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2425 Sunrise Key Blvd.

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Tel: (954) 463-2128

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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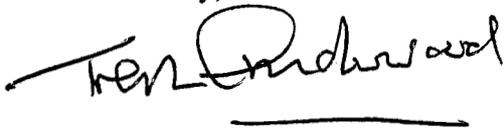
September 27, 2006

Dear Ms. Bayo,

Re: Docket Nos. 060172-EU and 060173-EU

In accordance with Order No. PSC-06-0646-PCO-EU an original and 15 copies of my posthearing comments are attached. This includes a Motion to open a new Docket specifically to address an alternative proposal that would not only ensure a more reliable supply of electricity and communications services but also facilitate the introduction of local competition in the supply of electric, telephone, Internet access and cable services.

Yours sincerely,



Trevor G. Underwood

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DOCUMENT NUMBER-DATE

08983 SEP 28 06

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In 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

In 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

Filed: September 28, 2006

POST-HEARING COMMENTS OF TREVOR UNDERWOOD, RESIDENT OF THE CITY OF FORT LAUDERDALE, ON THE PROPOSED NEW RULES GOVERNING STANDARDS OF CONSTRUCTION, PLACEMENT OF FACILITIES, AND UNDERGROUNDING OF ELECTRIC DISTRIBUTION FACILITIES TO ADDRESS THE EFFECTS OF EXTREME WEATHER EVENTS; AND MOTION TO OPEN A NEW DOCKET TO REVIEW CHANGES IN RULES AND OTHER ACTIONS REQUIRED TO SUPPORT AN ALTERNATIVE APPROACH TO IMPROVING THE RELIABILITY OF FLORIDA'S LOCAL ELECTRIC AND COMMUNICATIONS DISTRIBUTION INFRASTRUCTURE THROUGH THE CONSTRUCTION OF MUNICIPALLY OWNED AND CONTROLLED LOCAL UTILITY DISTRIBUTION SYSTEMS AND THE RENTING OF THESE TO MULTIPLE COMPETITIVE ELECTRICITY, TELEPHONE, INTERNET ACCESS AND CABLE SERVICE PROVIDERS IN PLACE OF THE CURRENT SYSTEM BASED ON REGULATION OF FRANCHISED MONOPOLIES.

I followed the Florida Public Service Commission (FPSC) Hearing on August 31, 2006, using the live audio facilities provided by the Commission and subsequently replayed the Hearing using the Audio archive provided on the FPSC website and downloaded the Transcript of the Hearing from the website as soon as this became available. The FPSC is to be highly commended for these excellent facilities that allow residents of Florida to participate in issues of vital importance to them. This Hearing under Dockets 060172-EU and 060173-EU addressed the proposed new Rules governing Standards of Construction,

DOCUMENT NUMBER-DATE

08983 SEP 28 06

FPSC-COMMISSION CLERK

Placement of Facilities, and Undergrounding of Electric Distribution Facilities to address the effects of Extreme Weather Events.

I wish to file the following comments on my own behalf as a resident of the City of Fort Lauderdale who could be seriously impacted financially by the proposed new Rules and by the failure of the proposed new Rules to achieve the purpose stated in the Notice of Rulemaking to increase the reliability of Florida's electric transmission and distribution infrastructure. I also wish to enter a motion to open a new Docket by the Florida Public Service Commission specifically to address an alternative proposal that would not only ensure a more reliable supply of electricity and communications services but also facilitate the introduction of local competition in the supply of electric, telephone, Internet access and cable services that has so far eluded the State of Florida despite various attempts to achieve this.

