

MINUTES OF June 6, 2006
COMMISSION CONFERENCE
COMMENCED: 9:40 a.m.
ADJOURNED: 11:45 a.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**
 May 2, 2006 Regular Commission Conference

DECISION: The minutes were approved.

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

ITEM NO.

CASE

2**

Consent Agenda

PAA

A) Request for approval of transfer of control of an alternative access vendor company.

DOCKET NO.

COMPANY NAME

060392-TP

TelCove of Florida, Inc.

TelCove of Jacksonville, Inc.

Level 3 Communications, LLC

Recommendation: The Commission should approve the action requested in the docket referenced above and close this docket.

DECISION: The recommendation was approved.

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

ITEM NO.

CASE

3**

Docket No. 060243-EI – Proposed revisions to Rule 25-6.044, F.A.C., Continuity of Service, and Rule 25-6.0455, F.A.C., Annual Distribution Service Reliability Report.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: GCL: Brown, Moore

ECR: Breman, Hewitt, Jopling, Lee, Matlock, McNulty, Swearingen

Issue 1: Should the Commission propose changes to Rules 25-6.044 and 25-6.0455, Florida Administrative Code, requiring investor-owned electric utilities to record and report distribution system reliability data?

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 be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

4**

Docket No. 060074-WU – Initiation of show cause proceedings against Alturas Utilities, L.L.C. for apparent violation of Rule 25-30.251(2), F.A.C., Record and Report of Interruptions.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Tew

Staff: GCL: Gervasi

ECR: Edwards, Rendell

RCA: Hicks

Issue 1: Should Alturas Utilities, L.L.C. be ordered to show cause, in writing within 21 days, as to why it should not be fined for failure to notify the Commission of at least six separate interruptions in service that took place during 2005, in apparent violation of Rule 25-30.251(2), Florida Administrative Code?

Recommendation: Yes. Alturas Utilities, L.L.C. should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$300 for failure to notify the Commission of at least six separate interruptions in service that took place during 2005, in apparent violation of Rule 25-30.251(2), Florida Administrative Code. The order to show cause should incorporate the conditions as set forth in the staff analysis. Further, the utility should be reminded of the importance of being courteous to its customers at all times. The utility should also be warned of the importance of complying with all Commission rules and statutes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Alturas pays the fine as set by the Commission in Issue 1, this docket should be closed administratively. However, if the utility timely responds in writing to the Order to show cause, the docket should remain open to allow for the appropriate processing of the response.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

5**

Docket No. 060141-TL – Complaint by Karl Amsler and Sonny Stewart against BellSouth Telecommunications, Inc. for alleged improper billing.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Tan, Scott

CMP: Kennedy

RCA: Plescow

Issue 1: Did BellSouth charge the Customers in accordance with its tariff when assigning special construction costs for a facilities rearrangement at the residence of Karl Amsler and Sonny Stewart?

Recommendation: Yes. BellSouth in accordance with its tariff charged Karl Amsler and Sonny Stewart for special construction costs for a facilities rearrangement.

Issue 2: Did BellSouth complete all of the work as charged for the facilities rearrangement?

Recommendation: No. BellSouth failed to remove the old anchor from the Customer's property. BellSouth should either remove the old anchor from the property or refund the Customers in the amount of \$174.51.

Issue 3: 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 interest 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. Staff recommends that BellSouth files within 30 days from date of issuance of consummating order, proof of removal of facilities or refund of \$174.51. After proof has been submitted, this docket should be closed administratively.

DECISION: The recommendations were approved. Additionally, staff was directed to review the requirements, if any, of what constraints should be in place for making an estimate.

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

ITEM NO.

CASE

6

Docket No. 060083-TP – Complaint of Northeast Florida Telephone Company d/b/a NEFCOM against Southeastern Services, Inc. for alleged failure to pay intrastate access charges pursuant to NEFCOM's tariffs, and for alleged violation of Section 364.16(3)(a), F.S.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Tew

Staff: GCL: Fordham, Fudge

CMP: Lee, Dowds, King

(Oral argument not requested - participation at the discretion of the Commission.)

Issue 1: Should SSI's Motion to Dismiss, or alternative request for abatement of these proceedings, be granted?

