

**MINUTES OF August 14, 2007
COMMISSION CONFERENCE**

COMMENCED: 9:40 a.m.
ADJOURNED: 10:25 a.m.
COMMENCED: 10:35 a.m.
ADJOURNED: 11:15 a.m.
COMMENCED: 11:25 a.m.
ADJOURNED: 12:05 p.m.
COMMENCED: 1:35 p.m.
ADJOURNED: 2:25 p.m.

COMMISSIONERS PARTICIPATING: Chairman Edgar
Commissioner Carter
Commissioner McMurrian
Commissioner Argenziano
Commissioner Skop

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

1

Approval of Minutes
July 10, 2007, Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

2**

Consent Agenda

PAA

A) Application for certificate to provide alternative access vendor service.

DOCKET NO.

COMPANY NAME

070418-TA

IPC Network Services, Inc.

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

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

3

Docket No. 060767-TP – Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: CMP: Trueblood, Barrett, Lee, Ollila

GCL: Tan, Teitzman

Issue 1: What compensation should apply to virtual NXX Traffic under the Interconnection Agreement?

Recommendation: Staff recommends that the physical end points of a virtual NXX (vNXX) call determine the appropriate intercarrier compensation. If the physical end points of a vNXX call are within the local calling area, as defined in the parties' interconnection agreement, the call should be considered local for intercarrier compensation purposes. If one of the physical end points of the call is outside of the local calling area, the call should be considered interexchange and subject to originating access charges (billed by the carrier whose end user makes the vNXX call).

~~**Issue 4:** When the parties exchange traffic via indirect connection, if Verizon Access has not established direct end office trunking sixty days after reaching a DS1 level, should Verizon Access be required to reimburse Embarq for any transit charges billed by an intermediary carrier for local traffic or ISP-bound traffic originated by Embarq?~~

~~**Recommendation:** No, although the language to implement direct end office trunks should, at a minimum:~~

- ~~▪ include a 90-day timeframe for establishing direct trunks;~~
- ~~▪ state that this timeframe is extendable if facility, equipment requirements, or related problems with the trunking order cause a delay that is attributable to Embarq;~~
- ~~▪ state that this timeframe is extendable if facility, equipment requirements, or related problems with the trunking order cause a delay that is attributable to a third party; and~~
- ~~▪ specify that the timeframe starts when all ordering requirements are fulfilled.~~

ITEM NO.

CASE

3

Docket No. 060767-TP – Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for arbitration of disputes arising from negotiation of interconnection agreement with Embarq Florida, Inc.

(Continued from previous page)

Issue 5: What rate should apply to transit traffic under the parties' interconnection agreement?

Recommendation: Staff recommends a transit rate of \$0.003 per minute of use (MOU) should apply to transit traffic under the parties' interconnection agreement (ICA).

Issue 6: Should this docket be closed?

Recommendation: No. This docket should remain open pending the submission of a properly executed conforming Agreement. Thereafter, it is recommended that staff review the Agreement and, if in compliance, administratively approve the Agreement and close the Docket.

DECISION: This item was deferred.

ITEM NO.

CASE

4**

Docket No. 070127-TX – Petition for interconnection with Level 3 Communications and request for expedited resolution, by Neutral Tandem, Inc.

Docket No. 070408-TP – Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: McMurrian

Staff: CMP: Lee, King

GCL: Teitzman, Mann

Issue 1: Should the Commission acknowledge Neutral Tandem’s Notice of Voluntary Dismissal of its First Petition for Interconnection with Level 3, without prejudice, in Docket No. 070127-TX?

Recommendation: Yes. The Commission should acknowledge Neutral Tandem’s Notice of Voluntary Dismissal of its First Petition for Interconnection with Level 3, without prejudice, in Docket No. 070127-TX.

Issue 2: Should the Commission merge the record from Docket No. 070127-TX into Docket No. 070408-TP?

Recommendation: Yes. Staff recommends that if Issue 1 is approved, the Commission should merge the record in Docket No. 070127-TX into Docket No. 070408-TP. Because Neutral Tandem’s Petition in Docket No. 070408-TP addresses the same issues that were to be addressed in Docket No. 070127-TX, staff believes it is appropriate and efficient to consolidate the records.

Issue 3: Should these dockets be closed?

Recommendation: If Issue 1 is approved, there is nothing further in Docket No. 070127-TX for the Commission to consider. Therefore, staff recommends that Docket No. 070127-TX should be closed.

Staff recommends that Docket No. 070408-TP should remain open to address Neutral Tandem’s Second Petition for Interconnection with Level 3 Communications and Request for Expedited Resolution and/or Interim Relief.

DECISION: The recommendations were approved. Commissioner Argenziano dissented.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

5**

Docket No. 060635-EU – Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: McMurrin

Staff: ECR: Ballinger, Brown

GCL: Brubaker

Issue 1: Should the Commission acknowledge the Applicants' voluntary withdrawal of their petition for need, and if so, what effect does the withdrawal have on Docket 060635-EU?

Recommendation: Yes. The Commission should acknowledge the Applicants' voluntary withdrawal of their petition for need determination as a matter of right. The effect of the voluntary withdrawal is to divest the Commission of further jurisdiction over this matter.

Issue 2: Should the docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrin, Argenziano, Skop

ITEM NO.

CASE

6

Docket No. 060162-EI – Petition by Progress Energy Florida, Inc. for approval to recover modular cooling tower costs through environmental cost recovery clause.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: Lee, Colson, Lester, Slemkewicz

GCL: Brown, Bennett

Issue 1: What is the appropriate mechanism to recover the prudently incurred costs of Progress Energy's temporary cooling tower project?

(A) Should PEF recover costs for the Crystal River Units 1 and 2 cooling tower project through the Environmental Cost Recovery Clause?

(B) Should PEF recover costs for the Crystal River Units 1 and 2 cooling tower project through current base rates?

(C) Should PEF recover costs for the Crystal River Units 1 and 2 cooling tower project through the Fuel Cost Recovery Clause?

Recommendation: The appropriate mechanism to recover the prudently incurred costs of Progress Energy's temporary cooling tower project is through the Environmental Cost Recovery Clause, not through the fuel clause or in base rates. The project meets the eligibility requirements for ECRC recovery and is in the public interest. Recovery of project costs through the ECRC is reasonable and consistent with prior Commission decisions. Cost recovery should be reviewed annually as part of the Commission's ongoing proceedings in the ECRC. If the Commission denies cost recovery through either clause, the project costs should be recovered through base rates.

DECISION: The recommendation was approved as modified. No conclusion was reached on parts (B) or (C).

Issue 2: How should the Commission's decision on Issue 1 be implemented?

Recommendation: If ECRC recovery is approved on Issue 1, project costs are included in the annual cost recovery factors in accordance with prior Commission practice and precedent, subject to prudence review and true-ups. If base rate recovery is approved on Issue 1, the 2006 costs included in the ECRC clause should be refunded in the 2007 ECRC docket true-up process with interest added.

DECISION: The recommendation was approved.

ITEM NO.

CASE

6

Docket No. 060162-EI – Petition by Progress Energy Florida, Inc. for approval to recover modular cooling tower costs through environmental cost recovery clause.

(Continued from previous page)

Issue 3: Should this docket be closed?

Recommendation: The docket should be closed after the time for filing an appeal has run.

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

7**

Docket No. 070007-EI – Environmental cost recovery clause.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: McNulty, Bulecza-Banks, Draper, Gardner, Marsh, Springer

GCL: Brown

RCA: Deamer, Rohrbacher, Vandiver, Welch

Issue 1: Should the Commission approve Gulf's, OPC's, and FIPUG's Stipulation Regarding Portions of Gulf Power Company's CAIR/CAMR/CAVR Environmental Compliance Program?

Recommendation: Yes. The Commission should approve the Stipulation.

DECISION: The recommendation was approved, with the stipulation that Gulf Power provide an annual status report on cost-effectiveness and prudence in the phases that are moved into.

Issue 2: Should this docket be closed?

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

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

8**

Docket No. 070339-EG – Petition for approval of energy conservation programs, by Sebring Gas System, Inc.

Critical Date(s): Company waived 60-day suspension date

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Brown, Baxter

GCL: Fleming

Issue 1: Should the Commission approve Sebring Gas System Inc.'s petition to offer four new energy conservation programs?

Recommendation: Yes. The proposed Residential New Construction, Residential Appliance Replacement, and Residential Appliance Retention Programs are cost effective. Customers should see energy savings by purchasing energy-efficient natural gas appliances and will also receive rebates for their purchase of new appliances. Sebring should also be allowed to offer the Conservation Education Program because the program is designed to teach consumers about conservation measures designed to reduce energy consumption and subsequently reduce their energy bills.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on September 14, 2007. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

9**PAA

Docket No. 070350-EG – Petition for approval of residential load control program by Florida Power & Light Company.

Critical Date(s): 01/31/08 (8-month effective date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Wilson, Kummer, Sickel

GCL: Fleming

Issue 1: Should the Commission approve Florida Power & Light's (FPL) petition to offer the currently approved Pilot Program as a permanent demand side management (DSM) program?

Recommendation: Yes. The currently approved Pilot Program continues to meet the policy objectives of the Florida Energy Efficiency and Conservation Act and should, therefore, be approved as a permanent demand side management (DSM) program. The revised tariff sheets for a permanent Residential Load Control Program contained in Appendix A of staff's August 2, 2007, memorandum should be approved. FPL should be allowed to petition for recovery of expenditures for its Residential Load Control Program through FPL's Energy Conservation Cost Recovery (ECCR) Clause.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on August 14, 2007. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect with any increase held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

10**

Docket No. 070376-EG – Petition for approval of residential thermostat load control pilot project by Florida Power & Light Company.

Critical Date(s): 08/14/2007 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Colson, Draper

GCL: Fleming

Issue 1: Should the Commission approve Florida Power & Light Company's (FPL) Petition for approval of its Residential Thermostat Load Control Pilot Project (TLCPP) for an initial 24-month period and recover the requested amount of \$728,000 associated with the TLCPP through the Energy Conservation Cost Recovery (ECCR) clause?

Recommendation: Yes. If the petition is approved, FPL will perform monitoring and evaluation to determine the demand (kW) and energy (kWh) impacts of the TLCPP. FPL will also perform quality control checks to verify the reliability of communications with the thermostats. FPL will utilize the data to perform a cost effectiveness analysis at the end of the Project. Staff also recommends that FPL provide annual progress reports to the Commission by September each year. The TLCPP will take effect August 14, 2007 and will expire on August 13, 2009.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, the tariffs should become effective August 14, 2007. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, the docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

11**PAA

Docket No. 070107-GU – Investigation into 2005 earnings of the gas division of Florida Public Utilities Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Slemkewicz, Springer

GCL: Jaeger

Issue 1: What is the appropriate amount of rate base for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2005?

Recommendation: The appropriate rate base for the Gas Division for 2005 is \$57,808,910.

Issue 2: What is the appropriate overall rate of return for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2005?

Recommendation: The appropriate overall rate of return for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2005 is 8.40 percent.

Issue 3: What is the appropriate net operating income for the Gas Division of Florida Public Utilities Company for determining the amount of excess earnings for 2005?

Recommendation: The appropriate net operating income for 2005 is \$5,265,100.

Issue 4: What is the amount of excess earnings for the Gas Division of Florida Public Utilities Company for 2005?

Recommendation: The total amount of excess earnings for 2005 for the Gas Division is \$666,099, plus interest of \$69,083, through July 31, 2007. Interest should continue to accrue until a final disposition of the excess earnings is made.

Issue 5: What is the appropriate disposition of the 2005 excess earnings for the Gas Division of Florida Public Utilities Company?

Recommendation: The total 2005 excess earnings of \$735,182, including interest, should first be used to offset the uncollected remainder of the natural gas storm surcharge authorized by Order No. PSC-05-1040-PAA-GU.¹³ FPUC should stop collecting the natural gas storm surcharge in the first billing cycle within a new calendar month thirty days after the order approving this recommended offset becomes final. The remaining amount of the 2005 excess earnings should be applied to the storm reserve to cover future storm-related costs.