It is clear from the various presentations, including by expert witnesses, leading up to and at the Hearing on August 31, that:

1. the primary cause of power outages and delay in restoring the electricity supply after the recent hurricanes has been from damage to the local overhead electric distribution system not from damage to the transmission grid or other transmission facilities which have been built to withstand hurricanes and are less exposed to falling trees or flying debris;
2. the hardening of the overhead local distribution facilities (primarily poles) and restrictions on loading of these facilities as proposed by the Commission and the

- electric utilities will have minimal impact in lessening the power outages or reducing the delay in restoring electricity supply due to hurricanes (even force 1 hurricanes) as these hardened facilities would not stand up to flying debris or to winds above force 1;
3. the current version of the proposed Rules further weakens any beneficial impact of the new construction standards (a) by leaving decisions on hardening of overhead distribution facilities or undergrounding these facilities to be guided by the NESC extreme wind loading standards only to the extent that the electric utility monopolies view this to be reasonably practical, feasible and cost-effective (with no definition of to whom), and (b) requiring no action on most of the existing overhead distribution facilities.
 4. the current version of the proposed new Rules by providing the electric utility monopolies with the ability to impose their own construction standards would give the electric utilities virtually unlimited powers to impose additional costs of pole hardening or undergrounding on consumers; this could result in an unprecedented transfer of income and wealth from consumers to the shareholders and senior management of the electric utility monopolies;
 5. the proposed new Rules by providing the electric utility monopolies with the ability to impose their own construction standards would also give the electric utilities virtually unlimited powers to impose additional costs on the third party 'attachers' (communications companies) or to restrict competition by restricting access to the overhead distribution system by communications companies in violation of the Telecommunications Act of 1996;

6. the encouragement of collusion between the electric utility monopolies and the third party 'attachers' through the proposed informal Infrastructure Advisory Committee (IAC) or through ongoing consultation requirements could further disadvantage consumers;
7. in order to avoid unauthorized delegation of authority by the FPSC to the electric utility monopolies the proposed new Rules would result in increased micromanagement of utility services by the FPSC;
8. the solutions proposed by the electric utility monopolies of pole hardening, strengthening other overhead facilities and tree removal would be damaging to the appearance of our neighborhoods and result in more and more serious road accidents.

It is also clear that the root cause of the recent failures in the reliability of and time to restore the electricity supply in Florida is the lack of incentive for proper maintenance of overhead facilities and lack of incentive for new investment (e.g. undergrounding these facilities) in the current environment based on regulated franchised monopolies providing the transmission and distribution systems. As concluded in the Department of Energy's report in the July 2003 "Grid 2030 A National Vision for Electricity's Second 100 Years", which was produced in collaboration with industry participants, the only effective way of achieving a more robust electricity supply and preventing such failures in the future is to replace this regulated monopoly environment with competition at each stage of electricity supply for which this is possible (i.e. excluding activities which are true 'local monopolies', in particular the local distribution system).

This Hearing has been dominated by the electric utility monopolies (also referred to as IOUs) and the third party ‘attachers’ (telephone, Internet access and cable communications companies) with only a small representation of the parties most seriously impacted by the proposed new Rules, the consumers and residents of Florida. Such representation of consumers interests has been limited to two small towns, Town of Palm Beach (population year round 10,000; seasonal 30,000) and Town of Jupiter Island (population year round 584, seasonal 1,775) and two moderately sized cities, City of North Miami (population 60,000) and City of Fort Lauderdale (population 160,000). Whilst the electric utility monopolies have focused almost exclusively on pole hardening and standards for above ground electric facilities and the third party “attachers” have focused almost exclusively on avoiding costs of hardening or undergrounding their own and electric utility owned facilities, the common presumption has been that the cost of these utility owned facilities should be borne by consumers.

In contrast the Towns of Palm Beach and Jupiter Island and the City of North Miami have focused on their desire to underground the electric distribution facilities. Although the Towns of Palm Beach and Jupiter Island have sought to reduce the costs of undergrounding utility owned facilities being passed on to their residents through amendments to the Rules requiring the electric utility monopolies to take account of reduced maintenance costs of these underground facilities, neither they nor any other participant addressed the financial implications of undergrounding at consumers expense

of electric distribution facilities of which the electric utility monopolies retain ownership and control.

If other towns and cities in Florida came to the same conclusions as the Towns of Palm Beach and Jupiter Island and the City of North Miami, and of most of the participants, including most expert witnesses, at the Hearing apart from the electric utility monopolies, that the only effective method of ensuring reliability of the electric supply (and terrestrial communications services) is to place them underground, then to do so under the proposed Rules would result in a massive, unprecedented and in most cases involuntary transfer of income and wealth from consumers to the shareholders and senior management of the electric utility monopolies, whilst locking in their monopoly position for the indefinite future. I am unaware of any reliable estimate of the cost of construction of underground local utility distribution systems for the whole of Florida. From available partial estimates I suspect that the cost for undergrounding local electric distribution system alone might be in the neighborhood of \$20-25 billion (between \$3,000 and \$4,000 per residential customer) and to add communications facilities in the same trenches might add another \$5-10 billion, resulting in a total transfer of \$30 billion.

The March 2005 study on the cost of undergrounding electric utility transmission and distribution facilities in Florida undertaken by the FPSC at the October 2004 request of the staff of the Committee on Utilities and Telecommunications in the Florida House of Representatives after the four hurricanes in 2004 that created widespread outages of electric service throughout the State, was restricted to extrapolating from the previous

1991 Commission study on undergrounding. It was also restricted to the electric utility monopolies' transmission and distribution facilities and did not include cost estimates for municipal and cooperative electric utilities. This process resulted in an estimate of \$94.5 billion for undergrounding the distribution lines and primary feeders of the Florida electric utility monopolies and would imply a transfer of nearly \$95 billion from consumers to the shareholders and senior management of the electric utility monopolies.

This report also noted that "there is less benefit to undergrounding transmission lines than undergrounding distribution lines" as "most overhead high-voltage transmission towers and lines are less susceptible to damage from weather than lower voltage distribution lines because of their greater structural strength. Also the greater height of higher voltage transmission facilities makes them less susceptible to damage from falling trees" but it failed to take account of this in its analysis or conclusions. It was based largely on transmission facilities and primary distribution feeder lines as no comparable data was available for local distribution facilities. As a result of this, the failure to properly separate transmission and primary distribution and local distribution, and the assumption of a 10-year cost recovery period, the study was heavily flawed before it was even started. I suspect that this also significantly overstates the true cost. It was not surprising therefore that the broad conclusion was that undergrounding was not 'cost effective'. An independent study for Davis Island, which suggested undergrounding was cost effective, produced a cost estimate that would indicate a number closer to the \$20-25 billion for the whole of Florida that I have quoted above.

Under the proposed Rules such underground assets would continue to be owned by the franchised electric utility monopolies even though the cost of creating them would be fully recovered from municipalities or consumers (subject to an adjustment for the reduction in maintenance costs). The new assets would sit in the balance sheets of the electric utility monopolies and will be taken into account in their share valuation and in any acquisition, such as the proposed merger between the FPL Group and Constellation Energy Group and the senior management and shareholders would be rewarded accordingly.

My alternative proposal for improving the reliability of Florida's local electric and communications infrastructure is for municipalities to construct, control and own the underground local utility distribution systems for electricity, telephone, Internet access and cable services in place of existing utility owned overhead facilities and to rent them to multiple competitive providers of these services, or in the case of electricity, alternatively, for the municipal electric utility to purchase electricity competitively from electricity generators in the wholesale market and to sell this on to its customers, in place of the current system based on regulation of franchised monopolies.

