levy Units 1 and 2, both projected to operate at a 90 percent capacity factor, will satisfy this projected growth (3,070+2,200=5,270 MW).

DECISION: The recommendation was approved.

Issue 4: Is there a need for the proposed generating units, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(4), Florida Statutes?

Recommendation: Yes. The cost estimates presented for capital costs, fuel costs, emission costs, water, and waste disposal appear reasonable at this time. PEF's projected performance specifications also appear to be reasonable. The effect of these cost assumptions on the overall economics and rate impacts of the proposed Levy Units 1 and 2 are discussed in greater detail in Issue 6. As the environmental price forecasts are based upon on-going federal CO₂ legislation, PEF should provide updated cost information as part of its annual feasibility report.

DECISION: The recommendation was approved. The Commission would encourage Progress to seek pro rata cost basis during its joint ownership discussions.

Issue 5: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Progress Energy Florida, Inc. which might mitigate the need for the proposed generating units?

Recommendation: No. Since 1981, PEF's demand side management (DSM) programs have reduced total demand over 1,500 MW. PEF has over 173 MW of renewable power from purchased power contracts. Even after considering all existing and additional DSM and renewable resources available for the foreseeable future, PEF still has a need for Levy Units 1 and 2. No additional cost-effective DSM or renewable resources have been identified that would mitigate the need for the proposed generating units.

DECISION: The recommendation was approved.

ITEM NO.

CASE

4

Docket No. 080148-EI – Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

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Issue 6: Will the proposed generating units provide the most cost-effective source of power, as this criterion is used in Section 403.519(4), Florida Statutes?

Recommendation: Yes. Despite high capital costs, the relatively low fuel costs associated with Levy Units 1 and 2 provide an economic advantage when compared to a natural gas generation alternative. When potential environmental compliance costs are considered, nuclear generation becomes even more cost-effective. In order to satisfy its obligation to prudently manage its resources, PEF should continue to negotiate with other utilities regarding joint ownership. PEF should be required to provide updates regarding discussions pertaining to joint ownership during its annual nuclear cost recovery proceedings.

DECISION: The recommendation was approved.

Issue 7: Based on the resolution of the foregoing issues, should the Commission grant Progress Energy Florida, Inc.'s petition to determine the need for the proposed generating units?

Recommendation: Yes.

DECISION: The recommendation was approved.

Issue 8: Should this docket be closed?

Recommendation: The docket should be closed after the time for filing an appeal has run.

DECISION: The recommendation was approved.

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

ITEM NO.

CASE

5**PAA

Docket No. 080281-EI – Petition for approval of Solar Energy Projects for Recovery through Environmental Cost Recovery Clause, by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: McNulty, Trapp, Wu

GCL: Brown

Issue 1: Should the Commission approve FPL’s petition for approval of the eligibility of the Martin Next Generation Solar Energy Center, the DeSoto Next Generation Solar Energy Center, and the Space Coast Next Generation Solar Energy Center for recovery through the Environmental Cost Recovery Clause (ECRC), pursuant to Section 366.92(4), F.S.?

Recommendation: Yes. As proposed, FPL’s Martin Solar, DeSoto Solar, and Space Coast Solar comply with the statutory requirements specified in the Section 366.92(4), F.S., for eligibility for cost recovery through the ECRC.

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 recommendations were approved.

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

ITEM NO.

CASE

6**PAA

Docket No. 070417-WS – Application for staff-assisted rate case in Polk County by Anglers Cove West, Ltd.

Critical Date(s): 12/15/08 (15-Month Effective Date (SARC))

Commissioners Assigned: All Commissioners

Prehearing Officer: Skop

Staff: ECR: Fletcher, Bulecza-Banks, Lingo, Bruce

GCL: Bennett

(Proposed Agency Action except for Issues 12, 13, and 14)

Issue 1: Should the quality of service provided by ACW be considered satisfactory?

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

Issue 2: What are the used and useful percentages for ACW’s water system, wastewater treatment plant, water distribution and wastewater collection systems?

Recommendation: ACW’s used and useful percentages (U&U) should be as follows:

Distribution System	100%
Wastewater Treatment Plant	100%
Collection System	100%

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

Recommendation: The appropriate average rate base for ACW is \$86,201 for water and \$169,269 for wastewater.

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

Recommendation: The appropriate return on equity is 11.78 percent with a range of 10.78 percent to 12.78 percent. The appropriate overall rate of return is 7.05 percent.

Issue 5: What are the appropriate amounts of test year revenues in this case?

Recommendation: The appropriate amount of test year revenues in this case are \$32,708 for the water system and \$32,708 for the wastewater system.

Issue 6: What is the appropriate amount of pre-repression operating expenses?

Recommendation: The appropriate amount of pre-repression operating expense for the Utility is \$87,968 for water and \$77,389 for wastewater.

Issue 7: What is the appropriate pre-repression revenue requirement?

Recommendation: The appropriate pre-repression revenue requirement is \$96,935 for water and \$91,990 for wastewater.

