

**MINUTES OF NOVEMBER 29, 2005**

**COMMISSION CONFERENCE**

**COMMENCED:** 9:40 a.m.

**ADJOURNED:** 1:10 p.m.

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

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

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**1 Election of a Commission Chairman to complete the unexpired Chairmanship term ending January 2, 2006.**

DECISION: On a motion by Chairman Baez and second by Commissioner Edgar, Commissioner Rudy Bradley was elected to serve as Chairman for the unexpired Chairmanship term of December 3 through December 31, 2005.

**2 Election of a Commission Chairman for a two-year term beginning January 3, 2006.**

DECISION: On a motion by Commissioner Deason and second by Commissioner Arriaga, Commissioner Lisa Edgar was elected to serve as Chairman for the term beginning in 2006 and 2007.

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**3Approval of Minutes**

October 18, 2005 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

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**4\*\*Consent Agenda**

- A) **Docket No. 050751-EI** - Application by Gulf Power Company ("Company") for authority to: receive equity funds from and/or issue common equity securities to its parent company, Southern Company ("Southern"); issue and sell long-term debt and equity securities; and issue and sell short-term debt securities during 2006. The maximum amount of common equity contributions received from and common equity issued to Southern, the maximum amount of equity securities issued and the maximum principal amount of long-term debt securities issued will total not more than \$400 million. The maximum principal amount of short-term debt at any one time will total not more than \$250 million.

In connection with this application, the Company confirms that the capital raised pursuant to this application will be used in connection with the activities of Gulf Power Company and not the unregulated activities of its affiliates.

For monitoring purposes, this docket should remain open until April 27, 2007 to allow the Company time to file the required Consummation Report.

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Consent Agenda

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- B) **Docket No. 050791-GU** - Application by Florida City Gas for authority to finance its on-going cash requirements through its participation and borrowings from and investments in AGL Resources' ("AGLR") Utility Money Pool during 2006. Florida City Gas is a division of Pivotal Utility Holdings, Inc., which is a wholly-owned subsidiary of AGLR. The maximum aggregate borrowings by Pivotal Utility Holdings, Inc.'s three utilities from the Utility Money Pool during 2006 will not exceed \$800 million. Florida City Gas states that its share of these borrowings will not exceed \$250 million.

For monitoring purposes, this docket should remain open until April 27, 2007 to allow the Company time to file the required Consummation Report.

**Recommendation:** The Commission should approve the action requested in the dockets referenced above.

**DECISION:** The recommendation was approved.

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

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5\*\***Docket No. 050694-SU** - Petition for declaratory statement regarding service availability charges by K W Resort Utilities Corp.

**Critical Date(s):** 12/29/05 (Parties have waived 90-day period provided in Section 120.565, F.S., to allow 10 extra days for resolution.)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** GCL: Bellak  
ECR: Hudson, Rendell

**Issue 1:** Should the Commission grant the declaratory statement requested by KW Resort Utilities Corp.?

**Recommendation:** Yes. The Commission should grant the declaratory statement as requested.

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

**Recommendation:** Yes. If the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.

**DECISION:** The recommendations were approved.

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

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

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** CMP: Moses, Casey

GCL: Rojas

**Issue 1:** Should the Commission approve Ms. Julie Church as an Advisory Committee member to replace Mr. Rick Kottler effective October 20, 2005?

**Recommendation:** Yes. The Commission should approve Ms. Julie Church as an Advisory Committee member to replace Mr. Rick Kottler effective October 20, 2005.

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

**Recommendation:** No. This docket should not be closed.

**DECISION:** The recommendations were approved.

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

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**7\*\*PAADocket No. 050647-TX** - Request for transfer of and name change on CLEC Certificates 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc., respectively, to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, respectively, and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

**Docket No. 050648-TI** - Acknowledgment of registrations as intrastate interexchange telecommunications companies by Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions; acknowledgment of cancellation of IXC Registration Nos. TI922, TI070, and TI291 by Excel Telecommunications, Inc., VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, and VarTec Solutions, Inc., respectively; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.; effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Arriaga (050648-TI)  
Administrative (050647-TX)

**Staff:** CMP: McCoy  
GCL: McKay

**Issue 1:** Should the Commission approve the transfer of and name change on CLEC Certificate Nos. 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, effective upon written notification from Comtel Telcom Assets LP that the transfer of assets is complete?

