

MINUTES OF DECEMBER 2, 2003

COMMISSION CONFERENCE

COMMENCED: 9:45 a.m.

ADJOURNED: 1:35 p.m.

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

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

1Election of the Commission Chairman

DECISION: On the motion of Commissioner Davidson and the second of Commissioner Bradley, Commissioner Braulio Baez was elected Chairman for a two-year term to begin January 6, 2004.

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

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2Approval of Minutes

October 21, 2003 Regular Commission Conference

November 3, 2003 Regular Commission Conference

DECISION: The minutes were approved.

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

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3**Consent Agenda

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
031016-TX	STS Telecom, LLC
031040-TX	Americatel Corporation

PAA B) Request for cancellation of competitive local exchange telecommunications certificate.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
031024-TX	Everest Broadband Networks of Florida, Inc.	10/06/03

PAA C) Applications for certificates to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
030978-TC	Rauenzahn Enterprises, Inc.
030977-TC	Kristian N. Lea d/b/a KAK Phone Service
030953-TC	David L Nelson d/b/a DNL Pay Telephone Co.
030992-TC	Barbara Ballard
031026-TC	T.L.C. Hospitality, L.L.C. d/b/a Holiday Inn Express Hotel and Suites
031045-TC	Gregory R. Sharp d/b/a Sharp Pay Phones

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- D) Docket No. 030987-EI - Application by Progress Energy Florida, Inc. ("Company") for authority to issue, sell or otherwise incur during 2004 any combination of additional equity securities and debt securities and obligations, consisting of (i) up to \$800 million outstanding at any time of short-term debt, including commercial paper, bank loans or loans from affiliates, which amount shall be in addition to and in excess of the amount the Company is authorized to issue pursuant to Section 366.04, Florida Statutes, which permits the Company to issue short-term securities aggregating to no more than five percent of the par value of the Company's other outstanding securities, and (ii) \$1 billion of any combination of equity securities and long-term debt securities and obligations. Any exercise of the requested authority shall be for the benefit of Progress Energy Florida, Inc. At no time will the Company borrow funds, incur debt or assume liabilities or obligations as guarantor, endorser, or surety that are not for the benefit of Progress Energy Florida, Inc.
- E) Docket No. 031000-EI - Application by Florida Power & Light Company ("FPL" or "Company") for authority to issue and sell and/or exchange any combination of long-term debt and equity securities and/or to assume liabilities or obligations as guarantor, endorser or surety in an aggregate amount not to exceed \$4.5 billion during calendar year 2004. In addition, FPL seeks permission to issue and sell short-term securities during calendar year 2004 and 2005 in an amount or amounts such that the aggregate principal amount of short-term securities outstanding at the time of any such sale will not exceed 25% of FPL's gross revenues during the preceding twelve months of operation.
- F) Docket No. 031003-EI - Application by Gulf Power Company (Gulf), pursuant to Chapter 25-8, Florida Administrative Code, and Section 366.04, Florida Statutes, for authority to receive equity funds from the Southern Company (Gulf's

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parent company), issue and sell long-term debt and equity securities, and issue and sell short-term debt securities during 2004. The maximum amount of common equity contributions received from Southern Company, the maximum amount of equity securities issued and the maximum principal amount of long-term debt securities issued will total not more than \$300 million. The maximum principal amount of short-term debt at any one time will total not more than \$190 million. Any exercise of the requested authority shall be for the benefit of Gulf. At no time will Gulf borrow funds, incur debt or assume liabilities or obligations as guarantor, endorser, or surety that are not for the benefit of Gulf.

RECOMMENDATION: The Commission should approve the action requested in the dockets referenced above and close these dockets, with the exception of Docket Nos. 030987-EI, 031000-EI, and 031003-EI, which must remain open for monitoring purposes.

DECISION: The recommendation was approved.

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

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4Docket No. 030575-PU - Proposed amendment to Rule 25-22.032,
F.A.C., Customer Complaints. (Deferred from November 3,
2003 conference; revised recommendation filed.)

Critical Date(s): None

Rule Status: Adoption

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: GCL: Cibula, Gervasi
CAF: Tudor, DeMello
ECR: Hewitt

ISSUE 1: Should the Commission adopt changes to the
proposed amendment of Rule 25-22.032, Florida Administrative
Code, entitled Customer Complaints, to address JAPC's
comments?

RECOMMENDATION: Yes. The Commission should adopt proposed
Rule 25-22.032 with changes, as set forth in Attachment A of
staff's November 20, 2003 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 is published, the rule may be filed for adoption with
the Secretary of State and the docket may then be closed.

DECISION: The recommendations were approved.

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

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5**Docket 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: Proposed

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: GCL: Cibula
ECR: Slemkewicz, Hewitt

ISSUE 1: Should the Commission propose the amendment of Rule 25-6.014, Florida Administrative Code, entitled Records and Reports in General; Rule 25-6.015, Florida Administrative Code, entitled Location and Preservation of Records; Rule 25-6.135, Florida Administrative Code, entitled Annual Reports; and Rule 25-6.1351, Florida Administrative Code, entitled Cost Allocation and Affiliate Transactions?

RECOMMENDATION: Yes. The Commission should propose the amendment of Rules 25-6.014, 25-6.015, 25-6.135, and 25-6.1351, Florida Administrative Code, as set forth in Attachment A of staff's November 20, 2003 memorandum.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

DECISION: The recommendations were approved.

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

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6**Docket No. 031029-EI - Proposed amendment of Rule 25-6.043, F.A.C., Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee, and Rule 25-6.0435, F.A.C., Interim Rate Relief.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: Full Commission
Prehearing Officer: Davidson

Staff: GCL: Moore, C. Keating
ECR: Slemkewicz, Hewitt, McNulty, Wheeler

ISSUE 1: Should the Commission amend Rule 25-6.043, Florida Administrative Code, Investor-Owned Electric Utility Minimum Filing Requirements, and Rule 25-6.0435, Florida Administrative Code, Interim Rate Relief?

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 closed.

DECISION: The recommendations were approved.

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

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7Docket No. 020507-TL - Complaint of Florida Competitive Carriers Association against BellSouth Telecommunications, Inc. regarding BellSouth's practice of refusing to provide FastAccess Internet Service to customers who receive voice service from a competitive voice provider, and request for expedited relief.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: GCL: Christensen
CMP: Bulecza-Banks

ISSUE 1: Does the Commission have jurisdiction to grant the relief requested in the Complaint?

RECOMMENDATION: Yes.

ISSUE 2: What are BellSouth's practices regarding the provisioning of its FastAccess Internet service to:

- a. A FastAccess customer who migrates from BellSouth to a competitive voice service provider; and
- b. To all other ALEC customers?

RECOMMENDATIONS:

- a. BellSouth's current FastAccess policy related to customer migration is as follows: if a customer obtains both local voice service and FastAccess from BellSouth and migrates to a CLEC that provisions local service via UNE-P or UNE-L, the customer's FastAccess service will be disconnected. If the CLEC provides local voice service via BellSouth resale, the customer can retain BellSouth FastAccess service. Further, BellSouth will provide FastAccess service in compliance with prior Commission orders provided the parties have agreed upon contract language.
- b. BellSouth's current FastAccess policy related to customers currently served by a CLEC is as follows: if a customer is obtaining local voice service from a CLEC that provides local service via UNE-P or UNE-L, the customer will not be eligible for FastAccess service. If the CLEC provides local voice service via BellSouth resale, or if the customer migrates to BellSouth for local voice service, the

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customer would be eligible for FastAccess service. Further, BellSouth will provide FastAccess service in compliance with prior Commission orders provided the parties have agreed upon contract language.

ISSUE 3: Do any of the practices identified in Issue 2 violate state or federal law?

RECOMMENDATION: Staff is presenting three options relating to whether BellSouth's disconnection practices identified in Issue 2 violate state or federal law. Staff recommends that either Option 1 or Option 2, presented below, be selected as those options are more fully supported by the evidence presented in this case.

Option 1: BellSouth's disconnection practice is anticompetitive because it prevents the CLECs from being treated fairly by erecting barriers to competition and because it impedes competition by limiting the range of consumer choice.

