

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

VERIZON FLORIDA LLC,	*	
	*	
Complainant,	*	Docket No. 15-73
	*	File No. EB-15-MD-002
v.	*	
	*	Related to
FLORIDA POWER & LIGHT	*	Docket No. 14-216
COMPANY,	*	File No. EB-14-MD-003
	*	
Respondent.	*	
	*	

**RESPONDENT FLORIDA POWER & LIGHT COMPANY'S
MOTION TO HOLD PROCEEDING IN ABEYANCE PENDING
RESOLUTION OF COMPLAINANT'S APPEAL OF STATE COURT DECISION**

Respondent Florida Power & Light Company ("FPL"), by and through its attorneys, respectfully submits this Motion to Hold Proceeding in Abeyance Pending Resolution of Complainant's Appeal of State Court Decision and requests that the Bureau enter an order staying this proceeding. In further support hereof, FPL states as follows.

1. On September 22, 2015, the Bureau sent the parties in this proceeding correspondence staying this proceeding pending resolution of FPL's contract claims in Florida circuit court.¹ In that correspondence, the Bureau noted that "it is not possible to determine whether the JUA rates comply with Section 224(b)(1) without knowing what the correctly calculated JUA rates are. It would be premature and improvident for the Commission to rule on the merits of the instant complaint before the Florida district court resolves the parties' dispute about the correct contractual rates."

¹ See Letter from Christopher Killion Chief, MDRD, Enforcement Bureau (Sep. 22, 2015), attached hereto as Exhibit A.

2. On October 15, 2015, the Circuit Court for Miami-Dade County, Florida (“Florida Court”) held a hearing to decide FPL’s Motion for Summary Judgment. At this hearing, the Florida Court entered summary judgment on all counts (breach of contract) in favor of FPL and against Verizon, reaching conclusions on numerous issues of fact and law.

3. On October, 16, 2015, FPL informed the Bureau of the Florida Court’s decision, and on October 20, 2015, the Bureau emailed both parties instructing Verizon to file a reply brief by November 24, 2015.

4. On October 26, 2015, the Florida Court entered a final judgment in the parties’ case on the summary judgment order. On November 6, 2015, the Florida Court denied a Motion for Reconsideration and Rehearing that Verizon had filed.

5. On November 11, 2015 and December 1, 2015, FPL emailed the Bureau noting the uncertainty created by Verizon’s refusal to confirm whether or not it intended to appeal the Florida Court’s decisions.

6. On December 4, 2015, Verizon filed a Notice of Appeal with the Florida Court.² Verizon’s appeal seeks to overturn the above-listed decisions as well as “all prior adverse orders.” Verizon’s appeal thus places back into question all of the issues previously resolved by the Florida Court, including the very same issues identified by the Commission in its letter of September 22, 2015.

7. Specifically, Verizon’s appeal again raises the Bureau’s previous concern regarding a ruling “on the merits of the instant complaint before the Florida district court resolves the parties’ dispute about the correct contractual rates.” As such, FPL believes that it is necessary to stay this proceeding again pending resolution of Verizon’s appeal.

² See Verizon Florida, LLC, Notice of Appeal, Miami-Dade County Circuit Court Case No. 13-01 4808-CA-01 (Dec. 4, 2015), attached hereto as Exhibit B.

8. In addition, because of the need for a stay, although FPL had recently indicated it would file motions to supplement the record and briefing in this matter, FPL will wait to file such motions until the Commission has ruled on FPL's present request to hold this matter in abeyance.

For the foregoing reasons, FPL respectfully requests that the Bureau enter an order staying this proceeding pending a resolution of Verizon's appeal of the parties' state court case and granting FPL any other relief that the Bureau deems proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2015, I caused a copy of the foregoing to be served on the following by hand delivery, U.S. mail or electronic mail (as indicated):

Christopher S. Huther, Esq.
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Attorneys for Verizon Florida LLC

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Marlene H. Dortch, Secretary
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Room TW-A325
Washington, DC 20554
(Via Hand Delivery)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(Via Hand Delivery)

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(Via U.S. Mail)

A handwritten signature in blue ink, appearing to read "Rob Gastner", written over a horizontal line.

Robert J. Gastner

FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU
MARKET DISPUTES RESOLUTION DIVISION
445 12TH, S.W.
WASHINGTON, DC 20554

September 22, 2015

Via E-Mail and First-Class Mail

Christopher S. Huther
Claire J. Evans
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006

Charles A. Zdebski
Gerit F. Hull
Robert J. Gastner
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Ave., NW
Washington, DC 20006

Re: *Verizon Florida LLC v. Florida Power & Light Co.*, File No. EB-15-MD-002,
Docket No. 15-73

Dear Counsel:

We hold this case in abeyance pending a determination of the correct contractual rates that applied to Verizon Florida LLC (Verizon) under the terms of its Joint Use Agreement (JUA) with Florida Power and Light (FPL) for Verizon's attachments on FPL's poles.

Background

In April, 2013, FPL brought a collections action in Florida district court seeking to compel Verizon to pay the outstanding balance of invoices FPL sent for 2011 and 2012 pursuant to the JUA.¹ In response, Verizon asserted as a defense that FPL improperly calculated the amounts owed under the JUA.²

Verizon filed the instant complaint against FPL in March 2015.³ The complaint alleges that the invoiced JUA rates (billed by FPL) violate section 224(b)(1) of the Communications Act,⁴ as interpreted in the Commission's 2011 *Pole Attachment Order*.⁵ The complaint failed to disclose Verizon's defense in Florida district court that FPL improperly calculated the amounts Verizon owed.

¹ See *Verizon Florida LLC v. Florida Power and Light Co.*, 30 FCC Rcd 1140, 1143–44, paras. 10–11 (EB Feb. 11, 2015).

² See *Florida Power and Light Co. v. Verizon Florida LLC*, Case No. 13014808CA01 (11th Dist., Miami-Dade County, Fla.) Trial Notebook at 38–43 (dated October 15, 2014).

³ Pole Attachment Complaint, File No. EB-15-MD-002 (filed Mar. 13, 2015).

⁴ See 47 U.S.C. § 224(b)(1).

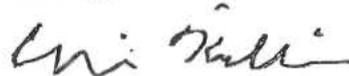
⁵ See *Implementation of Section 224 of the Act; A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff'd* *American Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

Discussion

This proceeding is held in abeyance pending a determination of the correct JUA rates in Florida district court. Simply put, it is not possible to determine whether the JUA rates comply with Section 224(b)(1) without knowing what the correctly calculated JUA rates are. It would be premature and improvident for the Commission to rule on the merits of the instant complaint before the Florida district court resolves the parties' dispute about the correct contractual rates. Accordingly, this proceeding is stayed pending resolution of the contract claims in Florida district court.

This letter ruling is issued pursuant to sections 4(i), 4(j) and 224 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), and 224; sections 1.1401–1.1424 of the Commission's rules, 47 C.F.R. §§1.1401–1.1424; and the authority delegated in Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

Sincerely,



Christopher Killion
Chief, MDRD, Enforcement Bureau

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Complex Business Litigation Section

VERIZON FLORIDA LLC,

Case No. 13-014808-CA-01

Defendant/Appellant,

v.

FLORIDA POWER & LIGHT CO.,

Plaintiff/Appellee.

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant/Appellant VERIZON FLORIDA LLC, a Florida Corporation, appeals to the Third District Court of Appeal the Final Judgment of this Court entered on October 26, 2015, the Order on Plaintiff's Motion for Summary Judgment entered on October 16, 2015, the Order Denying Motion to Reconsider and Rehear the Final Judgment and Order on Plaintiff's Motion for Summary Judgment entered on November 6, 2015, and all prior adverse orders. The Defendant filed a timely and authorized motion to reconsider and rehear the Order on Plaintiff's Motion for Summary Judgment and Final Judgment on October 26, 2015. The trial court entered a signed written order disposing of that motion on November 6, 2015. Conformed copies of the Final Judgment, the Order on Plaintiff's Motion for Summary Judgment, and the Order Denying Motion to Reconsider and Rehear are attached hereto as Exhibits A, B, and C respectively, in accordance with Rule 9.110(d). These orders were rendered on November 6, 2015. Rule 9.020(i)(1). The nature of the Order on Plaintiff's Motion for Summary Judgment, and the Final Judgment, is a final order of a trial court that is appealable pursuant to Rule 9.030(b)(1)(A).

Respectfully submitted,



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Attorneys for Verizon Florida LLC

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

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Maria J. Moncada
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Juno Beach, FL 33408
maria.moncada@fpl.com

Attorneys for Florida Power & Light Co.

via email on December 4, 2015.



Lewis F. Collins, Jr., Esq.

CFN: 20150686412 BOOK 29829 PAGE 4954

DATE: 10/27/2015 11:19:38 AM

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation

Complex Business Litigation Section (40)

Plaintiff,

Case No. 13-14808

v.

VERIZON FLORIDA LLC,
a Florida Corporation

Defendant.

FINAL JUDGMENT

This matter came before the Court upon Florida Power & Light Company's Motion for Summary Judgment. The Court granted the Motion by Order dated October 15, 2015 ("Order"). The Court having determined that there are no remaining issues between the parties, it is hereby

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CLERK OF COURT
MIAMI-DADE COUNTY
FLORIDA

ORDERED AND ADJUDGED that:

Plaintiff, FLORIDA POWER & LIGHT COMPANY, 700 Universe Blvd., Juno Beach, FL 33408, shall have and recover from Defendant, VERIZON FLORIDA LLC, 610 Zack Street, Tampa, FL 33602, Employer Identification Number 59-0397520, the principal sum of \$2,599,557.74, plus pre-judgment interest in the amount of \$322,229.32, for a total Final Judgment in the amount of \$2,921,887.06, that shall bear interest at the rate prescribed by law, for which let execution issue.

The Court reserves jurisdiction for the purpose of awarding costs and/or attorney's fees to Plaintiff upon proper motion and notice.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 10/23/15.

JOHN W. THORNTON
CIRCUIT COURT JUDGE ORIGINAL

JUDGE JOHN W. THORNTON JR.



FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials JWT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

Copies furnished to:
Counsel of Record

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation

Complex Business Litigation
Section (40)

Plaintiff,

Case No. 13-14808

v.

VERIZON FLORIDA LLC,
a Florida Corporation

Defendant.

**ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

This matter having come before the Court on Plaintiff Florida Power & Light Company's ("FPL") Motion for Summary Judgment and the Court having reviewed the Motion and the Memoranda in support of and opposing the Motion, and having heard argument of Counsel, makes the following:

FINDINGS OF FACT

1. FPL and Verizon Florida LLC's ("Verizon") predecessor in interest entered into a Joint Use Agreement ("JUA") in 1975, as amended in 1978.
2. Pursuant to the terms of the JUA, employing the payment formula contained in the JUA, and consistent with the Parties' practices since 1978, FPL



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invoiced Verizon for Verizon's attachments to FPL's poles in 2011 in the amount of \$2,097,293.70 (the "2011 Invoice").

3. Verizon did not object to the manner in which FPL applied the contractual formula, but, instead, advised FPL that the JUA's payment formula was "no longer operative."

4. Verizon calculated a rate of its own, based on what it believed the Federal Communications Commission ("FCC") might require under the provisions of the FCC's Pole Attachment Order. Pursuant to this unilateral calculation, Verizon paid only \$1,179,307.43 toward the 2011 Invoice.

5. FPL did not agree to Verizon's rate calculation or payment.

6. The FCC has never approved Verizon's rate calculation. The Pole Attachment Order does not establish any rate for entities such as Verizon.

7. Pursuant to the terms of the JUA, employing the payment formula contained in the JUA, and consistent with the Parties' practices since 1978, FPL invoiced Verizon for Verizon's attachments to FPL's poles in 2012 in the amount of \$2,319,985.02 (the "2012 Invoice").

8. Verizon did not object to the manner in which FPL applied the contractual formula. Persisting in the view that the payment formula in the JUA was no longer operative, Verizon paid only \$638,413.55 toward the 2012 Invoice,

based on its own unilateral calculation of what the FCC might require under the Pole Attachment Order.

9. Verizon terminated the JUA effective June 9, 2012. The payment provisions of the JUA, nonetheless, remain in effect for all poles to which Verizon remains attached, even after termination.

10. Section 11.1 of the JUA provides that the contract rate (the "adjustment rate") is subject to renegotiation at the request of either party. Verizon did not invoke Section 11.1.

11. The Parties, nonetheless, engaged in extensive, periodic good faith negotiations and met on numerous occasions regarding a new contract over an extended period of time prior to initiation of this lawsuit. No agreement was reached.

12. The amount of space to be allocated to the Parties on the Parties' poles was expressly established in the JUA. The contractual space allocation was never amended and remains in effect.

13. Three years after the original JUA was entered into, the Parties revised the payment provision of the JUA. That revised formula was the basis for the Invoices at issue here. The 1978 Amendment left in place the space allocations in the original JUA. Accordingly the payment formula at issue here reflected the

equitable sharing of the costs and economics of joint use as contemplated by the Parties.

14. Verizon has identified no provision of federal law with which the JUA does not comply. The FCC has not determined that the JUA or the joint use rate does not comply with federal law.

15. Verizon has identified no material provision of the JUA with which FPL has failed to comply.

16. Since the inception of the JUA and prior to the issuance of the 2011 Invoice, Verizon paid all invoices as calculated and submitted by FPL in the amount invoiced. It neither objected to the manner in which the invoices were calculated nor the JUA formula applied by FPL.

17. The 2011 and 2012 Invoices were calculated and prepared by FPL in the same manner and employing the same methodology as all previous invoices issued to Verizon.

18. The JUA expressly provides that other attachers may attach their facilities to the joint use poles, FPL's or Verizon's.

19. The JUA expressly provides that revenues received by the Parties from other attachers have no impact on the rates to be paid by FPL or Verizon to each other under the JUA.

Based on these Findings of Fact, the Court has reached the following:

CONCLUSIONS OF LAW

- A. There was a valid contract between the Parties - the JUA.
- B. FPL complied with all material terms of the JUA.
- C. FPL issued invoices for 2011 and 2012 pursuant to the provisions of and consistent with the JUA.
- D. Verizon failed to pay the invoices as required by the JUA, paying only a portion of the invoiced amount.
- E. The payment rate upon which Verizon based its payment was not agreed to by FPL nor established by the Pole Attachment Agreement or the FCC.
- F. By paying less than the amount required pursuant to the JUA, Verizon has breached its obligations under the JUA.
- G. FPL has been damaged by Verizon's underpayment in the principal amount of \$2,599,557.74.
- H. FPL is entitled to pre-judgment interest at the statutory rate on the 2011 Invoice amount of \$140,910.96, which is calculated from the date of Verizon's partial payment through October 15, 2015.
- I. FPL is entitled to pre-judgment interest at the statutory rate on the 2012 Invoice in the amount of \$181,418.36, which is calculated from the date of Verizon's partial payment through October 15, 2015.

J. ACCORDINGLY, JUDGMENT IS ENTERED ON BEHALF OF FPL AND AGAINST VERIZON IN THE PRINCIPAL AMOUNT OF \$2,599,557.74, plus prejudgment interest in the sum of \$322,329.32.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 10/15/15.



JOHN W. THORNTON
CIRCUIT COURT JUDGE

ORIGINAL

JUDGE JOHN W. THORNTON JR.

**No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

Copy to all Counsel of Record

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

FLORIDA POWER & LIGHT CO.

Complex Business Litigation Division
Case No.13-14808 CA-40

Plaintiffs,
vs.
VERIZON FLORIDA, LLC
Defendants

ORDER DENYING MOTION TO
RECONSIDER AND REHEAR

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THIS MATTER came before the Court, on Defendant's Motion to Reconsider and Rehear, and the Court having reviewed the file, motion and memoranda, and being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED the motion is DENIED. The hearing scheduled for December 17, 2015 is canceled.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 11/05/15.


JOHN W. THORNTON
CIRCUIT COURT JUDGE

ORIGINAL

JUDGE JOHN W. THORNTON JR.

No Further Judicial Action Required on THIS
MOTION
CLERK TO RECLOSE CASE IF POST
JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or

EXHIBIT
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hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

cc: Counsel / Parties of record

alvin.davis@squirepb.com; maria.moncada@fpl.com; collins@butler.legal; eservice@butler.legal; chuther@wileyrein.com; cevans@wileyrein.com