

MINUTES OF JANUARY 18, 2005

COMMISSION CONFERENCE

COMMENCED: 9:40 a.m.

ADJOURNED: 3:25 p.m.

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

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

1Docket No. 040246-WS - Proposed adoption of Rule 25-30.457, F.A.C., Limited Alternative Rate Increase, and Rule 25-30.458, F.A.C., Notice of and Public Information for Application for Limited Alternative Rate Increase.

Critical Date(s): None

Rule Status: Adoption

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: GCL: Moore, Jaeger
ECR: Hewitt, Rendell, Willis

Issue 1: Should the Commission adopt changes to proposed Rule 25-30.457, Florida Administrative Code, Limited Alternative Rate Increase, to address comments submitted by the Joint Administrative Procedures Committee staff attorney?

Recommendation: Yes.

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

Recommendation: Yes. After a Notice of Change is published in the Florida Administrative Weekly, the rule should be filed for adoption with the Secretary of State 21 days thereafter and the docket may be closed.

DECISION: The recommendations were approved.

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

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ITEM NO.

CASE

2**Docket No. 041304-TC - Proposed amendment of Rule 25-24.515, F.A.C., Pay Telephone Service.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: GCL: Stern
CMP: Kennedy
ECR: Hewitt

Issue 1: Should the Commission propose the amendment of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service?

Recommendation: Yes. The Commission should propose the amendment of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, to reflect changes in pay telephone station standards, as set forth in Attachment A of staff's January 6, 2005 memorandum.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no request for hearing or comments are filed, the rule 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: Baez, Deason, Bradley, Davidson, Edgar

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ITEM NO.

CASE

3**Docket No. 041017-TI - Revisions to intrastate interexchange telecommunications company rules in Chapters 25-4 and 25-24, F.A.C., to reflect 2003 statutory changes. (Deferred from December 7, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: GCL: Stern
CMP: Pruitt, Watts
ECR: Hewitt

Issue 1: Should the Commission propose the rule revisions to Chapters 25-4 and 25-24, Florida Administrative Code, contained in Attachment B of staff's January 6, 2005 memorandum?

Recommendation: Yes. The Commission should propose the rule revisions because they implement the 2003 amendments to Chapter 364, Florida Statutes.

Issue 2: Should the docket be closed?

Recommendation: Yes. If no request 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 with modifications/corrections to Issue 1 noted by BellSouth at the conference.

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

ITEM NO.

CASE

4**PAADocket No. 041307-EI - Petition for declaratory statement, or in the alternative, petition for waiver of Rule 25-6.100(2)(c), F.A.C., by Gulf Power Company.

Critical Date(s): 1/31/05 (90-day deadline for disposition of petition)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Brown

ECR: Baxter

Issue 1: Should the Commission grant Gulf's petition for a waiver of subparts (2), (3) and (4) of Rule 25-6.100 (2)(c), Florida Administrative Code?

Recommendation: Yes. The Commission should grant Gulf's petition for a rule waiver.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

5Docket 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

Staff: GCL: Jaeger
ECR: Merchant, Fletcher

Issue 1: Should the Commission grant Aloha's Motion for Stay Pending Judicial Review?

Recommendation: Yes. Pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, the Commission should grant the Motion for Stay Pending Judicial Review. Pending judicial review, the funds in the escrow account should be maintained at their present level.

Issue 2: Should this docket be closed?

Recommendation: No. Pending the final determination of the appropriate refunds and the required plant improvements, this docket should remain open.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

6**Docket No. 041408-EU - Joint petition of Tampa Electric Company and Withlacoochee River Electric Cooperative, Inc. for expedited interim approval of customer transfers pending consideration of joint application for permanent relocation of territorial boundaries.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: GCL: Rodan
ECR: Breman

Issue 1: Should the Commission approve the joint petition of Tampa Electric Company and Withlacoochee River Electric Cooperative, Inc. for interim electric service pending consideration of a subsequently filed joint application for modification of territorial boundaries?