This proposal is complementary to and conforms to the national agenda for modernizing and securing the supply, transmission and local distribution of electricity as outlined by the Department of Energy's Office of Electric Transmission and Distribution in the July 2003 "Grid 2030 A National Vision for Electricity's Second 100 Years" and in the subsequent January 2004 "National Electric Delivery Technologies Roadmap". The

vision of “Grid 2030” was to energize a competitive North American marketplace for electricity, involving production, transmission and local distribution. However the Vision and Roadmap were both incomplete to the extent that they did not address the bottleneck to progress represented by private monopoly suppliers of electricity owning and controlling the local distribution systems. This could significantly reduce the benefits if energizing the competitive marketplace for electricity does not extend all of the way to retail distribution. The reasons for this omission were largely founded in the limitation of Federal jurisdiction over retail distribution within each State.

I believe that my proposal differs from existing non-generating municipal electric utilities in that it envisages

- (1) an entirely underground municipally owned local utility distribution system as the exclusive local utility distribution system;
- (2) inclusion of local distribution facilities for communications services, including telephone, Internet access and cable services, in place of their own distribution facilities;
- (3) renting the use of the utility distribution system to multiple competing service providers for electricity and communications services in place of franchised monopolies;
- (4) financing the infrastructure by issuing a bond with the capital repayment and interest debt service fully covered by the rental income.

I believe that it is similar to existing non-generating municipal electric utilities in that it would also support the option for a municipal electric service provider purchasing electricity from the wholesale market and selling it on to consumers.

The primary objectives of this proposal are (a) to underground the local utility distribution system for electricity, telephone, Internet access and cable services to ensure greater reliability in the future; (b) to facilitate open access to multiple suppliers in a fully competitive environment for electricity, telephone, Internet access and cable services to reduce costs and improve the quality of service; (c) to remove the dependency on restricted access and price regulation for these services; and (d) to achieve these objectives at no cost to consumers either in the form of non-refundable deposits, CIACs, rate increases, surcharges or taxes.

The undergrounding of the electric and associated communications facilities should be carried out by or on behalf of the municipality having authority over the road rights of way and having authority over the provision of franchises and permits ceded to such municipality through the democratic process. The municipality would own and control either directly or through a municipally-owned utility distribution authority the local underground utility distribution systems for electric, telephone, Internet access and cable services and rent these to competing service providers. Construction and management of the distribution systems could be outsourced but ownership and control should be retained by the municipality to avoid the need for price regulation. There would be no further need for micro regulation by the FPSC, which could refocus on ensuring open competition in the markets for these services.

Municipalities already provide the local road system and, in most cases, the water and sewage distribution systems that run under the roads. These are the most clear-cut examples of 'natural monopolies'. Underground local distribution systems for electricity and terrestrial communications (and gas) are other examples 'natural monopolies' and are a modern extension of the local road system as the transport for these services. It is neither practical nor economic to have competing suppliers providing their own local roads along side each other or for the service providers to dig their own trenches wherever they choose. (The same argument applies to a significantly lesser degree to the electric transmission grid.)

The undergrounding could be financed by 20-30 year municipal bond issues or by drawing on similar State backed facilities (in the case of smaller municipalities) for which the debt could be fully covered by the rental income from the utility distribution systems. The rental cost for use of the shared underground distribution systems incurred by the service providers would be less than the cost that they would incur individually if they built the same facilities and the introduction of competition into the supply of these services would result in a reduction in the price of the services (in addition to improvements in quality and choice). The cost reduction to consumers resulting from increased competition would partly or completely offset the higher cost of an underground versus overhead utility distribution systems, reflected in the cost of renting the underground municipally owned facilities versus the cost of building and maintaining electric utility monopoly owned overhead facilities, thereby shifting the cost from consumers to the monopoly profits of the electric (and other) utility monopolies. The

cost reduction, increased income and other benefits achieved through a more competitive environment, a more reliable local distribution system and the avoidance of duplication of local distribution costs should easily outweigh the amortized cost of constructing a uniform local utilities distribution system.

