

MINUTES OF March 27, 2007
COMMISSION CONFERENCE
COMMENCED: 9:45 a.m.
ADJOURNED: 11:45 a.m.

COMMISSIONERS PARTICIPATING: Chairman Edgar
Commissioner Carter
Commissioner McMurrian

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

1 **Approval of Minutes**
February 13, 2007, Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

2**

Consent Agenda

PAA

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
070089-TX	TYBE COMMUNICATIONS INC.
070103-TX	Security Advisors, Inc. d/b/a SecureCOMM
070110-TX	Bandwidth.com CLEC, LLC
070115-TX	DukeNet Communications, LLC
070120-TX	American Telephone Company LLC

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, Carter, McMurrian

ITEM NO.

CASE

3**PAA

Docket No. 060726-WS – Application for certificates to provide water and wastewater service in Glades County and water service in Highlands County by Silver Lake Utilities, Inc.

Critical Date(s): 03/29/07 (90-day rule waiver statutory deadline)

Commissioners Assigned: All Commissioners

Prehearing Officer: Pending

Staff: GCL: Gervasi

ECR: Brady, Redemann

Issue 1: Should Silver Lake Utilities, Inc.'s Motion for Rule Variance from the strict requirements of Rule 25-30.033(1)(l), F.A.C., be granted?

Recommendation: Yes. The Motion for Rule Variance should be granted. The utility should be required to provide a website reference where a full legal description can be found.

Issue 2: Should this docket be closed?

Recommendation: No. If no timely protest is received from a substantially affected person within 21 days of the date of the Proposed Agency Action Order, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open, pending Commission action on Silver Lake's application for original water and wastewater certificates.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

4

Docket No. 070052-EI – Petition by Progress Energy Florida, Inc. to recovery costs of Crystal River Unit 3 uprate through fuel clause.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: GCL: Bennett, Young

ECR: Lester, McNulty

Issue 1: Should the Commission grant the Motion to Abate PEF’s request for authority to recover costs of the CR3 expansion through the fuel cost recovery clause?

Recommendation: No. The Commission should deny OPC’s Motion to Abate the proceeding. Instead, the Commission should treat the motion as a motion to stay the proceeding and exercise its discretion to postpone the determination of the cost recovery request until after the Siting Board has certified CR3.

DECISION: OPC’s motion to abate and staff’s recommendation to stay the proceeding are denied. Staff are directed to conduct a hearing in the near future.

Issue 2: Should this docket be closed?

Recommendation: This docket should remain open pending a decision of the Electrical Power Plant Siting Board on the certification of the expansion of Crystal River 3. If the expansion is certified, the docket should remain open. If the Siting Board does not certify the expansion, this docket should be closed.

DECISION: The recommendation is moot.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

5**PAA

Docket No. 060640-TP – Petition to investigate, claim for damages, complaint, and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation, by Bessie Russ.

Docket No. 070151-TP – Complaint to investigate Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Telecommunications, Inc. on behalf of Michael Russ for improper call blocking as established by Order PSC-07-0207-PCO-TP.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: 060640-TP (McMurrian)
070151-TP (Administrative)

Staff: GCL: Tan
CMP: Beard

Issue 1: Should BellSouth's Partial Motion to Dismiss be granted?

Recommendation: Yes. The Petition/Complaint should be dismissed in part because the Commission does not have judicial power required to (a) adjudicate claims for relief under the Florida Antitrust Act, The Sherman Act, or the Federal Trade Commission Act; (b) issue injunctions or award attorney fees; or (c) handle matters of personal injury claims founded in tort. In addition, the Commission does not have the authority to abrogate a waiver granted by the Federal Communication Commission.

Issue 2: Was Petitioner Bessie Russ' ability to receive incoming collect calls from the confinement facility in Escambia County improperly blocked?

Recommendation: No. Petitioner Bessie Russ' ability to receive incoming collect calls from the confinement facility in Escambia County was not improperly blocked.

Issue 3: Did BellSouth improperly attempt to market its products and services to Petitioner Bessie Russ?