**Recommendation:** Yes. The Commission should approve the requested transfer of and name changes on CLEC Certificate Nos. 5687, 4695, and 4699.

**Issue 2:** Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP d/b/a

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Docket No. 050647-TX - Request for transfer of and name change on CLEC Certificates 5687, 4695, and 4699 held by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc., respectively, to Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions, respectively, and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

Docket No. 050648-TI - Acknowledgment of registrations as intrastate interexchange telecommunications companies by Comtel Telcom Assets LP d/b/a VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions; acknowledgment of cancellation of IXC Registration Nos. TI922, TI070, and TI291 by Excel Telecommunications, Inc., VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, and VarTec Solutions, Inc., respectively; and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.; effective upon written notification from Comtel Telcom Assets LP that transfer of assets is complete.

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VarTec Telecom and Clear Choice Communications, Comtel Telcom Assets LP d/b/a Excel Telecommunications, and Comtel Telcom Assets LP d/b/a VarTec Solutions?

**Recommendation:** Yes. The Commission should approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

**Issue 3:** Should these dockets 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, the order will become final and effective upon the issuance of a consummating order. These dockets should be closed administratively upon receipt of written notification from Comtel Telcom Assets LP that the transfer of assets is complete and upon receipt of payment of the 2005 and 2006 (if applicable) regulatory assessment fees by VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. for both its CLEC and IXC operations. If VarTec Telecom, Inc. d/b/a VarTec Telecom, Inc. and Clear Choice Communications, Excel Telecommunications, Inc. and VarTec Solutions, Inc. fails to pay its 2005 and 2006 (if applicable) regulatory assessment fees, staff will bring this matter back before the Commission for resolution.

**DECISION:** The recommendations were approved.

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



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8\*\*PAADocket No. 050837-TI - Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to acquisition of telecommunications assets of American Long Lines, Inc., IXC Registration No. TJ753, by PaeTec Communications, Inc., IXC Registration No. TJ132; and request for removal from register of IXC Registration No. TJ753, effective December 31, 2005.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Curry  
GCL: Susac

**Issue 1:** Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from American Long Lines, Inc. to PaeTec Communications, Inc.?

**Recommendation:** Yes. The Commission should approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from American Long Lines, Inc. to PaeTec Communications, Inc.

**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. If the Commission's Order is not protested this docket should be administratively closed upon receipt of payment of the 2005 regulatory assessment fees by American Long Lines, Inc. If AMLL fails to pay its 2005 regulatory assessment fees, then this docket should remain open pending further action.

**DECISION:** The recommendations were approved.

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

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9\*\*PAADocket No. 050526-TI - Acknowledgment of cancellation of IXC Registration No. TJ230 by Radiant Telecom, Inc., effective August 2, 2005.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** CMP: Watts, Isler  
GCL: Scott

**Issue 1:** Should the Commission grant APCC Services, Inc.'s Motion to Intervene and Request to Stay Proceeding?

**Recommendation:** No. APCC Services, Inc.'s Motion to Intervene and Request to Stay Proceeding should be denied because it lacks standing. Staff believes that APCC Services, Inc. has not demonstrated a substantial injury sufficient to satisfy the Agrico two-prong test.

**Issue 2:** Should the Commission deny Radiant Telecom, Inc.'s request for a voluntary cancellation and instead cancel IXC Registration No. TJ230 on the Commission's own motion with an effective date of December 31, 2005?

**Recommendation:** Yes. The Commission should deny the company a voluntary cancellation and instead cancel IXC Registration No. TJ230 on its own motion, with an effective date of December 31, 2005.

**Issue 3:** 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 Radiant Telecom, Inc. 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 is removed from the register and its tariff canceled effective December 31, 2005, in accordance with the Commission's Order from this recommendation, the company should be required to cease and desist providing intrastate interexchange telecommunications services in Florida on that date. If the company should subsequently reapply for IXC registration or any other telecommunications certificate, such application should not be approved until the company has settled the issue of its apparent violation of Rule 25-22.032(6)(b), Florida Administrative Code. This docket should be closed administratively upon the issuance of the Consummating Order.

