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From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Friday, May 26, 2006 2:48 PM
To: Filings@psc.state.fl.us
Cc: Larry Harris
Subject: Fwd: Electronic Filing - Docket 060172EU and 060173-EU

Attachments: UG & Hardening Rule Comments-RoundII.May25.doc

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>>> Rhonda Dulgar 05/26/06 2:33 PM >>>
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b. Docket Nos. 060172-EU and 060173-EU

In Re: Proposed Rules Governing the Placement of New Electric Distribution Facilities Underground, and the Conversion of Existing Overhead Distribution Facilities, to Address the Effects of Extreme Weather Events

and

In Re: Proposed Amendments to Rules Regarding Overhead Electric Facilities to Allow More Stringent Construction Standards Than Required by the National Electric Safety Code.

c. Document being filed on behalf of the Towns of Palm Beach and Jupiter Island.

d. There are a total of 16 pages.

e. The document attached for electronic filing is Comments of the Town of Palm Beach and the Town of Jupiter Island Regarding Proposed Rules Relating to Undergrounding and Distribution Infrastructure Hardening.

(see attached file: UG & Hardening Rule Comments-RoundII.May25.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ORIGINAL

FLORIDA PUBLIC SERVICE COMMISSION DOCKETS 060172-EU & 060173-EU

**COMMENTS OF THE TOWN OF PALM BEACH AND THE TOWN OF JUPITER
ISLAND REGARDING PROPOSED RULES RELATING TO UNDERGROUNDING AND
DISTRIBUTION INFRASTRUCTURE HARDENING**

The Town of Palm Beach and the Town of Jupiter Island (the "Towns"), pursuant to the Staff's instructions at the conclusion of the May 19, 2006 Rule Development Workshop in these dockets, hereby offer the following comments and proposed rule language. The Towns' comments and proposed language are provided in this one document. The Towns' presentation proceeds through the rules in numerical order, as in the Staff's proposed rules distributed on May 15, with the Towns' comments preceding the proposed rule language, if any, within the discussion of each rule and subsection. "Overhead" is abbreviated "OH," "underground" is abbreviated "UG," and "Contribution in Aid of Construction" is abbreviated "CIAC," with other abbreviations defined in the text. The Towns' suggested changes to the rule are incorporated into the Staff's May 15 version, keeping the Staff's Times New Roman font for ease of identification, with suggested new language shown in **bold type** and proposed deletions shown in ~~strikethrough~~ format.

Rule 25-6.034, F.A.C., Standard of Construction

Subsection (4)

With regard to subsection (4) of Rule 25-6.034, the Towns believe that the Commission should clarify, either in the rule or in appropriate discussion in the order, when the requirements of this Rule apply to reconstruction, relocation, expansion, or other modifications to existing distribution facilities. The Towns are not able to offer specific language at this time, but the Towns general position is that, in the public interest and to provide maximum protection to consumers' service reliability, the Commission should come down on the side of applying more stringent reliability standards to more, rather than less, distribution facilities. Thus, the Towns would favor applying newer requirements for sturdier distribution construction to any substantial reconstruction, relocation, rebuild, expansion, or other modifications to existing distribution facilities.

Subsection (5)

With regard to subsection (5) of Rule 25-6.034, the Towns support the Staff's proposal to require the investor-owned utilities ("IOUs") to adopt the extreme wind loading standards

specified in the National Electrical Safety Code ("NESC"). However, the Towns believe that this Rule should be modified:

1. to require the IOUs to evaluate in detail (a) the NESC extreme wind loading standards, (b) what construction standards would be required to withstand Category 4 wind speeds, and also (c) what construction standards would be required to withstand Category 5 wind speeds; and

2. to require any utility to justify, with supporting analysis addressing both the reliability differentials and the cost impacts associated with meeting different standards, why it is not adopting standards to withstand anything less than Category 4 wind speeds.

Although Hurricane Wilma was surely a powerful storm before traversing the Gulf toward Florida, it was predominantly - at least per all official reporting sites on the Florida mainland and in the Florida Keys - a Category 1 storm. (See Tropical Cyclone Report, Hurricane Wilma, 15-25 October 2005, published by the National Hurricane Center on January 12, 2006 (the "Official NHC Wilma Report"), at pages 10-14. In fact, not a single official reporting station on mainland Florida or in the Florida Keys reported either maximum sustained winds or gusts above the Category 1 range. However, as is well-known, Wilma caused extensive damage, well over half a billion dollars worth, to FPL's transmission and distribution systems. In light of these extraordinary impacts of this ordinary storm, it is imperative that the Commission, in fulfilling its statutory mandate to regulate so as to protect the public interest, consider not only the extreme wind loading standards, which generally correspond to Category 3 wind conditions in coastal areas, but also what would be required for distribution facilities to withstand Category 4 and Category 5 wind speeds.