Option 2: BellSouth's disconnection practice is anticompetitive because it prevents the CLECs from being treated fairly by erecting barriers to competition and because it impedes competition by limiting the range of consumer choice. However, when applied to a new customer seeking service, BellSouth's practices do not limit customer choice since the customer can take into account whether he finds a DSL service or a competitive voice service more important.

Option 3: BellSouth's disconnection practice is not anticompetitive because it does not prevent the CLECs from being treated fairly and does

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not impede competition by limiting consumer choice.

ISSUE 4: Should the Commission order that BellSouth may not disconnect the FastAccess Internet Service of an end user who migrates his voice service to an alternative voice provider?

RECOMMENDATION: Of the three viable options presented by staff, staff recommends that either Options 1 or 2 be selected, as they set forth the most appropriate course of action.

Option 1: In the interest of promoting competition in accordance with Section 364.01(4)(d) and (g), Florida Statutes, and the federal Telecommunications Act, BellSouth should be prohibited from disconnecting FastAccess service to an end user who migrates his voice service to a CLEC. However, the requirement to continue to provide FastAccess should be re-evaluated by December 31, 2006, to determine whether this provision continues to be necessary to promote local voice competition. Further, the requirement would be subject to the terms set forth in Issue 6A. If during the Commission's ongoing market monitoring process staff determines that the competitive conditions have changed in either the local voice market or the broadband market, staff would inform the Commission and seek guidance as to whether the re-evaluation process should be undertaken sooner.

Option 2: In the interest of promoting competition in accordance with Chapter 364.01(4)(d) and (g), Florida Statutes, and the federal

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Telecommunications Act, BellSouth should be prohibited from disconnecting FastAccess service to an end user who migrates his voice service to a CLEC. However, the requirement to continue to provide FastAccess should terminate after three years from the date of the final order. Further, during the three-year period, the provision of FastAccess service would be subject to the terms set forth in Issue 6A.

Option 3: BellSouth's disconnection practices are neither anti-competitive or discriminatory. BellSouth should be allowed to continue its practice of disconnecting its FastAccess customers that migrate to a CLEC.

ISSUE 5: Should the Commission order BellSouth to provide its FastAccess Internet Service, where feasible, to any ALEC end user that requests it?

RECOMMENDATION: Staff believes there are three viable options available to address this issue. The three options are set forth as follows:

Option 1: BellSouth should not be ordered to provide FastAccess Internet Service, where feasible, to any CLEC end user that requests it.

Option 2: BellSouth should be required to provide FastAccess service to CLEC customers that request it, but the requirement to provide FastAccess would be reevaluated by December 31, 2006, to determine whether the mandate is necessary to promote competition in the local exchange market. Further, the requirement would be subject to the terms set forth in Issue 6B. If during the Commission's ongoing

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market monitoring process staff determines that the competitive conditions have changed in either the local voice market or the broadband market, staff would inform the Commission and seek guidance as to whether the re-evaluation process should be undertaken sooner.

Option 3: BellSouth should be required to provide FastAccess service to CLEC customers that request it, but the requirement to provide FastAccess would expire after three years from the date of the final order. Further, the requirement would be subject to the terms set forth in Issue 6B.

ISSUE 6(a): If the Commission orders that BellSouth may not disconnect its FastAccess Internet service, where a customer migrates his voice service to an ALEC and wishes to retain his BellSouth FastAccess service, what changes to the rates, terms, and condition of his service, if any, may BellSouth make?

ISSUE 6(b): If the Commission orders BellSouth to provide its FastAccess service to any ALEC end user that requests it, where feasible, then what rates, terms, and conditions should apply?

RECOMMENDATION: Staff has identified two aspects that the Commission should consider in addressing Issues 6(a) and (b). As a result, staff is presenting options related to: (i) provisioning of FastAccess service, and (ii) the pricing of FastAccess service. The pricing options presented apply equally to Issues 6(a) and 6(b).

If the Commission votes to require BellSouth to provide FastAccess service in Issues 4 and/or 5, staff recommends that one of the following provisioning options be selected:

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(1) Provisioning

- Option 1: BellSouth would be required to provision FastAccess on the high frequency portion of the loop for a customer migrating to a CLEC, provided the CLEC allows BellSouth access to the HFPL free of cost. With respect to those situations where a CLEC customer requests FastAccess, BellSouth may provision FastAccess on a stand-alone loop.
- Option 2: BellSouth may provision FastAccess via a stand-alone loop in the case of a BellSouth customer migrating to a CLEC or in the case where a current CLEC customer requests FastAccess.
- Option 3: BellSouth should be required to provision FastAccess via the high frequency portion of the loop regardless if the customer is migrating from BellSouth to a CLEC or if a CLEC customer is requesting FastAccess for the first time, provided the CLEC allows BellSouth access to the HFPL free of cost.

With respect to pricing, if the Commission requires BellSouth to provide FastAccess service in Issues 4 or 5, staff recommends that the Commission select one of the following options:

(2) Pricing

- Option 1: BellSouth should be required to offer FastAccess service at a price that provides the same percentage contribution to the company as it derives from its customers receiving both local service and FastAccess service.

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Option 2: BellSouth should be required to offer FastAccess service to CLEC customers at the same price that it offers FastAccess to CLEC customers that are being provided local voice service via resale.

Option 3: BellSouth should be free to price the service as whatever rate it chooses.

ISSUE 7: Should this docket be closed?

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

DECISION: This item was deferred.

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8**PAADocket No. 030960-TI - Investigation and determination of appropriate method for refunding overcharges assessed on intrastate calls made using calling card services provided by AmeriVision Communications, Inc. d/b/a LifeLine Communications.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Watts, Lewis
ECR: Maurey
GCL: Rojas

ISSUE 1: Should the Commission accept AmeriVision Communications, Inc. d/b/a LifeLine Communications' proposal to issue a credit of \$438.90, plus interest of \$6.29, for a total of \$445.19, to its affected customers for overcharging end-users on intrastate calls made using calling card services provided by AmeriVision Communications, Inc. d/b/a LifeLine Communications from August 1, 2002, to June 30, 2003?

RECOMMENDATION: Yes. The Commission should accept AmeriVision Communications, Inc. d/b/a LifeLine Communications' proposal to issue a credit of \$438.90, plus interest of \$6.29, for a total of \$445.19, to its affected customers for overcharging end-users on intrastate calls made using calling card services provided by AmeriVision Communications, Inc. d/b/a LifeLine Communications. Any amount that the company determines is unrefundable should be received by the Commission within 90 calendar days after the issuance of the Consummating Order and should identify the docket number and the company's name. The Commission should forward the contribution to the Division of Financial Services for deposit into the General Revenue Fund. The company should be required to file a report with the Commission within 90 days after the issuance of the Consummating Order detailing the amount refunded and identifying any monies it determined were unrefundable. If AmeriVision Communications, Inc. d/b/a LifeLine Communications fails to pay in accordance with its proposal

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Docket No. 030960-TI - Investigation and determination of appropriate method for refunding overcharges assessed on intrastate calls made using calling card services provided by AmeriVision Communications, Inc. d/b/a LifeLine Communications.

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and file its refund report with the Commission within 90 days after the issuance of the Consummating Order, the company's tariff should be canceled and Registration Number TI962 should be removed from the register. If AmeriVision Communications, Inc. d/b/a LifeLine Communications' tariff is canceled and Registration Number TI962 is removed from the register, then the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final 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 Order. This docket should remain open pending the receipt of the refund report. If the company determines that some of the monies are unrefundable, upon receipt of the payment it should be forwarded to the Division of Financial Services for deposit in the General Revenue Fund. Upon receipt of the refund report, this docket should be closed administratively.

DECISION: The recommendations were approved.

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

ITEM NO.

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9Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. (Deferred from August 5, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: GCL: Jaeger, Holley, Helton
ECR: Fletcher, Merchant, Willis, Jenkins, Devlin

ISSUE 1: Should interested persons be allowed to participate?

RECOMMENDATION: Yes. Pursuant to Rule 25-22.021, Florida Administrative Code, when "the Commission is considering new matters related to but not addressed at hearing," interested persons are not barred from participating. Interested persons should be given ten minutes each to discuss the appropriate calculation of the refunds and the appropriate amount of escrowed funds to be released.

ISSUE 2: Has Aloha made the appropriate refund of interim rates for the period January 1, 2002, through April 30, 2002 (the rate case period)?