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Docket No. 050526-TI - Acknowledgment of cancellation of IXC Registration No. TJ230 by Radiant Telecom, Inc., effective August 2, 2005.

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DECISION: The recommendations were approved.

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

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10\*\*PAARequest for cancellation of PATS certificates, effective December 31, 2005.

**Docket No. 050572-TC** - Capital Property Solutions, Inc.  
**Docket No. 050631-TC** - Spearman Distributors, Inc.  
**Docket No. 050674-TC** - Transcommunications Incorporated  
**Docket No. 050680-TC** - DeBonis Enterprises, Inc.  
**Docket No. 050688-TC** - Harland King d/b/a Trecom Payphones

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners  
**Prehearing Officer:** Edgar (050572-TC, 050674-TC, 050680-TC, 050688-TC)  
Arriaga (050631-TC)

**Staff:** CMP: Isler  
GCL: McKay, Rojas, Scott

**Issue 1:** Should the Commission deny each company identified in Attachment A of staff's November 17, 2005 memorandum a voluntary cancellation of its respective pay telephone company (PATS) certificate and cancel the certificate on the Commission's own motion with an effective date of December 31, 2005?

**Recommendation:** Yes. The companies identified in Attachment A of staff's memorandum should have their respective PATS certificate cancelled on the Commission's own motion.

**Issue 2:** Should these dockets 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 any 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 any company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If any company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist

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10\*\*PAA

Request for cancellation of PATS certificates, effective December 31, 2005.

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providing pay telephone service in Florida. These dockets should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate.

DECISION: The recommendations were approved.

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

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11\*\*PAACompliance investigations for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

**Docket No. 050654-TC** - Laura Rowe d/b/a Telecom South  
**Docket No. 050655-TC** - A. Tele-Coin, Corp.  
**Docket No. 050656-TC** - MB2, Inc.  
**Docket No. 050657-TC** - Rennob Phone Systems, Inc.  
**Docket No. 050660-TC** - ATS Payphones, Inc.  
**Docket No. 050662-TC** - Suzanne Galanos  
**Docket No. 050664-TC** - Florida Telecommunications Network Corp.  
**Docket No. 050665-TC** - Charles B. Brown, Jr.  
**Docket No. 050666-TC** - Emerald Coast Payphones, Inc.  
**Docket No. 050667-TC** - Ali M Mattar d/b/a Pyramids International Trading, Co.  
**Docket No. 050669-TC** - Rahman Food Mart, Inc.  
**Docket No. 050673-TC** - Columbia County Board of County Commissioners  
**Docket No. 050677-TC** - Prarthana Inc. d/b/a Country Quick Stop  
**Docket No. 050678-TC** - Metropolitan Payphones Corporation  
**Docket No. 050679-TC** - Christian Gayden d/b/a Skye Communication Co.  
**Docket No. 050684-TC** - Land for Sale Services Inc  
**Docket No. 050685-TC** - Barry Linus Murdock  
**Docket No. 050686-TC** - Barbara Ballard  
**Docket No. 050687-TC** - J.S.L. Telecommunications, Inc.  
**Docket No. 050689-TC** - Global Payphone Inc.  
**Docket No. 050690-TC** - K. Kessler Inc.  
**Docket No. 050691-TC** - Estellar G. Mitchell and Ray Randle Evans d/b/a Novellus  
**Docket No. 050692-TC** - Thomas E. Hendricks III  
**Docket No. 050695-TC** - BayComm Services, Inc.  
**Docket No. 050821-TC** - Conversant Technologies, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason (050654-TC, et al.)  
Administrative (050695-TC, 050821-TC)

**Staff:** CMP: Isler  
GCL: Scott

**Issue 1:** Should the Commission impose a penalty and a cost of collection, together totaling \$500, or cancel the Pay Telephone Company (PATs) certificate for each company identified in Attachment A of staff's November 17, 2005 memorandum, with an

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11\*\*PAA

Compliance investigations for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

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effective date of December 31, 2005, for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.505, Florida Administrative Code?

**Recommendation:** Yes. The companies listed in Attachment A of staff's memorandum should be penalized \$500 or have their certificates cancelled for nonpayment of the 2004 Regulatory Assessment Fee.

