

**MINUTES OF March 7, 2006**  
**COMMISSION CONFERENCE**  
**COMMENCED: 9:35 a.m.**  
**ADJOURNED: 10:25 a.m.**

**COMMISSIONERS PARTICIPATING:** Chairman Edgar  
Commissioner Deason  
Commissioner Arriaga  
Commissioner Carter  
Commissioner Tew

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

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1                    **Approval of Minutes**  
February 7, 2006 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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2\*\*

**Consent Agenda**

PAA

A) Request for cancellation of a competitive local exchange telecommunications certificate.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
060095-TX	International Telcom, Ltd.	12/31/2005

**Recommendation:** The Commission should approve the action requested in the docket referenced above and close this docket.

**DECISION:** The recommendation was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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3

**Docket No. 060038-EI** – Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason

**Staff:** GCL: Keating

ECR: Maurey, Willis

**(Oral argument not requested; participation at the Commission's discretion.)**

**Issue 1:** Should the Commission grant Intervenors' joint motion to dismiss FPL's petition for issuance of a storm recovery financing order?

**Recommendation:** No. Intervenors' joint motion to dismiss FPL's petition should be denied. FPL's petition states a cause of action upon which relief may be granted and, at a minimum, substantially complies with all applicable pleading requirements.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open to address FPL's pending petition for issuance of a storm recovery financing order.

**DECISION:** The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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4\*\*PAA

**Docket No. 040133-EU** – Petition of Withlacoochee River Electric Cooperative, Inc. to modify territorial agreement or, in the alternative, to resolve territorial dispute with Progress Energy Florida, Inc. in Hernando County.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** GCL: Brown  
ECR: Breman

**Issue 1:** Should the Commission grant Withlacoochee’s and Progress’s second joint petition to approve their amended and consolidated territorial agreement and implement the second phase of their settlement?

**Recommendation:** Yes. The proposed territorial agreement and settlement implementation is in the public interest and the Commission should approve it. The Commission should direct the parties to file status reports on the transfer of customers every six months until the transfers are complete.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose interests are substantially affected timely files a protest to the Commission’s proposed agency action order, this docket should be closed upon issuance of a consummating order.

**DECISION:** The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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5\*\*PAA

**Docket No. 060010-EI** – Complaint by Roderick and Judi Thompson against Florida Power & Light Company regarding backbilling for alleged meter tampering.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** GCL: Rodan

ECR: Kummer

RCA: Plescow

**Issue 1:** Is there sufficient evidence to demonstrate that meter tampering occurred at the residence of Roderick and Judi Thompson at 5670 NW 38<sup>th</sup> Terrace, Coconut Creek, Florida, to allow FPL to backbill Mr. Thompson's account for unmetered kilowatt hour consumption?

**Recommendation:** Yes. Prima facie evidence of meter tampering outlined in FPL's reports demonstrates that meter tampering occurred at Mr. Thompson's residence. As the customer of record during the entire period in question, Mr. Thompson should be held responsible for a reasonable amount of backbilling.

**Issue 2:** Is FPL's calculation of the backbilled amount of \$7,916.19, which includes investigation charges of \$465.46, reasonable?

**Recommendation:** No. While FPL's calculation of the average consumption per month appears appropriate, staff believes that a sustained drop in KWH registration began in 2001, rather than 1999. Excluding the 1999 and 2000 backbilled amounts from the total backbilled amount would be a \$2,311.01 adjustment, for a total backbilled amount of \$5,605.18.

**Issue 3:** 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 item was withdrawn.

**ITEM NO.**

**CASE**

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6\*\*

**Docket No. 981444-TP** – Number Utilization Study: Investigation into Number Conservation Measures.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** CMP: Maduro, Casey, Bulecza-Banks

GCL: Tan, Wiggins

**Issue 1:** Should this docket be closed?

**Recommendation:** Yes. There are no pending issues in this Docket that need to be addressed by the Commission and no further agency action is required. Therefore, this docket should be closed.

**DECISION:** The recommendation was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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7\*\*PAA

**Docket No. 060081-TC** – Investigation and determination of appropriate method for refunding apparent overcharges by HSI Telecom, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: M. Watts

ECR: Lester

GCL: Scott

**Issue 1:** Should the Commission accept HSI Telecom, Inc.'s proposal to issue a refund of \$5,946.92, plus interest of \$254.38, for a total of \$6,201.30, to the affected customers within 30 days of the issuance of the Consummating Order for overcharging end-users through incorrect routing of 0+ telephone calls from April 2005 through September 2005; require the company to remit monies that cannot be refunded to the Commission for deposit in the State of Florida General Revenue Fund within 60 days of the issuance of the Consummating Order; and require the company to submit a report within 60 days of the issuance of the Consummating Order to the Commission stating, (1) how much was refunded to its customers, (2) the number of customers, and (3) the amount of money that was unrefundable?

