

MINUTES OF JULY 5, 2005
COMMISSION CONFERENCE
COMMENCED: 9:35 a.m.
ADJOURNED: 10:45 a.m.

COMMISSIONERS PARTICIPATING: Chairman Baez
Commissioner Deason
Commissioner Bradley
Commissioner Edgar

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

1 Approval of Minutes
May 31, 2005 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

Minutes of
Commission Conference
July 5, 2005

ITEM NO. _____ CASE _____

2**Consent Agenda

PAA A) Application for certificate to provide competitive local exchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050325-TX	Syniverse Technologies, Inc.

PAA B) Application for certificate to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050372-TC	Christopher Vellanti

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

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

3**Docket No. 050045-EI - Petition for rate increase by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: GCL: C. Keating

ECR: Willis

Issue 1: Should the Commission grant FPL's motions to dismiss FRF's "Petition to Conduct General Rate Case and Request for Hearing" and the Hospitals' substantially similar petition?

Recommendation: Rather than dismiss, the Commission should deny both Petitions. Although the Petitions filed by FRF and the Hospitals are styled as requests to initiate proceedings, the relief sought by FRF and the Hospitals is purely procedural. The Petitions ask the Commission to conduct rate cases for FPL and suggest that the results of these requested rate cases should become effective at the conclusion of the currently operative rate settlement for FPL. A proceeding to determine the fair, just, and reasonable rates for FPL to implement upon conclusion of the currently operative rate settlement has already been initiated, and FRF and the Hospitals may fully and fairly represent their interests in that proceeding.

What is truly being sought by FRF and the Hospitals are procedural placeholders - in the form of separate but contemporaneous rate proceedings - that would allow either party, in the event it is unsatisfied with a hypothetical stipulation among FPL and other parties to the docket, to press the case to hearing under the established time schedule. The Commission should not provide FRF and the Hospitals such additional process rights beyond the due process rights afforded to all parties.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open.

DECISION: This item was deferred.

ITEM NO.

CASE

4**Docket No. 050078-EI - Petition for rate increase by Progress Energy Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: GCL: Brubaker

ECR: Willis

Issue 1: Should the Commission grant PEF's motion to dismiss FRF's Petition to Conduct General Rate Case and Request for Hearing?

Recommendation: Rather than dismiss, the Commission should deny FRF's Petition. Although the Petition filed by FRF is styled as a request to initiate proceedings, the relief sought by FRF is purely procedural. The Petition asks the Commission to conduct a rate case for PEF and suggests that the result of this requested rate case should become effective at the conclusion of the currently operative rate settlement for PEF. A proceeding to determine the fair, just, and reasonable rates for PEF to implement upon conclusion of the currently operative rate settlement has already been initiated, and FRF may fully and fairly represent its interests in that proceeding.

What is truly being sought by FRF is a procedural placeholder - in the form of a separate but contemporaneous rate proceeding - that would allow FRF, in the event it is unsatisfied with a hypothetical stipulation among PEF and other parties to the docket, to press the case to hearing under the established time schedule. The Commission should not provide FRF such additional process rights beyond the due process rights afforded to all parties.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open.

DECISION: This item was deferred.

ITEM NO.

CASE

5**Docket No. 050194-TL - Complaint by Florida BellSouth customers who paid fees to BellSouth Telecommunications, Inc. related to Miami-Dade County Ordinance Section 21-44 ("Manhole Ordinance") and request that Florida Public Service Commission order BellSouth to comply with Section A.2.4.6 of General Subscriber Service Tariff and refund all fees collected in violation thereof.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Bradley

Staff: GCL: Scott, Fordham
CMP: Simmons

Issue 1: Should the Commission grant BellSouth's Request for Oral Argument?

Recommendation: Yes.

Issue 2: Should the Commission grant BellSouth's Motion to Dismiss?