**Issue 2:** Should these dockets 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 any 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 any company fails to pay the penalty and cost of collection, together totaling \$500, and Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If any company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida. These dockets should be closed administratively either upon receipt of the payment of the penalty and cost of collection, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate.

**DECISION:** The recommendations were approved.

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

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12\*\*PAA Compliance investigations for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

**Docket No. 050649-TC** - Daytona International Speedway, Inc.

**Docket No. 050650-TC** - Rite Line Communications, Inc.

**Docket No. 050652-TC** - William Figel

**Docket No. 050653-TC** - Major Communications Consulting, Inc.

**Docket No. 050663-TC** - Lakeshore Car Care, Inc.

**Docket No. 050668-TC** - 3290 Sunrise Investments, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason

**Staff:** CMP: Isler  
GCL: Rojas

**Issue 1:** Should the Commission impose a penalty and a cost of collection, together totaling \$1,000, or cancel the Pay Telephone (PATS) certificate for each company identified in Attachment A of staff's November 17, 2005 memorandum, with an effective date of December 31, 2005, for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.505, Florida Administrative Code?

**Recommendation:** Yes. The companies listed in Attachment A of staff's memorandum should be penalized \$1,000 or have their certificates cancelled for nonpayment of the 2004 Regulatory Assessment Fee.

**Issue 2:** Should these dockets 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 any 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 any company fails to pay the penalty and cost of collection, together totaling \$1,000, and Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's certificate should be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late



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payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If any company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida. These dockets should be closed administratively either upon receipt of the payment of the penalty and cost of collection, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's certificate.

DECISION: The recommendations were approved.

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

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13\*\*PAA Compliance investigations for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

**Docket No. 050651-TC** - Janice M. Czaikowski

**Docket No. 050661-TC** - Publicall Telecommunications Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason

**Staff:** CMP: Isler  
GCL: Fordham

**Issue 1:** Should the Commission cancel Janice M. Czaikowski's and Publicall Telecommunications Inc.'s pay telephone company (PATS) certificates with an effective date of December 31, 2005, and require the companies to immediately cease and desist providing pay telephone service in Florida, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

**Recommendation:** Yes. The companies' PATS certificates should be cancelled for nonpayment of the 2004 Regulatory Assessment Fee.

**Issue 2:** Should these dockets 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 any 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 any company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida. If any company fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. These dockets should be closed administratively upon cancellation of the company's certificate.

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DECISION: The recommendations were approved.

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

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14\*\***Docket No. 050779-EI** - Request to modify tariff provision regarding waiver of connection charges for customers affected by natural disasters by Florida Power & Light Company.

**Critical Date(s):** 12/05/05 (60-day suspension date)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Wheeler  
GCL: C. Keating

**Issue 1:** Should the Commission approve Florida Power & Light Company's requested tariff modification to allow waiver of initial connection fees for new customers who are affected by natural disasters?

**Recommendation:** Yes.

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

**Recommendation:** Yes. If Issue 1 is approved, the tariff revision should become effective on November 29, 2005. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect 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 recommendation in Issue 1 was approved with the understanding that Florida Power & Light will coordinate with the Commission's legal staff as necessary to make the waiver available to those customers impacted by the past storm season. Issue 2 was approved.

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

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15\*\***Docket No. 050804-EI** - Petition for approval of tariff revisions to allow waiver of certain service charges for customers whose premises have been damaged by natural disasters or other declared emergencies, by Gulf Power Company.

**Critical Date(s):** 12/17/05 (60-day suspension date)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Wheeler  
GCL: Brubaker

**Issue 1:** Should the Commission approve Gulf Power Company's requested tariff modification to allow waiver of initial connection fees for new and existing customers who are affected by natural disasters?

**Recommendation:** Yes.

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

**Recommendation:** Yes. If Issue 1 is approved, the tariff revision should become effective on November 29, 2005. If a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect 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 recommendation in Issue 1 was approved with the understanding that Gulf Power will coordinate with the Commission's legal staff as necessary to make the waiver available to those customers impacted by the past storm season. Issue 2 was approved.