RECOMMENDATION: Yes. Aloha has made the 4.87% refund for the rate case period required by the Final Order. The \$102,152 balance in the escrow account related to the rate case period should be released to Aloha.

ISSUE 3: What is the appropriate calculation of refunds for the period May 1, 2002 through July 31, 2003 (the appeal period)?

PRIMARY RECOMMENDATION: In addition to the refunds set forth in Order No. PSC-02-0593-FOF-WU, i.e. 4.87%, the utility should be required to make an additional refund, with interest, of \$73,264. As a result, the total refund would be 7.85% which includes the 4.87% amount already refunded by the utility. The additional refund amount represents the adjustment needed to bring Aloha's earned return on equity (ROE) for the appeal period (May 1, 2002 through July 31, 2003) to its newly authorized midpoint of 11.34%. Of the total balance of \$499,671 held in escrow, the

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Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. (Deferred from August 5, 2003 conference; revised recommendation filed.)

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additional amount that should be released to Aloha is \$324,255. By adding the \$102,152 released in Issue 2, the total amount to be released at this time is \$426,407, which would leave \$73,264 in the escrow account. The remaining \$73,264 amount should be released to the utility upon staff's verification that Aloha has made the additional refund. The additional refund should be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility should submit proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The utility should treat any unclaimed refunds as contributions in aid of construction (CIAC) pursuant to Rule 25-30.360(8), Florida Administrative Code.

ALTERNATIVE ONE RECOMMENDATION: The refunds for interim rates collected through July 31, 2003 should be as set forth in Order No. PSC-02-0593-FOF-WU. Aloha has substantially completed the required 4.87% refunds. The utility was not unduly enriched by any appeal revenues collected above the amount already refunded. Further, it would be confiscatory to require additional refunds. As such, all funds in the escrow account should be released to Aloha and the escrow account should be closed.

ALTERNATIVE TWO RECOMMENDATION: Because the Final Order was upheld on appeal, and did not allow for any increase whatsoever, the total 15.95% increase for interim rates collected after April 30, 2002, should be refunded. This amounts to a total amount of \$397,519 without interest, or \$399,254 with interest. Because the utility has already refunded \$121,983 for this period, only an additional \$277,271 should be refunded (\$399,254 less \$121,983). As security for this additional refund, Aloha should maintain \$277,271 in the escrow account. In Issue 2, staff is recommending that \$102,152 be released. Therefore, to maintain the \$277,271, an additional \$120,248 should be released to the utility for a total release of escrowed

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funds of \$222,400. The remaining \$277,271 amount of the escrow account should be released to the utility upon staff's verification that the utility has made the additional refund. The additional refund should be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility should submit proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The utility should treat any unclaimed refunds as contributions in aid of construction (CIAC) pursuant to Rule 25-30.360(8), Florida Administrative Code.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to verify the completion of additional refunds, if any, as well as the construction of pro forma plant as required in the Final Order.

DECISION: This item was deferred.

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9ADocket 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: Full Commission
Prehearing Officer: Baez

Staff: ECR: Merchant, Willis, Jenkins, Devlin
GCL: Jaeger, Holley

ISSUE 1: Should any amount of escrowed funds be released to Aloha?

RECOMMENDATION: Yes. Aloha has refunded 4.87% of all interim rates collected, totaling \$153,510. Staff has verified that the refund was made and as such, \$153,510 should be released at this time to Aloha. The release of the remaining balance in the escrow account of \$346,161 should be addressed by the Commission when a decision is made on whether any further refunds are required.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to address whether any additional refunds, if any, are required, as well as the construction of pro forma plant as required in the Final Order.

DECISION: The recommendations were approved.

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

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10**PAADocket No. 000121B-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (SPRINT-FLORIDA TRACK)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Deason

Staff: CMP: Fisher, Hallenstein, Harvey, Rich, Simmons,
Vinson
GCL: Banks

ISSUE 1: Should the Commission order Sprint to implement proposed revisions to the Performance Measurement Plan presented in Attachment 1 of staff's November 20, 2003 memorandum?

RECOMMENDATION: Yes. Staff believes the Commission should approve the revisions to the Performance Measurement Plan for Sprint-Florida as presented in Attachment 1. The implementation of the revisions to Sprint's Florida Performance Measurement Plan should become effective beginning with January 2004 data.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final upon the issuance of a Consummating Order. Any protest of the Commission's decision in this matter should identify with specificity the item or measure being protested, and any such protest should not prevent the remainder of the Order from becoming final and effective. Thereafter, this docket should remain open for the Commission to conduct periodic six-month reviews of Sprint's Performance Measurement Plan and to complete the initial third-party audit outlined in Order No. PSC-03-0067-PAA-TP.

DECISION: The recommendations were approved.

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

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11**PAADocket No. 030876-TI - Compliance investigation of IBGH Communications, LLC for apparent violation of Sections 364.02 and 364.04, Florida Statutes. (Deferred from September 30, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Curry
GCL: Susac

ISSUE 1: Should the Commission accept IBGH's proposed settlement offer of \$5,000 to resolve the apparent violation of Sections 364.02 and 364.04, Florida Statutes?

RECOMMENDATION: Yes. The Commission should accept IBGH's proposed settlement offer of \$5,000 to be deposited into the General Revenue Fund for apparent violation of Sections 364.02 and 364.04, Florida Statutes. The payment should be received by the Commission within fourteen calendar days after the issuance of the Consummating Order and should identify the docket number and the company's name. The Commission should forward the payment to the Department of Financial Services for deposit into the General Revenue Fund. If the company fails to pay in accordance with its proposal, then the company's tariff should be canceled and Registration Number TJ855 should be removed from the register. If the company's tariff is canceled and Registration Number TJ855 is removed from the register, then the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida.

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Docket No. 030876-TI - Compliance investigation of IBGH Communications, LLC for apparent violation of Sections 364.02 and 364.04, Florida Statutes. (Deferred from September 30, 2003 conference; revised recommendation filed.)

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation on Issue 1, this docket should remain open pending the receipt of the \$5,000 settlement payment. Upon receipt of the payment, it should be forwarded to the Division of Financial Services for deposit into the General Revenue Fund, and this docket should be closed administratively.

DECISION: The recommendations were approved.

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

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12**PAADocket No. 030964-TI - Compliance investigation of Tel-Tec, Inc. for apparent violation of Section 364.02, Florida Statutes, Definitions, and Section 364.04, Florida Statutes, Schedules of Rates, Tolls, Rentals, Contracts, and Charges; Filing; Public Inspection.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Susac

ISSUE 1: Should the Commission impose a \$25,000 penalty on Tel-Tec, Inc. for its apparent violation of Sections 364.02 and 364.04, Florida Statutes?

RECOMMENDATION: Yes. The Commission should impose a \$25,000 penalty upon Tel-Tec for its apparent violations of Sections 364.02(13) and 364.04, Florida Statutes. If Tel-Tec fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. Further, if the company fails to timely file a protest and fails to do any of the following:

1. file a tariff;
2. provide the Commission with current contact information; or
3. pay the penalty,

the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida upon issuance of the Consummating Order until the company pays the penalty, files a tariff and provides the Commission with current contact information.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from staff's recommendation will become final 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 Order. If the Commission's Order is not protested and the payment of the penalty is not received within fourteen calendar days after

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12**PAA

Docket No. 030964-TI - Compliance investigation of Tel-Tec, Inc. for apparent violation of Section 364.02, Florida Statutes, Definitions, and Section 364.04, Florida Statutes, Schedules of Rates, Tolls, Rentals, Contracts, and Charges; Filing; Public Inspection.

(Continued from previous page)

the issuance of the Consummating Order, the collection of the penalty should be referred to the Department of Financial Services. This docket should be closed administratively upon receipt of:

1. The company's tariff, and
2. The company's current contact information, and
3. The payment of the penalty, or

upon the referral of the penalty to the Department of Financial Services.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

13**PAADocket No. 030790-TI - Cancellation of tariff and removal from register by Florida Public Service Commission of IXC Registration No. TJ457 issued to Everest Broadband Networks of Florida, Inc. for violation of Section 364.336, Florida Statutes.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: McKay

ISSUE 1: Should the Commission grant Everest Broadband Networks of Florida, Inc. a voluntary removal from the register of IXC Registration No. TJ457 and cancel its tariff?

