

**MINUTES OF JANUARY 4, 2005**

**COMMISSION CONFERENCE**

**COMMENCED:** 10:50 a.m.

**ADJOURNED:** 5:35 p.m.

**COMMISSIONERS PARTICIPATING:** Chairman Baez  
Commissioner Deason  
Commissioner Bradley  
Commissioner Davidson  
Commissioner Edgar

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

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1 Approval of Minutes

November 30, 2004 Regular Commission Conference

December 7, 2004 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO. CASE

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2\*\*Consent Agenda

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040251-TX	Twenty Eight Red, Inc. d/b/a Cash America
041331-TX	New Rochelle Telephone Corp.
041200-TX	Economic Telecom, Inc.
041201-TX	NETLINE COMMUNICATIONS CORP.

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
041329-TC	Dean Newell
041330-TC	James Larman
041343-TC	Candy Fawley
041372-TC	Mahmoud El-Yaman
041290-TC	Symtelco, LLC

RECOMMENDATION: The Commission should approve the action requested in the dockets referenced above and close these dockets.

DECISION: The recommendation was approved.

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

ITEM NO.

CASE

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3Docket No. 040763-TP - Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Critical Date(s): 5/31/05 (Current contract with Sprint expires on this date.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: CMP: Moses, Casey

GCL: Rojas

Issue 1: Should the Commission select Sprint as the relay service provider and direct the Commission's Executive Director to: (1) issue the attached letter of intent (Attachment A, Page 9 of staff's December 21, 2004 memorandum) notifying all bidders of the Commission's decision to award a three-year contract to Sprint to be the provider of the statewide telecommunications relay service in Florida; and (2) finalize and sign a contract with Sprint to provide the Florida Relay Service?

Recommendation: Yes. Based upon the RFP evaluation process, the Commission should select Sprint as the relay provider and direct the Commission's Executive Director to: (1) issue the letter of intent notifying all bidders that Sprint has been awarded a three-year contract as the provider of the statewide telecommunications relay service in Florida; and (2) finalize and sign a contract with Sprint to provide the Florida Relay Service.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for the life of the contract.

DECISION: The recommendations were approved with modifications discussed at the conference.

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

ITEM NO.

CASE

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4Docket No. 041211-TP - Petition for declaratory statement by Smart City Telecommunications LLC d/b/a Smart City Telecom to determine application of term "subscriber" or "customer" as contemplated by Rule 25-4.003(50), F.A.C.

Critical Date(s): 1/16/05 (By statute, order must be issued by this date.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Cibula

CMP: King

Issue 1: Should the Commission grant Smart City's Petition for Declaratory Statement and provide a determination as to whether Mr. Keith Kropp or Main Street Realtors was the original subscriber or customer of the Smart City account at issue pursuant to Rule 25-4.003(50), Florida Administrative Code?

Recommendation: Yes. The Commission should grant Smart City's petition and declare that, based on the facts as set forth in Smart City's petition, Main Street Realtors was the original subscriber or customer of the Smart City account.

Issue 2: Should this docket be closed?

Recommendation: Yes. No further action is required; therefore, this docket should be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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5Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.  
Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Baez (010503-WU)  
Bradley (020896-WS)

Staff: GCL: Cibula  
ECR: Devlin

Issue 1: Should the Commission grant Aloha's Request for Oral Argument on its Motion for Termination of Proceedings?

Recommendation: Yes. Aloha's Request for Oral Argument on its Motion for Termination of Proceedings should be granted. Each side should be given ten minutes to address the Commission.

DECISION: The recommendation was approved.

Issue 2: Should the Commission grant Aloha's Motion for Deletion of Proceedings as They Relate to Deletion of Territory?

Recommendation: Yes. Aloha's motion should be granted.

DECISION: The recommendation was approved.

Issue 3: Should Aloha's Request for Oral Argument in regard to its Motion for Reconsideration of Order No. PSC-04-1152-PCO-WS (the Discovery Order) be granted?