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

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16\*\*PAADocket No. 050274-WS - Application for staff-assisted rate case in Pasco County by Silver Fox Utility Company LLC d/b/a Timberwood Utilities.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason

**Staff:** ECR: Biggins, Edwards, Lingo, Rendell  
GCL: Vining

**Issue 1:** Should the quality of service provided by Timberwood be considered satisfactory?

**Recommendation:** Yes. The utility's overall quality of service is satisfactory.

**Issue 2:** What are the used and useful percentages for the utility's wastewater treatment plant, water distribution system, and wastewater collection system?

**Recommendation:** Timberwood's used and useful percentages (U&U) should be as follows:

Wastewater Treatment Plant	100%
Water Distribution and Wastewater Collection Systems	100%

**Issue 3:** What is the appropriate test year rate base for the utility?

**Recommendation:** The appropriate average test year rate base for Timberwood Utilities is \$11,911 for water and \$45,093 for wastewater.

**Issue 4:** What is the appropriate rate of return on equity and the appropriate overall rate of return for this utility?

**Recommendation:** The appropriate return on equity is 8.88% with a range of 7.88% - 9.88%. The appropriate overall rate of return is 8.88%.

**Issue 5:** What is the appropriate test year revenue?

**Recommendation:** The appropriate test year revenue for this utility is \$15,864 for water and \$39,419 for wastewater.

**Issue 6:** What is the appropriate amount of operating expense?

**Recommendation:** The appropriate amount of operating expenses for this utility is \$32,075 for water and \$37,394 for wastewater.

**Issue 7:** What is the appropriate revenue requirement?

**Recommendation:** The appropriate revenue requirement is \$33,133 for water and \$41,398 for wastewater.

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CASE

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16\*\*PAA

Docket No. 050274-WS - Application for staff-assisted rate case in Pasco County by Silver Fox Utility Company LLC d/b/a Timberwood Utilities.

(Continued from previous page)

**Issue 8:** Are continuations of the utility's current rate structures for its water and wastewater systems appropriate in this case, and, if not, what are the appropriate rate structures for the respective water and wastewater systems?

**Recommendation:** Yes. The utility's current rate structures for its water and wastewater systems should be continued. The base facility charge (BFC) cost recovery percentage for the water system should be set at 45%, while the respective BFC cost recovery percentage for the wastewater system should be set at 52%.

**Issue 9:** Are repression adjustments appropriate in this case, and, if so, what are the appropriate adjustments for the water and wastewater systems and the resulting kgals for rate setting for the respective systems?

**Recommendation:** Yes. Repression adjustments are appropriate for both the water and wastewater systems. Residential consumption should be reduced by 37.1%, resulting in a consumption reduction of approximately 1.393 kgals. The resulting total water consumption for rate setting is 2.818 kgals, or 33.1% less than total test year gallons. Residential wastewater consumption, capped at 6 kgal, should also be reduced by 37.1%, resulting in a consumption reduction of approximately 1.220 kgals. The resulting total wastewater consumption for rate setting is 2.524 kgals, or 32.6% less than billed test year wastewater consumption. In order to monitor the effects of the changes in revenues, the utility should prepare monthly reports for both the water and wastewater systems, detailing the number of bills rendered, the consumption billed, and the revenues billed. These reports should be provided to staff. In addition, the reports should be prepared, by customer class and meter size, on a quarterly basis for a period of two years, beginning the first billing period after the approved rates go into effect.

**Issue 10:** What are the appropriate rates for the system?

**Recommendation:** The recommended rates should be designed to produce revenues of \$33,133 for water and \$41,398 for wastewater. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates should not be implemented until notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice.

**Issue 11:** What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

**Recommendation:** The water and wastewater rates should be reduced as shown on Schedule Nos. 4 and 4A of staff's November 17, 2005 memorandum to remove rate case expense grossed-up for regulatory assessment fees and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of

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the four-year rate case expense recovery period, pursuant to Section 367.0816, Florida Statutes. The utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

**Issue 12:** Should the utility be authorized to collect late payment fees, and if so what are the appropriate charges?

**Recommendation:** Yes. The utility should be authorized to collect a \$5.00 late fee. The utility should file revised tariff sheets which are consistent with the Commission's vote within one month of the Commission's final vote. The revised tariff sheets should be approved upon staff's verification that the tariffs are consistent with the Commission's decision. If revised tariff sheets are filed and approved, the late payment fee should become effective for connections made on or after the stamped approval date of the revised tariff sheets, provided no protest is filed and customers have been noticed.

