MINUTES OF MARCH 30, 2004 COMMISSION CONFERENCE COMMENCED: 9:30 a.m. ADJOURNED: 10:40 a.m.

COMMISSIONERS PARTICIPATING: Chairman Baez

Commissioner Deason Commissioner Jaber Commissioner Bradley Commissioner Davidson

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

1**Consent Agenda

PAA

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

DOCKET NO.	COMPANY NAME
040178-TX	Conextel, Inc.
040146-TX	Sago Broadband, LLC

PAA

B) Docket No. 040079-TC - Request for cancellation of Pay Telephone Certificate No. 7892 by Edward J. Paul d/b/a Coastel Payphone Service, and application for certificate to provide pay telephone service by Corporate Marketing, Inc d/b/a COASTel Payphone Communications.

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

<u>DECISION</u>: The recommendations were approved.

2**Docket No. 040167-TP - Proposed adoption of Rules 25-4.082, F.A.C., Number

Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze; and proposed amendment of Rules 25-4.003, F.A.C., Definitions; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: Full Commission

Prehearing Officer: Davidson

Staff: GCL: Cibula

CMP: Kennedy, Casey

ECR: Hewitt

<u>Issue 1</u>: Should the Commission propose the adoption of Rules 25-4.082, F.A.C., Number Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze, and the amendment of Rules 25-4.003, F.A.C., Definitions, 25-24.490, F.A.C., Customer Relations; Rules Incorporated, and 25-24.845, F.A.C., Customer Relations; Rules Incorporated? <u>Recommendation</u>: Yes. The Commission should propose the adoption of Rules 25-4.082 and 25-4.083, and the amendment of Rules 25-4.003, 25-24.490, and 25-24.845, F.A.C., as set forth in Attachment A of staff's March 18, 2004 memorandum. Issue 2: Should this docket be closed?

<u>Recommendation</u>: 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: This item was deferred.

3**Docket No. 011333-EU - Petition of City of Bartow to modify territorial agreement or, in the alternative, to resolve territorial dispute with Tampa Electric Company in Polk County.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Jaber

Staff: GCL: Vining

ECR: Breman, D. Lee

<u>Issue 1</u>: Should the Commission acknowledge Bartow's voluntary dismissal of its petition, and if so, what effect does the dismissal have on Proposed Agency Action Order No. PSC-03-0739-PAA-EU?

<u>Recommendation</u>: Yes. The Commission should acknowledge Bartow's voluntary dismissal of its petition as a matter of right. The effect of the voluntary dismissal is to divest the Commission of further jurisdiction over this matter, rendering Proposed Agency Action Order No. PSC-03-0739-PAA-EU a nullity.

Issue 2: Should this docket be closed?

Recommendation: Yes.

<u>DECISION</u>: The recommendations were approved.

4**Docket No. 971482-TI - Initiation of show cause proceedings against Minimum Rate

Pricing, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection. Docket No. 980335-TI - Initiation of show cause proceedings against Minimum Rate Pricing, Inc. for violation of Rules 25-4.118, F.A.C., Interexchange Carrier Selection, and 25-4.043, F.A.C., Response to Commission Staff Inquiries.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Jaber

Staff: GCL: Fordham

CAF: Durbin CMP: Kennedy

<u>Issue 1</u>: Should the intrastate interexchange company (IXC) registration of MRP be canceled?

Recommendation: Yes.

<u>Issue 2</u>: Should the monies owed this Commission by MRP be submitted to the

Department of Financial Services for collection?

Recommendation: No.

Issue 3: Should these dockets be closed?

Recommendation: Yes.

<u>DECISION</u>: The recommendations were approved.

5**Docket No. 031125-TP - Complaint against BellSouth Telecommunications, Inc. for alleged overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: GCL: Christensen

CMP: Barrett

<u>Issue 1</u>: Should the Commission grant BellSouth Telecommunications, Inc.'s Partial Motion to Dismiss?