Recommendation: Yes. Staff recommends that the joint petition be approved. No uneconomic duplication of facilities is expected because TECO has neared completion of electric facilities in the proposed Belle Chase subdivision that would be adequate to provide service to the entire subdivision. WREC presently has no comparable electric facilities in place. Service by TECO is necessary to accommodate the developer's need to move forward quickly to make lots available to builders for construction.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for consideration of the joint application for modification of territorial boundaries that will subsequently be submitted for Commission approval.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

7Docket No. 040301-TP - Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.
Docket No. 041338-TP - Joint petition by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine; Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch; DIECA Communications, Inc. d/b/a Covad Communications Company; Florida Digital Network, Inc.; LecStar Telecom, Inc.; MCI Communications, Inc.; and Network Telephone Corporation ("Joint CLECs") for generic proceeding to set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in BellSouth Telecommunications, Inc. service area.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Bradley

Staff: GCL: Susac, Banks
CMP: Vinson, Dowds, Duffey, Harvey

Issue 1: Should BellSouth Telecommunications, Inc.'s Emergency Motion For Continuance be granted to the extent that it requests the Commission to consolidate Docket Nos. 040301-TP and 041338-TP?

Recommendation: Yes. Staff recommends consolidating the two dockets due to the fact that both dockets share virtually identical issues of law and fact relating to the rates, terms and conditions for a UNE-P to UNE-L conversion. Further, the consolidation of the dockets will also give the entire CLEC community an opportunity to put forth evidence regarding the UNE-P to UNE-L conversion. Last, administrative efficiency will be gained by consolidating Docket Nos. 040301-TP and 041338-TP.

DECISION: This issue was deferred to the 2/1/05 conference.

Issue 2: Should Supra Telecommunications and Information Systems, Inc.'s Motion for Partial Summary Final Order on Issues three and four be granted?

Recommendation: No. A genuine issue of material fact remains as to whether new non-recurring rates should be created that apply for a hot-cut from UNE-P to UNE-L where the lines are served by copper or UDLC, and where they are not served by copper or UDLC.

DECISION: The recommendation was approved.

ITEM NO.

CASE

7

Docket No. 040301-TP - Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.
Docket No. 041338-TP - Joint petition by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine; Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch; DIECA Communications, Inc. d/b/a Covad Communications Company; Florida Digital Network, Inc.; LecStar Telecom, Inc.; MCI Communications, Inc.; and Network Telephone Corporation (“Joint CLECs”) for generic proceeding to set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in BellSouth Telecommunications, Inc. service area.

(Continued from previous page)

Issue 3: Should Supra Telecommunications and Information Systems, Inc.'s Motion for Reconsideration be granted?

Recommendation: No. Supra's Motion for Reconsideration of Order No. PSC-04-1180-PCO-TP, issued November 30, 2004, should be denied because it fails to identify a point of fact or law that the Prehearing Officer failed to consider in rendering his Order. Supra's arguments have been considered and rejected by the Prehearing Officer. In addition, the arguments have been rendered moot by passage of time.

DECISION: The recommendation was approved.

Issue 4: Should these Dockets be closed?

Recommendation: If Issue 1 is approved then these dockets should be consolidated for hearing purposes. However, if Issue 1 is not approved then both dockets should remain open and proceed to hearing.

DECISION: This issue was deferred to the 2/1/05 conference.

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

ITEM NO.

CASE

8**PAADocket No. 040779-TP - Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc. (Deferred from November 30, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Rojas

CMP: Bates, Dowds

Issue 1: Should the Commission accept Z-Tel's Notice of Adoption?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order, and Z-Tel's adoption of the Network Interconnection Agreement should have an effective date of July 23, 2004, reflecting the date that the Notice of Adoption was filed this Commission. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order, the docket should remain open.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

9**PAADocket No. 041362-TI - Investigation and determination of appropriate method for refunding Universal Service Fund overcharges by Supra Telecommunications and Information Systems, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Watts

