

**MINUTES OF OCTOBER 5, 2004**

**COMMISSION CONFERENCE**

**COMMENCED:** 9:35 a.m.

**ADJOURNED:** 1:45 p.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 (\*\*).

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1\*\*Consent Agenda

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040976-TX	Utility USA, Inc.

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
040870-TX	Allegiance Telecom of Florida, Inc.	8/17/2004

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

DECISION: The recommendation was approved.

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

ITEM NO.

CASE

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2\*\*Docket No. 040436-TP - Proposed amendment of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: GCL: Moore  
CCA: Sharma  
CMP: Mailhot  
ECR: Hewitt  
EXD: Bane, Hill

Issue 1: Should the Commission amend Rule 25-4.0161, F.A.C., to increase the regulatory assessment fee rate paid by telecommunications companies?

Recommendation: Yes. The Commission should amend Rule 25-4.0161, F.A.C., to increase the regulatory assessment fee rate to .20 percent of gross operating revenues derived from intrastate business.

Issue 2: Should the Commission investigate alternative mechanisms for recovering the costs of regulating the telecommunications industry and pursue statutory authority to increase minimum regulatory assessment and certificate application fees?

Recommendation: Yes.

Issue 3: Should the Commission amend Rule 25-4.0161, F.A.C., governing extensions of time to file a regulatory assessment fee return in order to codify the standards that are actually used by staff to determine whether an extension should be granted?

Recommendation: Yes.

Issue 4: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket closed.

DECISION: The recommendations were approved. Commissioner Davidson dissented.

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

ITEM NO.

CASE

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3Docket No. 040863-EU - Petition for declaratory statement regarding application of Rule 25-17.0836, F.A.C., Modification to Existing Contracts; Explanation of When Approval is Required, to its circumstances, by Indiantown Cogeneration L.P.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Bellak

ECR: Haff

Issue 1: Should the Commission issue the declaratory statement sought by ICL concerning the facts presented?

Recommendation: Yes. The Commission should issue a declaratory statement that the Letter Agreement containing the Replacement Index devised by FPL and ICL is not subject to the requirements of formal approval to assure cost recovery.

Issue 2: Should this docket be closed?

Recommendation: Yes. The docket should be closed upon issuance of the order.

DECISION: The recommendations were approved.

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

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4Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Merchant, Fletcher, Willis

GCL: Jaeger

Issue 1: Should the Commission allow oral argument on Aloha's Motion to Terminate Informal Proceeding?

Recommendation: No. Because oral argument was not requested and would not appear to aid the Commission in comprehending and evaluating the issue on whether the informal proceeding should be terminated, staff recommends that oral argument not be allowed.

Issue 2: Should the Commission grant Aloha's Motion to Terminate Informal Proceeding and transfer this proceeding to DOAH for a formal proceeding?

Recommendation: No. Aloha has raised no new points in its motion that show there are disputed issues of material fact, but merely reiterates the points it has previously made. Having already decided that the issues raised by Aloha did not involve disputed issues of material fact, the Commission should proceed with the informal proceeding, and find that Aloha's request for the matter to be transferred to DOAH is still moot.

Issue 3: Should the Commission grant Aloha's Request for Oral Argument on its brief?

Recommendation: Yes. Because oral argument may aid the Commission in comprehending and evaluating the issues, staff recommends that oral argument be granted. Combined presentations on all issues raised in the briefs should be limited to fifteen minutes per side.

Issue 4: What is the appropriate calculation of refunds for the period May 1, 2002 through July 31, 2003 (the appeal period)?

Recommendation: Because the Final Order was upheld on appeal and did not allow for any increase, the total 15.95% increase for interim rates collected after April 30, 2002, should be refunded with interest. This amounts to a total of \$397,519 without interest for the appeal period. Because the utility has already refunded \$121,983 (includes \$530 of interest) for the appeal period, an additional \$276,066 without interest should be refunded. The balance remaining in the escrow account should be released to the utility upon staff's verification that the utility has made the additional refund. The additional refund should be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. The utility should submit proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code, and treat any unclaimed refunds as

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Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

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contributions in aid of construction (CIAC) pursuant to Rule 25-30.360(8), Florida Administrative Code.