<u>Recommendation</u>: Staff recommends that BellSouth's Partial Motion to Dismiss IDS's Amended Complaint be granted. Specifically, staff recommends that Count Three (seeking relief for alleged violation of the Settlement Agreement) and Count Five (seeking relief for alleged violation of the Telecommunications Act of 1996) be dismissed for lack of subject matter jurisdiction.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending further proceedings.

DECISION: This item was deferred.

6**PAADocket No. 040208-EI - Consumer complaint against Florida Power & Light Company by Leticia Callard.

Critical Date(s): None

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: GCL: Gervasi

CAF: Plescow ECR: Kummer

<u>Issue 1</u>: Is there sufficient cause to determine whether meter tampering occurred at the Callard residence at 7860 SW 18th Terrace, Miami, Florida, to allow FPL to backbill the Callard account for unmetered kilowatt hours?

<u>Recommendation</u>: Yes. Prima facie evidence of meter tampering noted in FPL's reports, as well as during the informal conference, demonstrates that meter tampering occurred. Because the account was in Mrs. Callard's name during the entire period, she should be held responsible for a reasonable amount of backbilling.

<u>Issue 2</u>: Is FPL's calculation of the backbilled amount of \$9,279.18, which includes investigation charges of \$348.21, reasonable?

Recommendation: Yes. The backbilled amount of \$9,279.18 is a reasonable approximation of the unbilled energy plus investigative costs. The customer should be encouraged to contact FPL immediately to make payment arrangements for this amount in order to avoid discontinuance of service without notice, which is authorized pursuant to Rule 25-6.105(5)(i), Florida Administrative Code. Moreover, the customer should be placed on notice that pursuant to Rule 25-6.105(5)(f), Florida Administrative Code, FPL is also authorized, upon sufficient notice, to refuse or discontinue service for neglect or refusal to provide safe and reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility.

Issue 3: Should this docket be closed?

<u>Recommendation</u>: Yes. If no timely protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.

<u>DECISION</u>: The recommendations were approved.

7**Docket No. 001503-TP - Cost recovery and allocation issues for number pooling trials in Florida.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Baez

Staff: CMP: Casey, Bulecza-Banks, Dowds, Pittman, Simmons

GCL: Christensen

<u>Issue 1</u>: Should the Commission grant the Joint Motion to Amend Procedural Schedule and approve the Joint Stipulated Record?

Recommendation: The Commission should grant, in part, the Joint Motion to Amend the Procedural Schedule filed by the Office of Public Counsel, Sprint-Florida, Incorporated, and BellSouth Telecommunications, Inc. as explained in the analysis portion of staff's March 18, 2004 memorandum. Staff also recommends that the Joint Stipulated Record submitted by the Parties, including the additional information identified by Commission staff, be approved and serve as the record on which the Commission bases its decision in this matter.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending further proceedings.

DECISION: The recommendations were approved.

8**Docket No. 040125-GU - Petition for approval of transportation cost recovery clause true-up by Florida Division of Chesapeake Utilities Corporation.

Critical Date(s): 4/4/04 (60-day suspension date)

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: CMP: Makin, Bulecza-Banks

GCL: Jaeger

<u>Issue 1</u>: Should the Commission grant Chesapeake's petition for approval of transportation cost recovery clause true-up?

<u>Recommendation</u>: Yes. The Commission should grant Chesapeake's petition for approval of a transportation cost recovery clause true-up, in the amount of \$7.00 under recovery through a charge to its Operational Balancing Account, and eliminate the TCR factors, effective March 30, 2004, the date of the Commission's vote on this matter. Issue 2: Should this docket be closed?

<u>Recommendation</u>: Yes. If a protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, the tariff should remain in effect with any charges held subject to refund pending resolution of the protest. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

DECISION: The recommendations were approved.

9**PAADocket No. 040162-TI - Compliance investigation of PHI Telecommunications
Corporation for apparent violation of Sections 364.02 and 364.04, Florida Statutes.