GCL: Rockette-Gray

Issue 1: Should the Commission accept Supra Telecommunications and Information Systems, Inc.'s proposal to issue refunds in the amount of \$221,535.31, plus interest of \$3,604.71, for a total of \$225,140.02, to the affected customers for apparent overcharges for Universal Service Fund contributions for the period April 2003 to August 2004?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of the Order. The company should submit a report within 30 days of the issuance of the Consummating Order to the Commission stating, (1) how much money was refunded to its customers, (2) the number of customers, and (3) the amount of money due to those customers that cannot be located; and remit any amounts due to customers that cannot be located to the Commission for deposit in the state of Florida General Revenue Fund. Upon receipt of Supra's report and staff's review, this docket should be closed administratively.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

10**PAADocket No. 041314-TI - Compliance investigation of Inter Con Communications for
apparent violation of Sections 364.02 and 364.04, F.S.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Scott

Issue 1: Should the Commission impose a penalty upon Inter Con Communications in
the amount of \$25,000 for its apparent violation of Sections 364.02 and 364.04, Florida
Statutes?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and
effective upon issuance of a Consummating Order, unless a person whose substantial
interests are affected by the Commission's decision files a protest that identifies with
specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida
Administrative Code, within 21 days of the issuance of the Proposed Agency Action
Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute
should be deemed stipulated. If ICC 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. If payment of the penalty is
not received within fourteen (14) calendar days after the issuance of the Consummating
Order the penalty should be referred to the Department of Financial Services for
collection and the company should be required to immediately cease and desist providing
intrastate interexchange telecommunications service in Florida. 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
4. Upon the referral of the penalty to the Department of Financial Services.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

11**PAADocket No. 041315-TI - Compliance investigation of D.G.A. Telecom, Inc. for apparent violation of Sections 364.02 and 364.04, F.S.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Rojas

Issue 1: Should the Commission impose a penalty upon D.G.A. Telecom, Inc. in the amount of \$25,000 for its apparent violation of Sections 364.02 and 364.04, Florida Statutes?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute should be deemed stipulated. If D.G.A. 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. If payment of the penalty is not received within fourteen (14) calendar days after the issuance of the Consummating Order the penalty should be referred to the Department of Financial Services for collection and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida. 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
4. Upon the referral of the penalty to the Department of Financial Services.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

12**PAADocket No. 041316-TI - Compliance investigation of NEC Prepaid, Inc. for apparent violation of Sections 364.02 and 364.04, F.S.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Rockette-Gray

Issue 1: Should the Commission impose a penalty upon NEC Prepaid, Inc. in the amount of \$25,000 for its apparent violation of Sections 364.02 and 364.04, Florida Statutes?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute should be deemed stipulated. If NEC 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. If payment of the penalty is not received within fourteen (14) calendar days after the issuance of the Consummating Order the penalty should be referred to the Department of Financial Services for collection and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service in Florida. 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
4. Upon the referral of the penalty to the Department of Financial Services.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

13**PAADocket No. 040062-TI - Compliance investigation of New Century Telecom, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Fordham, Rojas, Teitzman
SCR: Lowery

Issue 1: Should the Commission accept New Century Telecom, Inc.'s settlement offer, dated December 14, 2004, to resolve forty-two (42) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If New Century fails to pay the amount of the voluntary contribution in accordance with its settlement agreement, action will be taken pursuant to the provisions in paragraph 17 of that agreement. If New Century's tariff is cancelled and Registration No. TI427 is removed from the register as a result of such action, the company should be required to immediately cease and desist providing interexchange telecommunications service in Florida. This docket should be closed administratively upon either receipt of the final payment of the voluntary contribution or upon the removal of the company's registration number from the register and cancellation of the company's tariff. If New Century, or any of its principles, subsequently decide to reapply for registration as an intrastate interexchange company, it should be required to first pay any outstanding penalties assessed by the Commission. Any action by the Commission, including but not limited to any settlement, should not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

14Docket 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): 01/18/05 (60-day suspension date) - Issue 4

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

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

GCL: C. Keating, Fleming

Issue 1: Should the Commission grant OPC and FIPUG's joint motion to dismiss FPL's Storm Cost Recovery Petition? [This issue was decided at the Commission's 1/4/05 Agenda Conference. No further action on this issue is required.]

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

DECISION: Decided at the 1/4/05 conference.

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.

DECISION: The recommendation was approved. Commissioner Davidson dissented on this issue.