RECOMMENDATION: The Commission should grant Everest Broadband Networks of Florida, Inc. a voluntary removal from the register of IXC Registration No. TJ457 and cancel its tariff with an effective date of October 6, 2003. If the tariff is cancelled and the company's name removed from the register in accordance with the Commission's Order from staff's recommendation, the company should be required to immediately cease and desist providing intrastate interexchange service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from staff's recommendation will become final 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 issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

14**PAA Cancellation of tariff and removal from register by Florida Public Service Commission of IXC registrations for violation of Section 364.336, Florida Statutes.

Docket No. 030755-TI - Commercial Communications Systems, Inc.

Docket No. 030786-TI - Promise-Net International, Ltd., Inc.

Docket No. 030789-TI - Norbel Telecom, Inc.

Docket No. 030943-TI - Telecom New Zealand Communications (USA) Limited, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Administrative

Staff: CMP: Isler

GCL: McKay

ISSUE 1: Should the Commission grant the companies listed on Attachment A of staff's November 20, 2003 memorandum voluntary removal from the register and cancellation of their respective tariffs?

RECOMMENDATION: The Commission should not grant the companies listed on Attachment A voluntary removal from the register and cancellation of their respective tariffs. Rather, the Commission should remove each company, as listed on Attachment A, from the register on its own motion with an effective date as listed on Attachment A. The collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If a company's tariff is cancelled and its name removed from the register, as listed on Attachment A, in accordance with the Commission's Order from staff's recommendation, the respective company should be required to immediately cease and desist providing intrastate interexchange service in Florida. If any of the companies listed on Attachment A have their respective tariff cancelled and name removed from the register, and subsequently decides to reapply for registration as an intrastate interexchange telecommunications company, that

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<u>ITEM NO.</u>	<u>CASE</u>
14**PAA	Cancellation of tariff and removal from register by Florida Public Service Commission of IXC registrations for violation of Section 364.336, Florida Statutes.

(Continued from previous page)

company should be required to first pay any outstanding RAF, including statutory late payment charges.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: The Order issued from staff's recommendation will become final 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 Order. These dockets should then be closed upon issuance of a Consummating Order. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

15**PAADocket No. 030624-TX - Cancellation by Florida Public Service Commission of CLEC Certificate No. 7248 issued to TelSouth Communications, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from September 16, 2003 conference; revised recommendation filed.)
Docket No. 030658-TX - Cancellation by Florida Public Service Commission of CLEC Certificate No. 7934 issued to Heritage Technologies, Ltd. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: McKay

ISSUE 1: Should the Commission grant the companies listed on Attachment A of staff's November 20, 2003 memorandum voluntary cancellations of their respective competitive local exchange telecommunications company certificates?
RECOMMENDATION: The Commission should grant the companies a voluntary cancellation of their respective competitive local exchange telecommunications company certificates with an effective date as listed on Attachment A. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from staff's recommendation, the respective company should be required to immediately cease and desist providing competitive local exchange service in Florida.

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<u>ITEM NO.</u>	<u>CASE</u>
15**PAA	Docket No. 030624-TX - Cancellation by Florida Public Service Commission of CLEC Certificate No. 7248 issued to TelSouth Communications, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from September 16, 2003 conference; revised recommendation filed.) Docket No. 030658-TX - Cancellation by Florida Public Service Commission of CLEC Certificate No. 7934 issued to Heritage Technologies, Ltd. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

(Continued from previous page)

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: The Order issued from staff's recommendation will become final 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 Order. The dockets should then be closed upon cancellation of the certificates. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

16**Docket No. 030621-TX - Cancellation by Florida Public Service Commission of CLEC Certificate No. 7012 issued to KingTel, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: Rojas

ISSUE 1: Should the Commission accept the settlement offer proposed by KingTel, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within 30 days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 7012 should be cancelled administratively. If KingTel, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$500 contribution or cancellation of the certificate.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

17**Docket No. 030701-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 4882 issued to David P. Mandeville for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from September 30, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: McKay

ISSUE 1: Should the Commission grant David P. Mandeville a voluntary cancellation of Pay Telephone Certificate No. 4882?

RECOMMENDATION: The Commission should grant David P. Mandeville a voluntary cancellation of his pay telephone certificate with an effective date of September 26, 2003. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, David P. Mandeville should be required to immediately cease and desist providing pay telephone service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, this docket should be closed upon cancellation of the certificate as no other issues need to be addressed by the Commission.

DECISION: The recommendations were approved.

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

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<u>ITEM NO.</u>	<u>CASE</u>
18**Docket No.	030733-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 8097 issued to Colony 14 Communications, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.
	Critical Date(s): None
	Commissioners Assigned: Full Commission Prehearing Officer: Administrative
	Staff: CMP: Isler GCL: McKay
	<u>ISSUE 1</u> : Should the Commission accept the settlement offer proposed by Colony 14 Communications, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?
	<u>RECOMMENDATION</u> : The Commission should accept the company's settlement proposal. The Commission should forward the contribution to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.
	<u>ISSUE 2</u> : Should this docket be closed?
	<u>RECOMMENDATION</u> : If the Commission approves staff's recommendation in Issue 1, this docket should be closed as no other issues need to be addressed by the Commission.

DECISION: The recommendations were approved.

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

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<u>ITEM NO.</u>	<u>CASE</u>
19**Docket No.	030686-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 2358 issued to Telaleasing Enterprises, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from November 3, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: Christensen

ISSUE 1: Should the Commission accept the settlement offer proposed by Telaleasing Enterprises, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 2358 should be cancelled administratively. If Telaleasing Enterprises, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida.

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<u>ITEM NO.</u>	<u>CASE</u>
19**	Docket No. 030686-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 2358 issued to Telaleasing Enterprises, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from November 3, 2003 conference; revised recommendation filed.) (Continued from previous page) <u>ISSUE 2</u> : Should this docket be closed? <u>RECOMMENDATION</u> : If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$20,000 contribution or cancellation of the certificate.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

20**PAADocket No. 030873-TX - Application for certificate to provide competitive local exchange telecommunications service by Utility USA, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Williams, Kennedy
GCL: Rojas

ISSUE 1: Should the Commission accept Utility USA, Inc.'s offer to settle and grant Utility USA, Inc. a certificate to provide competitive local exchange telecommunications service within the state of Florida as provided by Section 364.337, Florida Statutes?

RECOMMENDATION: Yes. The Commission should accept Utility USA, Inc.'s offer to settle and grant Utility USA, Inc. Florida Public Service Commission Certificate No. 8419 to provide competitive local exchange telecommunications service within the state of Florida as provided by Section 364.337, Florida Statutes. The company should, however, be required to submit a price list at least one day prior to offering basic service. The payment of the past due regulatory assessment fees and statutory late payment charges, plus the \$500 penalty imposed in Docket No. 011278-TX, and the \$5,000 settlement for apparently operating Utility USA, Inc. without a certificate should be received by the Commission within fourteen calendar days after the issuance of the Consummating Order and should identify the docket number and the company's name. If the company fails to pay in accordance with its offer to settle, then the company's Certificate No. 8419 should be cancelled, and the company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida.

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ITEM NO.

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20**PAA

Docket No. 030873-TX - Application for certificate to provide competitive local exchange telecommunications service by Utility USA, Inc.

(Continued from previous page)

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, the Order issued from this recommendation will become final 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 Order. This docket should remain open pending the receipt of the company's settlement proposal of \$500 penalty and regulatory assessment fees (2000, 2001, and 2002), plus statutory late payment charges for each year, and the \$5,000 settlement payment. Upon receipt of all payments, this docket should be closed administratively. If the company fails to make all of the proposed payments, this docket should be closed administratively, the company's certificate should be cancelled, and the company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida.

DECISION: This item was deferred.

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<u>ITEM NO.</u>	<u>CASE</u>
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21**Docket No. 031053-TA - Request for cancellation of AAV/CLEC Certificate No. 3151 by Metropolitan Fiber Systems of Florida, Inc., effective 1/2/04.
Docket No. 031054-TA - Request for cancellation of AAV/CLEC Certificate No. 4040 by MCI WorldCom Communications, Inc., effective 1/2/04.
Docket No. 031055-TS - Request for cancellation of STS Certificate No. 1669 by Access Network Services, Inc., effective 1/2/04.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Williams
GCL: Rojas, McKay

ISSUE 1: Should the Commission approve the request for cancellation of AAV/CLEC Certificate No. 3151 by Metropolitan Fiber Systems of Florida, Inc., AAV/CLEC Certificate No. 4040 by MCI WorldCom Communications, Inc., and STS Certificate No. 1669 by Access Network Services, Inc.?