Issue 5: Should this docket be closed?

Recommendation: No. This docket should remain open to allow staff to verify that Aloha has complied with the Final Order to improve its quality of service as subsequently modified, and that Aloha has made the additional refunds with interest and treated any unclaimed refunds as contributions in aid of construction (CIAC).

DECISION: The recommendations were approved with the exception of Issue 3, which was denied.

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

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CASE

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5Docket No. 040086-EI - Petition to vacate Order No. PSC-01-1003-AS-EI approving, as modified and clarified, the settlement agreement between Allied Universal Corporation and Chemical Formulators, Inc. and Tampa Electric Company and request for additional relief, by Allied Universal Corporation and Chemical Formulators, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Jaber

Staff: GCL: Brown, Stern

ECR: Draper

Issue 1: Should the Commission grant the request for oral argument?

Recommendation: Yes.

Issue 2: Should the Commission dismiss Allied's amended petition?

Recommendation: Yes. Allied's amended petition fails to state a cause of action upon which the Commission can grant the relief requested. The Commission should dismiss the amended petition with prejudice.

Issue 3: Should the Commission grant Odyssey's Motions for Attorney's Fees and Sanctions?

Recommendation: The Commission should not address Odyssey's Motions for Attorney's Fees at this time. If the Commission grants the motions to dismiss, the Commission should address the motions when its Order becomes final and any appellate proceedings are concluded. If the Commission denies the motions to dismiss, it should address the motions during the course of the hearing procedure.

Issue 4: Should this docket be closed?

Recommendation: No. If the Commission dismisses Allied's amended petition with prejudice, this docket should remain open pending consideration of the outstanding motions for attorneys fees and sanctions. If the Commission dismisses Allied's amended petition with further leave to amend, or denies the motions to dismiss, the docket should remain open for further proceedings.

DECISION: This item was deferred.

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6Docket No. 040601-TP - Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc., and request for expedited processing.

Critical Date(s): 10/1/04 (On this date BellSouth contends it is no longer obligated to provide Covad access to new line sharing arrangements.)

Commissioners Assigned: All Commissioners  
Prehearing Officer: Jaber

Staff: GCL: Teitzman  
CMP: Dowds, Kennedy

Issue 1: Is BellSouth obligated to provide Covad access to line sharing after October 2004?

Recommendation: No. BellSouth is not obligated to provide access to line sharing after October 2004. Staff believes line sharing does not meet the definition of a loop and therefore does not fall under the requirements of section 271(c)(2)(B)(iv) of the Telecommunications Act.

DECISION: Staff's recommendation was denied and the current agreement allowed to remain in effect through December 19, 2004, recognizing that a "true-up" may be necessary if the FCC negates the 271 obligation. Commissioner Deason dissented on Issue 1.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to address the remaining open issues.

DECISION: The recommendation was approved. Additionally, the Commissioners denied Covad's request for official recognition of Order PSC-02-1304-FOR-TL; granted BellSouth's request for official recognition of the FCC's Brief; and allowed oral argument by the parties.

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

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7\*\*Docket No. 040301-TP - Petition by Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: GCL: Susac

CMP: Vinson, Dowds, Duffey

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s (BellSouth's) Motion to Dismiss Supra Telecommunications & Information Systems, Inc.'s (Supra's) Amended Petition for failure to state a cause of action upon which relief can be granted?

Recommendation: No. Taking all material allegations in Supra's First Amended Petition as facially correct, Supra has stated a cause of action upon which relief can be granted. In addition, staff recommends that this proceeding remain a two-party complaint proceeding and not be taken up in a generic docket.

Issue 2: Should Supra Telecommunications & Information Systems, Inc.'s (Supra) Motion for Partial Summary Final Order be granted?

Recommendation: No. Supra's Motion for Partial Final Summary Order should be denied because there is an issue of fact whether the current rate listed in the parties' agreement covers a "hot cut" for a USE-P to USE-L conversion.

Issue 3: Should this docket be closed?

Recommendation: If the Commission denies BellSouth's Motion to Dismiss in Issue 1, then the docket should remain open to determine the merit(s) of Supra's First Amended Petition. However, if the Commission grants BellSouth's Motion to Dismiss in Issue 1, then the docket should be closed because no further action by the Commission is necessary.