**Recommendation:** Yes. The Commission should accept HSI's refund proposal.

**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 this Order. The company should submit its final report, identified by docket number, and a check for the unrefunded amount (if any), made payable to the Florida Public Service Commission, within 60 days of the issuance of the Consummating Order. Upon receipt of the final report and unrefunded monies, if any, this docket should be closed administratively if no timely protest has been filed.

**DECISION:** The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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8\*\*PAA

**Docket No. 060158-TL** – Investigation of protection of customer proprietary network information by incumbent local exchange companies.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Moses

GCL: Scott

**Issue 1:** Should the Commission order the ILECs to implement additional measures to secure CPNI information and provide a report by May 1, 2006, to staff containing a description of the additional security measures and the date the measures were implemented?

**Recommendation:** Yes.

**Issue 2:** Should this docket be closed?

**Recommendation:** This docket should remain open pending the receipt of reports from the ILECs on progress of implementing additional CPNI security measures. Staff will continue to test various websites to determine if the security measures are successful. If staff determines the security measures are adequate, this docket should be closed administratively.

**DECISION:** Issue 1 was modified to state ILECs will be required to review their security measures, taking into consideration suggestions by the Office of the Attorney General, and report their findings back to the Commission for further discussion. ILECs will not be ordered to implement additional security measures at this time. Issue 2 was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew



**ITEM NO.**

**CASE**

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9\*\*

Compliance investigations for apparent violation of Section 364.336, F.S.

<b>Docket No. 050743-TI</b>	–	AS Systems Technology, Corp.
<b>Docket No. 050780-TI</b>	–	A & A System Technology Corp.
<b>Docket No. 050782-TI</b>	–	MLC Tel Corp.
<b>Docket No. 050785-TI</b>	–	DG-TEC, LLC
<b>Docket No. 050786-TI</b>	–	CCD Communications, Inc.
<b>Docket No. 050787-TI</b>	–	Skytel US, Inc.
<b>Docket No. 050794-TI</b>	–	United Telecommunication Services, Inc.
<b>Docket No. 050796-TI</b>	–	D.G.A. Telecom, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Isler

GCL: Scott

**Issue 1:** Should the Commission accept the settlement offers proposed by the entities listed in Attachment A of staff's February 23, 2006 memorandum to resolve the apparent violation of Section 364.336, Florida Statutes?

**Recommendation:** Yes. The settlement proposals should be accepted.

**Issue 2:** Should these dockets be closed?

**Recommendation:** If the Commission approves staff's recommendation in Issue 1, these dockets should be closed upon receipt of the \$100 contribution or cancellation of each entity's intrastate interexchange telecommunications tariff and removal from the register.

**DECISION:** The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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10\*\*PAA

**Docket No. 050641-TP** – Request for cancellation of AAV Certificate No. 4822, and CLEC Certificate No. 7093, and for acknowledgment of cancellation of IXC Registration No. TJ228, by KMC Telecom III LLC, effective September 22, 2005.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Isler

GCL: Fordham

**Issue 1:** Should the Commission deny KMC Telecom III LLC a voluntary cancellation of its alternative access vendor (AAV) Certificate No. 4822, competitive local exchange company (CLEC) Certificate No. 7093, and IXC tariff and Registration No. TJ228 and cancel the certificates and tariff and remove the company's name from the register on the Commission's own motion with an effective date of September 22, 2005?

**Recommendation:** Yes. The company should be denied a voluntary cancellation as listed on Attachment A of staff's February 23, 2006 memorandum.

**Issue 2:** Should this docket be closed?

**Recommendation:** Staff recommends that 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 the company 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 the company fails to pay the Regulatory Assessment Fees within fourteen (14) calendar days after the issuance of the Consummating Order, the company's AAV and CLEC certificates and IXC tariff should be cancelled administratively, the company's name should be removed from the register, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If the company's AAV and CLEC certificates and IXC tariff are cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing alternative access vendor, competitive local exchange, and intrastate interexchange telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees or upon cancellation of the company's AAV and CLEC certificates and IXC tariff and removal of its name from the register.

**DECISION:** The item was deferred.

**ITEM NO.**

**CASE**

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11\*\*

**Docket No. 060017-EI** – Petition for approval of revised underground residential distribution tariffs, by Progress Energy Florida, Inc.