RECOMMENDATION: Yes.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. These dockets should be closed.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

22**Docket No. 030752-EI - Petition for approval of green power pricing research project as part of Demand Side Management Plan by Florida Power & Light Company. (Deferred from November 3, 2003 conference; revised recommendation filed.)

Critical Date(s): None (60-day suspension date waived by FPL)

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: ECR: Harlow, Sickel, Brinkley, Draper
GCL: Holley

ISSUE 1: Should Florida Power & Light Company's petition for approval of a Green Power Pricing Research Project be approved?

RECOMMENDATION: Yes. The use of Tradeable Renewable Energy Credits in FPL's proposed voluntary research project provides a mechanism for interested customers to encourage renewable development. FPL should be authorized to: 1) incorporate the project into its demand-side management plan; 2) report all revenues and expenses through its ECCR clause; 3) recover reasonable and prudent project administrative costs up to \$1.5 million if total expenses exceed total revenues; and, 4) defer excess revenues as a regulatory liability and reinvest these revenues in the project, after the general body of ratepayers has been compensated with interest for any initial costs. FPL should be required to provide semi-annual progress reports to the Commission.

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22**

Docket No. 030752-EI - Petition for approval of green power pricing research project as part of Demand Side Management Plan by Florida Power & Light Company. (Deferred from November 3, 2003 conference; revised recommendation filed.)

(Continued from previous page)

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If Issue 1 is approved, this tariff should become effective on ~~November 3, 2003~~ December 2, 2003. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved with the additional reporting requirements and other modifications discussed at the conference.

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

ITEM NO.

CASE

23Docket No. 030423-WU - Investigation into 2002 earnings of
Residential Water Systems, Inc. in Marion County.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: ECR: Merta

GCL: Jaeger

ISSUE 1: Should additional revenues be held subject to
refund and additional security be required?

RECOMMENDATION: Yes. In addition to the \$19,365 already
being held subject to refund, \$51,653 in additional annual
revenues should be held subject to refund, and this amount
should be protected by a bond, letter of credit, or escrow
account. If the utility chooses to use its existing escrow
account, it should deposit an additional 25.07% of revenues
each month in the escrow account, for a total of 31.25%
(6.18% already being deposited). If the utility chooses to
use a bond or letter of credit, the amount of the bond or
letter of credit should be \$36,919. Pursuant to Rule 25-
30.360(6), Florida Administrative Code, the utility should
be required to provide a report by the 20th of each month
indicating the monthly and total revenue collected subject
to refund. The utility should be put on notice that failure
to comply with these requirements will result in the
initiation of a show cause proceeding.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. The docket should remain open pending
the Commission's final action on the investigation into 2002
earnings.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

24**Docket No. 030542-WS - Application for acknowledgement of transfer of Nassau County land and facilities to Nassau County and for cancellation of Certificate Nos. 171-W and 122-S, by Florida Water Services Corporation.
Docket No. 990817-WS - Application by Florida Water Services Corporation for amendment of Certificate Nos. 171-W and 122-S to add territory in Nassau County. (Deferred from October 21, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: ECR: Clapp, Kaproth, Redemann, Willis
GCL: Jaeger, Christenssen, Gervasi

ISSUE 1: Should the Request for Oral Argument by the American Beach Property Owners' Association, Inc. (ABPOA), be granted?

RECOMMENDATION: Yes. The Request for Oral Argument should be granted if the Commission finds that oral argument will aid it in comprehending and evaluating the issues before it. If granted, oral argument should be limited to five minutes for each party to address reconsideration of the order denying ABPOA intervention.

DECISION: The recommendation was approved with the understanding that the Chairman has discretion to allow more than five minutes for oral argument.

ISSUE 2: Should the American Beach Property Owners' Association, Inc.'s Motion for Reconsideration of the Prehearing Officer's Order No. PSC-03-0948-PCO-WS be granted?

RECOMMENDATION: No. The Motion for Reconsideration should be denied.

DECISION: The recommendation was approved.

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<u>ITEM NO.</u>	<u>CASE</u>
24**	Docket No. 030542-WS - Application for acknowledgement of transfer of Nassau County land and facilities to Nassau County and for cancellation of Certificate Nos. 171-W and 122-S, by Florida Water Services Corporation. Docket No. 990817-WS - Application by Florida Water Services Corporation for amendment of Certificate Nos. 171-W and 122-S to add territory in Nassau County. (Deferred from October 21, 2003 conference; revised recommendation filed.)

(Continued from previous page)

ISSUE 3: Should the Commission acknowledge Florida Water Services Corporation's withdrawal of its amendment application?

RECOMMENDATION: Yes. The Commission should acknowledge Florida Water Services Corporation's withdrawal of its amendment application in Docket No. 990817-WS.

DECISION: The recommendation was approved.

ISSUE 4: Should the transfer of Florida Water Services Corporation's Nassau County water and wastewater facilities to the County of Nassau be approved?

RECOMMENDATION: Yes. The transfer to Nassau County should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, effective March 31, 2003. Regulatory Assessment Fees (RAFs) for January 1 through March 31, 2003, should be submitted within 20 days after the issuance of the order approving the transfer. Certificate Nos. 171-W and 122-S should be cancelled administratively at the conclusion of all pending cases for the Nassau County facilities.

DECISION: The recommendation was approved with the modification that the transfer is acknowledged rather than approved.

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ITEM NO.

CASE

24**

Docket No. 030542-WS - Application for acknowledgement of transfer of Nassau County land and facilities to Nassau County and for cancellation of Certificate Nos. 171-W and 122-S, by Florida Water Services Corporation.
Docket No. 990817-WS - Application by Florida Water Services Corporation for amendment of Certificate Nos. 171-W and 122-S to add territory in Nassau County. (Deferred from October 21, 2003 conference; revised recommendation filed.)

(Continued from previous page)

ISSUE 5: Should the Commission open a docket to examine whether FWSC's sale of its Nassau County facilities involves a gain that should be shared with FWSC's remaining customers?

RECOMMENDATION: Yes. The Commission should open a docket to examine whether FWSC's sale of its Nassau County facilities involves a gain that should be shared with FWSC's remaining customers.

DECISION: The recommendation was approved.

ISSUE 6: Should ~~these this~~ dockets be closed?

RECOMMENDATION: If the Commission approves Issue 3 of this recommendation, then Docket No. 990817-WS should be closed. Docket No. 030542-WS ~~This docket~~ should remain open until the conclusion of any pending dockets concerning the Nassau County facilities, and until Certificate Nos. 171-W and 122-S are cancelled administratively.

DECISION: The recommendation was approved.

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

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ITEM NO.

CASE

25**Docket No. 030976-WS - Joint application for acknowledgment of transfer of land and facilities of Florida Water Services Corporation in Duval and St. Johns Counties to JEA, and for cancellation of Certificate Nos. 177-W, 562-W and 124-S.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: ECR: Clapp, Kaproth, Willis
GCL: Holley

ISSUE 1: Should the transfer of Florida Water Services Corporation's Duval and St. Johns County water and wastewater facilities to JEA be approved?

RECOMMENDATION: Yes. The transfer of the Duval and St. Johns County systems to JEA should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, effective October 15, 2003. Regulatory Assessment Fees (RAFs) for January 1 through October 15, 2003, should be submitted within 20 days after the issuance of the order approving the transfer. Certificate Nos. 177-W, 562-W, 124-S should be cancelled administratively at the conclusion of any pending dockets concerning the Duval and St. Johns County facilities.

ISSUE 2: Should the Commission open a docket to examine whether FWSC's sale of the Duval and St. Johns County systems to JEA involves a gain that should be shared with FWSC's remaining customers?

RECOMMENDATION: Yes. The Commission should open a docket to examine whether FWSC's sale of the Duval and St. Johns County systems involves a gain that should be shared with FWSC's remaining customers.

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ITEM NO.

