

MINUTES OF May 19, 2009

COMMISSION CONFERENCE

COMMENCED: 9:44 am
RECESSED: 11:35 am
RECONVENED: 12:00 noon
RECESSED: 12:02 pm
RECONVENED: 1:16 pm
RECESSED: 2:38 pm
RECONVENED: 2:56 pm
ADJOURNED: 4:13 pm

COMMISSIONERS PARTICIPATING: Chairman Carter (via telephone)
Commissioner Edgar
Commissioner McMurrian (via telephone)
Commissioner Argenziano
Commissioner Skop

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

1

Approval of Minutes

April 7, 2009 Regular Commission Conference
April 21, 2009 Regular Commission Conference

DECISION: The minutes were approved.

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

ITEM NO.

CASE

2**PAA

Docket No. 080724-EU – Joint petition for approval of territorial agreement in Marion County by Ocala Electric Utility and Progress Energy Florida, Inc.

Critical Date(s):	None
Commissioners Assigned:	All Commissioners
Prehearing Officer:	McMurrian
Staff:	GCL: Bennett ECR: Redemann, Rieger, Simpson

Issue 1: Should the Commission approve the proposed territorial agreement between Ocala Electric Utility and Progress Energy Florida, Inc.?

Recommendation: Yes. The proposed territorial agreement between Ocala Electric Utility and Progress Energy Florida, Inc. is in the public interest and should be approved. The effective date of the agreement should be the date the Commission’s order approving the agreement becomes final and is no longer subject to judicial review.

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: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

3

Docket No. 090135-TP – Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast for anticompetitive behavior in violation of Sections 364.01(4), 364.10(1), and 364.3381, F.S., violating terms of interconnection agreement, and engaging in cramming in violation of Sections 354.604(2), 364.10(1), F.S., and Rule 25-4.110(18), F.A.C., by Cbeyond Communications, LLC.

Critical Date(s):	None
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Administrative
Staff:	GCL: Murphy RCP: Bloom, King

(Oral Argument Not Requested)

Issue 1: Should AT&T’s Partial Motion to Dismiss be granted?

Recommendation: No. AT&T’s Partial Motion to Dismiss should be denied.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to address the Cbeyond Complaint against AT&T.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

4**PAA

Docket No. 090158-TC – Request for cancellation of PATS Certificate No. 2429 by Astro Skate Pinellas Park, LLC, effective March 24, 2009.

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

Issue 1: Should the Commission deny Astro Skate Pinellas Park, LLC, a voluntary cancellation of pay telephone service (PATS) Certificate No. 2429 and cancel the certificate on the Commission’s own motion with an effective date of March 24, 2009?

Recommendation: Yes, the company should be denied a voluntary cancellation as listed on Attachment A of staff’s memorandum dated May 7, 2009.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that 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 the company 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 the company pays the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company’s PATS certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fees prior to the expiration of the Proposed Agency Action Order, then the company’s PATS certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company’s PATS certificate is cancelled in accordance with the Commission’s Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees or upon cancellation of the company’s PATS certificate.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

5**PAA

Docket No. 090108-EI – Request for approval of change in rate used to capitalize allowance for funds used during construction (AFUDC) from 7.65% to 7.41%, effective January 1, 2009, by Florida Power & Light Company.

Critical Date(s):	None
Commissioners Assigned:	All Commissioners
Prehearing Officer:	McMurrian
Staff:	ECR: Slemkewicz, Livingston, Springer GCL: Brown

Issue 1: Should the Commission approve FPL’s request to decrease its AFUDC rate from 7.65 percent to 7.41 percent?

Recommendation: Yes. The appropriate AFUDC rate for FPL is 7.41 percent based on a 13-month average capital structure for the period ending December 31, 2008.

Issue 2: What is the appropriate monthly compounding rate to achieve the requested 7.41 percent annual rate?

Recommendation: The appropriate monthly compounding rate to maintain an annual rate of 7.41 percent is 0.597470 percent.

Issue 3: Should the Commission approve FPL’s requested effective date of January 1, 2009, for implementing the revised AFUDC rate?

Recommendation: Yes. The revised AFUDC rate should be effective as of January 1, 2009, for all purposes except for Rule 25-6.0423, F.A.C., Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery. For the purposes of Rule 25-6.0423, F.A.C., 7.42 percent is the appropriate AFUDC rate to be utilized for computing carrying costs for power plant need petitions submitted on or before December 31, 2010.