Critical Date(s): None

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Rojas

<u>Issue 1</u>: Should the Commission impose a \$25,000 penalty upon PHI Telecommunications Corporation (PHI) for its apparent violation of Sections 364.02 and 364.04, Florida Statutes, to be paid to the Florida Public Service Commission within fourteen (14) calendar days after the issuance of the Consummating Order?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from staff's March 18, 2004 recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If PHI 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;
- 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.

<u>DECISION</u>: The recommendations were approved.

ITEM NO. CASE

10**PAADocket No. 040161-TI - Compliance investigation of Global Link Communications, Inc. for apparent violation of Section 364.02, Florida Statutes, Definitions.

Critical Date(s): None

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: CMP: Curry

CAF: Lowery GCL: Rojas

<u>Issue 1</u>: Should the Commission impose a penalty on Global Link Communications, Inc. of \$10,000 for its apparent violation of Section 364.02, Florida Statutes, Definitions, or cancel Global Link Communications, Inc.'s tariff and remove Registration Number TJ373 from the register and require the company to immediately cease and desist providing intrastate interexchange telecommunications service in Florida, if the company fails to timely protest the Commission's Order and fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order?

Recommendation: Yes.

<u>Issue 2</u>: Should this docket be closed?

<u>Recommendation</u>: The Order issued from staff's March 18, 2004 recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should be closed administratively upon the receipt of the payment of the penalty or upon the cancellation of the company's tariff and removal of Registration Number TJ373 from the register.

DECISION: The recommendations were approved.

ITEM NO. CASE

11**PAADocket No. 040158-TX - Compliance investigation of EZ Talk Communications, L.L.C. for apparent violation of Rule 25-22.032, F.A.C., Consumer Complaints.

Critical Date(s): None

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: CMP: Buys

CAF: Lowery GCL: Susac

<u>Issue 1</u>: Should the Commission impose a penalty on EZ Talk Communications, L.L.C. of \$10,000 per apparent violation, for a total of \$20,000, for two apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, or cancel EZ Talk Communications, L.L.C.'s competitive local exchange company (CLEC) Certificate No. 5530 and require the company to immediately cease and desist providing CLEC services in Florida, if the company fails to timely protest the Commission's Order and fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from staff's March 18, 2004 recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed administratively upon receipt of the payment of the penalty or upon cancellation of the company's CLEC certificate.

<u>DECISION</u>: The recommendations were approved.

ITEM NO. CASE

12Docket No. 040001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Bradley

Staff: ECR: Bohrmann, Haff, McNulty

GCL: C. Keating, Rodan, Vining

<u>Issue 1</u>: Should the Commission grant Tampa Electric Company's request for oral argument on its motion for reconsideration of Order No. PSC-03-1461-FOF-EI? <u>Recommendation</u>: Yes. Oral argument may aid the Commission in its understanding and disposition of the underlying motion.

<u>Issue 2</u>: Should the Commission grant Tampa Electric Company's motion for reconsideration of Order No. PSC-03-1461-FOF-EI?

<u>Recommendation</u>: No. Tampa Electric's motion for reconsideration fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its Fuel Order and, therefore, should be denied.

<u>Issue 3</u>: Should the Commission grant the Intervenors' motion for reconsideration of Order No. PSC-03-1461-FOF-EI?

<u>Recommendation</u>: No. The Intervenors' motion for reconsideration fails to identify any point of fact or law that the Commission overlooked or failed to consider in rendering its Fuel Order and, therefore, should be denied.

<u>Issue 4</u>: Should the Commission grant Florida Power & Light Company's motion for clarification, or in the alternative, reconsideration of Order No. PSC-03-1461-FOF-EI? <u>Recommendation</u>: The Commission should clarify Order No. PSC-03-1461-FOF-EI as requested in Florida Power & Light Company's motion to more precisely reflect its vote. <u>Issue 5</u>: Should this docket be closed?

Recommendation: This docket is an ongoing docket and should remain open.