Recommendation: No. Staff believes that the Commission has jurisdiction to act and address all of the issues in this case, and that the Amended Complaint is legally sufficient. Accepting all allegations in the Amended Complaint as facially correct, staff recommends that the Amended Complaint does state a cause of action for which relief can be granted. Accordingly, staff recommends that the Motion to Dismiss be denied. Staff also recommends against abating the proceedings in this Docket pending the outcome of any referenced FCC proceedings. The Florida Public Service Commission is under order of the Circuit Court of Baker County in Docket No. 060296-TP to address these issues. For that reason also, this Docket may not be abated.

Issue 2: Should Docket No. 060296-TP be consolidated with this Docket for resolution with a single hearing?

Recommendation: Yes. The parties are the same in both dockets and the ultimate issues to be determined are the same. In the interest of Judicial economy and elimination of redundancy the two dockets should be consolidated.

Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending resolution of the issues therein.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

7**

Docket No. 010977-TL – State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Brown, Bulecza-Banks, Casey, Fogleman

GCL: Wiggins

Issue 1: Should the Florida Public Service Commission (FPSC or Commission) certify to the FCC and to USAC that for the year 2007, ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., Indiantown Telecommunications Systems, Inc., Northeast Florida Telephone Company, TDS Telecom, and Smart City Telecom will only use the federal high-cost support they receive for the provision, maintenance and upgrading of facilities and services for which the support is intended?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open in order to address future certification of rural telephone companies.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

8**PAA

Docket No. 060364-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, FAC, due to asset purchase agreement, whereby TTUSA Acquisition, Inc. will acquire assets of YesTel, Inc., including, but not limited to, YesTel's customer accounts in the State of Florida.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Tan

Issue 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from YesTel, Inc. to TTUSA Acquisition, Inc.?

Recommendation: Yes. The Commission should approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from YesTel, Inc. to TTUSA Acquisition, Inc.

Issue 2: Should this docket be closed?

Recommendation: The Order issued in the recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interest 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. If the Commission's Order is not protested this docket should be closed administratively upon issuance of the Consummating Order.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

9**PAA

Docket No. 060373-TI – Compliance investigation of Mercury Telco Group, Inc. for apparent violation of Rule 25-24.475, F.A.C., Company Operations and Customer Relations.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Buys

GCL: Tan

Issue 1: Should the Commission impose a penalty upon Mercury Telco Group, Inc. in the amount of \$10,000 per apparent violation, for a total of \$80,000, for eight apparent violations of Rule 25-24.475(5), Florida Administrative Code, Company Operations and Customer Relations?

Recommendation: Yes. The Commission should impose a penalty upon Mercury Telco Group, Inc. in the amount of \$80,000 for its apparent failure to respond to Commission inquiries regarding eight customer complaints in apparent violation of Rule 25-24.475(5), Florida Administrative Code, Company Operations and Customer Relations.

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 Mercury Telco Group, Inc. fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If Mercury fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order, the company's tariff should be cancelled administratively and its name removed from the register. If the company's tariff is cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing intrastate interexchange telephone service in Florida. This docket should be closed administratively either upon receipt of the payment of the penalty, or upon cancellation of the company's tariff and removal from the register.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

10**

Docket No. 050965-TX – Compliance investigation of Benchmark Communications, LLC d/b/a Com One 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: Watts, Ollila

GCL: Tan, Wiggins

Issue 1: Should the Commission accept Benchmark Communications, LLC d/b/a Com One's proposal that the Commission vacate Proposed Agency Action Order No. PSC-06-0229-PAA-TX as it pertains to Benchmark Communications, LLC only, or in the alternative its settlement offer to voluntarily contribute \$500 to the Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes?

Recommendation: No. The Commission should not accept the company's proposal to vacate PAA Order No. PSC-06-0229-PAA-TX as it pertains to Benchmark only, or its settlement offer of \$500.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1 then this matter should be set for an administrative hearing and the docket should remain open pending further action. If the Commission accepts Benchmark's proposal to vacate PAA Order No. PSC-06-0229-PAA-TX or its settlement offer, the Order resulting from this recommendation should be final and the docket closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

11**

Docket No. 060342-EI – Petition for approval of revision to Sebring Rider, Rate Schedule SR-1, by Progress Energy Florida, Inc.