Recommendation: No. BellSouth did not improperly attempt to market its products and services to Petitioner Bessie Russ. BellSouth should acknowledge that the petition as filed indicates that Petitioner Bessie Russ no longer wishes to receive marketing calls to her telephone.

Issue 4: Have the respondents improperly charged Petitioner Bessie Russ higher prices for telephone services?

Recommendation: No. The respondents have not improperly charged higher prices to Petitioner Bessie Russ for telephone services.

Issue 5: Was Complainant Michael Russ' ability to receive incoming calls from the confinement facility in Escambia County improperly blocked?

Recommendation: No. The ability to receive incoming calls from the confinement facility in Escambia County was not improperly blocked.

ITEM NO.

CASE

5**PAA

Docket No. 060640-TP – Petition to investigate, claim for damages, complaint, and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation, by Bessie Russ.

Docket No. 070151-TP – Complaint to investigate Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Telecommunications, Inc. on behalf of Michael Russ for improper call blocking as established by Order PSC-07-0207-PCO-TP.

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Issue 6: 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, these dockets should be closed upon the issuance of a consummating order. A protest in one docket should not prevent the action in a separate docket from being final.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

6**PAA

Docket No. 000121A-TP – Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BELLSOUTH FLORIDA TRACK)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: CMP: Harvey, Hallenstein, Hunter, Simmons

GCL: Teitzman

Issue 1: Should the Commission approve staff's proposed revisions to the BellSouth Performance Assessment Plan presented in Attachment 1 of staff's March 15, 2007, memorandum?

Recommendation: Yes. Staff recommends that BellSouth be ordered to implement the proposed changes to the Performance Assessment Plan as reflected in Attachment 1 of staff's memorandum within 90 days of the Commission's Proposed Agency Action Order if the changes are not protested.

DECISION: The recommendations were approved with stated modification to Page 18, Attachment 1, of staff's March 15, 2007 memorandum.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, the resulting Order will be issued as Proposed Agency Action. The Order will become final upon issuance of a Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. This Docket should remain open thereafter to continue the review process as adopted in the BellSouth Performance Assessment Plan.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

7**

Docket No. 060150-EI – Petition for approval of revisions to contribution-in-aid-of-construction definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company. (Deferred from February 13, 2007, conference; revised recommendation filed.)

Critical Date(s): 05/21/07 (8-month clock)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Draper, Breman, Kummer, Trapp

GCL: Gervasi

Issue 1: Should the Municipal Underground Utilities Consortium's Request for Oral Argument be granted?

Recommendation: No. The Request for Oral Argument should be denied because it does not comport with Rule 25-22.0022, F.A.C. However, interested persons may address the Commission informally on this item at the agenda conference, pursuant to Rule 25-22.0021, F.A.C.

Issue 2: Should the Petition to Intervene of the Municipal Underground Utilities Consortium be granted?

Recommendation: Yes. The Petition to Intervene should be granted and all parties to this proceeding should be required to serve copies of all pleadings, notices, and other documents on the Municipal Underground Utilities Consortium's representatives, as indicated in the Petition. The MUUC's intervention should be limited to issues directly relevant to the proposed tariff that is the subject of this docket.

Issue 3: Should the Commission approve FPL's amended petition for approval of revisions to its tariff to implement a Governmental Adjustment Factor (GAF) for calculation of CIAC?

Primary Staff Recommendation: Yes; however, the GAF and associated tariffs should be effective for only two-and-a-half years from the initial effective date, which is April 4, 2006. At least 60 days prior to the expiration of the GAF and associated tariffs, FPL should be required to file a report with the Commission providing an updated quantification of storm restoration benefits. FPL should also petition the Commission to continue the tariff, modify the tariff, or discontinue the tariff at that time as necessary. (Draper, Kummer)

Alternative Recommendation: The Commission should deny the tariff and require FPL to file tariffs implementing the requirements of Rule 25-6.115, F.A.C.

ITEM NO.

CASE

7**

Docket No. 060150-EI – Petition for approval of revisions to contribution-in-aid-of-construction definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company. (Deferred from February 13, 2007, conference; revised recommendation filed.)

