

**MINUTES OF SEPTEMBER 21, 2004**

**COMMISSION CONFERENCE**

**COMMENCED:** 9:45 a.m.

**ADJOURNED:** 1:40 p.m.

**COMMISSIONERS PARTICIPATING:** Chairman Baez  
Commissioner Deason  
Commissioner Bradley  
Commissioner Davidson

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

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1Approval of Minutes

August 3, 2004 Regular Commission Conference

August 17, 2004 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO. CASE

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2\*\*Consent Agenda

PAA            A) Applications for certificates to provide competitive local exchange telecommunications service. (Deferred from September 7, 2004 conference.)

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040632-TX	RNK Telecom, Inc.
040683-TX	XFone USA, Inc.
040771-TX	US Telecom Group, Inc. d/b/a US Telecom
040831-TX	Neutral Tandem-Florida, LLC
040219-TX	VOIP Corp

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040860-TX	IQC, LLC
040890-TX	Access One Communications, Inc.
040954-TX	Industry Retail Group, Inc.
040892-TX	Airespring, Inc.

PAA            C) Applications for certificates to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040865-TC	Florida EZ Link Inc.
040928-TC	BayComm Services, Inc.
040961-TC	Omnicom, Inc.

PAA            D) Applications for certificates to provide pay telephone service. (Deferred from September 7, 2004 conference.)

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Consent Agenda

(Continued from previous page)

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040710-TC	Marriott Hotel Services, Inc.
040824-TC	Juliette Powell
040825-TC	Capital Property Solutions, Inc.
040811-TC	Judy Brown Montanez and Armando Montanez

- E) Docket No. 040893-GU - Application by City Gas Company of Florida, a Division of NUI Utilities, Inc., for authority to issue debt securities pursuant to Section 366.04, Florida Statutes, and Chapter 25-8, Florida Administrative Code, and request for expedited consideration. The applicant seeks authority to enter into a \$75 million senior secured credit facility during the twelve-month period ending September 6, 2005. In addition, the applicant seeks approval to extend certain short-term, unsecured financial facilities in the maximum principal amount of \$150 million. The senior secured facility will provide additional liquidity through the close of the sale of the applicant's parent company, NUI Corporation, to AGL Resources, Inc., and can be utilized to purchase gas for the upcoming winter heating season and for general corporate purposes. The applicant requested and staff recommends that the effective date of the order should be the day of the Commission's vote.

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Consent Agenda

(Continued from previous page)

Any exercise of the requested authority shall be for the benefit of NUI Utilities, Inc. At no time will the applicant borrow funds, incur debt or assume liabilities or obligations as guarantor, endorser, or surety that are not for the benefit of NUI Utilities, Inc.

For monitoring purposes, this docket should remain open until December 21, 2005, to allow the applicant time to file the required Consummation Report. (Deferred from September 7, 2004 conference.)

RECOMMENDATION: The Commission should approve the action requested in the dockets referenced above and close these dockets, with the exception of Docket No. 040893-GU, which must remain open for monitoring purposes.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

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3\*\*Docket No. 040301-TP - Petition by Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: GCL: Susac  
CMP: Dowds

Issue 1: Should Supra Telecommunications & Information Systems, Inc.'s (Supra's) request for an interim rate be granted?

Recommendation: No. There does not appear to be a need or an adequate basis for an interim rate.

Issue 2: Should the Commission grant Supra's Motion for Reconsideration of Order No. PSC-04-0752-PCO-TP, issued August 4, 2004?

Recommendation: No. Supra's Motion for Reconsideration of Order No. PSC-04-0752-PCO-TP should be denied because it fails to identify a point of fact or law that the Prehearing Officer failed to consider in rendering his Order. Supra's arguments have been considered and rejected by the Prehearing Officer, or the arguments are new, and thus not appropriate for consideration in the context of a motion for reconsideration.

Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open to determine the merit of Supra Telecommunications & Information Systems, Inc.'s First Amended Petition.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

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4\*\*PAADocket No. 040714-TL - Petition for waiver of requirements of Order Nos. 12765 and 13476 to permit use of "FCC authorized charge for network access" on customer bills, by BellSouth Telecommunications, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: B. Keating

CMP: Salak

Issue 1: Should the Commission grant BellSouth's request for a waiver of Order Nos. 12765 and 13476?

Recommendation: Yes. Staff recommends that BellSouth be granted a limited waiver from the referenced Orders to allow it to use the phrase "FCC authorized charge for network access."

Issue 2: Should this Docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the Commission's Proposed Agency Action timely files a protest within 21 days of the issuance of the Order from this recommendation, this Docket should be closed upon issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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5\*\*Docket No. 040353-TP - Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: GCL: Teitzman, Rockette-Gray

CMP: Moss, Barrett

Issue 1: Should the Motion for Summary Final Order filed by Supra be granted?

Recommendation: No. The Motion for Summary Final Order filed by Supra should be denied.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for an evidentiary hearing on this matter.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

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

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: Scott, McKay

CMP: Bates

Issue 1: Should the Commission grant ALLTEL's Motion to Dismiss Volo's Notice of Adoption?

Recommendation: No. Staff recommends that ALLTEL's Motion to Dismiss be denied. Because the parties are, however, currently negotiating a new agreement, staff recommends that proceedings in this matter be held in abeyance for a period of sixty (60) days. Thereafter, if negotiations are not successful, this matter should be set for hearing.

Issue 2: Should this Docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, this Docket should be held open pending further proceedings.

DECISION: This item was deferred.



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7\*\*Docket No. 040527-TP - Complaint to enforce interconnection agreement with NuVox Communications, Inc. by BellSouth Telecommunications, Inc. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Jaber

Staff: GCL: Rojas, Susac

CMP: Bulecza-Banks, Casey, Cater

Issue 1: Should the Commission grant NuVox's Motion to Dismiss BellSouth's Complaint?

Recommendation: No. Staff recommends that NuVox's Motion to Dismiss be denied.