**Issue 13:** Should the recommended rates be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility?

**Recommendation:** Yes. Pursuant to Section 367.0814(7), Florida Statutes, the recommended rates should be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility. Prior to implementation of any temporary rates, the utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the utility shall be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should file reports with the Commission's Division of Economic Regulation no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

**Issue 14:** Should this docket be closed?

**Recommendation:** Yes. If no timely protest is received upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order, and the docket should be closed. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect with any increase held subject to refund pending resolution of the protest, and the docket should remain open.



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Docket No. 050274-WS - Application for staff-assisted rate case in Pasco County by Silver Fox Utility Company LLC d/b/a Timberwood Utilities.

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DECISION: The recommendations in Issues 1-8 and 10-14 were approved. Issue 9 was modified to deny repression adjustments. This decision was made with the understanding that staff will make fallout corrections to other issues as necessary. The utility will be required to submit the reports.

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

ITEM NO.

CASE

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- 17\*\***Docket No. 040951-WS** - Joint application for approval of sale of Florida Water Services Corporation's land, facilities, and certificates in Brevard, Highlands, Lake, Orange, Pasco, Polk, Putnam, a portion of Seminole, Volusia, and Washington counties to Aqua Utilities Florida, Inc.
- Docket No. 040952-WS** - Joint application for approval of sale of Florida Water Services Corporation's land, facilities, and certificates for Chuluota systems in Seminole County to Aqua Utilities Florida, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason

**Staff:** ECR: Johnson, Brady, Clapp, Daniel, Kaproth, Redemann, Rieger,  
Walden, Willis  
GCL: Brubaker

**Issue 1:** Should FWSC be ordered to show cause in writing within 21 days why it should not be fined for an apparent violation of Section 367.045, Florida Statutes?

**Recommendation:** No. FWSC should not be ordered to show cause. Friendly Center, Palms Mobile Home Park, and Park Manor should be included in the territory granted to FWSC. The utility should file revised tariff pages within thirty days of the Commission Order in this docket to reflect the territory descriptions in the name of FWSC so that the proper transition of the current FWSC tariffs can be made to Aqua. Additionally, the new tariff filed by Aqua should include tariff pages with territory descriptions of these three systems.

**Issue 2:** Should the transfer of Florida Water Service Corporation's land, facilities, and certificates in Brevard, Highlands, Lake, Orange, Pasco, Polk, Putnam, Seminole, Volusia, and Washington Counties to Aqua Utilities Florida, Inc. (Aqua) be approved?

**Recommendation:** Yes. The transfer of FWSC's land, facilities, and certificates in Brevard, Highlands, Lake, Orange, Pasco, Polk, Putnam, Seminole, Volusia, and Washington Counties to Aqua is in the public interest and should be approved. The transfer should be effective on the day of the Commission vote. Aqua should be responsible for the annual reports and regulatory assessment fees (RAFs) for 2005 and the future. In addition, the annual report should be organized alphabetically, by system names, as described in the analysis portion of staff's November 17, 2005 memorandum. Attachment 3 of staff's memorandum lists the Orders granting territory to FWSC, which describes the territory subject to the transfer in these dockets. If the Commission approves Issue 1, the three systems (Friendly Center, Palms Mobile Home Park, and Park Manor) should also be transferred to Aqua.

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Docket No. 040952-WS - Joint application for approval of sale of Florida Water Services Corporation's land, facilities, and certificates for Chuluota systems in Seminole County to Aqua Utilities Florida, Inc.

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**PAA**

**Issue 3:** Should the remaining portion of Florida Water Services Corporation's regulatory asset be transferred to Aqua Utilities Florida, Inc.?

**Recommendation:** Staff recommends that the portion of FWSC's regulatory asset related to the systems sold to Aqua, \$489,535 and \$174,657 for water and wastewater, respectively, should be included in the assets transferred to Aqua. Staff also recommends that the regulatory asset should be amortized over 10 years beginning on January 1, 2007.