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

Recommendation: Yes. 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.

DECISION: The recommendation was approved. Commissioner Davidson dissented on this issue.

ITEM NO.

CASE

14

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.

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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 preliminary surcharge 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. The tariff should become effective for meter readings on or after February 17, 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.

DECISION: The recommendation was approved. Commissioner Davidson dissented on this issue.

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.

DECISION: The recommendation was approved.

Issue 6: Should this docket be closed?

Recommendation: No. This docket should remain open.

DECISION: The recommendation was approved.

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

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ITEM NO.

CASE

15**Docket No. 041368-EI - Petition to revise Agreement for Residential Advanced Energy Management Program tariff by Gulf Power Company.

Critical Date(s): 1/18/05 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Draper, Ballinger

GCL: Brown

Issue 1: Should the Commission approve Gulf's proposal to modify its RSVP rate schedule and associated agreement to eliminate the initial one-year participation requirement?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on January 18, 2005. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect with any revenues 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.

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

ITEM NO.

CASE

16**Docket No. 041337-EM - Petition for new Master Metered Recreational Vehicle Park Rate Schedule by Ft. Pierce Utilities Authority.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Draper
GCL: Fleming

Issue 1: Should the Commission approve Ft. Pierce's proposed Master Metered Recreational Vehicle Park Rate Schedule?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the Commission's order in this docket files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. If a protest is timely filed, the tariff should remain in effect, pending resolution of the protest.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

17**Docket No. 020439-SU - Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation.

Docket No. 020331-SU - Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason (020439-SU)
Bradley (020331-SU)

Staff: ECR: Merta, Rendell
GCL: Jaeger

Issue 1: Should Sanibel Bayous Utility Corporation be ordered to show cause in writing, within 21 days, why it should not be fined for its apparent failure to comply with the requirements of Order No. PSC-03-0699-PAA-SU?

Recommendation: Yes. Sanibel Bayous Utility Corporation should be ordered to show cause in writing, within 21 days, why it should not be fined a total of \$500 for its apparent failure to timely comply with the requirements of Order No. PSC-03-0699-PAA-SU. The order to show cause should incorporate the conditions stated in the analysis portion of staff's January 6, 2005 memorandum.

PAA Issue 2: Should the Commission grant Sanibel Bayous' request for temporary relief from the requirements of Order No. PSC-03-0699-PAA-SU to construct a surge tank and add baffles in the chlorine contact chamber?

Recommendation: Yes. The Commission should grant the request. The completion of these requirements should be contingent upon the decision of the Florida Department of Environmental Protection (FDEP) on their necessity. Sanibel Bayous should be directed to make any improvements as required by FDEP.

PAA Issue 3: Should Sanibel Bayous' rates be adjusted to remove the rate impact of the pro forma plant items not completed by the utility?

Recommendation: No. Wastewater rates should not be adjusted to remove the impact of the pro forma plant items not completed by the utility.

Issue 4: Should these dockets be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

DECISION: The recommendations were approved.

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

ITEM NO. CASE

18**PAA Docket No. 030601-SU - Investigation of possible overearnings by North Peninsula Utilities Corporation in Volusia County.

(Continued from previous page)

18**PAADocket No. 030601-SU - Investigation of possible overearnings by North Peninsula Utilities Corporation in Volusia County.

Critical Date(s): Statutory deadline for 2002 Price Index waived.

Commissioners Assigned: All Commissioners
Prehearing Officer: Davidson

Staff: ECR: Merta, Rendell
GCL: Fleming

Issue 1: Should the Commission approve North Peninsula's proposed settlement?
Recommendation: Yes. The Commission should approve North Peninsula's proposed settlement dated November 29, 2004. The utility should be required to file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates within 30 days of the Consummating Order. 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 (F.A.C.). 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. Staff also recommends that the utility treat any unclaimed refunds as Contributions in Aid of Construction (CIAC) pursuant to Rule 25-30.360(8), F.A.C.