The Commission must also consider total economic and other impacts on the State as a whole. While some may view this as an argument for consideration of "externalities," it is not an inappropriate suggestion. Just because the total value of reducing and avoiding blackouts to the Florida economy and to Floridians generally is external to the ordinary calculation of electric rates does not mean that it is, or should be, external to the Commission's consideration and determination of these matters.

Ultimately, these issues pose the same type of reliability questions, and demand the same types of reliability-based decisions, that utilities and the Commission make with regard to generation and transmission. For example, with regard to

generation, the Commission makes judgments that a given reserve margin or a given Loss of Load Probability critical value is appropriate to ensure reliable service, generally without any cost-benefit evaluation of different possible levels of reliability, even though it is obviously true that constructing the generating system to provide a higher reserve margin, or to satisfy a smaller LOLP critical value, would result in more reliable service. Similarly, for transmission additions, the Commission generally accepts the utilities' use of "single-contingency" transmission planning, even though it is unequivocally true that "double-contingency" planning would provide for a more reliable transmission system.

The Commission is now faced with the comparable decision with regard to distribution system planning in the face of hurricanes, particularly where a substantial body of scientific opinion supports the concern that Florida may be in for 15 to 30 years of more frequent and more intense storm impacts. Here, the Commission must decide whether Florida's distribution system should be designed and constructed to withstand something less than Category 3 winds, or Category 3 winds, or Category 4 winds, or Category 5 winds. The Commission will also have to consider the impacts of storm surges where they may occur.

In short, the Commission must decide whether building the distribution system to withstand Category 3 winds or other to meet other standards is in the public interest as a reliability matter, in exactly the same way that it considers generation reserve margins and LOLP criteria and in exactly the same way that it considers transmission planning criteria. The Towns believe that the Commission must, in keeping with its overarching public interest mandate, give its most serious consideration to this issue.

The Towns support an appropriate cost-benefit type analysis, specifically either a true economic cost-benefit analysis or analysis using the Expected Unserved Energy ("EUE") methodology, which is a long-recognized approach to evaluating utility reliability, including, at least in some instances, distribution projects. At a minimum, it is entirely appropriate for the Commission to consider such an analysis, which would incorporate the value that Floridians place on avoiding loss of electric service into the Commission's determination of what the standards should be.

Proposed Rule Language - Subsection (5)

(5) For the construction of distribution facilities, each utility shall, at a minimum, to the

extent reasonably practical and feasible, adopt evaluate in detail the reliability effects and cost-effectiveness of adopting (a) the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC; (b) the construction standards that would be required to withstand Category 4 wind speeds; and (c) the construction standards that would be required to withstand Category 5 wind speeds. Each utility that proposes to adopt standards for anything less than Category 5 wind speeds shall justify, with supporting analysis addressing both the differential reliability impacts and the cost impacts associated with meeting different standards, why it is not adopting standards to withstand anything less than Category 5 wind speeds. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) new construction;

(b) major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and

(c) targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

Subsection (7)

With regard to subsection (7) of the Rule, as discussed at the May 19 workshop, the Towns agree that subsections (7)(a) and (7)(b) should be modified to include rights-of-way as well as easements as proper locations for the installation of distribution facilities.

The Towns further believe that, in subsection (7)(c), the permissive "may" should be changed to the mandatory "shall." Especially in light of the conditions imposed on local governments within subsection (7)(c), using "may" would give the utility unfair and unreasonable discretion to deny a local government's request to locate facilities in rights-of-way even

where the local government had provided "all necessary permits" and had satisfied "the utility's legal, financial, and operational requirements." Where a local government meets all of these requirements, it should be entitled to have the facilities located in rights-of-way. Indeed, once these conditions are met, there can be no good reason for the utility to deny a local government's request to locate distribution facilities in rights-of-way.