(Continued from previous page)

Issue 4: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed within 21 days of the issuance date of the Order, no further action will be necessary and this docket should be closed upon the issuance of a Consummating Order. However, if a protest is filed by a person whose interests are substantially affected within 21 days of the issuance date of the Order, the docket should remain open pending resolution of the protest.

DECISION: This item was deferred.

ITEM NO.

CASE

8**PAA

Docket No. 060811-EI – Petition for approval of purchased power agreements between Gulf Power Company and Coral Power, L.L.C., and Gulf Power Company and Southern Power Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Pending

Staff: ECR: S. Brown
GCL: M. Brown

Issue 1: Should the Commission approve Gulf Power Company's petition for approval of Purchased Power Contracts with Coral Power, L.L.C. and Southern Power Company?

Recommendation: Yes. Both the Coral Power and Southern Power agreements were negotiated in good faith and are cost-effective. Entering into the agreements could result in projected cost savings of \$7.7 million to Gulf's customers. Both agreements will allow Gulf Power Company the opportunity to provide its customers with reliable electric service from 2009 through 2014.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

9**PAA

Docket No. 070001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: Lester, Matlock, McNulty

GCL: Bennett, Young

Issue 1: What is the appropriate methodology for calculating over and under recoveries of projected fuel cost, pursuant to Commission Order Nos. 13694 and PSC-98-0691-FOF-PU?

Recommendation: To ensure consistency in the electric utilities' interpretation of Commission Order Nos. 13694 and PSC-98-0691-FOF-PU on a prospective basis commencing June 1, 2007, the appropriate method to determine whether actual fuel costs are ten percent greater than or less than projected fuel costs is to divide the estimated End-of-Period Total Net True-up by the current period's total actual and estimated Jurisdictional Fuel Revenue Applicable-to-Period.

The estimated End-of-Period Total Net True-up represents the utilities' best estimate, using the most current projections, of what the actual balance will be on Schedule A2 – Calculation of True-up and Interest Provision, Line C11 of staff's March 15, 2007, memorandum, at the end of the current period less any previous periods' true-ups for which recovery has been deferred, by order, until after the current recovery period. The current period's total actual Jurisdictional Fuel Revenue Applicable-to-Period should be consistent with the amount reported in the Period-to-Date column on Schedule A2, Line C3 of staff's March 15, 2007, memorandum, and the estimated amount of Jurisdictional Fuel Revenue Applicable-to-Period should represent the most current projection of those amounts for future months in the current period.

The above line numbers and amount titles are from the monthly Fuel and Purchased Power Cost Recovery filings, for Fuel and Purchased Power Cost Recovery. The appropriate method to determine whether actual capacity costs are ten percent greater than or less than projected capacity costs is to make a similar percent calculation using up-to-date Capacity Cost Recovery revenue and true-ups.

Issue 2: At what point in time should a utility notify the Commission that an over or under recovery exceeds 10% of the projected fuel costs?

Recommendation: Any time the absolute value of the percentage calculated in Issue 1, for Fuel and Purchased Power Cost Recovery or for Capacity Cost Recovery, is ten percent or greater, the utility should notify the Commission.

ITEM NO.

CASE

9**PAA

Docket No. 070001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

(Continued from previous page)

Issue 3: Should this docket be closed?

Recommendation: If no timely protest is filed by a person whose substantial interests are affected, the Order will become final upon issuance of a Consummating Order. However, this docket is an ongoing docket and it should remain open.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

10

Docket No. 070001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: Lester, McNulty

GCL: Bennett, Young

(Decision on motion for reconsideration - oral argument requested.)

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

Recommendation: No. Oral argument should be denied. Staff believes that the motion is clear on its face. However, if the Commission believes that oral argument would be helpful, it has the discretion to hear from OPC and all parties to the docket. If the Commission decides to hear oral argument, argument should be limited to ten minutes per side.

Issue 2: Should OPC's Motion for Clarification be granted?

Recommendation: Yes. The motion for clarification should be granted. The Commission should clarify that it did not intend to limit the scope of its review of OPC's Issue 16G during the 2007 fuel hearing.

Issue 3: Should OPC's Motion for Reconsideration of Order No. PSC-06-1057-FOF-EI be granted?