CASE

25**

Docket No. 030976-WS - Joint application for acknowledgment of transfer of land and facilities of Florida Water Services Corporation in Duval and St. Johns Counties to JEA, and for cancellation of Certificate Nos. 177-W, 562-W and 124-S.

(Continued from previous page)

ISSUE 3: Should this docket be closed?

RECOMMENDATION: This docket should remain open until the conclusion of any pending dockets concerning the Duval and St. Johns County systems, and until Certificate Nos. 177-W, 562-W, and 124-S are cancelled administratively.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

26**Docket No. 030637-WS - Petition for approval of deletion of territory in Seminole County and for amendment of Certificate Nos. 279-W and 226-S by Florida Water Services Corporation.
Docket No. 030667-WS - Application for amendment of Certificate Nos. 247-W and 189-S for extension of water and wastewater service area in Seminole County, by Sanlando Utilities Corporation.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Davidson

Staff: ECR: Redemann
GCL: Brubaker

ISSUE 1: Should the Commission approve the Settlement Agreement filed July 16, 2003, by Florida Water Services Corporation and Sanlando Utilities Corporation and the resulting amendments of water and wastewater certificates be granted?

RECOMMENDATION: Yes. The Commission should approve the Settlement Agreement (Attachment A of staff's November 20, 2003 memorandum) filed July 16, 2003, by Florida Water Services Corporation (FWSC) and Sanlando Utilities Corporation (Sanlando). Consistent with the Settlement Agreement, the Commission should approve the application of FWSC for amendment to Water Certificate No. 279-W and Wastewater Certificate No. 226-S to delete the territory described in Attachment B of staff's memorandum and the application of Sanlando for amendment to Water Certificate No. 247-W to add and delete territory and Wastewater Certificate No. 189-S to delete the territory described in Attachment C of staff's memorandum. Further, FWSC and Sanlando should charge the customers in the territory added herein the rates and charges contained in their respective tariffs until authorized to change by this Commission in a subsequent proceeding.

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26**

Docket No. 030637-WS - Petition for approval of deletion of territory in Seminole County and for amendment of Certificate Nos. 279-W and 226-S by Florida Water Services Corporation.

Docket No. 030667-WS - Application for amendment of Certificate Nos. 247-W and 189-S for extension of water and wastewater service area in Seminole County, by Sanlando Utilities Corporation.

(Continued from previous page)

ISSUE 2: Should Sanlando be ordered to show cause in writing within 21 days why it should not be fined for its apparent violation of Section 367.045, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated.

ISSUE 3: Should Docket Nos. 030637-WS and 030667-WS be closed?

RECOMMENDATION: Yes. These dockets should be closed.

DECISION: This item was deferred.

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CASE

27Docket No. 020071-WS - Application for rate increase in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

Critical Date(s): 12/2/03 (8-month effective date)

Commissioners Assigned: Deason, Baez, Bradley
Prehearing Officer: Baez

Staff: ECR: Kyle, Fletcher, Revell, Greene, Joyce,
Merchant, Stallcup, Hudson, Bruce, Daniel,
Rieger, Walden, Lester
GCL: Gervasi, Holley

ISSUE 1: Stipulated.

ISSUE 2: Dropped.

ISSUE 3: Stipulated.

ISSUE 4: Should any amortization expense be included for the Seminole County wastewater system televideo inspection charges?

RECOMMENDATION: No. All parties agree that these charges were fully amortized before the test year; therefore, no adjustments are necessary.

ISSUE 5: What adjustments, if any, should be made to the utility's UPIS with respect to common plant allocations from Water Services Corporation?

RECOMMENDATION: The utility's method of allocating common costs from Water Services Corporation (WSC) based on customer equivalents (CEs) is unsupported, as well as unreasonable. The following adjustments should be made to

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allocated plant to reflect corrections to the utility's method of recording allocations from WSC.

WSC Allocations of Common Plant

<u>County</u>	<u>Water</u>	<u>Wastewater</u>
Marion	109	17
Orange	(2,151)	0
Pasco	(5,812)	(1,815)
Pinellas	(3,181)	0
Seminole	2,377	1,283

Further, UI should be ordered to use ERCs, measured at the end of the applicable test year, as the primary factor in allocating affiliate costs in Florida as of January 1, 2004.

ISSUE 6: What adjustments should be made to CIAC and amortization of CIAC to reflect the contribution received from the City of Altamonte Springs?

RECOMMENDATION: Seminole County CIAC should be increased by \$107,000 to reflect the wastewater contribution received from the City of Altamonte Springs. Corresponding adjustments should also be made to increase accumulated amortization of CIAC and the test year amortization of CIAC by \$1,783 and \$3,567, respectively.

ISSUE 7: What adjustments, if any, should be made to the amount of working capital allocated to each of the utility's operating systems?

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RECOMMENDATION: The following adjustments should be made to the amount of working capital allocated to each of UIF's operating systems:

<u>County</u>	<u>Water</u>	<u>Wastewater</u>
Marion	(\$101,443)	(\$41,340)
Orange	(\$69,395)	\$0
Pasco	(\$205,937)	(\$226,005)
Pinellas	(\$25,370)	\$0
Seminole	(\$346,797)	(\$409,746)

ISSUE 8: If the Commission determines a system or a component of a system to be 100% used and useful in a prior case, is it obligated to keep that system 100% used and useful in a subsequent case?

RECOMMENDATION: No. The Commission is not obligated to keep a system 100% used and useful simply because it determined that system, or a component thereof, to be 100% used and useful in a prior case. In a rate case filed by the utility, the burden is on the utility to prove the used and usefulness of its systems. The Commission's decision on the used and usefulness of UIF's systems should be made based on the evidence of record, and the Commission's prior decisions involving a system or component of a system should be reviewed and considered in making that decision.

ISSUE 9: If a local jurisdiction requires fire flow, is the Commission obligated to give the Utility a fire flow allowance even if the system provides little or no fire flow?

RECOMMENDATION: If fire protection is required by a local jurisdiction, the utility has a responsibility to maintain sufficient capacity to furnish the service at the required rate and duration, even if that protection is only available to a limited number of customers in the service area.

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27	<p>Docket No. 020071-WS - Application for rate increase in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.</p> <p>(Continued from previous page)</p> <p>Therefore, the utility should be allowed to recover the cost associated with maintaining fire flow capacity for the Orangewood and Oakland Shores systems.</p> <p><u>ISSUE 10</u>: Should any of the UIF systems be considered as 100% used and useful because they are built out?</p> <p><u>RECOMMENDATION</u>: Staff recommends that all of the UIF water distribution and wastewater collection systems should be considered 100% used and useful because they are built out, with the exception of the Summertree water and wastewater systems in Pasco County and Golden Hills/Crownwood water system in Marion County.</p> <p><u>ISSUE 11</u>: What methodology should be employed to calculate the used and useful percentages, and what are the appropriate used and useful percentages for the utility's water treatment systems, including source of supply and pumping, water treatment plants, and storage and high service pumping?</p> <p><u>RECOMMENDATION</u>: Staff recommends that all components of each of the UIF water systems in this case are 100% used and useful, based on the methodology described in the analysis portion of staff's November 20, 2003 memorandum.</p> <p><u>ISSUE 12</u>: What methodology should be employed to calculate the used and useful percentages, and what are the appropriate used and useful percentages for the utility's wastewater treatment plants?</p> <p><u>RECOMMENDATION</u>: Staff recommends that the Crownwood wastewater treatment plant be considered 68.65% used and useful based on the methodology contained in Rule 25-30.432, F.A.C.</p> <p><u>ISSUE 13</u>: What methodology should be employed to calculate the used and useful percentages, and what are the appropriate used and useful percentages for the utility's water distribution and wastewater collection systems?</p>

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RECOMMENDATION: Staff recommends that all of the UIF water distribution and wastewater collection systems should be considered 100% used and useful, based on the methodology discussed in the analysis portion of staff's November 20, 2003 memorandum.

ISSUE 14: What is the appropriate rate base?

RECOMMENDATION: The projected 13-month average rate base for each system is as follows:

	<u>Water</u>	<u>Wastewater</u>
Marion	\$ 266,335	\$ 59,128
Orange	\$ 46,653	N/A
Pasco	\$ 879,905	\$ 271,676
Pinellas	\$ 195,047	N/A
Seminole	\$ 1,429,842	\$ 1,319,403

ISSUE 15: Stipulated.