Issue 2: Should this Docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, this Docket should be held in abeyance for a period of 30 days from the issuance of the order resulting from this recommendation and the parties should be directed to enter staff-assisted discussions to attempt to resolve outstanding issues. If at the conclusion of the 30-day period such discussions are unsuccessful, this matter should be set for hearing.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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8\*\*Docket No. 971485-TI - Initiation of show cause proceedings against Preferred Carrier Services, Inc. d/b/a Telefonos Para Todos and d/b/a Phones For ALL for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: GCL: L. Fordham

CMP: Kennedy

Issue 1: Should the Commission notify the Division of the Commission Clerk and Administrative Services to request permission from the Florida Department of Financial Services to write off the uncollectible amount of \$10,000 due to the bankruptcy of Preferred Carrier Services, Inc.?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

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9\*\*PAADocket No. 040701-EU - Joint petition for approval of territorial agreement concerning service to two locations in Jackson County, by Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: GCL: Gervasi  
ECR: Breman, Windham

Issue 1: Should the Commission approve the Joint Petition of WFEC and FPUC for approval of the Agreement?

Recommendation: Yes. The Agreement between WFEC and FPUC (the parties) is in the public interest and should be approved.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving the Agreement, this docket should be closed upon the issuance of a Consummating Order. If a protest is timely filed by a substantially interested person, the Agreement should remain in effect pending resolution of the protest and the docket should remain open.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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10\*\*Docket No. 981079-SU - Application for amendment of Certificate No. 104-S to extend service territory in Pasco County by Hudson Utilities, Inc., and request for limited proceeding. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: GCL: Gervasi

ECR: Clapp, Redemann

Issue 1: Should OPC's Motion to Initiate a Show Cause Proceeding Against Hudson Utilities, Inc., for failure to serve the Sea Pines area within a reasonable time be granted?

Recommendation: Yes. The Motion should be granted. Hudson should be required to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,500 for failure to serve the Sea Pines area within a reasonable time, in apparent violation of Section 367.111(1), Florida Statutes. The order to show cause should incorporate the conditions stated in the analysis portion of staff's August 26, 2004 memorandum. Moreover, Hudson should be required to file monthly progress reports, starting 30 days from the issuance date of the Order arising from this recommendation, to update the Commission on the status of the construction to Sea Pines, and to include: the status of the construction bids and whether a contractor has been employed to begin construction; the estimated construction costs; the estimated dates to begin and to complete construction; the estimated timeline under which construction activities will occur; whether the final right-of-way permit has been approved; whether funding of the construction has been approved by Hudson's lenders; and the status of Hudson's ongoing negotiations with the County for the transfer of the Sea Pines area to the County.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open in order to monitor Hudson's progress in providing service to the Sea Pines area and for final disposition of the show cause order.

DECISION: This item was deferred.

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11 \*\*Docket 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. (Deferred from September 7, 2004 conference; revised recommendation filed.)

Critical Date(s): 5/31/05 (Current contract with Sprint expires on this date. Significant time is needed to issue the RFP, evaluate proposals, and set up the system.)

Commissioners Assigned: All Commissioners  
Prehearing Officer: Davidson

Staff: CMP: Moses, Casey  
GCL: Rojas

Issue 1: Should the draft RFP attached to staff's September 9, 2004 memorandum be issued?

Recommendation: Yes. The Commission should issue the attached RFP.

Issue 2: Should this docket be closed?

Recommendation: No.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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12\*\*Docket No. 030851-TP - Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Local Circuit Switching for Mass Market Customers.  
Docket No. 030852-TP - Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Davidson

Staff: CMP: Lee, Dowds  
GCL: Teitzman, Rojas, Susac  
MMS: Bethea

Issue 1: Should these dockets be closed?

Recommendation: Yes. In light of the Court's USTA II decision, no further Commission action is necessary or required in Docket Nos. 030851-TP and 030852-TP, and thus the dockets should be closed. Additionally, staff recommends that the Commission not prepare summaries or forward the records in these dockets to the FCC, but rather serve to facilitate any such filings by the parties and provide any other reasonable assistance to effect such efforts.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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13\*\*PAADocket No. 040808-TI - Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to purchase of substantially all telecommunications assets of Motion Telecom, Inc. by Network US, Inc. d/b/a CA Affinity.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Williams

GCL: Scott

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 Motion Telecom, 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, Bradley, Davidson

ITEM NO.

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14\*\*PAADocket No. 040845-TX - Compliance investigation of USA Telephone Inc. d/b/a CHOICE ONE Telecom for apparent violation of Section 364.183(1), F.S., Access to Company Records, and Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff:       CMP:   Howell  
              GCL:   Scott  
              RCA:   Vandiver

Issue 1: Should the Commission impose a penalty in the amount of \$10,000 against USA Telephone Inc. d/b/a CHOICE ONE Telecom for its apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records, and order the company to submit the required information listed in Attachment A of staff's September 9, 2004 memorandum to the Division of Regulatory Compliance and Consumer Assistance?

Recommendation: Yes.

Issue 2: Should the Commission impose a penalty in the amount of \$1,000 against USA Telephone Inc. d/b/a CHOICE ONE Telecom for its apparent repeat violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, for not paying the 2003 Regulatory Assessment Fee?

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 USA Telephone 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 USA Telephone fails to submit the required information, and pay the penalties and Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, the company's CLEC Certificate No. 5647 should be cancelled and the collection of the Regulatory Assessment Fees, plus statutory late payment charges, should be referred to the Department of Financial Services for further collection efforts. If USA Telephone's certificate is cancelled in



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Docket No. 040845-TX - Compliance investigation of USA Telephone Inc. d/b/a CHOICE ONE Telecom for apparent violation of Section 364.183(1), F.S., Access to Company Records, and Rule 25-4.0161, FAC, Regulatory Assessment Fees; Telecommunications Companies.

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accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange service in Florida. This docket should be closed administratively upon either receipt of the required information, and the payment of the penalties and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of the company's CLEC Certificate No. 5647.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

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15\*\*PAA Compliance investigations for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from September 7, 2004 conference.)