DECISION: The recommendations were approved.

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



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8\*\*PAADocket No. 040731-TI - Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to acquisition by Network US, Inc. d/b/a CA Affinity of all telecommunications assets, including customer accounts, of Connect america, Inc. in foreclosure sale; and acknowledgment of cancellation and removal from register of Connect america's Registration No. TJ012.

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Administrative

Staff: CMP: Williams  
GCL: Rojas

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 long distance customers from Connect america, Inc. to Network US, Inc. d/b/a CA Affinity?

Recommendation: Yes.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

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

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9\*\*PAADocket No. 040289-TI - Compliance investigation of Optical Telephone Corporation for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. (Deferred from May 18, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Buys  
GCL: Rojas  
SCR: Lowery

Issue 1: Should the Commission penalize Optical Telephone Corporation \$10,000 per apparent violation, for a total of \$90,000, for nine (9) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes.

Issue 2: Should the Commission penalize Optical Telephone Corporation \$10,000 per apparent violation, for a total of \$140,000, for fourteen (14) apparent violations of Section 364.604(2), Florida Statutes?

Recommendation: Yes.

Issue 3: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If OTC fails to timely file a protest and to 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 OTC fails to pay the penalty within fourteen (14) calendar days after issuance of the Consummating Order, the company's tariff should be cancelled and Registration No. TJ551 should be removed from the register. If OTC's tariff is cancelled and Registration No. TJ551 is 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 interexchange telecommunications service in Florida. This docket should be closed administratively upon either receipt of the payment of the penalty or upon the removal of the company's registration number from the register and cancellation of the company's tariff. If OTC subsequently decides to reapply for registration as an intrastate interexchange company, it should be required to first pay any outstanding penalties assessed by the Commission.

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9\*\*PAA

Docket No. 040289-TI - Compliance investigation of Optical Telephone Corporation for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. (Deferred from May 18, 2004 conference; revised recommendation filed.)

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Any action by the Commission, including but not limited to any settlement, should not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.

DECISION: The recommendations were approved.

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

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10\*\*PAA Docket No. 041113-TL - Compliance investigation of Sprint-Florida, Incorporated regarding rebate required by Order No. PSC-03-0733-PAA-TL, issued June 19, 2003.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff:       CMP:   Watts  
              ECR:   Maurey  
              GCL:   Rojas

Issue 1: Should the Commission penalize Sprint-Florida, Incorporated for the company's apparent failure to issue rebates to customers in central and south Florida for missed commitments for installation of primary service, as required by the company's Service Guarantee Plan, for the period February 1, 2004, to August 31, 2004?

Recommendation: No.

Issue 2: Should the Commission require Sprint-Florida, Incorporated to credit the affected customers' accounts with a \$25-per-account rebate for a total rebate of \$285,075.00, plus \$1,486.69 interest, for a total of \$286,561.69, for the company's missed commitments for installation of primary service, as required by the company's Service Guarantee Plan, during the period February 1, 2004, to August 31, 2004; require the company to submit a report within 30 days of the issuance of the Consummating Order to the Commission stating, (1) how much was rebated to its customers, (2) the number of customers, and (3) the amount of money due to those customers that cannot be located; and require Sprint to apply any amounts due to customers that cannot be located to the Community Service Fund, created pursuant to the Service Guarantee Plan, for use for Lifeline promotion?

Recommendation: Yes.

Issue 3: Should this docket be closed?

Recommendation: The Order issued from the recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of the Order. Upon receipt of Sprint's report and staff's review, this docket should be closed administratively.

DECISION: The recommendations were approved.