**PAA**

**Issue 4:** Should the debit balances in accumulated depreciation resulting from the unamortized losses associated with the 1999 physical inventory be included in rate base for transfer purposes?

**Recommendation:** No. The debit balances in accumulated depreciation should be recorded as fully amortized losses, resulting in a reduction to rate base of \$219,355 for water and \$88,819 for wastewater.

**PAA**

**Issue 5:** Should the retirements from the 2003 physical inventory be included in rate base for transfer purposes?

**Recommendation:** No. The \$218,238 in retirements as a result of the 2003 physical inventory should be removed from rate base for transfer purposes as assets not transferred to Aqua.

**PAA**

**Issue 6:** Should the property losses associated with the abandonments of the Lake Gibson Estates, Zephyr Shores, and Beecher's Point wastewater plants, the St. Johns Highlands water plant, and the disconnection of the Lake Gibson Estates wastewater septic tanks be included as extraordinary property losses in rate base for transfer purposes?

**Recommendation:** Yes, an extraordinary property loss of \$-0-, \$-0-, and \$41,094, respectively, for the Lake Gibson Estates, Zephyr Shores, and Beecher's Point wastewater plant abandonments, \$11,503 for the St. Johns Highlands water plant abandonment, and \$159,005 for the Lake Gibson Estates wastewater septic tank disconnections, should be included in rate base for transfer purposes.

**PAA**

**Issue 7:** What is the rate base of the Florida Water Services Corporation at the time of transfer?

**Recommendation:** The staff-recommended rate base for transfer purposes is \$9,847,462 and \$5,894,452 for water and wastewater, respectively, as of June 30, 2004. Aqua should be required to provide a statement within 60 days of the date of the order that it has set up

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its books and records using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) and that adjustments to rate base have been made to reflect the approved balances as of June 30, 2004.

**Issue 8:** Should an acquisition adjustment be included in the calculation of rate base?

**Recommendation:** No. Pursuant to Rule 25-30.0371(3)(b), Florida Administrative Code, an acquisition adjustment should not be included in rate base.

**PAA**

**Issue 9:** Should FWSC's existing water and wastewater rates and service availability charges be continued by Aqua?

**Recommendation:** Yes. FWSC's existing water and wastewater rates and service availability charges should be continued by Aqua until authorized to change by the Commission in a subsequent proceeding. The tariff sheets reflecting these rates and charges should be effective for services rendered or connections made on or after the stamped approval date pursuant to Rule 25-30.475, Florida Administrative Code.

**PAA**

**Issue 10:** Should Aqua Utilities be authorized to continue collecting AFPI?

**Recommendation:** Yes. Aqua should be authorized to continue collecting the remaining authorized AFPI charges from new connections. Schedule 6 of staff's November 17, 2005 memorandum shows the charges and remaining ERCs by system. The AFPI over-collected by FWSC, in the amount of \$212,470, should be credited to CIAC. Aqua should maintain a monitoring system that prevents future over collection of AFPI.

**Issue 11:** Should these dockets be closed?

**Recommendation:** No. If no timely protest is received to the proposed agency action issues, the Order will become final upon the issuance of a Consummating Order. However, the dockets should remain open pending receipt of the statement within 60 days of the order approving the transfer that it has established its books and records in compliance with the NARUC USOA and that its books have been adjusted to reflect the approved rate base balances as of the date of the transfer. Upon receipt of the statement, the dockets should be administratively closed.

**DECISION:** Issues 1, 2, 6, 7, 8 and 10 were approved; Issues 4 and 5 were approved with the noted corrections.. Issue 3 was modified to state that amortization will begin January 1, 2006 rather than January 1, 2007. Issue 9 was approved with the correction made by staff that this issue is final action

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rather than PAA. Issue 11 was approved with correction made by staff that these dockets (rather than this docket) will be closed.

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

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18 **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:** Baez, Deason, Bradley  
**Prehearing Officer:** Bradley

**Staff:** GCL: B. Keating, Fordham  
CMP: Marsh, Pruitt

**Issue 1:** What is the Florida Public Service Commission's jurisdiction to address all or part of this complaint?

**Recommendation:** The Commission should affirm that it has jurisdiction to investigate and address the allegations presented in Sprint's complaint pursuant to Section 364.16 (3)(b), Florida Statutes, consistent with Order No. PSC-05-1065-FOF-TP.