Issue 4: 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: Carter, Edgar, McMurrian, Argenziano, Skop

ITEM NO.

CASE

6**

Docket No. 080712-SU – Application for approval of new class of service for reuse water service in Martin County by Indiantown Company, Inc.

Critical Date(s):	08/17/09 (8-Month Effective Date)
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Administrative
Staff:	ECR: Mouring, Bulecza-Banks, Fletcher GCL: Williams

Issue 1: Should Indiantown’s proposed tariff sheets to establish a reuse water rate be approved as filed?

Recommendation: Yes. Indiantown’s proposed tariff sheets to establish a reuse water rate should be approved as filed. Indiantown should file a proposed notice to reflect the Commission’s decision for staff’s approval. The approved tariffs should be effective for services rendered on or after the stamped approval date provided the Utility has issued notices to all persons who have filed a written request for reuse water service or who have been provided a written estimate for reuse water service within the 12 calendar months prior to the month Indiantown filed its petition.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose interests are substantially affected within 21 days of the issuance of the Order, the Tariff Order will become final upon the issuance of a Consummating Order and the docket should be closed. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect pending the resolution of the protest, and the docket should remain open.

DECISION: The recommendations were approved as modified at the Commission Conference.

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

ITEM NO.

CASE

6A**

Docket No. 010503-WU – Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Critical Date(s):	None	
Commissioners Assigned:	All Commissioners	
Prehearing Officer:	Edgar	
Staff:	ECR: Fletcher, Willis GCL: Brubaker, Jaeger	

Issue 1: Should the Commission order Aloha Utilities, Inc. to transfer the escrowed interim funds from Regions Bank to the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management?

Recommendation: Yes. The Commission should order Aloha, in cooperation with staff, to move the escrowed funds from Regions Bank to an escrow account with the Florida Department of Financial Services, Division of Treasury, Bureau of Collateral Management, consistent with the terms and conditions contemplated by Order No. PSC-01-2199-FOF-WU, by which the escrow account was originally established. If the Commission approves staff’s recommendation and Aloha does not comport with the resulting Commission’s order by May 26, 2009, staff recommends that it be authorized to seek enforcement of the Commission’s order in a court of competent jurisdiction. Staff also recommends that the Commission approve the specific findings discussed in the analysis portion of staff’s memorandum dated May 12, 2009, in anticipation that enforcement of the Commission’s order may become necessary.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending final disposition of all pending matters in the docket.

DECISION: The recommendations were approved as modified at the Commission Conference. Staff was directed to work with Aloha and provide them with the new BCM escrow account number so that the interim funds can be deposited in this account.

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

ITEM NO.

CASE

7**

Docket No. 090164-EI – Petition for approval of revised tariff sheets for underground residential distribution service, by Tampa Electric Company.

Critical Date(s):	06/01/09 (60-Day Suspension Date)
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Administrative
Staff:	ECR: Piper, Draper, Kummer GCL: Sayler

Issue 1: Should the Commission suspend TECO's proposed Tariff Sheet Nos. 5.510, 5.515, and 5.516 regarding conversion of and construction of underground residential facilities?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission vote on the proposed tariff revision.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

8**

Docket No. 090173-EI – Request to revise underground residential differential rates by Gulf Power Company.

Critical Date(s):	06/01/09 (60-Day Suspension Date)
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Administrative
Staff:	ECR: Roberts, Draper, Kummer GCL: Jaeger

Issue 1: Should the Commission suspend Gulf's proposed tariff sheets Nos. 4.25, 4.26, 4.26.1, and 4.26.2 regarding construction of underground residential facilities?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission's final decision on the proposed tariff revision.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

9

Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

Critical Date(s):	05/19/09 (60-Day Suspension Date)
Commissioners Assigned:	All Commissioners
Prehearing Officer:	Skop
Staff:	ECR: Slemkewicz, Maurey, Draper GCL: Fleming, Klancke, Saylor, Young

(Decision on Interim Rates - Participation is at the discretion of the Commission)

Issue 1: Should the \$499,997,000 million permanent base rate increase and its associated tariff revisions requested by Progress Energy Florida, Inc. be suspended pending a final decision in this docket?

Recommendation: Yes. The \$499,997,000 permanent base rate increase and its associated tariff revisions requested by Progress Energy Florida, Inc. should be suspended pending a final decision in this docket.

Issue 2: Does the Stipulation approved by Order No. PSC-05-0945-S-EI, allow PEF to request an interim rate increase?