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

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11\*\*PAADocket No. 040062-TI - Compliance investigation of New Century Telecom, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. (Deferred from June 29, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

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

Issue 1: Should the Commission accept New Century Telecom, Inc.'s settlement offer, dated July 20, 2004, to resolve forty-two (42) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: No. The Commission should reject New Century Telecom, Inc.'s settlement offer. Instead, the Commission should penalize the company \$10,000 per apparent violation, for a total of \$420,000, for 42 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. If New Century Telecom, Inc. fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days after issuance of the Consummating Order, Registration Number TI427 should be removed from the register, the company's tariff should be cancelled, and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications service within Florida.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If New Century fails to timely file a protest and to 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 New Century fails to pay the penalty within fourteen (14) calendar days after issuance of the Consummating Order, the company's tariff should be cancelled and Registration No. TI427 should be removed from the register. If New Century's tariff is cancelled and

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11\*\*PAA

Docket No. 040062-TI - Compliance investigation of New Century Telecom, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. (Deferred from June 29, 2004 conference; revised recommendation filed.)

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Registration No. TI427 is 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 interexchange telecommunications service in Florida. This docket should be closed administratively upon either receipt of the payment of the penalty or upon the removal of the company's registration number from the register and cancellation of the company's tariff. If New Century subsequently decides to reapply for registration as an intrastate interexchange company, it should be required to first pay any outstanding penalties assessed by the Commission. Any action by the Commission, including but not limited to any settlement, should not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.

DECISION: The recommendations were approved with the modification that a Show Cause be issued as to why New Century Telecom, Inc. should not be fined \$420,000.00, and give the company 20 (twenty) days to respond. If the company provides a settlement offer with the points covered in staff's recommendation and in discussion at the Conference, and with the understanding that money can be escrowed (rather than securing a surety bond), the offer will be brought back to the Commission for consideration.

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

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12\*\*Docket No. 040215-TC - Compliance investigation of U.S. Paytel Optima, L.L.C. for  
apparent violation of Rule 25-4.019, F.A.C., Records and Reports in General.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff:       CMP: Curry  
              GCL: Rojas  
              RCA: Vandiver

Issue 1: Should the Commission accept U.S. Paytel Optima, L.L.C.'s proposed  
settlement offer of \$2,500 to resolve the apparent violation of Rule 25-4.019, Florida  
Administrative Code, Records and Reports in General?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes.

DECISION: The recommendations were approved.

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

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CASE

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13\*\*PAADocket No. 040823-TX - Joint application for approval for name change and transfer of Certificate No. 5618 of Focal Communications Corporation of Florida to Broadwing Communications, LLC; approval for Focal Communications Corporation of Florida to abandon services; and notification of the transfer of assets and customers of Focal Communications Corporation of Florida to Broadwing Communications, LLC.

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Administrative

Staff: CMP: Williams  
GCL: Rojas

Issue 1: Should the Commission approve the name change and transfer of Certificate No. 5618 from Focal Communications Corporation of Florida to Broadwing Communications, LLC?

Recommendation: Yes.

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 long distance customers from Focal Communications Corporation of Florida to Broadwing Communications, LLC?

Recommendation: Yes.

Issue 3: Should this docket be closed?

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

DECISION: The recommendations were approved.

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



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CASE

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14\*\*PAADocket No. 040352-GU - 2004 depreciation study by Florida Public Utilities Company.

Critical Date(s): 10/19/04 (Rate case hearing, Docket No. 040216-GU.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: ECR: Gardner, Colson, Haff, Kenny

GCL: Brubaker

Issue 1: Should currently prescribed natural gas depreciation rates of Florida Public Utilities Company be revised?

Recommendation: Yes. A comprehensive review of FPUC's planning and activity since its prior depreciation filing indicates a need for a revision in the currently prescribed depreciation rates for natural gas.

Issue 2: Should FPUC's proposed implementation date of January 1, 2005, for new depreciation rates and amortization schedule be approved?

Recommendation: Yes.

Issue 3: Should any corrective reserve allocations between accounts be made?

Recommendation: Yes. Staff recommends the corrective reserve allocations shown in Attachment A of staff's September 23, 2004 memorandum. This action will bring each affected account more in line with its theoretically correct reserve level.

Issue 4: Should the remaining lives, net salvage values, reserve amounts, and resulting depreciation rates proposed by FPUC be approved?

Recommendation: Yes. The Staff's recommended lives, net salvage values, reserves, amortization schedule, and resultant depreciation rates shown in Attachment B of staff's September 23, 2004 memorandum should be approved.

Issue 5: Should the current amortization of investment tax credits and flowback of excess deferred income taxes be revised to reflect the approved depreciation rates and recovery schedules?