**Critical Date(s):** 3/7/06 (60-day suspension date)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Baxter, Draper, Lee  
GCL: Brown

**Issue 1:** Should Progress Energy Florida, Inc.'s petition for approval of revisions to its Underground Residential Distribution (URD) tariffs be suspended?

**Recommendation:** Yes.

**Issue 2:** Should this docket be closed?

**Recommendation:** No.

**DECISION:** The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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12\*\*

**Docket No. 060107-EI** – Petition for approval to replace optional average billing plan with an optional budget billing program for residential customers by Florida Public Utilities Company.

**Critical Date(s):** 3/24/06 (60-day suspension date)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Draper

GCL: Fleming

**Issue 1:** Should the Commission approve FPUC's proposed revisions to its optional budget billing program for residential customers?

**Recommendation:** Yes.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If Issue 1 is approved, this tariff should become effective on March 7, 2006. 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 can be closed upon the issuance of a consummating order.

**DECISION:** The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

**ITEM NO.**

**CASE**

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13

**Docket No. 040156-TP** – Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

**Critical Date(s):** None

**Commissioners Assigned:** Edgar

**Prehearing Officer:** Edgar

**Staff:** CMP: Lee, Dowds, K. Kennedy, King

GCL: L. Fordham, Banks

**(Post-hearing decision - participation is limited to Commissioners and staff.)**

**Issue 1:** What language should be adopted for inclusion in the interconnection agreement amendment to implement the Commission's rulings in Order Nos. PSC-05-1200-FOF-TP and PSC-06-0078-FOF-TP?

**Recommendation:** Staff recommends that the Commission adopt the amendment identified as Attachment A to staff's February 23, 2006 memorandum to implement the Commission's rulings in Order Nos. PSC-05-1200-FOF-TP and PSC-06-0078-FOF-TP, except for the language in Section 3.11.2.1.5, where per the letter filed March 2, 2006 in this docket, the parties have subsequently agreed to different contract language.

**Issue 2:** What should be the effective date of the amendment to the parties' agreement?

**Recommendation:** Staff believes the affected parties have had sufficient notice to plan for any eventualities which may flow from the Commission's findings in this matter. Therefore, if the Commission approves the recommendation of staff in Issue 1, and adopts the amendment identified as Attachment A attached thereto, it is appropriate that the effective date of that amendment be March 11, 2006. Further, the fully executed agreements should be filed with this Commission within 10 days of the vote of the Commission on this recommendation.

**Issue 3:** Should this docket be closed?

**Recommendation:** No. The docket should remain open for 45 days following the issuance of the final order to allow parties to file fully executed agreements and to address any other outstanding matters. After the 45 days have passed, and there are no outstanding issues, this docket should be closed administratively.

**DECISION:** The recommendations were approved with modifications as stated by staff at the agenda conference.

Commissioners participating: Edgar

**ITEM NO.**

**CASE**

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14

**Docket No. 041144-TP** – Complaint against KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated.

**Critical Date(s):** None

**Commissioners Assigned:** Deason

**Prehearing Officer:** Deason

**Staff:** GCL: Wiggins, L. Fordham

CMP: Pruitt, Marsh

**(Post-hearing motions for reconsideration – oral argument requested – participation at the discretion of the Commission.)**

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

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

**Issue 2:** Should the Commission grant the Motion for Reconsideration filed by KMC?

**Recommendation:** KMC's Motion for Reconsideration should be denied. It does not identify a material mistake of fact or law made in rendering the Commission's decision.

**Issue 3:** Should the Commission grant the Cross-Motion for Reconsideration filed by Sprint?

**Recommendation:** The Cross-Motion for Reconsideration should be granted in part and denied in part. Sprint identified a mistake of fact or law in the Commission's decision on Issue 6; however, such mistake is not sufficient to warrant a different finding for the issue. Sprint has also identified a mistake of fact or law in the Commission's decisions on Issues 8 and 10. Reconsideration on these issues should be granted in part. Sprint's methodology for calculation of the amount owed by KMC should be accepted, subject to the adjustments specified in Order No. PSC-05-1234-FOF-TP, issued December 19, 2005. Accordingly, the previously ordered audit would be unnecessary. Sprint should revise its calculations to reflect the adjustments and file them with this Commission within 30 days of the issuance of the reconsideration order.

**Issue 4:** Should this docket be closed?

**Recommendation:** No. If the Commission accepts staff's above recommendations, the Docket should remain open pending Commission approval of the revised figures to be submitted by Sprint.

**DECISION:** The item was deferred.