

MINUTES OF APRIL 6, 2004
COMMISSION CONFERENCE
COMMENCED: 9:40 a.m.
ADJOURNED: 10:25 a.m.

COMMISSIONERS PARTICIPATING: Chairman Baez
Commissioner Deason
Commissioner Jaber
Commissioner Bradley
Commissioner Davidson

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

1Docket No. 030970-EI - Proposed amendment of Rules 25-6.014, F.A.C., Records and Reports in General; 25-6.015, F.A.C., Location and Preservation of Records; 25-6.135, F.A.C., Annual Reports; and 25-6.1351, F.A.C., Cost Allocation and Affiliate Transactions.

Critical Date(s): None

Rule Status: Adoption

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: GCL: Cibula
ECR: Hewitt, Slemkewicz

Issue 1: Should the Commission adopt changes to proposed Rule 25-6.015, F.A.C., Location and Preservation of Records, to address JAPC staff's comments?

Recommendation: Yes. The Commission should adopt proposed Rule 25-6.015 with changes, as set forth in Attachment A of staff's March 25, 2004 memorandum.

Issue 2: Should the rule be filed for adoption with the Secretary of State and the docket closed?

Recommendation: Yes. A Notice of Change should be published in the Florida Administrative Weekly. After the Notice of Change is published, the rule may be filed for adoption with the Secretary of State and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley, Davidson

ITEM NO.

CASE

2**Docket No. 030643-TP - Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida for review of decision by The American Arbitration Association, in accordance with Attachment 1 Section 11.2(a) of interconnection agreement between GTE Florida Inc. and TCG South Florida. (Deferred from March 16, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Davidson

Staff: GCL: Banks, Susac
CMP: Pruitt

Issue 1: Should Verizon Florida Inc.'s request for oral argument be granted?

Recommendation: Yes. Staff recommends that Verizon Florida Inc.'s request for oral argument be granted. If the Commission grants oral argument, staff recommends that each party be allowed ten minutes to present oral argument.

Issue 2: Did Verizon timely file its appeal of the American Arbitration Association's award according to the parties' interconnection agreement?

Recommendation: Yes. Staff recommends that Verizon's filing of its appeal of the AAA order should be considered timely.

Issue 3: Should TCG's Motion to Dismiss be granted?

Recommendation: No. TCG's Motion to Dismiss should be denied. As a general matter, the Commission has jurisdiction to resolve disputes arising under an approved interconnection agreement unless its role is restricted by a binding dispute resolution provision in the agreement. The agreement in this case expressly provides that an arbitrator's decision resolving an interconnection agreement dispute shall not be final if (1) a party appeals the decision to the Commission, (2) the matter is within the jurisdiction of the Commission, and (3) the agency agrees to hear the matter. The first two prongs of this provision are met, so it is not appropriate to dismiss for lack of jurisdiction.

The Motion and Response do not, however, provide sufficient information for staff to recommend whether the Commission should exercise its discretion to "agree" to hear an appeal under the third prong. Therefore, staff recommends that within 20 days of the issuance of the Order, Verizon should submit a memorandum that (a) identifies the specific factual, legal and policy issues for which review is sought, (b) addresses the reasons that the Commission should agree to review the arbitrator's decision on each issue identified, (c) specifies the type of proceeding that should be held on each issue (e.g., a de novo evidentiary hearing or appellate review based on the record in the arbitration proceeding) and (d) identifies the applicable standard of review for each issue.

Agenda for
Commission Conference
April 6, 2004

ITEM NO.

CASE

2**

Docket No. 030643-TP - Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida for review of decision by The American Arbitration Association, in accordance with Attachment 1 Section 11.2(a) of interconnection agreement between GTE Florida Inc. and TCG South Florida. (Deferred from March 16, 2004 conference.)

(Continued from previous page)

TCG should then be given 20 days to respond. Staff would subsequently file a recommendation on whether, and under what procedures, the Commission should agree to hear the appeal.

Issue 4: Should this docket be closed?

Recommendation: If the Commission denies staff's recommendation in Issue 3, this docket shall be closed as no further Commission action is required. If, however, the Commission approves staff's recommendation in Issue 3, this docket should remain open pending the resolution of the issues in the docket.

DECISION: This item was deferred.

ITEM NO.