Recommendation: Yes. The current amortization of investment tax credits (ITC) and the flowback of excess deferred income taxes (EDIT) should be revised to match the actual recovery periods for the related property. The utility should file detailed calculations of the revised ITC amortization and flowback of EDIT at the same time it files its surveillance report covering the period ending December 31, 2005.

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14\*\*PAA

Docket No. 040352-GU - 2004 depreciation study by Florida Public Utilities Company.

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Issue 6: Should this docket be closed?

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

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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15\*\*PAADocket No. 040762-EU - Petition for waiver of or variance from individual metering requirements of Rule 25-6.049(5)(a), F.A.C., by Coastal Blue Development, LLC d/b/a Seychelles, a Condominium.

Critical Date(s): 10/25/04 (statutory deadline)

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Baxter  
GCL: Fleming

Issue 1: Should the Commission grant Coastal Blue's request for waiver of the requirements of Rule 25-6.049(5)(a), Florida Administrative Code?

Recommendation: Yes. Staff recommends that the requested rule waiver be granted, provided that: (1) Seychelles allocates the cost of electricity to the individual condominium unit owners using a reasonable apportionment method, as required by Rule 25-6.049(6)(a), Florida Administrative Code; (2) the waiver is effective only so long as the condominium is operated and licensed as a transient occupancy facility; and (3) all or substantially all of the units are operated on a transient basis. At such time the condominium is no longer so operated and licensed, Seychelles must immediately inform Gulf Power Company (Gulf), at which time Gulf will install individual meters on the occupancy units. In the event such a conversion to individual metering is required, Seychelles will be solely responsible for the cost of such conversion.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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16\*\*Docket No. 040442-EI - Petition for authority to implement proposed FlatBill rate schedule by Gulf Power Company.

Critical Date(s): 1/12/05 (8-month effective date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Baxter, Wheeler, Slemkewicz, Lester, McRoy  
GCL: Brown

Issue 1: Should Gulf Power Company's proposed FlatBill rate program be approved?

Recommendation: Yes. Gulf's proposed FlatBill program should be approved, provided that: (1) all components used to calculate the FlatBill, including the consumption adder, risk adder, and normalized weather are described in the tariff; (2) all terms and conditions of service, including termination of service, and what happens when service is interrupted due to natural disaster are described in the tariff; (3) staff reviews all disclosure information supplied to customers to insure it complies with the Commission's requirements, including a statement that the customer is paying a premium for the service, that the FlatBill includes a consumption adder and risk adder, that the customer will be sent a notice at least 30 days prior to the expiration of the FlatBill contract that it will be renewing, and contains the new offer amount, and a statement of the obligations of customers who leave the program prior to the expiration of the FlatBill contract; (4) Gulf files quarterly reports no later than 30 days following the end of the quarter which identify: the total revenues collected under the FlatBill tariff versus the revenues that would have been collected under the traditional (Residential and General Service) tariffs, the revenues attributable to the risk adder, the actual billing cycle weighted cooling degree days minus normal cooling degree days, the actual billing cycle weighted heating degree days minus normal heating degree days, and the quarterly incremental number of participants on the tariff; (5) the consumption adder applied to the customer's forecasted annual kWh usage does not exceed eight percent (8%) and the risk adder, used to account for financial, weather, and other risks, does not exceed five percent (5%); and (6) Gulf obtains a rule waiver from the requirement to include all the information on customer bills required in paragraphs 1, 2, and 4 of Rule 25-6.100(2)(c), Florida Administrative Code prior to implementing the tariff. Gulf should be required to file new tariff sheets consistent with the Commission's vote in this docket for administrative approval.

DECISION: The recommendation was approved with modification to include information described in the 10/04/04 letter from Gulf Power Company to Commission staff.

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16\*\*

Docket No. 040442-EI - Petition for authority to implement proposed FlatBill rate schedule by Gulf Power Company.

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Issue 2: Should the Commission approve Gulf Power Company's request to remove any FlatBill program profit/loss from operating revenues for earnings surveillance and other regulatory purposes?