ISSUE 16: What is the appropriate return on equity (ROE) for UIF?

RECOMMENDATION: The appropriate return on equity (ROE) for UIF is 11.45% with a range of plus or minus 100 basis points. This is based on the current leverage formula in Order No. PSC-03-0707-PAA-WS, issued June 13, 2003. The Commission should not adjust the leverage formula to remove the small utility risk premium.

ISSUE 17: Should UIF's ROE be lowered as a penalty to reflect the quality of its books and records?

RECOMMENDATION: No. The utility should not be penalized because of its books and records. The requirements necessary to bring the utility into compliance are being addressed in Docket No. 020407-WS, the Cypress Lakes Utilities, Inc. rate case.

ISSUE 18: What is the appropriate cost of overall rate of return for water and wastewater for each county?

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RECOMMENDATION: The appropriate cost of overall rate of return for each county is as shown in the table below. For identification purposes, the AFUDC rate should be the same as the rate of return, and the monthly discounted rate is also reflected.

<u>County</u>	<u>Rate of Return</u>	<u>AFUDC Monthly Discounted Rate</u>
Marion	9.59%	0.798611%
Orange	8.69%	0.723691%
Pasco	9.57%	0.797328%
Pinellas	9.48%	0.789695%
Seminole	9.58%	0.797650%

ISSUE 19: What is the appropriate amount of test year revenues?

RECOMMENDATION: The appropriate amount of test year revenues for Marion County Water is \$153,402 and for Marion County Wastewater is \$67,800. The appropriate amount of test year revenues for Orange County Water is \$85,713. The appropriate amount of test year revenues for Pasco County Water is \$432,971 and for Wastewater is \$284,248. The appropriate amount of test year revenues for Pinellas County Water is \$56,629. The appropriate amount of test year revenues for Seminole County Water is \$607,594 and for Wastewater is \$398,746.

ISSUE 20: Directed Verdict.

ISSUE 21: Directed Verdict.

ISSUE 22: What adjustments, if any, should be made to the utility's operation and maintenance expense with respect to amounts allocated from WSC?

RECOMMENDATION: The following adjustments should be made to UIF's expenses to reflect corrections to the utility's method of recording allocations from Water Services

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Corporation, and to allocate the stipulated decrease in O&M costs from Florida Cost Center 600 to the UIF systems.

	<u>Water</u>	<u>Wastewater</u>
Marion	(\$4,986)	(\$743)
Orange	(1,899)	0
Pasco	(23,248)	(7,261)
Pinellas	(6,737)	0
Seminole	<u>(25,376)</u>	<u>(13,700)</u>
Total	<u>(\$62,246)</u>	<u>(\$21,704)</u>

ISSUE 23: Should adjustments be made to the amount of salaries, pensions and benefit expense and payroll taxes included in the Company's MFR filing?

RECOMMENDATION: Yes. The following adjustments are necessary to salaries, benefits expense, and payroll taxes.

<u>Systems</u>	<u>Salaries</u>	<u>Pension & Benefits</u>	<u>Payroll Taxes</u>
Marion - Water	\$7,781	(\$1,143)	(\$990)
Marion - Wastewater	(\$10,225)	(\$170)	(\$147)
Orange - Water	(\$5,494)	(\$1,162)	(\$712)
Pasco - Water	\$17,995	(\$622)	(\$1,231)
Pasco - Wastewater	(\$8,003)	\$648	(\$385)
Pinellas - Water	(\$24,689)	(\$6,954)	(\$4,299)
Seminole - Water	\$5,051	(\$1,110)	(\$2,002)
Seminole - Wastewater	<u>\$2,727</u>	<u>(\$583)</u>	<u>(\$1,081)</u>
Total	<u>(\$14,856)</u>	<u>(\$10,860)</u>	<u>(\$10,846)</u>

ISSUE 24: What adjustments, if any, should be made to the utility's O&M expense in Seminole County with respect to the wastewater interconnection with the City of Sanford?

RECOMMENDATION: O&M expenses in Seminole County should be reduced by \$88,202 to reflect the proper amount of purchased

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wastewater treatment expense and other discontinued expense associated with the interconnection.

ISSUE 25: What is the appropriate amount of rate case expense?

RECOMMENDATION: Total rate case expense of \$397,597 should be allowed, or \$99,399 in annual amortization. As a result, the adjustments listed in the table below should be made to each system.

<u>County</u>	<u>Water</u>	<u>Wastewater</u>	<u>Total</u>
Marion	(\$15,764)	(\$3,239)	(\$19,003)
Orange	(\$23,613)		(\$23,613)
Pasco	\$14,825	\$6,396	\$21,221
Pinellas	(\$21,551)		(\$21,551)
Seminole	(\$2,145)	(\$1,144)	(\$3,289)
Total	<u>(\$48,248)</u>	<u>\$2,013</u>	<u>(\$46,235)</u>

ISSUE 26: Does UIF have excessive unaccounted for water and if so, what adjustments should be made?

RECOMMENDATION: No adjustment should be made for unaccounted for water where: (1) the amount is less than 10%, (2) the adjustment would be less than 1% and therefore immaterial, or (3) the utility is already addressing the problem through corrective measures. Adjustments should be made to reduce electric power purchased by \$2,297 and chemicals by \$373 to reflect unaccounted for water in excess of 10% for the Golden Hills/Crownwood system, for overall Pasco County, and the Lake Tarpon system.

ISSUE 27: Does UIF have excessive infiltration/inflow in any of its wastewater systems, and if so, what adjustments should be made?

RECOMMENDATION: Staff recommends that the treatment costs associated with the Ravenna Park wastewater system in Seminole County be reduced by \$45,478 due to excessive inflow and infiltration. The other wastewater systems in

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this case do not require an adjustment for excessive inflow and infiltration.

ISSUE 28: Is there a gain on sale with respect to the sale of the Druid Isle water system and of a portion of the Oakland Shores water system to the City of Maitland and/or with respect to the sale of the Green Acres Campground water and wastewater facilities to the City of Altamonte Springs, and if so, in what amounts?

RECOMMENDATION: Yes. The gains on the sales to the City of Maitland and the City of Altamonte Springs should be \$67,695 and \$269,661, respectively.

ISSUE 29: Should gains or losses on the sale of utility assets be included in cost of service for rate setting purposes?

RECOMMENDATION: No. The gains on the Maitland and Altamonte Sales should be attributable to the shareholders. Thus, no adjustments are necessary to test year operating expenses.

ISSUE 30: What is the test year operating income before any revenue increase?

RECOMMENDATION: Based on the adjustments discussed in previous issues, staff recommends that the test year operating income before any provision for increased revenues for UIF should be as follows:

<u>County</u>	<u>Water</u>	<u>Wastewater</u>
Marion	\$ 20,307	\$ 20,530
Orange	\$ (6,120)	N/A
Pasco	\$ 42,352	\$ 16,190
Pinellas	\$ 4,085	N/A
Seminole	\$ 80,335	\$ (11,509)

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ISSUE 31: What is the appropriate revenue requirement?
RECOMMENDATION: The following revenue requirement should be approved:

	Adjusted Test Year Revenues	\$ Increase (Decrease)	Revenue Requirement	% Increase (Decrease)
Marion Water	\$153,402	\$8,778	\$162,180	5.72%
Marion Wastewater	\$67,800	(\$24,950)	\$42,850	(36.80)%
Orange Water	\$85,713	\$17,080	\$102,793	19.93%
Pasco Water	\$432,971	\$70,299	\$503,270	16.24%
Pasco Wastewater	\$284,248	\$16,477	\$300,725	5.80%
Pinellas Water	\$56,629	\$24,186	\$80,815	42.71%
Seminole Water	\$607,594	\$95,002	\$702,596	15.64%
Seminole Wastewater	\$398,746	\$231,442	\$630,188	58.04%

ISSUE 32: What are the appropriate bills, ECRs and gallons to be used to set water and wastewater rates for the 2001 test year?

RECOMMENDATION: The appropriate number of bills, gallons, and ERCs for Orange and Pinellas Counties is contained in Composite Exhibit 5. The appropriate number of bills, gallons, and ERCs for Pasco and Seminole Counties is contained in Exhibit 5, and updated to include the revised MFR Schedules E-2 and E-14 contained in Exhibit 6. Staff made two minor corrections to these schedules as described in the analysis portion of staff's November 20, 2003 memorandum. The appropriate number of bills, gallons, and ERCs for Marion County is contained in Composite Exhibit 5, as adjusted to reflect the annualization of the addition of a bulk wastewater customer during the test year.