Issue 2: Should this docket be closed?
Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. This docket should remain open pending staff's verification that the utility has completed the required refunds at which time the docket should be closed administratively.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

19**Docket No. 050005-WS - Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

Critical Date(s): 3/31/05 (Statutory reestablishment deadline.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Biggins, Rendell

GCL: Rodan

- PAA Issue 1: Which index should be used to determine price level adjustments?
Recommendation: The Gross Domestic Product Implicit Price Deflator Index is recommended for use in calculating price level adjustments. Staff recommends calculating the 2005 price index by using a fiscal year, four quarter comparison of the Implicit Price Deflator Index ending with the third quarter 2005.
- PAA Issue 2: What percentage should be used by water and wastewater utilities for the 2005 Price Index?
Recommendation: The 2005 Price Index for water and wastewater utilities should be 2.17%.
- Issue 3: How should the utilities be informed of the indexing requirements?
Recommendation: Pursuant to Rule 25-30.420(1), Florida Administrative Code, the Division of the Commission Clerk and Administrative Services, after the issuance of the Consummating Order, should mail each regulated water and wastewater utility a copy of the PAA order establishing the index which should contain the information presented in Form PSC/WAW 15 (4/99) and Appendix A (Attachment 1 of staff's January 6, 2005 memorandum). A cover letter from the Director of the Division of Economic Regulation should be included with the mailing of the order (Attachment 2 of staff's January 6, 2005 memorandum). If a protest is filed and a hearing is held, the Division of the Commission Clerk and Administrative Services should mail each regulated water and wastewater utility a copy of the final order establishing the index which should contain the information presented in Form PSC/WAW 15 (4/99) and Appendix A (Attachment 1 of staff's memorandum). A cover letter from the Director of the Division of Economic Regulation should be included with the mailing of the order (Attachment 2 of staff's memorandum).

ITEM NO.

CASE

19**

Docket No. 050005-WS - Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S.

(Continued from previous page)

Issue 4: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon the issuance of the Consummating Order if no substantially affected person files a timely protest within the 14-day protest period after issuance of the PAA Order. Any party filing a protest should be required to prefile testimony with the protest.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

20**Docket No. 030123-WS - Application for transfer of majority organizational control of Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities in Polk County and for name change on Certificate Nos. 589-W and 507-S to Grenelefe Resort Utility, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Johnson, Kaproth, Rieger

GCL: Jaeger

Issue 1: Should Sports Shinko be ordered to show cause, in writing within twenty days, why it should not be fined for its apparent violation of Sections 367.071 and 367.1214, Florida Statutes?

Recommendation: No. Show cause proceedings should not be initiated.

Issue 2: Should the transfer of majority organizational control of Sports Shinko Utility, Inc. in Polk County to Grenelefe Resort L.L.C. be approved and should the request to change the name of the utility to Grenelefe Resort Utility, Inc., be approved?

Recommendation: Yes. The transfer of majority organizational control of Sports Shinko Utility, Inc. in Polk County to Grenelefe Resort L.L.C., is in the public interest and should be approved. Also, the request to change the name of the utility to Grenelefe Resort Utility, Inc. should be approved. A description of the territory granted by Certificate Nos. 589-W and 507-S is appended to staff's January 6, 2005 recommendation as Attachment A.

PAA

Issue 3: What is the rate base of Sports Shinko at the time of transfer?

Recommendation: The rate base is \$506,627 for water and \$129,272 for wastewater as of July 1, 2002.

Issue 4: Should the rates and charges approved for this utility be continued?

Recommendation: Yes. The buyer should continue charging the rates and charges approved for Sports Shinko until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

ITEM NO.

CASE

20**

Docket No. 030123-WS - Application for transfer of majority organizational control of Sports Shinko Utility, Inc. d/b/a Grenelefe Utilities in Polk County and for name change on Certificate Nos. 589-W and 507-S to Grenelefe Resort Utility, Inc.

(Continued from previous page)

Issue 5: Should this docket be closed?