Recommendation: No. Gulf Power Company should be required to include all FlatBill program revenues, including any profit/loss, in operating revenues for all regulatory purposes. In addition, FlatBill program revenues should be allocated first to fully recover the cost recovery clause charges based on actual kWh usage each month.

DECISION: The recommendation was approved.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. If the tariff is approved, Gulf should be required to file tariffs consistent with the Commission's decision.

DECISION: The recommendation was approved.

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

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CASE

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17\*\*PAADocket No. 040660-EG - Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Colson

GCL: Brown

Issue 1: Should the Commission approve the BuildSmart program as modified in Florida Power & Light Company's petition filed on June 30, 2004, including approval for energy conservation cost recovery ?

Recommendation: Yes. The program is designed to encourage energy conservation that cost-effectively reduces FPL's coincident peak load and its customer's energy consumption through the building of energy efficient residential new construction. The modified BuildSmart program is cost effective for both single-family detached and attached homes. The program can be monitored and FPL will file program standards within 30 days from the approval of the program. Staff requests permission to administratively approve the program standards.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Commissioner's PAA order, this docket should be closed upon issuance of a consummating order.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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18\*\*PAA Docket No. 040472-EI - Petition for approval of cost recovery for new environmental program necessitated by U.S. Environmental Protection Agency's adoption of rules establishing new requirements for cooling water intake structures at existing electric power generating facilities under Section 316(b) of Clean Water Act, by Progress Energy Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: ECR: Breman  
GCL: Stern

Issue 1: Should the Commission approve PEFI's petition for cost recovery of the Comprehensive Demonstration Study and the costs to implement any new design, operational, or restoration activities needed to reduce mortality of fish and shellfish pursuant to new federal standards for cooling water intake structures?

Recommendation: Yes in part, and no in part. The program is eligible for recovery through the ECRC and any prudently incurred costs for the Comprehensive Demonstration Study are appropriate for recovery through the ECRC consistent with the Commission's offsetting policy established in Order No. PSC-00-1167-PAA-EI. However, it is premature to approve cost recovery for implementing any new design, operational, or restoration activities because projections of those costs cannot be supplied at this time. If the new EPA rules are stayed, PEFI should submit a copy of the stay to the Commission within two weeks of its issuance.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed 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.

DECISION: The recommendations were approved. Commissioner Deason dissented.

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

ITEM NO.

CASE

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19\*\*PAA Docket No. 040582-EI - Petition for approval of recovery through environmental cost recovery clause of costs associated with Clean Water Act section 316(b) Phase II rule project, by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Jaber

Staff: ECR: Breman

GCL: Stern

Issue 1: Should the Commission approve FPL's petition for the Comprehensive Demonstration Study as a new activity for cost recovery through the ECRC?

Recommendation: Yes. The program is eligible for recovery through the ECRC and any prudently incurred costs for the Comprehensive Demonstration Study are appropriate for recovery through the ECRC, consistent with the Commission's offsetting policy established in Order No. PSC-00-1167-PAA-EI. If a stay of the new rules is issued, then FPL should submit a copy of the stay to the Commission within two weeks of its issuance.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed 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.

DECISION: The recommendations were approved. Commissioner Deason dissented.

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



ITEM NO.

CASE

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20\*\*PAADocket No. 040750-EI - Petition for approval of new environmental programs for cost recovery through the Environmental Cost Recovery Clause, by Tampa Electric Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Breman, Haff, Lee

GCL: Stern

Issue 1: Should the Commission approve Tampa Electric Company's petition for the Big Bend Unit 4 SCR system and Pre-SCR retrofit activities on Big Bend Units 1, 2, and 3 as new activities for cost recovery through the ECRC?

Recommendation: Yes. Prudently incurred costs for the Big Bend Unit 4 SCR system and Pre-SCR retrofits on Big Bend Units 1, 2, and 3 are appropriate for recovery through the ECRC.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed 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.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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21\*\*Docket No. 040179-WS - Application for transfer of facilities and Certificate Nos. 336-W and 191-S in Martin County from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Johnson, Brinkley, Walden

GCL: Fleming

Issue 1: Should the transfer of facilities and Certificate Nos. 336-W and 291-S from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island be approved?  
Recommendation: Yes. The transfer of facilities and Certificate Nos. 336-W and 291-S from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island should be approved. The transfer should be effective on the day of the Commission vote. In addition, Columbia Properties Stuart, LLC will be responsible for the payment of all regulatory assessment fees (RAFs) due for revenues received through the date of closing. UIHI will be responsible for the payment of all RAFs due thereafter and for filing the 2004 annual report for January 1 through December 31, 2004. A description of the territory being transferred is appended to staff's September 23, 2004 memorandum as Attachment A.