CASE

2A**Docket No. 031125-TP - Complaint against BellSouth Telecommunications, Inc. for alleged overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC. (Deferred from March 30, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: GCL: Christensen

CMP: Barrett

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Partial Motion to Dismiss?

Recommendation: Staff recommends that BellSouth's Partial Motion to Dismiss IDS's Amended Complaint be granted. Specifically, staff recommends that Count Three (seeking relief for alleged violation of the Settlement Agreement) and Count Five (seeking relief for alleged violation of the Telecommunications Act of 1996) be dismissed for lack of subject matter jurisdiction.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending further proceedings.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley, Davidson

Agenda for
Commission Conference
April 6, 2004

ITEM NO.

CASE

3**PAADocket No. 040211-TP - Bankruptcy cancellation by Florida Public Service Commission of AAV Certificate No. 7612 and CLEC Certificate No. 7611 issued to Enron Telecommunications, Inc., effective 3/4/04.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: Rockette-Gray, Teitzman

Issue 1: Should the Commission grant Enron Telecommunications, Inc. cancellation of its Alternative Access Vendor and Competitive Local Exchange Company certificates with an effective date of March 4, 2004, due to bankruptcy; notify the Division of the Commission Clerk and Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write off the uncollectible amounts; and require the company to immediately cease and desist providing alternative access vendor and competitive local exchange service in Florida?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest is filed and upon issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley, Davidson

ITEM NO.

CASE

4**PAADocket No. 031135-EI - Petition for approval to implement consolidated fuel adjustment surcharge by Florida Public Utilities Company.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: ECR: Bohrmann, Draper, Matlock, Lingo

GCL: Brubaker

Issue 1: Should the Commission approve Florida Public Utilities Company's (FPUC) petition to implement a consolidated fuel adjustment surcharge?

Recommendation: No. The Commission should deny Florida Public Utilities Company's petition to implement a consolidated fuel adjustment surcharge. FPUC's proposal results in significant cost shifting with minimal benefits. Also, FPUC Northeast division's ratepayers oppose FPUC consolidating its rates and charges.

Issue 2: What is the appropriate regulatory treatment for the true-up balances that exist for FPUC's Northeast and Northwest divisions on the day prior to the effective date of a consolidated fuel cost recovery factor?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this issue is moot and no decision is necessary. If the Commission decides in Issue 1 to consolidate the fuel rates for FPUC's two divisions, FPUC should continue to refund 0.38363¢ per kilowatt-hour (kwh) to its Northeast (Fernandina Beach) division ratepayers and collect 0.11373¢ per kilowatt-hour from its Northwest (Marianna) division ratepayers for the remainder of 2004 as directed by Order No.

PSC-03-1461-FOF-EI. In addition, FPUC should refund (collect) any over- (under-) recovery balance accrued from July 2003, through the day prior to the effective date of the consolidated fuel cost recovery factor on an energy basis during calendar year 2005.

Issue 3: If the Commission approves FPUC's petition, in whole or in part, to consolidate its two divisions' fuel cost recovery factors, what should be the effective date of the consolidation?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this issue is moot and no decision is necessary. If the Commission decides in Issue 1 to consolidate the fuel rates for FPUC's two divisions for costs incurred for wholesale energy purchases on a going-forward basis, the Commission should set the effective date to consolidate FPUC's two divisions' fuel cost recovery factors as the first billing cycle for May 2004 (i.e., April 29, 2004).

Agenda for
Commission Conference
April 6, 2004

ITEM NO.

CASE

4**PAA

Docket No. 031135-EI - Petition for approval to implement consolidated fuel adjustment surcharge by Florida Public Utilities Company.

(Continued from previous page)

Issue 4: Should this docket be closed?

Recommendation: Yes. If no timely protest is received from a substantially affected person within 21 days of the date of the Proposed Agency Action (PAA) Order, the PAA Order will become final upon the issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley, Davidson

ITEM NO.

CASE

5**PAADocket No. 040180-EI - Request for approval to change rate used to capitalize allowance for funds used during construction (AFUDC) from 7.84% to 7.29%, effective 1/1/04, by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Administrative

Staff: ECR: Brinkley, Lester

GCL: Jaeger

Issue 1: Should the Commission approve FPL's request to reduce its AFUDC rate from 7.84% to 7.29%?

Recommendation: Yes. The appropriate AFUDC rate for FPL is 7.29% based on a 13-month average capital structure for the period ending December 31, 2003.