Recommendation: The Commission should grant in part and deny in part BellSouth's Motion to Dismiss. Staff believes that the Petitioners have standing to bring the subject matter of the Complaint before the Commission, and to seek a refund for all affected customers of any charges collected in violation of the Tariff. However, staff believes that the other relief requested by the Petitioners, i.e. the injunctive relief and attorney's fees, is not within the Commission's jurisdiction. Furthermore, staff believes that BellSouth's alternative request to refer the Complaint to the Division of Regulatory Compliance and Consumer Assistance for consideration pursuant to Rule 25-22.032, Florida Administrative Code (F.A.C.), is inappropriate in this instance.

Issue 3: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 2, this docket should remain open pending further proceedings.

DECISION: The recommendations were approved for Issues 1 and 3; Issue 2 was approved with the modification that the matter will be held in abeyance while staff investigates the history of the tariff and related matters. Staff will report back on the results of its investigation and a determination will be made at that time on the most efficient way to proceed. The claim for attorney's fees will be stricken because the Commission does not have authority to address attorney's fees. The request for injunctive relief will not be addressed at this time.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

6**PAADocket No. 050374-TL - Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated.

Critical Date(s): 9/22/05 (Florida Statute 364.051 requires the Commission to act upon the petition within 120 days after filing.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: CMP: Mann, Bulecza-Banks, Casey, Moses, Salak, Wright

GCL: Teitzman, B. Keating, Rojas

Issue 1: Should a present value methodology be used to calculate the number of access lines for purposes of determining the maximum storm recovery surcharge?

Recommendation: No. A simple average of Sprint's projected access lines should be used. Staff further recommends that if a surcharge is assessed on customers, the surcharge should cease once the total hurricane-related expenses are recovered.

Issue 2: What is the appropriate rate to be used in calculating the carrying costs, if any, on the amount of storm-related costs?

Primary Recommendation: Primary staff recommends that Sprint be allowed to recover interest on the outstanding balance of storm damage costs at the applicable average 30-day commercial paper rate.

Alternative Recommendation: Alternative staff recommends that no carrying charges be included in the amount of storm-related costs.

Issue 3: Should the Commission approve the Sprint/OPC Stipulation and Settlement as filed?

[Five options for addressing this issue are addressed in staff's memorandum dated June 24, 2005.]

Primary Recommendation: No. The Commission should not approve the Petition for Approval of Storm Cost Recovery Surcharge and Stipulation with Office of Public Counsel, by Sprint-Florida, as filed. If the primary recommendation in Issue 2 is adopted and the average 30-day commercial paper rate is to be used, staff recommends that Option 4 be approved, which applies the commercial paper rate to the period August 2004 through July 2005, and the proposed recovery period of August 2005 through July 2007. If the alternate recommendation in Issue 2 is approved, then staff recommends that Option 5 be approved to reflect no carrying charge.

Alternative Recommendation: Yes. The Commission should approve the Stipulation, as filed, which establishes the maximum recoverable expenses of \$30,319,521. Alternative staff further recommends that the Commission apply an average 30-day commercial paper rate to the outstanding balance of expenses for the period August 2005, through July 2007. This results in a total expense of \$30,887,418 (Option 2).

ITEM NO.

CASE

6**PAA

Docket No. 050374-TL - Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated.

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Issue 4: Should this docket be closed?

Recommendation: No. This docket should remain open. Pursuant to Uniform Rule 28-106.111, Florida Administrative Code, "Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision." If no protest is filed the Order from this recommendation will become final upon the issuance of a Consummating Order. Thereafter, this Docket should remain open to address the remaining issues. Parties will be submitting briefs on the outstanding policy and legal issues. If a timely protest is filed, staff recommends that the Commission require that any party filing the protest should be required to prefile testimony with the protest. Additionally, staff recommends that rebuttal testimony should be due no later than 10 days after the receipt of prefiled testimony. If necessary, an administrative hearing should be held as expeditiously as possible. Additionally, staff believes the Commission can render a bench decision at the conclusion of the hearing or convene a Special Agenda conference if necessary to meet the statutory time limitation and with proper notice.

DECISION: No action was taken on Issues 1 and 2. In Issue 3, the primary staff recommendation was denied, and the alternative staff recommendation was approved with a modification reflecting acceptance of a letter submitted by Sprint-Florida, Incorporated. Issue 4 was approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

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7**Docket No. 040343-TP - Petition by Volo Communications of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc. for adoption of existing interconnection agreement between ALLTEL Florida, Inc. and Level 3 Communications, LLC.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: CMP: Bates

GCL: Scott, McKay

Issue 1: Should the Commission grant ALLTEL's Motion to Approve Settlement Agreement?