**Issue 2:** Are KMC Data LLC and KMC Telecom V, Inc. properly included as parties to this complaint?

**Recommendation:** Staff recommends that KMC Data LLC should be dismissed as a defendant in this Complaint because there is no nexus between it and the circumstances giving rise to this docket. Additionally, staff recommends that KMC V should be retained as a joint defendant with KMC III, because an adequate nexus has been demonstrated.

**Issue 3:** Under the Interconnection Agreements with KMC or Sprint's tariffs, is Sprint required to conduct an audit as a condition precedent to bringing its claims against KMC or for KMC to be found liable?

**Recommendation:** No. There is no provision in the Interconnection Agreements with KMC or Sprint's tariff that requires an audit prior to filing a complaint with this Commission or that requires an audit to establish liability.

**Issue 4:** What is the appropriate method to determine the jurisdictional nature and compensation of traffic?

**Recommendation:** The jurisdiction and compensation of a call should be based on its end points, unless otherwise specified in the applicable interconnection agreement. Notwithstanding this conclusion, enhanced services traffic may be exempt from access charges.

**Issue 5:** Did KMC knowingly deliver interexchange traffic to Sprint over local interconnection trunks in violation of Section 364.16(3)(a), Florida Statutes? If yes, what is the appropriate compensation and amount, if any, due to Sprint for such traffic?

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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.

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**Recommendation:** No. KMC did not knowingly violate Section 364.16(3)(a), Florida Statutes.

**Issue 6:** Was any of the traffic that is the subject of Sprint's complaint enhanced services traffic? If yes, how is enhanced services traffic delivered to Sprint from KMC to be treated under the Interconnection Agreements, Sprint's tariffs, and applicable law?

**Recommendation:** The evidence in the record is inconclusive as to whether the subject traffic is enhanced services traffic or voice traffic. Since the nature of the traffic cannot be determined, treatment of enhanced services under the interconnection agreements, tariffs and law need not be decided.

**Issue 7:** Was KMC required to pay Sprint its tariffed access charges for the traffic that is the subject of this complaint? If yes, what is the appropriate amount, if any, due to Sprint for such traffic?

**Recommendation:** KMC should be required to pay Sprint its tariffed access charges for the traffic that is the subject of this complaint. The amount is discussed in Issue 8.

**Issue 8:** Did KMC deliver interexchange traffic to Sprint over local interconnection trunks in violation of the terms of the Interconnection Agreements with Sprint? If yes, what is the appropriate compensation and amount, if any, due to Sprint for such traffic?

**Recommendation:** Yes. KMC delivered interexchange traffic to Sprint over local interconnection trunks in violation of the terms of its Interconnection Agreements with Sprint. However, the amount cannot be determined based on this record. The parties should obtain an audit or accounting to determine the amount, subject to the adjustments noted by staff.

**Issue 9:** To what extent, if any, is Sprint's backbilling limited by its Interconnection Agreements with KMC, Sprint's tariffs, or other applicable law?

**Recommendation:** Sprint's backbilling is only limited by Section 95.11 (2) , Florida Statutes.

**Issue 10:** Did Sprint overpay reciprocal compensation to KMC? If yes, what is the appropriate refund, if any, due to Sprint?

**Recommendation:** Yes. An audit of the traffic in question should be completed by an independent third party to determine the appropriate refund. Responsibility for payment of the cost of the audit should be handled in the same manner as recommended in Issue 8.

**Issue 11:** If the Commission determines that KMC owes Sprint compensation for any traffic delivered by KMC to Sprint that is the subject of this complaint or refunds for overpayment of reciprocal compensation, what are the appropriate payment arrangements?

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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.

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**Recommendation:** The appropriate payment arrangements should be determined after the audits conducted as directed in Issues 8 and 10 are complete. A late payment charge of 1.5% per month should be paid by KMC.

**Issue 12:** Should this docket be closed?

**Recommendation:** No. If the Commission approves staff's recommendation, this Docket should remain open pending the Commission's review of the audits for Issues 8 and 10. The Commission should then establish a timeline for the payment of the appropriate refund amount as determined by the auditor.

**DECISION:** The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley