

ORIGINAL

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Sent: Wednesday, July 26, 2006 4:29 PM
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Subject: Docket Nos. 060172 and 060173 - FCTA Comments on 7-13-06 Workshop

Attachments: 060172 & 060173 Comments 7-26-06.doc

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A. The person responsible for this electronic filing is:

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B. The docket numbers and titles are:

In Re: Docket No. 060172 - Re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.

Docket No. 060173 - Re: Proposed rules governing placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.

C. This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.

D. The Comments are a total of 7 pages.

E. Attached are the Florida Cable Telecommunications Association's Comments on the July 13, 2006 Workshop on the Cost Impact of Proposed Rules 25-6.034 Standard of Construction, 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards

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and Procedures, and 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

Thank you,

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ORIGINAL

THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.

Docket No. 060173-EU

Re: Proposed rules governing placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.

Docket No. 060172-EU

Filed: July 26, 2006

POST JULY 13, 2006 WORKSHOP COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION (FCTA) ON THE COST IMPACT OF PROPOSED RULES 25-6.034 STANDARD OF CONSTRUCTION, 25-6.0341 LOCATION OF THE UTILITY'S ELECTRIC DISTRIBUTION FACILITIES, 25-6.0342 THIRD-PARTY ATTACHMENT STANDARDS AND PROCEDURES, AND 25-6.0343 MUNICIPAL ELECTRIC UTILITIES AND RURAL ELECTRIC COOPERATIVES

The FCTA has substantial concerns arising from the fact that, pursuant to these proposed rules, the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards unilaterally established by the utilities. Although the proposed rules require the utilities to seek input from third-party attachers in establishing the construction and attachment standards, there is no assurance that the utilities will not summarily disregard such input. Further, although the rules give the Commission authority to review any disputes over the construction and attachment standards, there is no provision for an evidentiary hearing, and any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, non-discriminatory access rights granted under 47 U.S.C.A. section 224.

If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of direct charges for certain services while simultaneously recovering the same costs in their annual rental charges ("double billing"), recovering excessive amounts from attaching entities for services that can only be performed by the pole owners ("over billing"), and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves. Moreover, utilities also have engaged in unreasonable operational

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practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overlashing of fiber optic cable to existing strand – a practice the Federal Communications Commission (“FCC”) has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. In addition, utilities have unreasonably denied attachment to their anchors – requiring attaching entities instead to set their own anchors and thereby expend unnecessary resources. Again, the FCC has found this practice to be unreasonable.

This memo lists some of the improper billing practices and operational practices engaged in by utilities that have resulted in excessive and unnecessary costs to attaching entities. In addition, because the cost impact cannot be determined until the construction and attachment standards are established, this memo includes some of the cost information related to specific construction activities as reported in FCC decisions.

A. Unreasonable Billing Practices by Utilities

1. Double Billing:

- Collected money from attachers for unnecessary, duplicative, or defective make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 26 (2003) (identifying at least 29 examples of engineering errors or duplicative charges that Georgia Power unreasonably forced Knology to pay).
- Required cable operators to pay a share of indirect costs associated with the functions performed by dedicated employees and simultaneously to pay for the dedicated employees amounting to an unreasonable duplicative charge. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 53 (2003) (demonstrating that Georgia Power included management and supervisory functions in the calculation of the indirect overhead expenses when these same functions were already paid by Knology through the direct expense of the two dedicated Georgia Power employees).
- Charged for cost of private easements when the cost was already recovered in the pole attachment rent. *Cable Television Ass’n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 27 (2003) (holding that Georgia Power was not entitled to additional payment for private easements because the Commission’s rate formula assures that Georgia Power receives just compensation as required by the Fifth Amendment).
- Imposed a direct charge for anchors while also recovering the costs of anchors in the pole attachment rent. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶¶ 28, 33 (1983)

(holding VEPCO's \$7.00 charge for use of each anchor rod was unjust and unreasonable because the rate formula takes into account the cost of a bare pole and the investment in anchors). *See also Capital Cities Cable v. Mountain States Telephone & Telegraph Co.*, Memorandum Opinion & Order, 56 RR 2d 393 ¶¶ 40-42 (1984) (holding the utility was double recovering the cost of the anchors by charging a separate anchor fee when the cost of the anchors was already included in the rate formula by way of the bare pole cost).

- Used administrative fees to double recover administrative costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the administrative costs associated with the "Billing Event Fee" and the "CATV Pole License Agreement" fee were already included in the carrying charges used to calculate the maximum pole attachment rate).

2. Over Billing:

- Imposed charges without any discernable backup or itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 50 (2003) (holding Georgia Power's \$190,805.86 charge to Knology for "GPESS SUPR & ADMIN" costs was unreasonable because Georgia Power provided no explanation or support for this figure).
- Charged excessive penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶¶ 11, 13 (2000) (holding the unauthorized pole attachment penalty charge of up to \$250 per pole was unreasonable in light of the industry practice of charging between \$15 and \$25 per unauthorized pole attachment).
- Imposed unreasonably high markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding the "margin of error" surcharge of approximately 10.5% on all make-ready bills was unreasonable because no evidence was provided to justify the percentage).
- Provided insufficient detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding that VEPCO's make-ready bills to Cavalier Telephone were insufficiently detailed).
- Failed to provide refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO never provided a make-ready overcharge refund despite charging a margin of error surcharge).