Recommendation: No. This docket should remain open pending receipt of evidence that Grenelefe Resort Utility, Inc. has provided proof that the adjustments for all the applicable NARUC USOA primary accounts have been made and has set up its books and records using the NARUC Uniform System of Accounts. Once the proof has been provided that the adjustments for all the applicable NARUC USOA primary accounts have been made and the books and records are set up using NARUC Uniform System of Accounts, this docket may be closed administratively if no person whose substantial interest are affected by the Commission's proposed agency action timely files a protest to that action and a consummating order has been issued.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

21**Docket No. 030948-WS - Application for transfer of majority organizational control of Paradise Lakes Utility, L.L.C., holder of Certificate Nos. 458-W and 392-S in Pasco County, from Paradise Lakes, Inc. to Larry and Janice DeLucenay.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Johnson, Kaproth

GCL: C. Keating

Issue 1: Should the Commission approve the transfer of majority organizational control of Paradise Lakes Utility, L.L.C. from Paradise Lakes, Inc. to Larry and Janice DeLucenay?

Recommendation: Yes. The transfer of majority organizational control is in the public interest and should be approved. A description of the territory granted by Certificate Nos. 458-W and 392-S is appended to staff's January 6, 2005 memorandum as Attachment A.

PAA

Issue 2: What is the rate base of Paradise Lakes at the time of transfer?

Recommendation: The rate base for transfer purposes is \$101,664 for the water system and \$315,569 for the wastewater system as of December 31, 2002.

Issue 3: Should the existing rates and charges for the utility be continued?

Recommendation: Yes. The rates and charges approved for the utility should be continued. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

Issue 4: Should the utility be required to provide proof that it has adjusted its books for all the applicable NARUC USOA primary accounts associated with the adjustments recommended herein?

Recommendation: Yes. To ensure that the utility adjusts its books in accordance with the Commission's decision, Paradise Lakes should provide proof, within 90 days of issuance of a final order on this matter, that the adjustments for all the applicable NARUC USOA primary accounts have been made and has set up its books and records according to NARUC USOA .

ITEM NO.

CASE

21**

Docket No. 030948-WS - Application for transfer of majority organizational control of Paradise Lakes Utility, L.L.C., holder of Certificate Nos. 458-W and 392-S in Pasco County, from Paradise Lakes, Inc. to Larry and Janice DeLucenay.

(Continued from previous page)

Issue 5: Should the docket be closed?

Recommendation: No. This docket should remain open pending receipt of evidence that Paradise Lakes Utility, L.L.C. has provided proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Once the proof has been provided that the adjustments for all the applicable NARUC USOA primary accounts have been made, this docket may be closed administratively if no person whose substantial interests are affected by the Commission's proposed agency action timely files a protest to that action and a consummating order has been issued.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

22**Docket No. 031042-WS - Application for transfer of Certificate Nos. 611-W and 527-S in Charlotte County from Hunter Creek Utilities, LLC to MSM Utilities, LLC, in Charlotte County.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Brady, Kaproth, Redemann

GCL: Vining

Issue 1: Should the transfer of Certificate Nos. 611-W and 527-S from Hunter Creek Utilities, LLC to MSM Utilities, LLC be approved?

Recommendation: Yes. The transfer is in the public interest and should be approved. The territory being transferred is described in Attachment A of staff's January 6, 2005 memorandum. The effective date for the transfer should be the date of the Commission vote. The MacLachlan Trusts should be responsible for filing the utility's 2004 annual report and paying 2004 regulatory assessment fees by March 31, 2005. MSM Utilities, LLC, should be responsible for filing the utility's annual reports and paying regulatory assessment fees for all subsequent years.

PAA Issue 2: What is the rate base for Hunter Creek Utilities, LLC's water and wastewater systems at the time of the transfer?

Recommendation: For transfer purposes, rate base should be \$78,932 for the water system and \$24,000 for the wastewater system as of December 31, 2004. Within 30 days from the date of the order approving the transfer, MSM Utilities, LLC, should be required to provide a statement from its accountant indicating that the utility's books have been adjusted to reflect the Commission-approved rate base adjustments and balances.

PAA Issue 3: Should an acquisition adjustment be approved?

Recommendation: No. An acquisition adjustment should not be included in the calculation of rate base for transfer purposes.

Issue 4: Should the utility's existing rates and charges be continued?

Recommendation: Yes. The existing rates and charges for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff sheets reflecting the existing rates and charges should be effective for services rendered or connections made on or after the stamped approval date.