Recommendation: Yes. Staff believes that the Stipulation contemplates PEF's request for an interim rate increase and that such a request is not prohibited by the Stipulation.

Issue 3: Has PEF established a prima facie entitlement for interim relief, pursuant to Section 366.071(1), F.S.?

Recommendation: Yes. Staff believes that the 10 percent threshold adopted by the parties in the Stipulation represents a level below which rates are no longer fair, just, and reasonable, thereby entitling PEF to petition the Commission to amend its base rates. PEF has presented prefiled testimony and documentation supporting that it is earning below the 10 percent threshold. Accordingly, staff recommends that PEF has established a prima facie entitlement for interim relief and is entitled to the proposed interim increase, pursuant to Section 366.071, F.S., as discussed in Issue 4 & 8.

Issue 4: Is Progress Energy Florida, Inc.'s proposed 2008 interim test year rate base of \$5,098,765,000 appropriate?

Recommendation: Yes. The appropriate 2008 interim test year rate base for PEF is \$5,098,765,000.

Issue 5: Are Progress Energy Florida, Inc.'s proposed return on equity of 10.00 percent and its overall cost of capital of 7.84 percent reasonable for the purpose of determining interim rates?

Recommendation: Yes. PEF's proposed return on equity of 10.00 percent and overall cost of capital of 7.84 percent are reasonable for purposes of determining interim rates.

Issue 6: Is Progress Energy Florida, Inc.'s proposed 2008 interim test year net operating income of \$391,486,000 appropriate?

Recommendation: Yes. The appropriate 2008 interim test year net operating income for PEF is \$391,486,000.

ITEM NO.

CASE

9

Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

(Continued from previous page)

Issue 7: Is Progress Energy Florida, Inc.'s proposed interim net operating income multiplier of 1.6343 appropriate?

Recommendation: Yes. PEF's proposed interim net operating income multiplier of 1.6343 is appropriate.

Issue 8: Should Progress Energy Florida, Inc.'s requested interim revenue increase of \$13,078,000 be granted?

Recommendation: If it is determined that interim relief should be granted to PEF in this case, the appropriate interim revenue increase for PEF should be \$13,078,000.

Issue 9: Should Progress Energy Florida, Inc.'s requested percentage increase factor of 1.70 percent be approved?

Recommendation: No. If it is determined that relief should be granted to PEF in this case, the appropriate percentage increase factor is 0.91 percent. If approved, PEF should file revised tariff sheets reflecting the 0.91 percent increase factor.

Issue 10: How should the interim revenue increase for Progress Energy Florida, Inc. be distributed among the rate classes?

Recommendation: The percentage increase factor approved in Issue 9 should be applied uniformly to all existing base rates and charges to derive the interim base rates and charges, as required by Rule 25-6.0435, F.A.C. The interim rates should go into effect with the first billing cycle in July 2009. The Company should give notice to customers of the interim increase commencing with the June 2009 bills to coincide with the notice staff is recommending PEF provide for the Bartow Repowering project in Docket No. 090144-EI.

Issue 11: What is the appropriate security to guarantee the amount collected subject to refund?

Recommendation: The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking.

Issue 12: Should this docket be closed?

Recommendation: No. This docket should remain pending the Commission's final resolution of the Company's requested rate increase.

DECISION: The recommendations were approved with an oral modification to Issue 3. Commissioner Argenziano dissented on Issues 2 – 11.

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

ITEM NO.

CASE

10**

Docket No. 090144-EI – Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

Critical Date(s): 05/19/09 (60-Day Suspension Date)

Commissioners Assigned: All Commissioners

Prehearing Officer: McMurrian

Staff: ECR: Slemkewicz, Maurey, Draper

GCL: Fleming, Klancke, Saylor, Young

SGA: Ellis

Issue 1: Does the stipulation approved by Order No. PSC-05-0945-S-EI allow PEF to request a limited proceeding to implement a base rate increase?

Recommendation: Yes. Staff believes that the Stipulation clearly contemplates PEF's request for a limited proceeding for the Bartow Repowering Project and that such a proceeding is not prohibited by the Stipulation. Moreover, staff believes that by filing the revised tariff sheet with its petition, PEF has triggered the application of the "file and suspend" provisions of Section 366.06, F.S.

Issue 2: Is PEF's calculation of the \$126,212,000 annual base rate increase and the 9.12 percent increase factor to recover the revenue requirements associated with the Bartow Repowering Project reasonable?