Docket No. 040406-TC - Ocean Palms Beach Club, Inc.  
Docket No. 040812-TC - Edward E. Rockey

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Administrative

Staff: CMP: Isler  
GCL: Rockette-Gray

Issue 1: Should the Commission deny the companies listed on Attachment A of staff's August 26, 2004 memorandum voluntary cancellation of their respective certificates and instead, on the Commission's own motion, cancel the companies' respective certificates with prejudice?

Recommendation: Yes.

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 listed on Attachment A of staff's August 26, 2004 memorandum 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 listed on Attachment A of staff's memorandum fails to pay the Regulatory Assessment Fees, including statutory late payment charges, within fourteen (14) calendar days after the issuance of the Consummating Order, each company's respective certificate, as listed on Attachment A, should be cancelled administratively and the collection of the past due fees should be referred to the Department of Financial Services for further collection efforts. If any company's certificate as listed on Attachment A is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to

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15\*\*PAA

Compliance investigations for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. (Deferred from September 7, 2004 conference.)

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immediately cease and desist providing pay telephone service in Florida. These dockets should be closed administratively upon either receipt of the payment of the Regulatory Assessment Fees, including statutory penalty and interest charges, or upon cancellation of a company's certificate as listed on Attachment A. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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16\*\*PAADocket No. 040703-TC - Bankruptcy cancellation by Florida Public Service Commission of PATS Certificate No. 5878 issued to Phoenix Telecom, LLC d/b/a Phoenix Payphones, LLC, effective 4/2/04. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Isler  
GCL: Fordham

Issue 1: Should the Commission grant Phoenix Telecom, LLC d/b/a Phoenix Payphones, LLC cancellation of its Pay Telephone Service certificate with an effective date of April 2, 2004, due to bankruptcy; notify the Division of the Commission Clerk and Administrative Services that any unpaid RAFs, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write off the uncollectible amounts; and require the company to immediately cease and desist providing pay telephone service in Florida?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest is filed and upon issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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17\*\*PAADocket No. 040791-TI - Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TI258 issued to Inacom Communications, Inc., effective July 27, 2004. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Isler

GCL: Rockette-Gray

Issue 1: Should the Commission grant Inacom Communications, Inc. cancellation of its tariff and removal from the register with an effective date of July 27, 2004, due to bankruptcy; notify the Division of the Commission Clerk and Administrative Services that any unpaid Regulatory Assessment Fees, including statutory penalty and interest charges, should not be sent to the Florida Department of Financial Services and request permission to write off the uncollectible amounts; and require the company to immediately cease and desist providing interexchange telecommunications service in Florida?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest is filed and upon issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

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18\*\*Docket No. 040914-EI - Proposed revision to waive certain connection charges during times of natural disaster by Florida Power & Light Company.  
Docket No. 040915-EI - Petition for approval of tariff revision allowing waiver of service charges for customers affected by natural disasters by Progress Energy Florida, Inc.  
Docket No. 040958-EI - Petition for expedited approval of tariff revisions to allow waiver of service charges for customers whose electric service has been affected by natural disasters or other declared emergencies, by Tampa Electric Company. (Deferred from September 7, 2004 conference.)

Critical Date(s): 60-day suspension dates: 040914-EI - 10/18/04  
040915-EI - 10/19/04  
040958-EI - 10/24/04

Commissioners Assigned: All Commissioners  
Prehearing Officer: Administrative

Staff: ECR: Wheeler  
GCL: Helton

Issue 1: Should the Commission approve Florida Power & Light Company's request to revise its Tariff Sheet No. 4.020 to allow the company to waive certain connection charges for customers affected by natural disasters or during periods of declared emergencies?

Recommendation: Yes.

Issue 2: Should the Commission approve Progress Energy Florida, Inc.'s request to revise its Tariff Sheet No. 4.020 to allow the company to waive certain service charges for customers affected by natural disasters or during periods of declared emergencies?

Recommendation: Yes.

Issue 3: Should the Commission approve Tampa Electric Company's request to revise its Tariff Sheet No. 3.030 to allow the company to waive certain service charges for customers affected by natural disasters or during periods of declared emergencies?

Recommendation: Yes.

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Docket No. 040914-EI - Proposed revision to waive certain connection charges during times of natural disaster by Florida Power & Light Company.  
Docket No. 040915-EI - Petition for approval of tariff revision allowing waiver of service charges for customers affected by natural disasters by Progress Energy Florida, Inc.  
Docket No. 040958-EI - Petition for expedited approval of tariff revisions to allow waiver of service charges for customers whose electric service has been affected by natural disasters or other declared emergencies, by Tampa Electric Company. (Deferred from September 7, 2004 conference.)

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Issue 4: Should these dockets be closed?

Recommendation: Yes. If Issues 1, 2 and 3 are approved, the tariff revisions should become effective on September 7 21, 2004. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect pending resolution of the protest. If no timely protest is filed, these dockets should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved with the modification to Issue 4.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

CASE

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18A\*\*PAADocket No. 041057-EI - Petition for approval to establish as regulatory asset any costs charged to Account No. 228.1 in excess of Storm Reserve, by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Slemkewicz

GCL: Brubaker

Issue 1: Should the Commission approve Florida Power & Light Company's (FPL) petition to establish a regulatory asset for storm damage costs in excess of its storm reserve?

Recommendation: No. The petition should be denied because it is both unnecessary and premature. FPL should record prudently incurred storm damage costs in Account No. 228.1, Accumulated Provision for Property Insurance, as required by Rules 25-6.0143(1) and 25-6.0143(4)(b), Florida Administrative Code. After the actual amount of the costs is known, FPL may then file a petition seeking an alternative accounting treatment for recovery of prudently incurred storm damage costs that exceed the Storm Reserve balance.

DECISION: The recommendation was approved with the understanding that the company will continue booking amounts consistent with current accounting practice, which will be subject to Commission review and approval when its petition is filed.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the Commission's Proposed Agency Action timely files a protest within 21 days of the issuance of the Order from this recommendation, this Docket should be closed upon issuance of a Consummating Order.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Davidson



ITEM NO.