Recommendation: Yes. Staff recommends the Commission grant ALLTEL's Motion to Approve Settlement Agreement between ALLTEL and Volo.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there is no need for further proceedings.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

8**PAADocket No. 050363-TP - Compliance investigation of Southeastern Services, Inc. for apparent failure to disclose required information on each of its applications for alternative access vendor certificate, competitive local exchange company certificate, and interexchange company certificate.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Fordham

Issue 1: Should the Commission accept Southeastern Services, Inc.'s settlement offer to resolve its apparent failure to disclose required information on each of its applications for a certificate of public convenience and necessity to provide services within the State of Florida as an Alternative Access Vendor, a Competitive Local Exchange Company, and an Interexchange Company?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation 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 SSI fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If SSI fails to pay the amount of the voluntary contribution within fourteen (14) calendar days of the issuance of the Consummating Order, Certificate Nos. 7018, 7767, and 7988 should be cancelled. If SSI's certificates are cancelled, the company should be required to immediately cease and desist providing all intrastate telecommunications service in Florida. This docket should be closed administratively upon either receipt of the payment of the voluntary contribution or upon the cancellation of the company's certificates.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

9**PAADocket No. 050224-GU - Investigation into 2002 earnings of the gas division of Florida Public Utilities Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Slemkewicz, Maurey

GCL: Jaeger

Issue 1: What is the appropriate amount of rate base for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2002?

Recommendation: The appropriate rate base for the Gas Division for 2002 is \$48,803,860.

Issue 2: What is the appropriate overall rate of return for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2002?

Recommendation: The appropriate overall rate of return for purposes of determining the amount of excess earnings for 2002 is 7.27%.

Issue 3: What is the appropriate net operating income for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2002?

Recommendation: The appropriate net operating income for 2002 is \$3,632,014.

Issue 4: What is the amount of excess earnings for the Gas Division of Florida Public Utilities Company for 2002?

Recommendation: The total amount of excess earnings for the Gas Division is \$136,709 plus interest of \$6,254 through May 31, 2005. Interest should continue to accrue until a final determination of the disposition of the excess earnings is made.

Issue 5: What is the appropriate disposition of the 2002 excess earnings for the Gas Division of Florida Public Utilities Company?

Recommendation: The total excess earnings of \$142,963, including interest, should first be offset by the \$25,190 NTAC and TCR under-recovery true-up as authorized in Order No. PSC-05-0490-PAA-GU. The remaining \$117,773 of 2002 excess earnings should be considered as an offset to the amount of storm restoration costs that FPUC is seeking in Docket No. 041441-GU.

Issue 6: Should this docket be closed?

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

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CASE

9**PAA

Docket No. 050224-GU - Investigation into 2002 earnings of the gas division of Florida Public Utilities Company.

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DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

10**Docket No. 050318-WU - Request for increase in service connection charges in Highlands County by Placid Lakes Utilities, Inc.

Critical Date(s): 7/8/05 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Hudson

GCL: Jaeger

Issue 1: Should Placid Lakes' proposed tariff sheet to implement service connection charges be suspended?

Recommendation: Yes. Placid Lakes' proposed tariff sheet to implement service connection charges should be suspended pending further investigation by staff. This docket should remain open pending the completion of staff's investigation.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

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CASE

11 **Docket No. 050272-WU - Application for amendment of Certificate No. 427-W to add territory in Marion County, by Windstream Utilities Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: ECR: Redemann
GCL: Rodan, Halloran

Issue 1: Should the Commission acknowledge Windstream's "Quick Take" application to amend Certificate No. 427-W?

Recommendation: Yes. The Commission should acknowledge Windstream's amendment application to expand its Majestic Oaks territory. The proposed territory amendment is described in Attachment A of staff's June 23, 2005 recommendation. Windstream should charge the customers in the added territory 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, Edgar