Issue 8: What are the appropriate billing determinants for rate setting purposes for the respective water and wastewater systems?

Recommendation: The appropriate billing determinants for rate setting are 370 ERCs and 10,078.2 thousand gallons (10,078.2 kgals) for the water system, and 356 ERCs and 7,452.4 kgals for the wastewater system.

ITEM NO.

CASE

6**PAA

Docket No. 070417-WS – Application for staff-assisted rate case in Polk County by Anglers Cove West, Ltd.

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Issue 9: What are the appropriate rate structures for ACW's water and wastewater systems?

Recommendation: The appropriate rate structure for the water and wastewater systems' residential and non-residential class is a BFC/uniform gallonage charge rate structure. The BFC cost recovery percentage for the water system should be set at 40 percent. The residential wastewater monthly gallonage cap should be set at 6,000 gallons (6 kgals). The non-residential gallonage charge should be 1.2 times greater than the corresponding residential charge, and the BFC cost recovery percentage for the wastewater system should remain at 50 percent.

Issue 10: Are repression adjustments appropriate in this case, and if so, what are the appropriate adjustments to make for this utility, what are the appropriate corresponding expense adjustments to make, and what are the final revenue requirements?

Recommendation: No, a repression adjustment is not appropriate in this case. However, in order to monitor the effects resulting from the changes in revenues, the Utility should prepare monthly reports for the water system, detailing the number of bills rendered, the consumption billed and revenues billed. In addition, the reports should be prepared by customer class and meter size. The reports should be filed with staff, on a quarterly basis, for a period of two years beginning the first billing period after the approved rates go into effect. To the extent the utility makes adjustments to consumption in any month during the reporting period, the utility should be ordered to file a revised monthly report for that month within 30 days of any revision.

Issue 11: What are the appropriate monthly rates for each system?

Recommendation: The appropriate monthly water rates are shown on Schedule No. 4-A of staff's memorandum dated July 2, 2008, and the appropriate wastewater monthly rates are shown on Schedule No. 4-B of staff's memorandum dated July 2, 2008. The recommended water rates produce revenues of \$96,935, and the recommended wastewater rates produce revenues of \$91,990, excluding miscellaneous service charges. The Utility 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.

ITEM NO.

CASE

6**PAA

Docket No. 070417-WS – Application for staff-assisted rate case in Polk County by Anglers Cove West, Ltd.

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Issue 12: Should ACW be ordered to show cause, in writing, within 21 days, why it should not be fined for charging rates and charges that are not contained in its tariff, in apparent violation of Sections 367.081(1) and 367.091(4), F.S.?

Recommendation: No, a show cause proceeding should not be initiated. The Utility should, however, be put on notice that, pursuant to Sections 367.081(1) and 367.091(4), F.S., it must charge only those rates and charges approved by the Commission in its tariff. Further, ACW must refund, with interest, all unauthorized charges within 60 days of the consummating order. Refunds shall be made in accordance with Rule 25-30.360, F.A.C.

Issue 13: Should the recommended rates be approved for the Utility on a temporary basis, subject to refund, in the event of a protest 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. 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 shall be subject to the refund provisions discussed in the analysis portion of staff's memorandum dated July 2, 2008. 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.

Issue 14: 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 water and wastewater rates should be reduced as shown on Schedule Nos. 4-A and 4-B of staff's memorandum dated July 2, 2008, to remove rate case expense grossed up for regulatory assessment fees 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 the Utility 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. 070417-WS – Application for staff-assisted rate case in Polk County by Anglers Cove West, Ltd.

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Issue 15: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within twenty-one days of the issuance of the order, a consummating order will be issued. 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 and that the refund has been completed and verified by staff. Once these actions are complete, this docket should be closed administratively.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

7**PAA

Docket No. 080132-WU – Application for transfer of water facilities to Okeechobee Utility Authority, and cancellation of Certificate No. 629-W, by Blue Heron Golf & Country Club.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Brady, Kaproth

ADM: Belcher

GCL: Klancke

(Proposed Agency Action for Issue 1)

Issue 1: Should the Commission approve Blue Heron Golf & Country Club's request for a waiver of its 2006 annual report fine?

Recommendation: No. The utility has not demonstrated good cause for noncompliance. The penalty of \$489, as prescribed by Rule 25-30.110(7), Florida Administrative Code (F.A.C.), should be assessed. Payment should be made within 30 days of the date of this Commission's vote.

DECISION: The recommendation was denied.

Issue 2: Should the transfer of Blue Heron's water facilities to OUA and the cancellation of Certificate No. 629-W be acknowledged?

Recommendation: Yes. The transfer of Blue Heron's water facilities to OUA should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate No. 629-W should be cancelled effective March 4, 2008.

DECISION: The recommendation was approved.

Issue 3: Should this docket be closed?

Recommendation: No. If no protest to the proposed agency action issue is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued. However, the docket should remain open pending verification of payment of the penalty for the late-filed 2006 annual report. Upon verification of payment, the docket should be administratively closed.

DECISION: The recommendation was approved.

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