This proposal would also avoid the problems faced by the communications companies both in terms of passed-on costs and the opportunities for anti-competitive behavior resulting from above ground local distribution system hardening proposals that have featured strongly in the FPSC Rulemaking proceedings and Hearing under Dockets 060172 and 060173. These problems disappear in this proposal since all service providers would be on an equal footing in renting the underground local utility distribution facilities from the municipal authority. This proposal would also provide protection against "build-out" and "cherry-picking" that was of concern to State legislators in their attempts earlier this year to open up cable services to increased competition.

In recognition of the desirability of introducing competition in the provision of Internet access services, on June 28, 2006, the US Senate Commerce, Science and Transportation Committee approved S. 2686, the Communications, Consumers' Choice and Broadband Deployment Act of 2006, which pre-empts state barriers to municipal provision of broadband services.

In response to a question on behalf of the City of Fort Lauderdale at the Hearing on August 31 requesting clarification of a sentence in the proposed Rule 25-6.115 suggesting that distribution facilities undergrounded under that Rule would be owned by the electric utility monopoly, Ms. Kummer and Mr. Breman of the FPSC staff confirmed that this only applied to facilities that would continue to be maintained by the electric utility monopoly but there was nothing to stop a municipality from municipalizing the utility distribution system. In the latter situation such facilities would be owned by the municipal electric distribution utility.

The first step would be for the municipality, or a consortium acting on behalf of the municipality, to construct the new underground local utility distribution system to support multiple service providers of electricity, telephone, Internet access and cable services and, as this is constructed, to substitute it progressively for the existing (overhead) utility distribution facilities with the existing service providers. This will raise issues about compensation for the termination by the municipality of existing franchised facilities and the responsibility for removal of franchised facilities and non-franchise facilities constructed under blanket permits. In addition some existing underground facilities that meet the requirements for multiple service providers might be purchased by the municipality. In other cases the introduction of the underground municipal distribution system will result in compensation for the owners of the existing facilities, which will partly offset the rent for use of the underground municipal distribution system for a transitional period based on the remaining life of these facilities. It may also require

regulatory changes to enable outsourcing by municipalities of the management of electric and communications utility distribution systems.

The second step would be to connect the municipally owned and controlled underground local utility distribution systems to the Florida electric transmission Grid through underground primary feeder lines. In some cases this will require rights of way through other municipalities.

The third step would be to invite other service providers for electricity, telephone, Internet access and cable services to use the municipal utility distribution systems to provide competing services to the residents of the municipality or to bid for the supply of electricity to the municipal electric distribution utility. This may require enabling legislation.

A fourth step would be for the FPSC and State to respond positively to the FERC and Department of Energy initiatives for a more robust national electricity supply by arranging for Florida to participate in a multi-state Regional Transmission Organization (RTO) on the lines of the currently moribund SeTrans RTO that that was intended to cover all or parts of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina and Texas, by supporting the construction of additional interstate transmission capacity under the authority provided to the Secretary of Energy in the 2005 Energy Policy Act, and by relaxing State restrictions on construction of additional electric generation capacity in Florida. These actions would further extend the competition for

the supply of electricity to the municipality by extending their market for generation capacity beyond that currently provided by the Florida electric utility monopolies, FEMA, and Florida municipal and electric cooperative generators to any generator of electricity in the Eastern Interconnection of the National Grid. Additional steps might be to encourage competitive transmission facilities within Florida to provide alternative connections to the National Grid.

On its own, municipalization and undergrounding with competition between multiple service providers, would achieve the purpose stated in the Notice of Rulemaking to increase the reliability of Florida's electric distribution infrastructure. However, the benefits would be further enhanced if in addition (1) Florida complied with the December 1999 FERC Order No. 2000 encouraging voluntary transfer of control of electric transmission facilities to a RTO to ensure open and transparent access to these facilities, (2) Florida worked with the US Department of Energy to establish additional intrastate electric transmission capacity as provided for in the Energy Policy Act of 2005 to open up Florida to additional electric generation capacity outside of the State, and (3) Florida amended State legislation preventing new uncommitted electric generation facilities to be sited in Florida.