DECISION: The recommendations were approved.

ITEM NO. CASE

13**Docket No. 030959-EI - Petition by Tampa Electric Company for approval of extension of Pilot Green Energy Rate Rider and Program through December 2006.

Critical Date(s): None

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: ECR: Harlow, Colson

GCL: Vining

<u>Issue 1</u>: Should the Commission approve Tampa Electric Company's (TECO) petition for an extension of the Pilot Green Energy Rate Rider and Program through December 31, 2006?

Recommendation: Yes. TECO has shown that under reasonable assumptions, the program can be self-sustaining by the end of the proposed three-year extension. TECO's revised marketing and pricing approach should result in increased participation levels. The proposed extension should give TECO ample time to determine if the program can be self-sustaining. TECO's request for an allocation capped at \$150,000 from its Conservation R&D Program should also be approved. TECO should recover annual expenses in excess of annual revenues through the ECCR clause, capped at \$150,000 over the three-year period. TECO should be required to file semi-annual progress reports, which include the participation levels achieved, energy produced, and cost and revenue estimates.

Issue 2: Should this docket be closed?

<u>Recommendation</u>: Yes. If Issue 1 is approved, this tariff should become effective March 30, 2004. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

<u>DECISION</u>: The recommendations were approved.

14**Docket No. 031100-EI - Petition for approval of tariffs offering energy profiler online service and remote access service by Progress Energy Florida, Inc.

Critical Date(s): 8/10/04 (8-month effective date)

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: ECR: Baxter

GCL: Brown

<u>Issue 1</u>: Should the Commission grant PEF's petition for approval of its proposed Energy Profiler Online Service?

Recommendation: Yes.

<u>Issue 2</u>: Should the Commission approve PEF's petition for approval of its proposed Remote Access Service?

Recommendation: Yes.

Issue 3: Should this docket be closed?

<u>Recommendation</u>: Yes. If Issues 1 and 2 are approved, this tariff should become effective on March 30, 2004. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

15**Docket No. 031074-EI - Petition for approval of changes to existing performance

guaranty agreement and for approval of a second performance guaranty agreement, by Florida Power & Light Company.

Critical Date(s): 7/25/04 (8-month effective date)

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: ECR: Draper, Springer

GCL: Brown, Helton

<u>Issue 1</u>: Should the Commission approve FPL's proposed changes to its existing Performance Guaranty Agreement tariff?

Recommendation: Yes.

<u>DECISION</u>: The recommendation was approved.

<u>Issue 2</u>: Should the Commission approve FPL's proposed new Performance Guaranty Agreement tariff?

<u>Primary Recommendation</u>: Yes. The proposed tariff should be approved, provided FPL files with the Commission monitoring reports as described in the primary analysis portion of staff's March 18, 2004 memorandum.

<u>DECISION</u>: The recommendation was approved with modifications discussed at the conference.

Alternative Recommendation: No. The proposed tariff should not be approved.

DECISION: The alternative recommendation was denied.

ITEM NO. CASE

15**

Docket No. 031074-EI - Petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement, by Florida Power & Light Company.

(Continued from previous page)

<u>Issue 3</u>: Should this docket by closed?

Recommendation: Yes. If Issue 1 and staff's primary recommendation in Issue 2 are approved, the tariff should become effective on March 30, 2004. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest. If staff's alternative recommendation in Issue 2 is approved and a protest is timely filed, the docket should remain open pending resolution of the protest. If no protest is filed, the docket should be closed upon issuance of a consummating order.

<u>DECISION</u>: The recommendation was approved.

ITEM NO. CASE

16**Docket No. 040085-EI - Petition for approval of new curtailable service rate Schedules CS-3 and CST-3 by Progress Energy Florida, Inc.