Proposed Rule Language - Subsection (7)

(7) Location of the utility's electric facilities.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities,
utilities shall use easements, public streets, roads and highways along which the utility has the
legal right to occupy, and public lands and private property across which rights-of-way and
easements have been provided by the applicant for service. To the extent practical and feasible,
facilities shall be placed in easements or rights-of-way in front of the customer's premises
adjacent to a public road for all new facilities and major upgrades or rebuilds affecting a
customer or contiguous group of customers served by the same distribution line.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the
utility shall require the applicant for service to provide easements or access to rights-of-way
along the front edge of the property, unless the utility determines there is an operational,
economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility
may shall, if the applicant for service is a local government that provides all necessary permits
and meets the utility's legal, financial, and operational requirements, place facilities in road
rights-of-way in lieu of requiring easements.

Rule 25-6.0345, Safety Standards for Construction

The Towns believe that the scope of data to be reported pursuant to subsections (5) and (6) of this Rule should be expanded to include all incidents or accidents involving death or injury to persons, without limiting the reporting requirement to those events involving non-utility personnel and to those events involving hospitalization, and further that accidents involving damage to utility property in excess of \$5,000 should also be reported. The Towns do not have an opinion as to the time for reporting such information, and accordingly, do not have an opinion as to whether these data should be reported pursuant to subsection (5) or subsection (6) of the Rule.

However, since they will ultimately bear on the costs associated with overhead vs. underground facilities, the Towns do believe that the expanded data, as discussed above, should be collected, maintained, and reported by each utility.

Rule 25-6.078, Schedule of Charges

Subsection (2)

The Towns support the rule requirement that costs estimates pursuant to this Rule must reflect the requirements of Rule 25-6.034, Standard of Construction. Thus, if a utility adopts the NESC extreme wind loading standards or the standards that would be required to "harden" OH facilities to withstand Category 4 or 5 wind speeds, then it is the cost of such "hardened" facilities that should be used as the OH value in computing any CIAC that would be due for a UG installation or conversion.

Subsection (4)

The Towns support the inclusion of operating and maintenance costs, and the inclusion of storm restoration costs, in the determination of underground CIACs. Accordingly, the Towns are satisfied with the Staff's proposed language.

As commentary on subsection (4) of this Rule, the Towns offer the following explanation of how they believe these costs should be considered. First, both O&M costs and storm restoration costs should be considered on a life-cycle cost basis, with projected differences in both O&M costs (including tree-trimming and other vegetation management costs) and in storm restoration costs for OH vs. UG facilities being included in CIAC calculations on a net present value ("NPV") basis. The Towns do not agree that the suggestion that "things are going to turn out differently than projected" justifies abandoning a life-cycle cost approach. Florida's utilities, and probably all utilities in the U.S., routinely use life-cycle, NPV cost analyses as the bases for their significant decisions, from selecting power plants to transmission system design to distribution facilities of various types, even though, as Commissioner Gerald Gunter used to say, "the one thing we know about any forecast is that it's going to be wrong." This doesn't stop the utilities or the Commission from making the best decisions they can, based on projected life-cycle costs, and there is no good reason to use any other approach in this instance.

Second, specifically with regard to the inclusion of storm restoration costs in calculating CIACs, the Towns envision such consideration being made as follows. Average storm restoration costs, adjusted as appropriate for the specific installation

under consideration¹, should be used as the basis for analysis; they should be projected forward, on an expected value basis incorporating reasonable assumptions regarding future projected storm experience (and probably also incorporating sensitivity cases), and escalated forward to an assumed year or years in which such storm costs might be expected to be incurred; finally, they should be converted to NPV values. This could be discussed in the text of the Commission's order adopting the Rule or specified in the Rule.

Subsection (10)

The Towns believe that the Commission, in fulfilling its statutory mandate to promote the public interest, should give due consideration to all value that undergrounding will create for Floridians, not limited solely and exclusively to the direct benefits that utility customers will realize through enhanced reliability, lower O&M costs, and lower storm restoration costs. Accordingly, with regard to subsection (10), the Towns believe that the Commission should not only allow utilities to absorb part of the cost differential between the cost of OH and the cost of UG facilities, but should also allow utilities the opportunity to justify putting specified amounts of UG investment in rate base upon a showing that the project is in the public interest.

The utility regulation literature recognizes that the value that customers assign to avoiding outages is substantial. Values attached by residential customers to not being blacked out range from \$1 to \$10 per kWh not interrupted to as much as \$30 per kWh not interrupted for commercial and industrial customers (testimony of Dr. Richard Brown in FPL's storm surcharge hearing, Transcript at 326-27).