Recommendation: Yes. Staff recommends that the \$126,212,000 annual base rate increase and 9.12 percent increase factor for the Bartow Repowering Project are reasonable for the purposes of this limited proceeding.

Issue 3: Should the \$126,212,000 annual base rate increase to recover the revenue requirements associated with the Bartow Repowering Project be held subject to refund?

Recommendation: Yes. The \$126,212,000 annual base rate increase should be held subject to refund pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI.

Issue 4: Should the Commission approve PEF's revised tariff sheets?

Recommendation: The tariff sheets as filed reflect both the Project increase and the interim increase requested in Docket No. 090079-EI. If the Commission denies or modifies the interim increase request, PEF should file revised tariff sheets reflecting the Commission's decision in Docket No. 090079-EI, and the Project increase approved in this docket. The appropriate tariff sheets reflecting the Project increase should be approved and the resulting increase in revenues held subject to refund pending the outcome of the hearing in Docket No. 090079-EI. If the Commission denies the Project increase, this issue is moot.

ITEM NO.

CASE

10**

Docket No. 090144-EI – Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

(Continued from previous page)

Issue 5: What is the appropriate effective date for implementing the \$126,212,000 annual base rate increase?

Recommendation: If the Commission approves PEF's request to increase base rates by \$126,212,000 annually, the effective date for implementing the base rate increase is the first billing cycle in July 2009. Starting with the first billing cycle in June 2009, PEF should include bill inserts to notify its customers of the base rate increase. If the commercial operation of the Bartow Repowering Project is delayed from the projected June 1, 2009, date, the effective date should be moved to the first billing cycle 30 days following the commercial operation in-service date.

Issue 6: What is the appropriate security to guarantee the amount collected subject to refund?

Recommendation: The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking.

Issue 7: Should this docket be closed?

Recommendation: ~~Yes. No. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending review in the base rate proceeding in Docket No. 09..79-EI, resolution of the protest. Furthermore Staff also recommends that if the order is protested, this docket should be consolidated with Docket No. 090079-EI, PEF's ~~rate~~ base rate proceeding, in the interest of administrative efficiency, and given the congruence between the issues and parties in the two dockets. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.~~

DECISION: The recommendations were approved with oral modification noted above. Commissioner Argenziano dissented on Issues 1, 2, 4 and 5.

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

ITEM NO.

CASE

11 **Docket No. 080318-GU** – Petition for rate increase by Peoples Gas System.

Critical Date(s): 8-Month Effective Date Waived through 05/19/09

Commissioners Assigned: All Commissioners
Prehearing Officer: Skop

Staff: ECR: Draper
 GCL: Klancke, Brubaker, Fleming

(Post Hearing Decision - Participation is Limited to Commissioners and Staff)

Issue 49: What are the appropriate customer charges?

Recommendation: The appropriate customer charges are shown in Schedule 6 of staff's memorandum dated May 7, 2009. Staff requests that the Commission grant staff the authority to administratively approve the tariffs filed to implement all Commission-approved rates and charges in this docket.

Issue 50: What are the appropriate per therm distribution charges?

Recommendation: The appropriate per therm distribution charges are shown in Schedule 6 of staff's memorandum dated May 7, 2009.

Revised Issue 54: Should the Commission approve PGS's proposed "Gas System Reliability Rider," which would permit recovery of revenue requirements associated with eligible infrastructure system replacements (e.g., replacements for existing facilities, relining projects to extend the useful life of existing facilities, road relocation projects) and incremental O&M expenses, if any, incurred to comply with mandatory pipeline safety regulations? If approved as proposed by PGS, such recovery would continue until the effective date of revised base rates established in the Company's next base rate proceeding. The rider would also provide for the refund of O&M expenses, if any, incurred to comply with mandatory pipeline safety regulations, in excess of such expenses included in the Company's most recent base rate proceeding.

Recommendation: Yes, provided that PGS only be allowed to recover actual costs after they have been incurred. PGS should file a petition annually to establish per therm factors for each rate schedule to recover its actual and verifiable relocation and pipeline integrity costs in excess of what is recovered through base rates.

Issue 59: Should this docket be closed?

Approved Stipulation: Yes, this docket should be closed after the Commission has issued its final order and the time for filing an appeal has expired.

DECISION: The recommendations were approved with the exception of Issue 54. Staff's revised recommendation for Issue 54 was denied and the "Gas System Reliability Rider" was not approved.

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