Critical Date(s): 3/30/04 (60-day suspension date)

Commissioners Assigned: Full Commission Prehearing Officer: Administrative

Staff: ECR: Wheeler

GCL: Brown

<u>Issue 1</u>: Should the Commission approve Progress Energy Florida, Inc.'s (PEF'S) proposed new Curtailable General Service - Fixed Curtailable Demand Rate Schedule CS-3 and Curtailable General Service - Fixed Curtailable Demand Rate Schedule CST-3 - Optional Time of Use?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on March 30, 2004. If a protest is filed within 21 days of the issuance of the order, this 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.

17**Docket No. 020567-WS - Investigation of possible overearnings by Lake Groves
Utilities, Inc. in Lake County. (Deferred from February 17, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Baez

Staff: ECR: Greene, Floyd, Joyce, Merchant, Walden

AUS: Vandiver GCL: Jaeger

<u>Issue 1</u>: In determining whether the Lake Groves water system exceeded a fair return on its investment, should the Commission update the test year and consider the total earnings of the newly merged entity of LUSI?

Recommendation: Yes. The test year ended December 31, 2002, is appropriate given the material additions to water plant and to reflect the merger of Lake Groves into LUSI in 2002. Staff's investigation of the calendar year 2002 indicates that the water system for the combined entity is earning a return within the overall range of the required rate of return, using the current leverage formula. Accordingly, staff recommends that the investigation should be closed and the corporate undertaking guaranteeing the revenue held subject to refund should be released.

Issue 2: Should this docket be closed?

<u>Recommendation</u>: Yes. If the Commission approves staff's recommendation in Issue 1, there are no further actions to be taken, and this docket should be closed.

DECISION: The recommendations were approved.

ITEM NO. CASE

18**Docket No. 030986-WS - Application for acknowledgment of sale of land and facilities

of Little Sumter Utility Company to Village Center Community Development District, and for cancellation of Certificate Nos. 580-W and 500-S in Marion and Sumter Counties.

Docket No. 021238-WS - Investigation of rate structure and conservation initiative of Little Sumter Utility Company in Sumter County, pursuant to Order PSC-00-0582-TRF-SU.

Critical Date(s): None

Commissioners Assigned: Full Commission Prehearing Officer: Baez (030986)

Bradley (021238)

Staff: ECR: Walden, Kaproth, Lingo

GCL: Gervasi

<u>Issue 1</u>: Should the transfer of the water and wastewater facilities of Little Sumter Utility Company to the Village Center Community Development District be approved?

<u>Recommendation</u>: Yes. The transfer to the Village Center Community Development District should be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate Nos. 580-W and 500-S should be canceled.

<u>Issue 2</u>: Did the utility comply with prior Commission Orders regarding its escrow account and conservation-related expenditures, and what is the appropriate disposition of the escrow account?

<u>Recommendation</u>: Yes. The utility complied with prior Commission Orders regarding its escrow account and conservation-related expenditures. The appropriate current balance of the escrow account is zero; therefore, the escrow account established pursuant to Order No. PSC-96-1132-FOF-WS should be closed.

<u>Issue 3</u>: Does LSU's current rate structure need to be evaluated?

<u>Recommendation</u>: No. Staff is recommending in Issue 1 that the transfer of the utility to Village Center Community Development District be approved as a matter of right.

Therefore, there is no need to evaluate the utility's rate structure.

<u>Issue 4</u>: Should Docket Nos. 021238-WS and 030986-WS be closed?

<u>Recommendation</u>: Yes. Because no further action is needed, the dockets should be closed.

<u>DECISION</u>: The recommendations were approved.

ITEM NO. CASE

19Docket No. 010283-EI - Calculation of gains and appropriate regulatory treatment for non-separated wholesale energy sales by investor-owned electric utilities.

Critical Date(s): None

Commissioners Assigned: Baez, Jaber, Bradley

Prehearing Officer: Jaber

Staff: ECR: Bohrmann, Breman, Harlow

GCL: C. Keating

Issue 1: Should this docket be closed?

Recommendation: Yes. This docket should be closed.

<u>DECISION</u>: The recommendation was approved.

Commissioners participating: Baez, Jaber, Bradley