CASE

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18B\*\*PAADocket No. 041085-EI - Petition for approval to establish regulatory asset for costs in excess of Storm Damage Reserve Fund, by Progress Energy Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Slemkewicz

GCL: Brubaker

Issue 1: Should the Commission approve Progress Energy Florida, Inc.'s (PEF) petition to establish a regulatory asset for storm damage costs in excess of its storm reserve?

Recommendation: No. The petition should be denied because it is both unnecessary and premature. PEF should record prudently incurred storm damage costs in Account No. 228.1, Accumulated Provision for Property Insurance, as required by Rules 25-6.0143(1) and 25-6.0143(4)(b), Florida Administrative Code. After the actual amount of the costs is known, PEF may then file a petition seeking an alternative accounting treatment for recovery of prudently incurred storm damage costs that exceed the Storm Reserve balance.

DECISION: The recommendation was approved with the understanding that the company will continue booking amounts consistent with current accounting practice, which will be subject to Commission review and approval when its petition is filed.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the Commission's Proposed Agency Action timely files a protest within 21 days of the issuance of the Order from this recommendation, this Docket should be closed upon issuance of a Consummating Order

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

CASE

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19Docket No. 031033-EI - Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Bohrmann, Devlin, Jenkins, Trapp, Maurey, Windham, Von Fossen, Floyd, Matlock

GCL: C. Keating, Rodan

Issue 1: Is Tampa Electric's June 27, 2003, request for proposals sufficient to determine the current market price for coal transportation?

Recommendation: No. By its restrictive terms and conditions, Tampa Electric's June 27, 2003, request for proposals (RFP) was not sufficient to determine the market price for coal transportation.

DECISION: The recommendation was approved.

Issue 2: Are Tampa Electric's projected coal transportation costs for 2004 through 2008 under the winning bid to its June 27, 2003, request for proposals for coal transportation reasonable for cost recovery purposes?

Primary Recommendation: No. Although a competitive market for coal transportation services does likely exist, the wide disparity in the estimated rates for such services recommended by the parties and the staff suggests that a consensus definition of the market cannot be reached based on the record in this case. Primary staff recommends that the Commission review the books and records of TECO Transport to determine an appropriate level of cost recovery for Tampa Electric based on what TECO Transport charges non-affiliated companies for waterborne transportation.

DECISION: The recommendation was denied.

First Alternate Recommendation: No. The rate proposed by Tampa Electric for inland river barge service should be reduced by \$0.34 per ton to reflect backhaul opportunities. The rate proposed by Tampa Electric for ocean barge service should be reduced by \$2.69 per ton. This adjustment is based on (1) removing Witness Dibner's preference trade adjustment, (2) accepting Witness Majoros' adjustment to reflect backhaul opportunities, (3) using capitalization ratios that more closely reflect actual

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19

Docket No. 031033-EI - Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark. (Deferred from September 7, 2004 conference.)

(Continued from previous page)

conditions for the industry, and (4) adjusting annual throughput to expected annual levels.

DECISION: The recommendation was denied.

Second Alternate Recommendation: No. The rate proposed by Tampa Electric for inland river barge service should be reduced by \$1.00 per ton. The rate proposed for terminal service should be reduced by \$0.23 per ton. The rate proposed for ocean barge service should be reduced by \$2.41 per ton. These adjustments are based on comparisons of waterborne transportation rates paid by other Florida utilities to non-affiliated carriers.

DECISION: The recommendation was approved with the exclusion of adjustment for terminal service.

Third Alternate Recommendation: No. The overall rates for waterborne transportation should be reduced to reflect delivery of 1 million tons of coal in 2004 and 2 million tons annually from 2005 through 2008 by rail with the remainder of Tampa Electric's coal transportation requirements satisfied by waterborne transportation at the market rates proposed by either (a) first alternate staff or (b) second alternate staff.

DECISION: The recommendation was denied.

Fourth Alternate Recommendation: Yes.

DECISION: The recommendation was denied.

Issue 3: Should the Commission modify or eliminate the waterborne coal transportation benchmark that was re-affirmed for Tampa Electric by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI?

Recommendation: Yes. Staff recommends:

- 1) The benchmark that the Commission approved by Order No. 20298 and reaffirmed for Tampa Electric Company by Order No. PSC-93-0443-FOF-EI, issued March 23, 1993, in Docket No. 930001-EI, is no longer relevant. The Commission should eliminate the benchmark.

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19

Docket No. 031033-EI - Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark. (Deferred from September 7, 2004 conference.)

(Continued from previous page)

- 2) The Commission should not require Tampa Electric to rebid for coal transportation services for the current contract period of 2004 through 2008. Tampa Electric's cost recovery for the 2004 through 2008 period should be governed by the Commission's vote on Issue 2. At its own discretion, Tampa Electric may choose to re-bid part or all of its existing coal transportation requirements to mitigate the impact of the adjustments, if any, the Commission votes on in Issue 2. Should Tampa Electric decide to re-bid, the company may petition the Commission for an alternate regulatory treatment of its coal transportation costs based on the results of the re-bid.
- 3) The Commission should order Tampa Electric to conduct fair, open, and reasonable RFP processes for solid fuel procurement for 2009 and beyond. The Commission should evaluate Tampa Electric's requests for recovery of costs for 2009 and beyond based on the results of the RFP.
- 4) The Commission should require Tampa Electric to perform a separate feasibility analysis of using rail accessible coal supplies and rail transportation, in whole or in part, to supply solid fuel to its Big Bend and Polk Stations. The results of the study should be provided to the Commission within 180 days of the final order.

DECISION: The recommendation was approved with the clarification that TECO is free to come up with another RFP.

Issue 4: Should this docket be closed?

Recommendation: If the Commission approves the primary staff recommendation in Issue 2, this docket should remain open for the Commission to determine the appropriate rate for cost recovery purposes. Otherwise, this docket should be closed after time for filing an appeal has expired.

DECISION: The recommendation was approved. Additionally, TECO's motion for settlement was denied.