- Applied make-ready surcharges across an entire category of attachers without regard to the underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO charged all CLECs the margin of error surcharge without any connection to the work performed).
- Imposed administrative fees that exceeded actual costs. *Tex. Cable & Telecomm. Ass'n v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the “Billing Event Fee” and the “CATV Pole License Agreement” fee do not represent actual costs).
- Imposed engineering survey fees unrelated to the actual costs. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138 ¶¶ 6, 10 (1999) (holding the engineering fee was inappropriate because it was not based on non-recurring actual costs; therefore, by definition, the engineering survey fee was already included in the annual pole attachment fee based on fully allocated costs).

3. Billing One Attacher for Costs Associated with Another Attacher:

- Charged new attacher for make-ready work to remedy pre-existing safety violations. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 16 (2000) (illustrating VEPCO’s attempt to push costs associated with correcting pre-existing safety violations onto Cavalier Telephone).
- Charged new attacher to replace poles to remedy pre-existing safety violations. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 40 (2003) (“Having rejected Georgia Power's defenses regarding pole change-outs, we order Georgia Power to refund Knology the costs of any change-outs necessitated by the safety violations of other attachers. . .”).

4. Billing a Single Attacher for Costs Common to All Attachers:

- Charged new attacher for the full cost of a post attachment pole inspection that benefited the utility and other attachers. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 34 (2003) (holding that Georgia Power’s post attachment inspection was a routine inspection because the inspection involved the identification and correction of other attachers’ safety violations). *See also Newport News Cablevision, Ltd. Communications, Inc. v. Va. Elec. & Power Co.*, 7 FCC Rcd 2610 ¶¶ 8-14 (1992) (holding that VEPCO unreasonably allocated 100% of the inspection costs to the cable provider); *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 16 (2003)

(holding that charges to cable operators for periodic inspections were unreasonable since “costs attendant to routine inspections of poles, which benefit all attachers, should be included in the maintenance costs account and allocated to each attacher in accordance with the Commission's formula . . .”).

- Charged new attacher the full cost for the pre-make-ready inspections that benefited the utility and other attachers. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 43 (2003) (rejecting Georgia Power’s assertion that Knology should pay the entire cost of the pre-make-ready inspections because both Georgia Power and the other attachers benefited from the large scale inspection).

B. Unreasonable Operational Practice by Utilities

- Imposed a consent requirement on cable operators for overlashing that contravened Commission policy. *Cable Television Ass’n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 13 (2003) (rejecting Georgia Power’s requirement that cable operators seek written consent prior to overlashing because the Commission’s policy was that “neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment”).
- Denied anchor attachments for safety reasons without explanation or support. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶ 33 (1983) (rejecting VEPCO’s denial of anchor attachments because VEPCO made no detailed showing that its poles were engineered in such a way that separate anchors were necessary).

C. Actual Costs Relating to Pole Attachments

1. Pole Replacement:

- \$2,146 per pole. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶¶ 40-41 (2003) (Ordering Georgia Power to refund Knology for 16 pole replacements at \$2,146 per pole for a total refund of \$34,366. The \$2,146 amount was the average amount that had been charged by Georgia Power where Knology was found not to be the cause of the pole replacement.)
- \$3,000 - \$5,000 per pole. *Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, Consolidated Order, 14 FCC Rcd 11599 ¶ 9 (1999) (The primary issue in the case was Kansas Cit Power & Light’s failure to perform make-ready work in timely

fashion. The amount per pole was provided by KCPL in response to a request from Time Warner for estimated cost of pole replacements.)¹

2. Pole audit:

- \$0.70 per pole. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶ 9 n.62 (2000) (commenting that this may be a reasonable rate).
- “The just and reasonable cost for the 1996 [Pole] Count is \$1.40 [per pole].” *Cable Tex., Inc. v. Entergy Services, Inc.*, Order, 14 FCC Rcd 6647 ¶ 16 (1999).²

3. Make ready construction costs, management and inspection costs, and engineering costs:

- \$150 per pole. *Cable Television Ass’n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 19 (2003) (The Cable Association was contesting Georgia Power’s \$150 up-front fee for make-ready work. The Enforcement Bureau found the fee unreasonable and concluded that “Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs.” It is not clear from the decision the specific tasks that this fee was designed to cover.)

As previously stated in the FCTA’s presentation at the Staff Workshop on July 13, 2006, regarding location of the utilities’ electric distribution facilities, it is very difficult to respond to the request for cost impact on cable attachers of the proposed Rule 25-6.0341. For new overhead or underground lines, the FCTA prefers that they be constructed in accessible locations. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. The FCTA would appreciate input into electric construction projects. However, the FCTA requests that the opportunity for input be timely with respect to the evaluation of construction alternatives and the FCTA’s budgeting time deadlines. Funding of line relocation and conversion to underground projects remains a major concern.

¹ The per pole cost data cited is provided for illustrative purposes only. It should be noted that pole costs and associated labor costs have gone up substantially in general, and particular poles may be extremely expensive depending on characteristics of individual poles. The price of a single pole may vary by as much as tenfold depending on the characteristics of the poles.

² The audit fees cited involved the total cost for a pole count. Audits currently are much broader in scope, and the costs have increased substantially.

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