Other sources support this range. For example, an article by Judah Rose and Charles Mann, published in the widely recognized Public Utilities Fortnightly, December 1, 2005, "Unbundling the Electric Capacity Price in a Deregulated Commodity Market," stated the following:

A recent survey of utilities that we conducted revealed that on average, utilities estimated that

¹ For example, in calculating the CIAC for a project that will convert rear-yard OH facilities to front-lot right-of-way installation of UG facilities, it will likely be appropriate to include the costs associated with storm restoration for rear-yard facilities, which the utilities have claimed are quite substantial.

customers would pay \$12 (not cents, but dollars) per kilowatt-hour on average to avoid being blacked out. In other words, the value of power is very high relative to its average cost. For some customers, willingness to pay is especially high even relative to this high average. For example, businesses are anxious to avoid having expensive capital and labor sitting idle. Hence they exhibit an even higher willingness to pay for reliability.

While there may be some argument about the magnitude of the economic benefits of increased reliability and reduced electric service interruptions, there can be no doubt that the total value to Florida and Floridians of avoiding blackouts, and of reducing their scope, duration, and severity is tremendous. The Towns would suggest that these values may well make even the very high price-tags for undergrounding proffered by the utilities appear entirely reasonable relative to the total benefits provided. Accordingly, the Commission, in keeping with its overarching mandate to regulate in the public interest, should take this into consideration in its deliberations on these important issues.

Subsection (10) -Proposed Rule Language

(10)(9) Nothing herein contained shall be construed to prevent any utility from absorbing assuming all or any portion of the costs differential of providing underground distribution systems, provided, however, that such assumed costs in excess of a comparable overhead system differential shall not be chargeable to the general body of ratepayers, unless the utility or applicant demonstrates, using appropriate cost-benefit analyses, reliability analyses (which may include Expected Unserved Energy analyses), or other material, reasonable, and probative evidence, that the costs for underground facilities that the utility proposes to include in rate base will be reasonably and prudently incurred and will promote the public interest; and provided further that any such policy adopted by a utility shall not be applied in an unduly discriminatory manner anywhere in have uniform application throughout its service area.

Rule 25-6.115, F.A.C.

The Towns generally support the Staff's proposed changes to Rule 25-6.115, with the exception of subsection (12), and offer the following specific comments.

Subsection (3)

The Towns support the thrust of the proposed modification to subsection (3), but believe that "the costs the utility would incur for the installation" should be clarified to mean life-cycle costs.

Subsection (3) - Proposed Rule Language

(3) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

(a) ~~s~~Such work meets the investor-owned public utility's construction standards;

(b) ~~t~~The investor-owned public utility will own and maintain the completed distribution facilities; and

(c) ~~s~~Such agreement is not expected to cause the general body of ratepayers to incur greater costs in excess of the costs the utility would incur for the installation, with such costs being evaluated on a life-cycle cost basis and giving due consideration to all costs identified in subsection (11) below.

Subsection (6)

The Towns specifically support and applaud the proposed amendment to subsection (6). The current 180-day deadline poses significant logistical problems for local governments in their efforts to negotiate with utilities before and after obtaining a binding cost estimate and then to obtain needed approval from their voting citizens, which is generally needed for substantial UG conversion projects, within the 180 days.

Subsection (11)

The Towns support proposed new subsection (11). With regard to the requirement in proposed subsection (11)(a) that CIACs for UG conversions be calculated including the NPV of O&M

costs and also including storm restoration costs, the Towns respectfully ask the Commission and Staff to consider the Towns' comments on these subjects presented with regard to the comparable provisions of Rule 25-6.078(4) above.

With regard to proposed subsection (11)(b), the Towns understand this proposal to be intended to rectify the concern² raised in the Towns' May 3 comments, and accordingly support this proposed new subsection.

Subsection (12)

Proposed subsection (12) is identical to proposed subsection (10) of Rule 25-6.078, as amended, and the Towns respectfully ask the Commission to consider their comments with regard to Rule 25-6.078(10) here.

² To recapitulate, the Towns' concern is with the utilities' attempts to apply their "corporate overheads," which would properly be included in a utility-constructed underground conversion project, as an offset to the credit given where a local government or other applicant hires its own contractors to do the project. Based on the Towns' experience to date, this item is typically worth 20-25 percent of the total job cost, and the utilities' attempts to include such costs is unjust - charging corporate overheads on work that they don't even do - as well as a substantial disincentive to undergrounding.

New Rule 25-6.116, F.A.C.