Commissioners participating: Baez, Deason, Bradley, Davidson

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Commission Conference  
September 21, 2004

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CASE

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20\*\*PAA Docket No. 021067-WS - Application for staff-assisted rate case in Polk County by River Ranch Water Management, L.L.C.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Hudson

GCL: Helton

Issue 1: Should the utility be relieved from the requirement established by Order No. PSC-03-0740-PAA-WS to install the pro forma addition related to the rehabilitation of the wastewater system within 180 days from the issuance of the Consummating Order?  
Recommendation: Yes. The utility should be relieved from the requirement established by Order No. PSC-03-03740-PAA-WS to install the pro forma addition related to rehabilitation of the wastewater system.

Issue 2: Should the 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: This item was deferred.

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CASE

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21\*\*Docket No. 980744-WS - Investigation into ratemaking considerations of gain on sale from sale of facilities of Florida Water Services Corporation to Orange County.  
Docket No. 031060-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Martin County in Martin County.  
Docket No. 031061-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Marion County in Marion and Sumter Counties.  
Docket No. 031062-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Florida Governmental Utility Authority in Lee County.  
Docket No. 031063-WU - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Osceola County in Osceola County.  
Docket No. 031064-WU - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Clay County Utility Authority in Clay and Bradford Counties.  
Docket No. 031065-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to City of Deltona in Volusia County.  
Docket No. 040023-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Charlotte County in Charlotte County.  
Docket No. 040024-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Nassau County in Nassau County.  
Docket No. 040025-WU - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to JEA in Duval and St. Johns Counties.

Critical Date(s): None

Commissioners Assigned: All Commissioners (980744-WS for purposes of this decision only)

Prehearing Officer: Deason (040023-WS, 040024-WS, 040025-WU)  
Bradley (031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS)  
Davidson (980744-WS)

Staff: ECR: Kyle, Merchant, Willis  
GCL: Brubaker

Issue 1: What is the proper disposition of Docket Nos. 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WU?

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Docket No. 980744-WS - Investigation into ratemaking considerations of gain on sale from sale of facilities of Florida Water Services Corporation to Orange County.  
Docket No. 031060-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Martin County in Martin County.  
Docket No. 031061-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Marion County in Marion and Sumter Counties.  
Docket No. 031062-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Florida Governmental Utility Authority in Lee County.  
Docket No. 031063-WU - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Osceola County in Osceola County.  
Docket No. 031064-WU - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Clay County Utility Authority in Clay and Bradford Counties.  
Docket No. 031065-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to City of Deltona in Volusia County.  
Docket No. 040023-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Charlotte County in Charlotte County.  
Docket No. 040024-WS - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Nassau County in Nassau County.  
Docket No. 040025-WU - Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to JEA in Duval and St. Johns Counties.

(Continued from previous page)

Recommendation: All of the above sales of assets resulted in a loss of customers and the associated future revenue streams. Accordingly, by operation of Section 367.0813, Florida Statutes, any gain or loss at issue in the dockets shall be borne by the shareholders. No further action is required in these dockets by the Commission, and they should be closed.

Issue 2: Should Docket 980744-WS be closed?

Recommendation: Yes, the hearing currently scheduled in Docket 980744-WS should be cancelled, and Docket 980744-WS should be closed. The disposition of the loss on the sale of the laboratory is no longer at issue, and the sales of assets in Orange and Citrus Counties resulted in losses of customers and the associated revenue streams. Accordingly, by operation of Section 367.0813, Florida Statutes, gains resulting in a loss of customers shall be borne by the shareholders.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

CASE

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22\*\*Docket No. 040730-WS - Application for transfer of portion of water and wastewater facilities to Seminole County, and for amendment of Certificate Nos. 279-W and 226-S, by Florida Water Services Corporation.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Clapp, Kaproth

GCL: Brubaker

Issue 1: Should the transfer of Florida Water Services Corporation's Altamonte system facilities to Seminole County be approved?

Recommendation: Yes. The transfer of FWSC's Altamonte system facilities to Seminole County should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes. Certificate Nos. 279-W and 226 S should be amended to reflect the deleted territory described in Attachment A, effective June 30, 2004.

Issue 2: Should this docket be closed?

Recommendation: Yes. No further action need be taken and the docket may be closed.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson



ITEM NO.

CASE

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23\*\*Docket No. 030991-WU - Application for transfer of all water facilities of Suwannee Valley Estates in Columbia County to Consolidated Water Works, Inc. (holder of Certificate No. 393-W), for cancellation of Certificate No. 421-W, and for amendment of Certificate No. 393-W. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Johnson, Kaproth, Walden

GCL: Brown

Issue 1: Should the Commission approve the transfer of the water facilities from Suwannee Valley Estates to CWW, the cancellation of Certificate No. 421-W, and the amendment of Certificate No. 393-W?

Recommendation: Yes. The transfer of the water facilities from Suwannee Valley to CWW should be approved. Suwannee Valley's Certificate No. 421-W should be canceled and CWW's Certificate No. 393-W should be amended to include the territory of Suwannee Valley. The transfer should be effective the day of the Commission vote. In addition, CWW should be ordered to submit a warranty deed within 60 days of the date the order resulting from action taken at this agenda conference becomes final, reflecting that ownership of the land upon which the Suwannee Valley facilities are located has been properly conveyed to CWW. CWW is responsible for remitting the 2004 and all future regulatory assessment fees (RAFs) and annual reports. A description of the territory to be transferred is appended to staff's August 26, 2004 recommendation as Attachment A.

PAA Issue 2: What is the rate base of Suwannee Valley at the time of transfer?

Recommendation: The rate base could not be calculated at this time. Therefore rate base has been set at \$0 for transfer purposes as of December 30, 2002. The utility should be required to provide proof within 60 days of the order becoming final that it has set up the books and records for all of CWW, including the Suwannee Valley system, using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) and that the beginning plant balances for the Suwannee Valley system reflect the balances established pursuant to this order.

PAA Issue 3: 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 4: Should the rates and charges approved for Suwannee Valley be continued?

Recommendation: Yes. CWW should continue charging the rates and charges approved for Suwannee Valley until authorized to change by the Commission in a subsequent

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23\*\*

Docket No. 030991-WU - Application for transfer of all water facilities of Suwannee Valley Estates in Columbia County to Consolidated Water Works, Inc. (holder of Certificate No. 393-W), for cancellation of Certificate No. 421-W, and for amendment of Certificate No. 393-W. (Deferred from September 7, 2004 conference.)