Recommendation: If the Commission votes to approve advisory staff's recommendation on Issue 2, Aloha's Request for Oral Argument would be moot. However, even if the Commission denies advisory staff's recommendation on Issue 2, Aloha's Request for Oral Argument should be denied.

DECISION: This issue was moot.

Issue 4: Should Aloha's Motion for Reconsideration of Order No. PSC-04-1152-PCO-WS (the Discovery Order) be granted?

Recommendation: If the Commission votes to approve advisory staff's recommendation on Issue 2, Aloha's Motion for Reconsideration of Order No. PSC-04-1152-PCO-WS

ITEM NO.

CASE

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5

Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.  
Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

(Continued from previous page)

would be moot. However, even if the Commission denies advisory staff's recommendation on Issue 2, the motion for reconsideration should be denied. Aloha should provide the information requested in POD No. 1, as set forth in Order No. PSC-04-1152-PCO-WS, within 5 days of the Commission's vote on this motion.

DECISION: This issue was moot.

Issue 5: Should these dockets be closed?

Recommendation: If the Commission approves advisory staff's recommendation on Issue 2, Docket No. 020896-WS should be closed and the customer hearing scheduled for January 27-28, 2005, should be cancelled. If the Commission denies advisory staff's recommendation on Issue 2, Docket No. 020896-WS should remain open. In either event, Docket No. 010503-WU should remain open to proceed to hearing on the protest to the order relating to the measurement of water quality.

DECISION: The recommendation was approved.

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

ITEM NO.

CASE

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6\*\*Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: GCL: Gervasi, Helton

ECR: Fletcher, Stallcup

Issue 1: What action, if any, should the Commission take in the event that Aloha's Motion for Termination is granted?

Primary Staff Recommendation: If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Primary staff recommends that the Commission should decline to initiate deletion proceedings against Aloha because there is not probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Because Aloha provides potable water which meets all state and federal drinking water standards up to the point of connection to its customers' meters, primary staff does not believe that the facts relating to Aloha's provision of water service to Trinity, Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Aloha should be required to continue to submit monthly project status reports up to the time of implementation of the treatment standard imposed by Order No. PSC-04-0712-PA-WS.

Alternate Staff Recommendation: If the Commission votes to grant Aloha's Motion for Termination, the Commission must determine whether there is probable cause to believe that Aloha has violated a statute, rule, or order that warrants the imposition of a penalty. Alternate staff believes the facts relating to Aloha's provision of water service to Trinity (south of Mitchell Boulevard and east of Seven Springs Boulevard), Riviera Estates, Villa del Rio, and Riverside Village Unit 4 provide probable cause that Aloha has violated its statutory duty under section 367.111(2), Florida Statutes, to provide service to customers in those areas that "shall not be . . . less sufficient than is consistent with . . . the reasonable and proper operation of the utility system in the public interest." Alternate staff recommends that the appropriate penalty pursuant to section 367.161(2), Florida Statutes, for such statutory violation is to amend or partially revoke Aloha's Water Certificate No. 136-W to delete these insufficiently served areas from its service territory. The Commission's decision to revoke any portion of Aloha's certificated

ITEM NO.

CASE

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6\*\*

Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.

(Continued from previous page)

territory should be made contingent upon provisions being made for an alternative service provider to be in place. Procedurally, alternate staff recommends that the Commission open a new docket for this deletion proceeding, provide 30 days' notice of the initiation of such action pursuant to section 367.045(6), and, at the expiration of that 30 days, issue the Order to Show Cause appended to this recommendation as Attachment C, to initiate the deletion proceeding and provide a point of entry for Aloha to request a hearing. The requisite notice should be served on Aloha by personal service or certified mail, and submitted for the next available publication of the Florida Administrative Weekly and to a newspaper of general circulation in the area affected within seven days of the Commission's vote on the matter.

DECISION: The primary recommendation was denied; the alternate recommendation was approved.

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



ITEM NO.

CASE

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7Docket No. 041272-EI - Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: GCL: Brubaker, Rodan  
ECR: Slemkewicz, Willis

Issue 1: Should the joint Motion to Dismiss filed by OPC and FIPUG be granted?

Recommendation: No. The Motion to Dismiss should be denied.