The Towns continue to believe that the utilities should be required to share information with local governments, and with other applicants (such as homeowners associations or neighborhood associations) in order facilitate the optimal timing of UG conversion projects. Accordingly, the Towns propose this new rule to require investor-owned utilities to provide the maximum practicable information regarding future projects to potential applicants, in order to foster coordination and efficiency. For example, total costs should be minimized and total benefits and efficiency maximized, where the applicant and the utility coordinate an overhead-to-underground conversion with a road widening project, or with the replacement of water and sewer lines, or in lieu of a utility-initiated replacement of old overhead facilities.

Proposed Rule Language-New Rule 25-6.116, F.A.C.

25-6.116 Utility's Obligation to Provide Information Regarding Relocations, Replacements, and Rebuilding of Existing Facilities.

(1) The intent of this rule is to make the maximum amount of information regarding planned and potential future relocations, replacements, or rebuilding of overhead facilities available, as early as practicable and feasible, to applicants or potential applicants for an overhead-to-underground conversion project, so that such applicants and potential applicants can, to the maximum extent feasible, coordinate their conversion projects with the investor-owned electric utility's projects, in order to ensure efficiency, minimize cost, and maximum net benefits to all concerned.

(2) Each investor-owned electric utility shall maintain accurate information regarding any and all planned or

contemplated relocations, replacements, or rebuilding of
existing overhead facilities, to the best of the utility's
ability using commercially reasonable efforts. For purposes of
this rule, "planned or contemplated" is intended to be construed
in the broadest sense, and is intended to include any potential
projects that the utility may have begun to evaluate or
consider, even though such projects may not have been approved
by the utility and may not be contemplated for actual
construction until several years into the future. Such
information shall include, at a minimum and without limitation,

(a) any correspondence or other information between or
involving the utility and either the Florida Department of
Transportation or any local transportation or road department,
and

(b) any correspondence or other information between or
involving the utility and any other utility (e.g.,
telecommunications, water, wastewater, or natural gas utilities)
that may involve the relocation or replacement of overhead
electric distribution facilities.

(3) Upon request of any applicant or potential applicant
for an overhead-to-underground conversion project, each
investor-owned electric utility shall furnish to the applicant
or potential applicant a complete listing of any planned or
contemplated relocations, replacements, or rebuilding projects
that involve the utility's overhead facilities in any part of

the applicant's affected area, e.g., within the city limits of
an applicant city, within the geographic boundaries of an
applicant county, or within the identified boundaries of a
neighborhood or subdivision where the applicant is a
neighborhood or homeowners association.

(4) The utility may require confidential treatment of
information furnished pursuant to this rule, to the extent that
the subject information constitutes proprietary, confidential
business information within the meaning of Chapter 119 or
Section 366.093, Florida Statutes.

Timing of Rulemaking Proceedings

As stated at the April 17 Rule Development Workshop, the Town of Palm Beach and the Town of Jupiter Island are participating with a consortium of other towns and cities that are keenly interested in converting parts or all of their existing overhead distribution facilities to underground facilities. These cities and towns are in the process of engaging engineering experts to prepare a study of the cost-effectiveness of undergrounding vs. hardening of OH facilities to withstand different strength storms, pursuant to a substantial consulting services contract. However, as it relates to the timing of these dockets, the consultants cannot reasonably be expected to complete their work in 2 or 3 months. The Towns have been negotiating and working toward having the work completed by the end of August, with a view toward rule hearings in late September or October, and we would respectfully ask the Commission to set the schedule for these dockets accordingly.

In this regard, the Commission should note that the Florida Legislature, in enacting Senate Bill 888, has passed an act that will, if it becomes law, require the Commission to "conduct a review to determine what should be done to enhance the reliability of Florida's transmission and grids during extreme weather events" with considerations to include "recommendations for promoting and encouraging underground electric distribution for new service or construction . . . and the conversion of existing overhead distribution facilities to underground facilities, including any recommended incentives to local governments for local-government-sponsored conversions." The Commission is directed to submit its review and recommendations to the Governor, the President of the Senate, and the Speaker of the House by July 1, 2007.

The Towns would respectfully suggest that this timetable, endorsed by the Florida Legislature, gives the Commission a clear indication that rulemaking that addresses these issues and that is concluded during the last quarter of 2006, which we believe is entirely feasible, would be satisfactory regarding the timing concerns of the Legislature.

To be sure, the Towns want quick action, but they equally want the opportunity to put the best evidence available before the Commission in timely proceedings, without delay but without rushing to judgment.

The Town of Palm Beach and the Town of Jupiter Island thank the Commission and the Commission Staff for the opportunity to present these comments and for their consideration of them. The Towns look forward to continuing to participate in these critically important rulemaking dockets.