Issue 2: What is the appropriate monthly compounding rate to achieve the requested 7.29% annual rate?

Recommendation: The appropriate monthly compounding rate to maintain a simple rate of 7.29% is 0.588100%.

Issue 3: Should the Commission approve Florida Power & Light Company's requested effective date of January 1, 2004, for implementing the revised AFUDC rate?

Recommendation: Yes.

Issue 4: 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: Baez, Deason, Jaber, Bradley, Davidson

ITEM NO.

CASE

6Docket No. 030444-WS - Application for rate increase in Bay County by Bayside Utility Services, Inc.

Critical Date(s): 4/17/04 (60-day suspension date)

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: ECR: Fletcher, Merchant, Maurey, Willis

GCL: Jaeger

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

Recommendation: Yes. Bayside's proposed water and wastewater rates should be suspended. The docket should remain open pending the Commission's final action on the utility's requested rate increase.

Issue 2: Should an interim revenue increase be approved?

Recommendation: Yes. On an interim basis, the utility should be authorized to collect annual water and wastewater revenues as indicated below:

	<u>Adjusted Test Year Revenues</u>	<u>% Increase</u>	<u>Revenue Requirement</u>	<u>\$ Increase</u>
Water	\$65,894	\$42,547	\$108,441	64.57%
Wastewater	\$92,613	\$51,145	\$143,758	55.22%

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

Recommendation: The service rates for Bayside in effect as of December 31, 2002, should be increased by 65.52% for water and 56.04% for wastewater to generate the recommended revenue increases for the interim period. 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), Florida Administrative Code, provided the customers have received notice. The rates should not be implemented until 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.

Issue 4: What is the appropriate security to guarantee the interim 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 oral 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 water and wastewater revenues collected under interim conditions. As discussed in the recommendation for Docket No. 030446-SU on this same agenda, staff has recommended an incremental

ITEM NO.

CASE

6

Docket No. 030444-WS - Application for rate increase in Bay County by Bayside Utility Services, Inc.

(Continued from previous page)

corporate undertaking guarantee of \$58,758. In this docket, staff is recommending an incremental amount subject to refund of \$46,964. These two incremental increases will raise the total cumulative guarantee to \$809,902, which can be supported by UI. Pursuant to Rule 25-30.360(6), Florida Administrative Code, 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, Florida Administrative Code.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley, Davidson

ITEM NO.

CASE

7Docket No. 030446-SU - Application for rate increase in Pinellas County by Mid-County Services, Inc.

Critical Date(s): 4/17/04 (60-day suspension date)

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: ECR: Revell, Edwards, Merchant

GCL: Jaeger

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

Recommendation: Yes. Mid-County's proposed wastewater rates should be suspended. The docket should remain open pending the Commission's final action on the utility's requested rate increase.

Issue 2: Should an interim revenue increase be approved?

Recommendation: Yes. On an interim basis, the utility should be authorized to collect annual wastewater revenues as indicated below:

	<u>Test Year</u> <u>Revenues</u>	<u>\$ Increase</u>	<u>Revenue</u> <u>Requirement</u>	<u>% Increase</u>
Wastewater	\$1,067,627	\$117, 221	\$1,184,848	10.98%

Issue 3: What are the appropriate interim wastewater rates?

Recommendation: The service rates for Mid-County in effect as of December 31, 2002, should be increased by 10.98% to generate the recommended revenue increase for the interim period. 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), Florida Administrative Code, provided the customers have received notice. Also, the rates should not be implemented until the required security has been filed. The utility should provide proof to staff of the date notice was given within 10 days after the date of notice.

Issue 4: What is the appropriate security to guarantee the interim 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 oral 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 water and wastewater revenues collected under interim conditions. As discussed in the recommendation for Docket No. 030444-WS on this same agenda, staff has recommended an incremental corporate undertaking guarantee of \$46,964. In this docket, staff is recommending an incremental amount subject to refund of \$58,758. These two incremental increases will raise the total cumulative guarantee to \$809,902, which can be supported by UI. Pursuant

ITEM NO.

CASE

7 Docket No. 030446-SU - Application for rate increase in Pinellas County by Mid-County Services, Inc.

(Continued from previous page)

to Rule 25-30.360(6), Florida Administrative Code, 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, Florida Administrative Code.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley, Davidson