Issue 2: Should the docket be closed?

Recommendation: No. If the Commission votes in favor of staff's recommendation in Issue 1, the docket should remain open to accommodate the hearing currently scheduled in this docket.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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8Docket No. 041291-EI - Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.

Critical Date(s): 1/19/05 (60-day suspension date) - Issue 4

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Slemkewicz, Willis, Kummer, Wheeler, Maurey

GCL: C. Keating

Issue 1: Should the Commission grant OPC and FIPUG's joint motion to dismiss FPL's Storm Cost Recovery Petition?

Recommendation: No. The motion to dismiss should be denied. FPL's petition states a cause of action upon which relief may be granted.

Issue 2: Should the Commission grant OPC and FIPUG's joint request to strike or dismiss FPL's Preliminary Surcharge Petition?

Recommendation: No. The Commission should deny OPC and FIPUG's joint request to strike or dismiss FPL's Preliminary Surcharge Petition.

Issue 3: Should the Commission authorize FPL to implement a preliminary storm surcharge subject to refund?

Recommendation: Yes. If the motions to dismiss/strike are denied, FPL should be authorized to implement a preliminary surcharge, subject to refund. This approval would be preliminary in nature and would not prejudice the merits of any issues that may be raised in the evidentiary hearing in this docket, such as the implementation of any surcharge, any amounts to be recovered, or the duration of any surcharge.

Issue 4: Should the Commission approve FPL's proposed Original Tariff Sheet No. 8.033?

Recommendation: If the Commission approves staff's recommendation in Issue 3, the tariff as filed should be approved and remain in effect until the final order is issued in this docket. The appropriate allocation of the costs to rate classes and the resulting rate factors should be an issue in the hearing scheduled for April. Consistent with the application of interim rates, the tariff should become effective for meter readings on or after February 3, 2005. If the Commission denies FPL's request to implement the storm damage surcharge subject to refund prior to the hearing, the proposed tariff sheet should be suspended, pending the results of the scheduled hearing.

ITEM NO.

CASE

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8                      Docket No. 041291-EI - Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.

(Continued from previous page)

Issue 5: What is the appropriate security to guarantee the amount collected subject to refund through the storm surcharge?

Recommendation: The appropriate security to guarantee the amount collected subject to refund through the storm surcharge is a corporate undertaking.

Issue 6: Should this docket be closed?

Recommendation: No. This docket should remain open.

DECISION: The recommendation in Issue 1 was approved, while Issues 2 through 6 were deferred to the 01/18/05 agenda conference.

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

ITEM NO.

CASE

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9Docket No. 040001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Critical Date(s): None

Commissioners Assigned: Baez, Deason, Bradley, Davidson (for purposes of this decision only)

Prehearing Officer: Bradley

Staff: ECR: Haff, Ballinger  
GCL: Vining, C. Keating

Issue 14C: Should the Commission approve the three UPS agreements between FPL and Southern Company for cost recovery purposes?

Primary Recommendation: No. The new UPS agreements between FPL and Southern Company are not cost-effective. FPL's own analysis indicates that the new UPS agreements are between \$69 million and \$93 million more costly than FPL's self-build alternative. However, in staff's opinion, a more realistic cost difference is \$117 million because FPL over-estimated the potential for coal-fired economy energy purchases from Southern Company.

Alternate Recommendation: Yes. The new UPS agreements provide certain benefits, some of which are difficult to quantify. The primary benefit of the new UPS agreements is FPL's retention of firm transmission rights within the Southern system. Staff recommends, as a condition of approval, that any gain on sales to third parties that utilize the transmission rights associated with the UPS agreements should be credited 100% to FPL's ratepayers. If FPL negotiates the purchase of additional coal capacity and energy from either the Miller or Scherer units, the same conditions should apply. In order to not penalize FPL, the gains on such sales should not be included in FPL's calculation of a three-year rolling average for purposes of establishing the threshold for other economy sales pursuant to Order No. PSC-00-1744-PAA-EI.

DECISION: The primary recommendation was denied; the alternate recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Davidson