Critical Date(s): 6/11/06 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Baxter

GCL: Brown

Issue 1: Should Progress Energy Florida, Inc.'s petition for approval of revisions to its Sebring Rider (SR-1) tariff be suspended?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: No.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

12**PAA

Docket No. 060048-EG – Petition for approval of modifications to demand-side management programs by Progress Energy Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: ECR: Colson, Sickel

GCL: Brown

Issue 1: Should the Commission approve Progress Energy Florida Inc.'s (PEF) Petition for Modifications to Certain Demand Side Management (DSM) Programs, including recovery of reasonable and prudent costs for these programs through the energy conservation cost recovery (ECCR) clause?

Recommendation: Yes. The proposed modifications will provide new program participation standards to address the increased heating, ventilation, and air conditioning (HVAC) efficiency requirements that have been enacted. The modifications will also increase incentives for certain conservation measures in order to increase participation levels and clarify customer eligibility for certain measures.

Issue 2: Should this docket be closed.

Recommendation: Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance or the Commissioner's PAA 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

13**PAA

Docket No. 060286-EG – Petition for approval of revisions to residential and commercial/industrial heating, ventilating, and air conditioning programs by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Sickel

GCL: Fleming

Issue 1: Should the Commission approve FPL's proposed modifications to its Residential and Commercial/Industrial Heating, Ventilating and Air Conditioning Programs?

Recommendation: Yes. The modified programs meet the objectives of Rule 25-17.001, Florida Administrative Code, Florida Energy Efficiency and Conservation Act (FEECA), and Sections 366.80–366.85 and 403.519, Florida Statutes. They will continue to be cost effective, monitorable, and meet or exceed the Company's approved numeric conservation goals. Within 60 days of an order approving the requested program modifications, FPL should file detailed program standards for both the residential and commercial programs, to be administratively approved by staff.

Issue 2: Should this docket be closed?

Recommendation: 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 the issuance of a consummating order.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

14**

Docket No. 060169-SU – Application for transfer of non-jurisdictional Laurel Oaks Wastewater System in Lee County from The Laurel Oaks Property Owners Association, Inc. to Forest Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: ECR: Johnson, Walden

GCL: Fleming

Issue 1: Should the transfer of the non-jurisdictional Laurel Oaks wastewater system from the Laurel Oaks Property Owners Association, Inc. in Lee County to Forest Utilities, Inc. and amendment of Forest's service territory be approved?

Recommendation: Yes. The transfer of the Laurel Oaks wastewater system to Forest is in the public interest and should be approved effective the date of the Commission's vote. The rates and charges approved for Forest should be continued until authorized to change by the Commission in a subsequent proceeding. Certificate No. 300-S should be amended to include the territory described in Attachment A of staff's May 25, 2006 memorandum.

Issue 2: Should this docket be closed?

Recommendation: Yes. Because no further action is necessary, this docket should be closed.

DECISION: The recommendations were approved.

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

ITEM NO. **CASE**

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

Critical Date(s): None

Commissioners Assigned: Deason, Arriaga, Carter
Prehearing Officer: Deason

Staff: ECR: Brady, Rieger
GCL: Fleming

PAA **Issue 1:** What are the appropriate initial rates and charges and return on investment for Ocala Springs Utilities Inc.?

Recommendation: The rates and charges as discussed in staff’s analysis should be approved. The utility should be required to charge its approved rates and charges until authorized to change them by this Commission in a subsequent proceeding. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date. A return on equity of 11.78% plus or minus 100 basis points should also be approved. Within 180 days of the date of a Consummating Order, the utility should be required to provide an executed and recorded warranty deed in the name of the utility for the land upon which the utility facilities are intended to be constructed.

PAA **Issue 2:** What are the appropriate service availability policy and charges for Ocala Springs Utilities Inc.?

Recommendation: The utility’s proposed service availability policy and charges set forth within the staff analysis are reasonable and should be approved effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code.

Issue 3: Should this docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action on initial rates and charges, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of an executed and recorded warranty deed in the name of the utility. Upon receipt and confirmation of proof of ownership, the docket should be administratively closed.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Arriaga, Carter