ISSUE 33: Is the utility's proposed rate consolidation for Pasco and Seminole Counties appropriate, and if not, what, if any, rate consolidation is appropriate for those counties?

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RECOMMENDATION: Yes. The utility's proposed rate consolidation is appropriate. The rates for each water system in Pasco County should be consolidated into a single tariff rate. The rates for the Oakland Shores water system in Seminole County should be consolidated with the remaining water systems into a single tariff rate.

ISSUE 34: What are the appropriate rates for water service for this utility?

RECOMMENDATION: The appropriate monthly rates for water service are shown on Schedule 4-A of staff's November 20, 2003 memorandum. The recommended water rates should be designed to produce revenues of \$160,900 in Marion County, \$100,581 in Orange County, \$494,751 in Pasco County, \$80,807 in Pinellas County and \$693,219 in Seminole County, all of which exclude miscellaneous revenues. The utility should file revised tariff sheets and proposed customer notices to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates should not be implemented until staff has approved the proposed customer notices, and the notices have 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.

ISSUE 35: What are the appropriate rates for wastewater for this utility?

RECOMMENDATION: The appropriate monthly rates for wastewater service are shown in Schedule 4B of staff's November 20, 2003 memorandum. The recommended wastewater rates should be designed to produce revenues of \$42,790 in Marion County, \$299,188 in Pasco County, and \$626,110 in Seminole County, all of which exclude miscellaneous revenues. The utility should file revised tariff sheets and proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service

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rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code. The 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.

ISSUE 36: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of amortized rate case expense, as required by Section 367.0816, Florida Statutes?

RECOMMENDATION: The rates should be reduced as shown on Schedules 4-A and 4-B of staff's November 20, 2003 memorandum to remove the revenue impact of rate case expense. This amount was calculated by taking the annual amount of rate case expense by system grossed up for regulatory assessment fees. 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, Florida Statutes. The utility should be required to file revised tariffs and proposed customer notices for each system 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 for the reduction in the rates due to the amortized rate case expense.

ISSUE 36A: Is an interim refund appropriate and if so, what is the appropriate amount?

(This issue was not included in the prehearing order and is a fall-out of Stipulation 29 regarding the methodology to determine if any interim refunds are required. Parties did not present positions on this issue.)

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27	Docket No. 020071-WS - Application for rate increase in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida. (Continued from previous page) <u>RECOMMENDATION</u> : The utility should be required to refund 7.66% of water revenues collected under interim rates for Marion County. No other interim refunds are appropriate. The refund should be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), Florida Administrative Code. <u>ISSUE 37</u> : Should the utility be required to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-97-0531-FOF-WU, issued May 9, 1995, in Docket No. 960444-WU, for its failure to maintain its books and records in conformance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts? <u>RECOMMENDATION</u> : No. Although the record reflects that the utility's books and records are not maintained in compliance with the NARUC USOA, the utility's compliance with this issue is being addressed in Docket No. 020407-WS. The utility's future compliance and actions should be monitored in conjunction with Docket No. 020407-WS and future rate filings for UI systems in Florida. <u>ISSUE 38</u> : Should this docket be closed? <u>RECOMMENDATION</u> : No. This docket should remain open pending staff's verification that the utility's revised tariff sheets and notice are consistent with the Commission's decision and that the utility has properly administered the interim refund. Once staff has verified that the refund has been made, the corporate undertaking should be released. Upon staff's verification that the above requirements have been met and after the time for filing an appeal has run, the docket should be administratively closed.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Baez, Bradley

ITEM NO.

CASE

28Docket No. 030349-TP - Complaint by Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. regarding BellSouth's alleged use of carrier-to-carrier information.

Critical Date(s): None

Commissioners Assigned: Deason, Bradley, Davidson
Prehearing Officer: Deason

Staff: GCL: Dodson, Susac
CMP: Casey, Broussard, Bulecza-Banks, Hallenstein

ISSUE A: What is the Commission's jurisdiction regarding the alleged violations of 47 U.S.C. §222(b) of the Federal Telecommunications Act of 1996?

RECOMMENDATION: Staff believes that the Commission cannot provide a remedy (federal or state) for a violation of 47 U.S.C. §222(b). If, however, the conduct at issue also constitutes anticompetitive behavior as prohibited by Section 364.01(4)(g), Florida Statutes, the Commission may impose penalties as provided in Section 364.285, Florida Statutes, for the violation of state law. In order to ensure that its decision under state law does not conflict with the federal provision, the Commission may interpret the federal provision and apply it to the facts of this case. Findings made as a result of such federal law analysis would not, however, be considered binding on the FCC or any court having proper jurisdiction to hear and remedy complaints regarding violations of Section 222 of the Act.

ISSUE 1: Can BellSouth share carrier-to-carrier information, acquired from its wholesale Operational Support System (OSS) and/or wholesale operations, with its retail division to market to its current and potential customers?

RECOMMENDATION: No. BellSouth cannot share carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, with its retail division to market to its current and potential customers. Staff recommends that the Commission affirm its findings in Order PSC-02-0875-PAA-TP, issued June 28, 2002, in Docket No. 020119-TP, and Order PSC-03-0726-FOF-TP, issued June 19, 2003, in Docket Nos. 020119-TP, 020578-TP, and 021252-TP, which prohibit

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BellSouth's wholesale division from sharing information with its retail division.

ISSUE 2: Can BellSouth use carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, to furnish leads and/or marketing data to its in-house and third-party marketers?

RECOMMENDATION: Staff recommends that BellSouth should not be allowed to use carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, to furnish leads and/or marketing data to its in-house and third-party marketers.

ISSUE 3: Has BellSouth shared and/or used carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, in its retail division, with its in-house marketers and/or third-party marketers for marketing purposes? If such practices are improper, what penalties should be imposed?

PRIMARY RECOMMENDATION: Primary staff recommends that BellSouth, due to a manual coding error, did, between July 18, 2003 and August 27, 2003, share and/or use carrier-to-carrier information, acquired from its wholesale OSS and/or wholesale operations, in its retail division, with its in-house marketers and/or third-party marketers for marketing purposes. However, this was an isolated incident which, when discovered, was immediately corrected by BellSouth. Since the mistake was minor, no harm was caused to Supra, and the error was corrected immediately by BellSouth, primary staff does not recommend BellSouth be penalized or fined for this coding error, but primary staff does recommend that BellSouth be put on notice that future non-compliance of Order No. PSC-02-0875-PAA-TP, or any other order or rule of this Commission, will not be tolerated.

ALTERNATIVE RECOMMENDATION: Alternate staff recommends that BellSouth, due to a manual coding error, did, between July 18, 2003 and August 27, 2003, share and/or use carrier-to-

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carrier information, acquired from its wholesale OSS and/or wholesale operations, in its retail division, with its in-house marketers and/or third-party marketers for marketing purposes in violation of Commission Order No. PSC-02-0875-PAA-TP. Therefore, alternate staff recommends that BellSouth be fined \$10,000 for each of the three instances where customers in Florida received marketing mailings based on the use of wholesale information which was provided to BellSouth's retail division. The penalty should be paid within 14 calendar days after the issuance of the Final Order to the Florida Public Service Commission and be remitted to the Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285 (1), Florida Statutes.

ISSUE 4: Should this docket be closed?

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

DECISION: The alternative recommendation in Issue 3 was denied. The remaining recommendations were approved.

Commissioners participating: Deason, Bradley, Davidson

Minutes of
Commission Conference
December 2, 2003

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29**Docket No. 021249-TP - Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for non-compliance with Commission Order PSC-02-0878-FOF-TP. (Deferred from September 30, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Baez, Bradley, Davidson
Prehearing Officer: Bradley

Staff: GCL: Christensen
CMP: Dowds, Pittman

ISSUE 1: Should the Commission acknowledge Supra's Notice of Voluntary Withdrawal Without Prejudice?

RECOMMENDATION: Yes. The Commission should acknowledge Supra's Notice of Voluntary Withdrawal Without Prejudice.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Bradley, Davidson