ITEM NO.

CASE

22**

Docket No. 031042-WS - Application for transfer of Certificate Nos. 611-W and 527-S in Charlotte County from Hunter Creek Utilities, LLC to MSM Utilities, LLC, in Charlotte County.

(Continued from previous page)

Issue 5: Should the docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action issues on rate base and acquisition adjustment, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of the statement from the utility's accountant indicating that the utility's books have been adjusted to reflect the Commission-approved rate base adjustments and balances. Upon receipt of such statement, the docket should be administratively closed.

DECISION: The recommendations were approved.

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

Minutes of
Commission Conference
January 18, 2005

ITEM NO.

CASE

23**Docket No. 041041-SU - Application for quick-take amendment of Certificate No. 357-S
in Highlands County by Fairmount Utilities, The 2nd, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Walden

GCL: Brown

Issue 1: Should the Commission acknowledge Fairmount's "Quick Take" application to
amend Certificate No. 357-S?

Recommendation: Yes. The Commission should acknowledge Fairmount's amendment
application to expand its certificated territory. Fairmount should charge the customer in
the added territory, as reflected in Attachment A of staff's January 6, 2005 memorandum,
the rates and charges contained in its tariff until authorized to change by this Commission
in a subsequent proceeding.

Issue 2: Should this docket be closed?

Recommendation: Yes. No further action is required and the docket should be closed.

DECISION: The recommendations were approved.

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

Minutes of
Commission Conference
January 18, 2005

ITEM NO.

CASE

24 Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

Critical Date(s): None

Commissioners Assigned: Baez, Deason

Prehearing Officer: Deason

Staff: GCL: Banks, B. Keating

CMP: Simmons

Issue 1: Should the Commission eliminate the default local calling area established in Order No. PSC-02-1248-FOF-TP and close this docket?

Recommendation: Yes.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason

ITEM NO.

CASE

25 Docket No. 040601-TP - Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc., and request for expedited processing.

Critical Date(s): None

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

Staff: GCL: Teitzman
CMP: Dowds, Kennedy

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

Recommendation: No. The Request for Oral Argument should be denied.

Issue 2: Should BellSouth's Motion for Reconsideration be granted?

Recommendation: No. BellSouth has not demonstrated that when addressing the stipulated legal issue put forth by the parties in this docket, the Commission overlooked a point of fact or law in rendering Order No. PSC-04-1044-FOF-TP.

Issue 3: Should BellSouth's Motion for Clarification be granted?

Recommendation: Yes. The Commission should clarify that the decision reached in Order No. PSC-04-1044-FOF-TP did not result from an agreement by the parties. Additionally, the Commission should clarify that it did not make an affirmative finding that there is an existing Section 271 line sharing obligation.

Issue 4: Should Covad's Cross-Motion for Reconsideration be granted?

Recommendation: No. Covad has not demonstrated that when addressing the stipulated legal issue put forth by the parties in this docket, the Commission overlooked a point of fact or law in rendering Order No. PSC-04-1044-FOF-TP.

Issue 5: Should this docket be closed?

Recommendation: No. This docket should remain open to address the remaining open issues, currently held in abeyance pursuant to Order No. PSC-04-0833-PCO-TP. Staff will work with the parties to discuss how the docket should proceed and bring a recommendation to the Prehearing Officer.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

CASE

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

Critical Date(s): None

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

Staff: ECR: Fletcher, Redemann, Merchant, Willis
GCL: Jaeger

Issue 1: Should the Commission approve the Settlement Agreement in its entirety?

Recommendation: Yes, the Settlement Agreement should be approved in its entirety. With the approval of this Settlement Agreement, Utilities, Inc., should be released from its corporate undertaking guarantee in the amount of \$102,733. Bayside Utility Services, Inc. should be required to charge the rates as shown on Exhibit A of the Settlement Agreement and should comply with all other aspects of the Settlement Agreement. The tariffs submitted should be administratively approved, and the utility should send the notice to its customers prior to January 29, 2005.

Issue 2: Should the docket be closed?

Recommendation: Yes. There are no further actions to be taken in this docket.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Davidson, Edgar