¹³ Docket No. 041441-GU, issued October 25, 2005, In re: Petition for approval of storm cost recovery clause to recover storm damage costs in excess of existing storm damage reserve, by Florida Public Utilities Company.

ITEM NO.

CASE

11**PAA

Docket No. 070107-GU – Investigation into 2005 earnings of the gas division of Florida Public Utilities Company.

(Continued from previous page)

Issue 6: Did Florida Public Utilities Company appropriately cease its accrual to the storm damage reserve after 2002?

Recommendation: Yes. FPUC is not required to seek Commission approval to either start or cease an accrual to the storm damage reserve.

Issue 7: 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: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

12**

Docket No. 070275-WS – Application for amendment of Certificates 592-W and 509-S to extend water and wastewater service area to include certain land in Polk County by Cypress Lakes Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Carter

Staff: ECR: Rieger

GCL: Fleming

Issue 1: Should the Commission approve Cypress Lakes' application to amend Certificates 592-W and 509-S?

Recommendation: Yes. The Commission should approve Cypress Lakes' application to amend Certificates 592-W and 509-S to include territory as reflected in Attachment A of staff's August 2, 2007, memorandum. The resultant order should serve as Cypress Lakes' amended certificates and should be retained by the utility. The utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission.

PAA

Issue 2: Should the special developer agreement be approved?

Recommendation: Yes. The special developer's agreement in Attachment B of staff's August 2, 2007, memorandum between Cypress Lakes Associates, Ltd. and Cypress Lakes Utilities, Inc. should be approved. The proposed developer agreement should not impact the service availability charges that may be established in the pending rate case, Docket No. 060257-WS.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no protest to the approved special developer agreement is filed by a substantially affected person within 21 days of the issuance of this Order, the docket should be closed upon issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

13**

Docket No. 070324-WU – Application for quick-take amendment of Certificate No. 040-W to extend water service to certain territory in Orange County, by Utilities, Inc. of Florida.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Skop

Staff: ECR: Redemann

GCL: Jaeger

Issue 1: Should the Commission acknowledge Utilities, Inc. of Florida’s “Quick Take” application to amend Certificate No. 040-W?

Recommendation: Yes. The Commission should acknowledge Utilities, Inc. of Florida’s amendment application to expand its territory. The proposed territory amendment is described in Attachment A of staff’s August 2, 2007, memorandum. The resultant order should serve as Utilities, Inc. of Florida’s amended certificate and it should be retained by the utility. Utilities, Inc. of Florida should charge the customers in the added territory 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. No further action is required and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

14**

Docket No. 060726-WS – Application for certificates to provide water and wastewater service in Glades County and water service in Highlands County by Silver Lake Utilities, Inc.

Critical Date(s): 08/14/07 (Statutory deadline for original certificate pursuant to Section 367.031, Florida Statutes)

Commissioners Assigned: All Commissioners

Prehearing Officer: Skop

Staff: ECR: Brady, Redemann

GCL: Fleming

Issue 1: Should Silver Lake Utilities, Inc.'s application for water and wastewater certificates be granted?

Recommendation: Yes. Silver Lake Utilities, Inc. should be granted Certificate Nos. 636-W and 546-S to serve the territory described in Attachment A of staff's August 2, 2007, memorandum effective the date of the Commission's vote. The resultant order should serve as the applicant's water and wastewater certificates and it should be retained by the applicant as such. Within 90 days from the date of the order approving certificates, the applicant should submit executed and recorded lease agreements.

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open pending the establishment of initial rates and charges.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Carter, McMurrian, Argenziano, Skop

ITEM NO.

CASE

15**

Docket No. 070381-SU – Application for transfer of wastewater facilities to City of Sebring in Highlands County, and cancellation of Certificate No. 349-S, by Harder Hall - Howard, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Clapp, Kaproth

GCL: Young

Issue 1: Should the transfer of Harder Hall – Howard, Inc. wastewater facilities to the City of Sebring and the cancellation of Certificate No. 349-S be approved?

Recommendation: Yes. The transfer of Harder Hall – Howard, Inc. wastewater facilities to the City of Sebring should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate No. 349-S should be cancelled effective December 1, 2006.

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: Edgar, Carter, McMurrian, Argenziano, Skop