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proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

Issue 5: Should this docket be closed?

Recommendation: No. This docket shall remain open pending receipt of evidence that CWW owns or has continued use of the land upon which its facilities are located, and pending receipt of proof that it has set up its books and records using the NARUC Uniform System of Accounts. Once the recorded deed and proof of appropriate accounting procedures have been received, and staff has verified that the submissions satisfy the requirements of Rule 25-30.037(2)(q), Florida Administrative Code, this docket may be closed administratively if no timely protest to the Commission's proposed agency action order has been filed by a substantially affected person, and a consummating order has been issued.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

CASE

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24\*\*Docket No. 040358-SU - Application for certificate to provide wastewater service in Bay County by Crooked Creek Utility Company. (Deferred from September 7, 2004 conference.)

Critical Date(s): 9/16/04 (Statutory deadline for original certificates pursuant to Section 367.031, Florida Statutes.)

Commissioners Assigned: All Commissioners  
Prehearing Officer: Deason

Staff: ECR: Johnson, Kenny, Lester, Walden  
GCL: Fleming

Issue 1: Should the application of Crooked Creek Utility Company for a wastewater certificate be granted?

Recommendation: Yes. Crooked Creek Utility Company should be granted Certificate No. 535-S to serve the territory described in Attachment A of staff's August 26, 2004 memorandum. The utility should file an executed and recorded copy of the warranty deed for the land for the wastewater facilities within 30 days of the issuance date of the Order granting the certificate.

PAA Issue 2: What are the appropriate initial wastewater rates and return on investment for this utility?

Recommendation: The utility's proposed wastewater rates, customer deposits, and miscellaneous service charges described in the analysis portion of staff's August 26, 2004 memorandum should be approved. Crooked Creek should be required to file a tariff reflecting a copy of the customer's bill within 120 days of the consummating order. Crooked Creek should charge the approved rates and charges until authorized to change them by this Commission in a subsequent proceeding. The rates should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, Florida Administrative Code. A return on equity of 11.40% should be approved.

PAA Issue 3: What are the appropriate service availability charges for Crooked Creek Utility Company?

Recommendation: The utility's proposed service availability policy and charges set forth within the analysis portion of staff's August 26, 2004 memorandum are appropriate and should be approved effective for connections made on or after the stamped approval date on the tariff sheets.

PAA Issue 4: Should the utility's proposed Allowance for Funds Used During Construction (AFUDC) rate be approved?

Recommendation: Yes. The utility's proposed AFUDC rate should be approved. An annual AFUDC rate of 9.10% should be approved with a discounted monthly rate of

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24\*\*

Docket No. 040358-SU - Application for certificate to provide wastewater service in Bay County by Crooked Creek Utility Company. (Deferred from September 7, 2004 conference.)

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0.728583%. The approved rate should be applicable for eligible construction projects beginning on or after the date the certificate of authorization is issued.

Issue 5: Should this docket be closed?

Recommendation: No. If no timely protest is received upon the expiration of the protest period, the order will become final upon the issuance of a consummating order. This docket should remain open pending receipt of the executed and recorded copy of the warranty deed, at which time the docket may be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

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CASE

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25\*\*Docket No. 040371-WS - Application for amendment of Certificates 465-S and 496-W to extend water and wastewater service areas to include certain land in Lake County by Lake Utility Services, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: ECR: Walden

GCL: Vining

Issue 1: Should the utility's request to amend its water and wastewater certificates be granted?

Recommendation: Yes. The water and wastewater certificates of Lake Utility Services, Inc. should be amended to include the territory listed on Attachment A of staff's September 9, 2004 memorandum. Lake Utility Services, Inc. should charge the customers in the territory added herein the rates and charges contained in its tariffs until authorized to change by this Commission in a subsequent proceeding.

Issue 2: Should the 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, Bradley, Davidson

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26\*\*Docket No. 040497-WS - Application for amendment of Certificates 387-W and 331-S to add territory in Martin County by Indiantown Company, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Jaber

Staff: ECR: Walden

GCL: Vining

Issue 1: Should the utility's request to amend its water and wastewater certificates be granted?

Recommendation: Yes. The water and wastewater certificates of Indiantown Company, Inc. should be amended to include the territory listed on Attachment A of staff's September 9, 2004 memorandum. Indiantown should charge the customers in the territory added herein the rates and charges contained in its tariffs until authorized to change by this Commission in a subsequent proceeding. Indiantown should further comply with Rule 25-30.036(3)(d), Florida Administrative Code, within sixty days of the date of the Commission order.

Issue 2: Should the docket be closed?

Recommendation: No. Staff must review the utility's proof of ownership of the land upon which the water and wastewater facilities are located. Once this information is provided and is satisfactory to staff, the docket can be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Davidson

ITEM NO.

CASE

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27\*\*Docket No. 040733-SU - Disposition of gain on sale of land held for future use in Marion County by BFF Corp. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Hudson  
GCL: Brubaker

PAA

Issue 1: Should BFF Corp.'s proposed settlement for the disposition of the gain on the sale of the land be approved?

Recommendation: Yes. The utility's proposed settlement should be approved as discussed in the analysis portion of staff's August 26, 2004 memorandum. The utility's revised tariff sheets filed on July 15, 2004 should be approved as filed. The tariff sheets should be implemented on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice.

Issue 2: Should the Commission order BFF Corp to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Order No. PSC-02-0487-PAA-SU?

Recommendation: No. A show cause proceeding should not be initiated.

Issue 3: Should the 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, Bradley, Davidson

ITEM NO.

CASE

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28\*\*Docket No. 030339-TP - Petition of Allegiance Telecom of Florida, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc.

Critical Date(s): None

Commissioners Assigned: Baez, Bradley, Davidson

Prehearing Officer: Bradley

Staff: GCL: Susac

CMP: Pruitt

Issue 1: Should the Commission acknowledge Allegiance Telecom of Florida, Inc.'s letter as a request for a voluntary dismissal stating administrative efficiencies for closing the docket?