Florida electric utilities complied with the April 1996 FERC Order No. 888 requiring all transmission facilities to file Open Access Transmission Tariffs (OATTs) to "functionally unbundled" wholesale power services from transmission services; but this only applied to interstate wholesale transmission and unbundled interstate retail transmission due to

FERC's uncertainty about its jurisdiction over utilities that do not offer unbundled retail sales. (In 2002 the US Supreme Court in *New York v FERC* 535 US1 affirmed that FERC had no jurisdiction over bundled retail sales of electricity.)

In the July 30, 1999, update to the FPSC report on "Key Aspects of Electric Restructuring and their Relevance for Florida's Electricity Market" the FPSC stated its opposition to the restructuring proposed by FERC. The FPSC challenged FERC's authority in "states such as Florida where the Legislature has established a clear and pervasive regulatory scheme" (page 10). After the FPSC proposed to FERC a Florida only RTO, the Florida electric utility monopolies filed in October 2000 for RTO status for GridFlorida as a restricted for-profit Florida RTO. This was then challenged by the FPSC who questioned the benefit to Florida consumers assuming the estimated \$9 million start up costs. After an extremely lengthy diversion, including a flawed cost-benefit analysis, this culminated in the granting of the GridFlorida Companies' request to withdraw their compliance filing and closing of Docket 020233 by the FPSC on May 9, 2006.

By 2004 regions accounting for 68% of US economic activity had adopted RTOs but notably not Florida. The primary objections to RTOs expressed by Public Service Commissions in several Southern and Midwestern states have been that RTOs could transfer some of their retail transmission authority to federal regulators and that RTO membership and start-up costs would increase electricity rates to consumers. The SeTrans RTO proposal for Southeastern states has been indefinitely suspended due to these states'

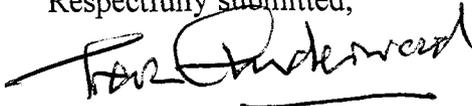
participation requiring approval from their respective Public Service Commissions who indicated that were unwilling to cede their authority. Meanwhile 24 States and the District of Columbia had also enacted legislation to promote competition in the supply of retail electricity in these states, again excluding Florida.

The grounds for this motion are that the proposed new Rules and amendments to existing rules are not sufficient to achieve the stated objective of improving the reliability of Florida's local electric and communications infrastructure under extreme weather events, that the proposed solution transfers too much additional control to the existing electric utility monopolies and fails to address consumers interests, that a more effective alternative solution exists that has not been considered in this Hearing, and that this alternative falls outside the scope of Docket Nos. 060172-EU, 060173-EU and 060512-EU. The purpose of the proposed Docket would be for the FPSC to review whether any new Rules, amendments to existing Rules or changes in State legislation are required to enable Florida municipalities to avail themselves of this alternative solution.

The battle against the monopolistic utility holding companies started with President Franklin Roosevelt in 1935; in Florida we are still suffering on account of the unfinished business. It is time to move on. There is virtually no other area of economic activity where anyone would advocate an isolationist policy and forgo the benefits provided by participating in the economies of scale and benefits of competition provided by the United States market.

I would like to end my comments with a quote by Pat Wood, prior to his appointment by President George Bush as FERC Chairman, in a FRONTLINE interview on March 26, 2001: Question: "...You are a person who believes in competition, free markets, deregulation?" Answer: "Exactly in that order." Question: "Which order?" Answer: "Competition first. *Because on our best day as a regulator, we can't do near the job for the customer that a competitive open market can do.* But you've got to have that as the trade off. I, and my ilk, have been the substitute for competition for ...80 years, since 1920 or 1930 or so..."

Respectfully submitted,

A handwritten signature in black ink that reads "Trevor Underwood". The signature is written in a cursive style and is positioned above a horizontal line.

Trevor G. Underwood, Esq.
2425 Sunrise Key Blvd.
Fort Lauderdale, FL 33304