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Host: Bobby Link (**BL**)

Guest: Mike Twomey (**MT**), attorney and consumer advocate

Guest: Bob Sanchez (**BS**), policy director, James Madison Institute

**BL:** The state's utility regulators have recently approved a surcharge for electric companies and had a controversial phone rate increase upheld by the Florida Supreme Court. The Public Service Commission Nominating Committee is also in the process of selecting up to three new members. Joining us by phone is Mike Twomey, an attorney and consumer advocate, and in the studio, Bob Sanchez, a policy expert with The James Madison Institute. Let's start with the most recent surcharge that the PSC approved for Florida Power & Light. The PSC is allowing the electric company to tack on \$1.68 to monthly bills for 30 months starting in September. That is in reaction to costs sustained from last year's hurricane season. Bob, your reaction to that decision?

**BS:** Well actually, in the long-term, this may serve consumers well, because it allows Florida's utilities to remain reasonably stable financially, to recoup part of the billion dollars that FPL lost due to storm damage, when they had to bring in people from other companies, pay a lot of overtime, and replace damaged equipment. And it's very important for investor-owned utilities to stay financially stable.

**BL:** And Mike obviously, there was additional service from electric companies during last year's hurricanes, doesn't it make sense that eventually the consumers would have to pay for that?

**MT:** Not necessarily. Bob's right that the companies need to stay financially viable. In Florida Power & Light's case, they earned about 12.68% on equity year-end 2004, which is a very, very high profit rate. Consumer representatives in the FP&L-Sloan case asked the Public Service Commission to require the shareholders of FP&L to have to spend some of their own money to fix their own systems, which of course, without which they can't sell their only product, electricity, until they spent their way down to 10% on year-end 2004. 10% would have still been a very, very handsome profit. But customers, typically, wouldn't have to pay for damages that occurred in between rate cases. They've been collecting a storm surcharge since about February or March, even before the Public Service Commission heard evidence on the case.

**BL:** Bob, the state Supreme Court recently upheld the PSC decision to allow Sprint, Bellsouth, and Verizon, the state's three largest phone companies, to phase in a rate increase over the next few years. The PSC argued that the phone companies' rates have been kept artificially low, which prevents competition. Is there any evidence that there will be more competition because of the increase?

**BS:** Well there already is competition from cell phone companies. In fact, many customers are dropping their landlines and going exclusively with cell phones for telephone service and with cable modem or other broadband access for computer hookups. So, the phone companies are kind of stuck with a big stranded investment of the sort, and have been trying to raise their rates. It could be that the higher permitted

rates will lure some competitive phone companies in who could charge less, but that remains to be seen.

**BL:** Mike, go ahead.

**MT:** The stated purpose of the legislation was to increase competition for the local companies with landline competitors, not cell phones, and not by other broadband methodologies, which were statutorily excluded from the definition of the competition. What happened during the hearing process was that there was an intervening federal appellate court decision out of Washington, D.C., that effectively said that the primary tool that competitive landline were using, that is renting the facilities of the incumbent companies, would no longer be available per FCC rules at relatively low rates. All the major competitors bowed out, we asked the Florida Public Service Commission to review their decision in light of that federal appellate court decision. They declined to do so, to change the ruling. We also asked the Florida Supreme Court to send the case back to the Public Service Commission for a new determination on whether there can be competition in light of this decision, and the court declined to do so, which we think was a mistake on it's part.

**BL:** Mike, according to news reports, there were more than 100 applicants and 22 people actually interviewed for the three possible positions on the Public Service Commission. The nominating council was charged with bringing that list down to 18, and one of the four people that didn't make the first cut was a lawyer that works in the office of public counsel, which is the state advocate for consumers in utility cases. Should members of the PSC be allowed to have any background in advocating for consumers?

**MT:** Of course. There were in fact 131 applications for the position. The first mistake the nominating council made was that they failed to give to the most qualified individuals interviews. Interviews were held this Monday morning in the Tampa airport. Of the people they interviewed, they only interviewed 22, and they had to name a minimum of 18, so they only had to cut four. They cut Patti Christensen, who is a highly experienced lawyer in the office of public counsel, newly public counsel, she had worked for many years at the Public Service Commission. The suggestion by any of those nominating council members that you should have to purge yourself, I found completely and utterly offensive. When they cut those people, those selected others with ties to the Bush Administration, people without college degrees, and it was, in my view, a process, not to mention the fact that three of the nominating council members were voting with expired terms.

**BL:** Bob, should members of the PSC have backgrounds fighting pro-consumer causes, or on the flip side, even representing utility companies?

**BS:** I don't want to second-guess the actions of this commission. I think what's important is, the PSC staff is where the expertise is supposed to reside. The actual members of the commission should be sophisticated to understand the issues, but they're not supposed to necessarily have all the technical expertise that the lawyers and others would have who are on the permanent staff. Commissioners come and go. In a sense, their role is legislative in the sense that their rulings make law, or amounts to administrative law, and so what's important is they have a sense of fairness, and a sense of ability to apply common sense to these questions. You don't want them in the pocket of the utilities, nor do you want them in the pocket of advocacy groups necessarily.

**BL:** Mike Twomey, consumers advocate, and Bob Sanchez, with The James Madison Institute, thanks to you both.