Recommendation: Yes. The Commission should acknowledge Allegiance's letter as a request for a voluntary dismissal.

Issue 2: Should this docket be closed?

Recommendation: Yes. There is nothing further in this docket for this Commission to consider, and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Bradley, Davidson



ITEM NO.

CASE

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29Docket No. 021256-WU - Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC. (Deferred from September 7, 2004 conference.)

Critical Date(s): None

Commissioners Assigned: Deason, Jaber, Bradley

Prehearing Officer: Deason

Staff: GCL: Fleming, Brown, Rodan

ECR: Brady, Kaproth, Rieger, Winters

Issue 1: Does the Commission have exclusive jurisdiction over the certification of private utilities?

Recommendation: Yes. The Commission has exclusive jurisdiction over the certification of private utilities under the provisions of Chapter 367, Florida Statutes.

Issue 2: Is the service proposed by Farmton Water Resources LLC exempt from Commission jurisdiction?

Recommendation: No. The service proposed by Farmton is not exempt from Commission jurisdiction pursuant to the provisions of Chapter 367, Florida Statutes.

Issue 3: Has Farmton met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?

Recommendation: Yes. Farmton has met the filing and noticing requirements required by Commission Rules.

Issue 4: Is there a need for service in Farmton's proposed service territory and, if so, when will service be required?

Recommendation: Yes. There is a need for service. However, it is not known when all forms of service will be required.

Issue 5: Is Farmton's application inconsistent with Brevard County's or Volusia County's comprehensive plans?

Recommendation: Yes. Farmton's application appears to be inconsistent with the comprehensive plans, pursuant to Section 367.045(5)(b), Florida Statutes, but in light of the evidence presented in this case, that inconsistency should not cause the Commission to deny the utility's application.

Issue 6: Will the certification of Farmton result in the creation of a utility which will be in competition with, or duplication of, any other system?

Recommendation: No. The utility will not be in competition with, or duplication of, any other system.

Issue 7: Does Farmton have the financial ability to serve the requested territory?

Recommendation: Yes. Farmton has demonstrated the financial ability to serve the requested territory.

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CASE

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29

Docket No. 021256-WU - Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC. (Deferred from September 7, 2004 conference.)

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Issue 8: Does Farmton have the technical ability to serve the requested territory?

Recommendation: Yes. The utility has the existing and potential technical ability to serve all the needs of the requested territory.

Issue 9: Does Farmton have sufficient plant capacity to serve the requested territory?

Recommendation: Yes. Farmton has sufficient existing and potential capacity for all services needed in the proposed service area.

Issue 10: Has Farmton provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?

Recommendation: Yes. The Commission approved the stipulation that Farmton has provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located. If the Commission grants Farmton's request for a certificate, Farmton should be required to file an executed and recorded copy of its proposed long-term lease with the Miami Corporation within 30 days of the date of Commission vote.

Issue 11: Is it in the public interest for Farmton to be granted a water certificate for the territory proposed in its application?

Recommendation: Yes. When considered as a whole, it is in the public interest to grant Farmton Certificate No. 622-W to provide water service to the territory described in Attachment C of staff's August 26, 2004 memorandum.

Issue 12: What is the appropriate return on equity for Farmton?

Recommendation: The Commission approved the stipulation that the return on equity should be based on the current leverage graph formula in effect at the time of the Commission vote in this proceeding. Based on that formula, return on equity for Farmton of 11.40%, with a range of plus or minus 100 basis points, should be approved.

Issue 13: What are the appropriate potable water, fire protection, and bulk raw water rates and charges for Farmton?

Recommendation: If Farmton is granted an original water certificate, the rates and charges contained in the analysis portion of staff's August 26, 2004 memorandum are reasonable and should be approved. Farmton should be required to file revised tariff sheets containing the rates and charges approved by the Commission within 30 days from Commission vote. The tariff should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. Farmton should be put on notice that it is required to charge the rates and charges in its approved tariff until authorized to change by the Commission.

Issue 14: What are the appropriate service availability charges for Farmton?

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29

Docket No. 021256-WU - Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC. (Deferred from September 7, 2004 conference.)

(Continued from previous page)

Recommendation: Farmton's proposed service availability policy and charges as set forth within the analysis portion of staff's August 26, 2004 memorandum are consistent with the guidelines of Rule 25-30.580, Florida Administrative Code, and should be approved. The charges should be effective for connections made on or after the stamped approval date on the tariff sheets.

Issue 15: What is the appropriate Allowance for Funds Used During Construction (AFUDC) rate for Farmton?

Recommendation: The Commission approved the stipulation that the AFUDC should be based on the current leverage graph formula in effect at the time of the Commission vote in this proceeding. Based on that formula, an annual AFUDC rate of 9.12% and a discounted monthly rate of 0.7596837% should be approved and applied to the qualified construction projects beginning on or after the date the certificate of authorization is issued.

Issue 16: Should this docket be closed?

Recommendation: Upon the expiration of the appeal period, if no party timely appeals the order, upon staff's verification that the utility has filed an executed and recorded copy of its lease and upon the filing and staff's approval of the revised tariff sheets, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Bradley

ITEM NO.

CASE

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30Docket No. 030300-TP - Petition for expedited review of BellSouth Telecommunications, Inc.'s intrastate tariffs for pay telephone access services (PTAS) rate with respect to rates for payphone line access, usage, and features, by Florida Public Telecommunications Association.

Critical Date(s): None

Commissioners Assigned: Deason, Bradley, Davidson  
Prehearing Officer: Davidson

Staff: CMP: Brown, Dowds  
GCL: Fordham, Teitzman

Issue 1(a): Has BellSouth reduced its intrastate payphone line rates by the amount of the interstate end user common line charge (EUCL)? If not, has BellSouth ceased charging the EUCL on payphone lines?

Recommendation: Yes. BellSouth reduced its intrastate payphone line rates by the amount of the interstate EUCL with the filing of a revision to its General Subscriber Services Tariff (GSST), Section A7.4, on October 27, 2003. This reduction became effective on November 10, 2003.

Issue 1(b): As of what date was BellSouth required to reduce its intrastate payphone line rates by the amount of interstate EUCL?

Recommendation: There was no date-specific requirement for BellSouth to reduce its intrastate payphone line rates by the amount of the interstate end-user common line charge (EUCL). Any reductions must occur on a going-forward basis when the Commission reviews a BOC's payphone line rates for NST compliance, as it is doing here for BellSouth.

Issue 1(c): Can the FPSC order refunds to ~~FPTA's members~~ all payphone service providers for the time period bracketed between (a) and (b)? If so, what is the amount of any required refunds and how should any refunds be effected?

Recommendation: Staff recommends that between April 15, 1997 and November 10, 2003, the rates charged by BellSouth to the PSPs were legally sustainable and were consistent with BellSouth's tariffs and controlling orders of this Commission. Further, staff believes that ordering refunds would be the equivalent of retroactive ratemaking, a practice prohibited by prevailing law. Accordingly, staff believes this Commission should not order refunds to PSPs for that time period. Therefore, this Commission need not determine amounts or how any refunds should be effected.

Issue 2: In Docket No. 970281-TL, PAA Order No. PSC-98-1088-FOF-TL, issued on August 11, 1998, this Commission determined BellSouth's intrastate payphone rates to be in compliance with the FCC's "new services" test.

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Docket No. 030300-TP - Petition for expedited review of BellSouth Telecommunications, Inc.'s intrastate tariffs for pay telephone access services (PTAS) rate with respect to rates for payphone line access, usage, and features, by Florida Public Telecommunications Association.

(Continued from previous page)

- (a) Are BellSouth's intrastate payphone rates no longer compliant with the new services test? If so, when did they become noncompliant?
- (b) If BellSouth's intrastate payphone rates are not compliant with the new services test, at what rate levels will BellSouth's intrastate payphone rates comply with the new services test?

Recommendation: BellSouth's rates remain compliant with the new services test; however, staff recommends that BellSouth's overhead factor be reduced to 30.21%. A revised tariff, and all supporting documentation demonstrating the changes made, should be filed within 30 days of the issuance of the order.

Issue 2(c): Can this Commission order BellSouth to revise its intrastate payphone rates? If so, as of what date should any such rate changes be effective?

Recommendation: Yes. This Commission can order BellSouth to revise its intrastate payphone rates. If it does order BellSouth to revise its intrastate payphone rates, any revised tariffs and all supporting documentation should be filed within 30 days of the issuance of the order. Those changes would be non-basic rate changes and would go into effect on 15 days' notice per Section 364.051(5), Florida Statutes.

Issue 2(d): If BellSouth's payphone rates became noncompliant with the new services test, can the FPSC order refunds to ~~FPTA's members~~ all payphone providers for the time period from when they became noncompliant to the date identified in Issue 2(c)? If so, what is the amount of any required refunds and how should any refunds be effected?

Recommendation: Staff recommends that BellSouth's rates never became noncompliant during the subject time period. Accordingly, staff believes this Commission should not order refunds to PSPs for that time period. As such, this Commission need not determine amounts or how any refunds should be effected.

ITEM NO.

CASE

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Docket No. 030300-TP - Petition for expedited review of BellSouth Telecommunications, Inc.'s intrastate tariffs for pay telephone access services (PTAS) rate with respect to rates for payphone line access, usage, and features, by Florida Public Telecommunications Association.

(Continued from previous page)

Issue 3: Should this docket be closed?

Recommendation: If BellSouth is ordered to make staff's recommended changes in Issues 2(a) and (b), this docket should remain open until BellSouth files a revised tariff and provides staff with documentation demonstrating the changes made. Any revised tariffs and all supporting documentation should be filed within 30 days of the issuance of the order and the docket closed administratively. If the Commission disagrees with staff's recommendation in Issues 2(a) and (b), this docket may be closed.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Bradley, Davidson

ITEM NO.

CASE

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31 Docket No. 030623-EI - Complaints by Ocean Properties, Ltd., J.C. Penney Corp., Target Stores, Inc., and Dillard's Department Stores, Inc. against Florida Power & Light Company concerning thermal demand meter error.

Critical Date(s): None

Commissioners Assigned: Deason, Bradley, Davidson  
Prehearing Officer: Davidson

Staff: GCL: C. Keating, Gervasi  
ECR: Floyd, Kummer, Matlock, Wheeler  
RCA: Mills, Ruehl

Issue 1: Should FPL's motion for partial summary final order be granted?

Recommendation: No. FPL's motion for partial summary final order on issue 3 should be denied and the issue should proceed to hearing. FPL's motion for partial summary final order on issue 4, as well as the customers' alternative cross motion for partial summary final order on that issue, should also be denied. Any possible disputed issues of material fact with respect to issue 4 should proceed to hearing, after which time the parties may brief the remaining legal issue.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open in order to proceed to hearing to resolve the protests to Order No. PSC-03-1320-PAA-EI.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Bradley, Davidson

ITEM NO.

CASE

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32\*\*Docket No. 030746-TP - Complaint of Cargill Crop Nutrition, Inc., f/k/a Cargill Fertilizer, a subsidiary of Cargill Corporation, against Verizon Florida Inc. for enforcement of FCC orders and Florida Public Service Commission decisions eliminating application of tariff charges for complex inside wiring, and request for relief.

Critical Date(s): None

Commissioners Assigned: Jaber, Bradley, Davidson

Prehearing Officer: Bradley

Staff: GCL: Banks, Susac

CMP: Barrett

Issue 1: Should the Commission acknowledge Cargill Fertilizer's Notice of Voluntary Dismissal of its Complaint with prejudice?

Recommendation: Yes. The Commission should acknowledge Cargill's Notice of Voluntary Dismissal of its Complaint with prejudice. In addition, all confidential materials filed in this Docket should be returned to the filing party.

Issue 2: Should this Docket be closed?

Recommendation: Yes. There is nothing further in this Docket for this Commission to consider, and the Docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Bradley, Davidson