PAA

Issue 2: Should an acquisition adjustment be included in the calculation of rate base?  
Recommendation: No. Pursuant to Rule 25-30.0371(2), Florida Administrative Code, an acquisition adjustment should not be included in rate base.

Issue 3: Should Utilities, Inc. of Hutchinson Island adopt and use the rates and charges approved by this Commission for Columbia Properties Stuart, LLC.?

Recommendation: Yes. Utilities, Inc. of Hutchinson Island should continue charging the rates and service availability charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services rendered or connections made on or after the stamped approval date.

PAA

Issue 4: Should Utilities, Inc. of Hutchinson Island's request to use the uniform Allowance for Funds Used During Construction (AFUDC) rate granted in Order No. PSC-04-0262-PAA-WS be approved?

Recommendation: Yes. An annual AFUDC rate of 9.03% with a discounted monthly rate of 0.751966% should be approved for UIHI which is consistent with Order No. PSC-04-0262-PAA-WS. The rate should be applicable for eligible construction projects.

ITEM NO.

CASE

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21\*\*

Docket No. 040179-WS - Application for transfer of facilities and Certificate Nos. 336-W and 191-S in Martin County from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island.

(Continued from previous page)

PAA

Issue 5: Should the Commission approve a wastewater tariff reflecting the reclaimed water class of service for the golf course located in the Hutchinson Island Resort?

Recommendation: Yes. The utility has filed a wastewater tariff reflecting the reclaimed water class of service at a zero rate for the golf course located within the Hutchinson Island Resort. The tariff should be effective for services rendered on or after the stamped approval date of the tariff. The utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers.

Issue 6: Should this docket be closed?

Recommendation: Yes. If no timely protests are filed by a substantially affected person to the proposed agency action Issue Nos. 2, 4, and 5, a Consummating Order should be issued upon the expiration of the protest period and the docket should be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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22\*\*Docket No. 040276-WU - Application for transfer of majority organizational control of Brendenwood Water System, Inc., holder of Certificate No. 339-W in Lake County, from Paul E. Day to Deborah J. Miller.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: ECR: Clapp, Rieger, Romig

GCL: Brown

Issue 1: Should the transfer of majority organizational control of Brendenwood Water System, Inc., holder of water Certificate No. 339-W, from Paul E. Day to Deborah J. Miller, be approved?

Recommendation: Yes. The transfer of majority organizational control of Brendenwood Water System, Inc., holder of water Certificate No. 339-W, from Paul E. Day to Deborah J. Miller, is in the public interest and should be approved. A description of the territory being transferred is appended to staff's September 23, 2004 memorandum as Attachment A.

PAA

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

Recommendation: The rate base, which for transfer purposes reflects the net book value at the time of transfer, is \$7,191 for the Brendenwood water system as of March 1, 2004.

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

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

Issue 4: Should this docket be closed?

Recommendation: Yes. If no timely protest by a substantially affected person is received to the proposed agency action issue, a Consummating Order should be issued upon the expiration of the protest period and the docket should be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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23\*\*Docket No. 040388-WU - Application for amendment of Certificate 363-W in Marion County by Sunshine Utilities of Central Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Rieger

GCL: Jaeger

Issue 1: Should the Commission approve Sunshine's application to amend Certificate No. 363-W?

Recommendation: Yes. The Commission should approve Sunshine's application to amend Certificate No. 363-W. Sunshine should charge the customers in the added territory, as reflected in Attachment A of staff's September 23, 2004 memorandum, the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

Issue 2: Should this docket be closed?

Recommendation: Yes. If staff's recommendation in Issue 1 is approved, no further action is required and the docket should be closed.

DECISION: The recommendations were approved.

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