Recommendation: No. OPC's Motion for Reconsideration should be denied.

Issue 4: Should this docket be closed?

Recommendation: This docket is an ongoing docket and should remain open.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

11

Docket No. 060368-WS – Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

Critical Date(s): 03/27/07 (60-day interim date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: Fletcher, Daniel, Edwards, Johnson, Kyle, Massoudi, Maurey, Redemann, Rendell, Revell, Rieger, Springer, Walden

GCL: Gervasi, Fleming, Jaeger

Issue 1: Should the utility's proposed final water and wastewater rates be suspended?

Recommendation: Yes. The utility's proposed final water and wastewater rates should be suspended.

DECISION: The recommendation was approved.

Issue 2: Should any interim revenue increase be approved?

Recommendation: Yes. The appropriate interim revenue requirements are as shown in Attachment A of staff's March 15, 2007, memorandum.

DECISION: The recommendation was approved.

Issue 3: What are the appropriate interim water and wastewater rates?

Recommendation: The appropriate interim rates are shown on Schedules No. 4-A and 4-B of staff's March 15, 2007, memorandum for water and wastewater, respectively. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1)(a), F.A.C., provided customers have received notice. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission decision, the proposed customer notice is adequate, and the required security has been filed. The utility should provide proof of the date notice was given within 10 days after the date of notice.

DECISION: The recommendation was approved.

Issue 4: What is the appropriate security to guarantee the interim increase?

ITEM NO.

CASE

11

Docket No. 060368-WS – Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

(Continued from previous page)

Recommendation: A corporate undertaking is acceptable, contingent upon receipt of the written guarantee of the parent company, Aqua America, Inc. (Aqua), and written confirmation of Aqua’s attestation that ~~it does not have any outstanding~~ the amount Aqua guarantees on behalf of Aqua-owned utilities in other states is capped at 40 million. Aqua should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of revenues collected under interim conditions. Aqua’s total guarantee should be an amount of \$2,671,026. Pursuant to Rule 25-30.360(6), F.A.C., the utility should provide a report by the 20th of each month, indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

DECISION: The recommendation was approved with noted modifications.

Issue 5: Should this docket be closed?

Recommendation: No. The docket should remain open pending the Commission’s final action on the utility’s requested rate increase.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

12

Docket No. 060285-SU – Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven. (Deferred from March 13, 2007, conference.)

Critical Date(s): 07/09/07 (5-month statutory date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: Fletcher, Springer, Rendell

GCL: Brown

Issue 1: Should the utility's proposed wastewater system capacity charge of \$2,627.75 per equivalent residential connection and \$13.83 per gallon for all others be approved on a temporary basis?

Recommendation: Yes. The utility's proposed wastewater system capacity charges of \$2,627.75 per equivalent residential connection and \$13.83 per gallon for all others should be approved on a temporary basis, subject to refund, for connections made after the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code.

Issue 2: If the temporary charges are approved, what is the appropriate security to guarantee the temporary increase?

Recommendation: A corporate undertaking is acceptable, contingent upon receipt of the written guarantee of the parent company, Utilities, Inc. (UI), and written confirmation of UI's continued attestation that it does not have any outstanding guarantees on behalf of UI-owned utilities in other states. UI should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of monies collected under temporary conditions. UI's total guarantee should be a cumulative amount of \$1,216,970, which includes an amount of \$124,497, subject to refund in this docket. Pursuant to Rule 25-30.360(6), F.A.C., the utility should provide a report by the 20th of each month, indicating the monthly and total amount collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending the Commission's final action on the utility's requested rate increase.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian

ITEM NO.

CASE

13**

Docket No. 060806-WU – Application for amendment of Certificate No. 347-W to add territory in Marion County by Marion Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Pending

Staff: ECR: Walden

GCL: Jaeger

Issue 1: Should the Commission acknowledge withdrawal of the application and refund the filing fee?

Recommendation: Yes. The Commission should acknowledge withdrawal of the application and refund the \$100 filing fee paid by Marion Utilities, Inc.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed because no further action is required.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian