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October 2, 2006

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

**In re: Docket No. 060172-EU - 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. 061073-EU - Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code**

Dear Ms. Bayo:

Enclosed is an original and 15 copies of BellSouth Telecommunications, Inc.'s Post-Workshop Comments, which we ask that you file in the captioned dockets.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.

**FLORIDA PUBLIC SERVICE COMMISSION**

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| 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 |
| 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: October 2, 2006 |

**BELLSOUTH TELECOMMUNICATIONS, INC.'s**
**POST-HEARING COMMENTS**

BellSouth Telecommunications, Inc. ("BellSouth") submits these comments following the public hearing held on August 31, 2006 regarding proposed Rules 25-6.0341, 25-6.0342, and 25-6.0343 and amendments to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, and 25-6.115, Florida Administrative Code (collectively "Proposed Rules"). As will be set forth in more detail below, the Florida Public Service Commission ("Commission") should reject the Proposed Rules, or, in the alternative, adopt the alternative rules proposed herein.

**SUMMARY OF BELLSOUTH'S POSITION**

The intended purpose of the Proposed Rules is "to strengthen Florida's electrical infrastructure and decrease restoration times following extreme weather events." *See* Order No. PSC-06-0610-PCO-TP at 1. BellSouth believes that reducing power outages following extreme weather events is a laudable goal and supports this general objective; however, the Proposed Rules are not the appropriate vehicles to achieve the desired result.

***First***, there is a legitimate question as to whether the Proposed Rules will accomplish much if anything, other than imposing staggering costs on pole attachers and ultimately on Florida consumers. It is both telling and ironic that the only pole owners in Florida supporting the concepts articulated in the Proposed Rules are Investor Owned Electric Utilities ("IOUs"). Indeed, the Florida Electric Municipal Association ("FEMA") and the Florida Electric Cooperative Association ("FECA"), both of which represent municipal and rural cooperative electrical companies (collectively "MUNI(s)"), have stated in Docket No. 060512-EU and this proceeding that a requirement to use extreme wind loading standards would greatly increase the cost of construction, "possibly without any measurable benefit" and that "applying extreme wind loading standards to municipal distribution systems will likely not improve the storm-hardiness of those distribution systems."[1]

FMEA and FECA also stated that the cause of fallen poles was trees and debris falling on conductors and reiterated that "[m]any of the poles that failed due to wind were in fact built to meet the extreme wind loading."[2] The fact that the two types of owners of electric poles in Florida – MUNIs and IOUs - do not agree on the need for the Proposed Rules is instructive and belies the IOUs' positions and arguments in this proceeding.

Likewise, Incumbent Local Exchange Companies ("ILECs") have also presented credible evidence to establish that the Proposed Rules will not have the intended effect. Dr. Larry Slavin, on behalf of Verizon, testified that distribution facilities would still be subject to damage from trees, tree limbs and flying debris, even if built to the increased

[1] *See Direct Testimony of William B. Willingham* in Docket No. 060512-EU at 4; FMEA's May 3, 2006 Comments in Docket No. 060172-EU at 13, collectively attached hereto as Exhibit 1.
[2] *Id.*

standards.[3] He also testified that adopting the Proposed Rules would actually make the current situation worse, because they will delay restoration and result in more downed-poles following typical storms.[4] Similarly, George Finn of Embarq testified that pole damage resulted from many factors: "Airborne debris, falling trees, falling tree limbs, flooding, storm surge, sand, as well as wind." Mr. Finn was also "unaware of any data from Florida or any of the other states in which we operate that suggests that the existing standards are inadequate, nor [was he] aware of any documented evidence that suggests that exceeding the current standards would provide any additional protection from these violent storms."[5] Moreover, Kirk Smith of BellSouth testified that some of poles that fell in Hurricane Wilma were new or made of concrete and that the percentage of poles that fell (10,000) "represented a miniscule portion of the overall network damaged."[6]

In fact, the public comments of Florida Power & Light ("FPL") just after Hurricane Wilma support the ILEC and MUNI arguments, not the current *ex post facto* positions of the IOUs. For instance, it was reported that:

- "Hurricane Wilma did massive damage to Florida Power & Light's electric supply system, knocking out 240 substations . . . That makes Wilma a far more destructive hurricane than Katrina."[7]
- "Flying debris appears to be the reason for many of the knocked-out substations. . . ."[8]
- "[e]ach substation must undergo an arduous restart process, in which every element and circuit is checked before the unit is brought back on line."[9]

[3] Aug. 31, 2006 Tr. at 35.
[4] *Id.* at 25.
[5] *Id.* at 71.
[6] *Id.* at 33.
[7] *FPL Substations "Severely Damaged"*, THE MIAMI HERALD, Oct. 26, 2005, attached hereto as Exhibit 2.
[8] *Id.*
[9] *Id.*

- Some of the poles that fell as a result of Hurricane Wilma were "installed as recently as last year" and that "many of the [concrete poles] broke during Wilma too."[10]

- "Williams said that while good progress has been made, the severe damage that Wilma dealt to transmission lines and substations was a major challenge and prevented speedier rates of restoration than the company has historically been able to accomplish."[11]

- "Teams of FPL forensics experts are studying damage to substations where flying debris wrapped itself around equipment, knocking out power to thousands at a time."[12]

- "The roughly 10,000 poles [Wilma] destroyed is fairly miniscule among FPL's 1 million statewide."[13]

- "FPL says the poles are built to a national standard and have weathered other storms just fine."[14]

In light of all of this evidence, including FPL's comments immediately following Hurricane Wilma, there is a real question as to whether the Proposed Rules will reduce the widespread power outages that resulted after Hurricane Wilma. This is so because the Proposed Rules do nothing to "harden" electric substations or otherwise lessen the risk that 240 substations (each of which serves 10,000 to 30,000 customers) will fail again.

Significantly, there is no dispute that complying with the Proposed Rules will be extremely costly for IOUs and attaching entities alike. In fact, Kirk Smith of BellSouth testified that BellSouth's estimate of its potential costs ranges from $500 million to $4

[10] *FPL: Wind Felled Poles – Not Rot*, THE MIAMI HERALD, Nov. 1, 2005, attached hereto as Exhibit 3.
[11] FPL Press Release, Oct. 28, 2005, attached hereto as Exhibit 8.
[12] *Wilma's Destruction Baffles FPL Officials*, THE HERALD TRIBUNE, Oct. 28, 2005, attached hereto as Exhibit 4.
[13] *Id.*
[14] *Id.*

billion, depending on certain unknown factors.[15] These estimates include costs that are illogical from a business and operational perspective. For example, it is likely that BellSouth will be forced to incur expenses associated with replacing good, working facilities if the Proposed Rules go into effect.[16] All of the costs prompted by the Proposed Rules will have to be passed on to Florida consumers, because no entity can absorb them.

At the very least, the Proposed Rules are premature. BellSouth has already committed time and resources to implementing the pole inspection process mandated by the Commission earlier this year. *See* Order No. PSC-06-0168-PAA-TL (Issued March 1, 2006) in Docket No. 060077-TL, (hereinafter "Telecom Inspection Order"). The Telecom Inspection Order require telecommunications companies to inspect their wood poles on an eight year cycle and file an annual report that includes a review of the methods used to determine National Electric Safety Code ("NESC") compliance for strength and structural integrity (taking into account pole loading where required), and summary data and results of the prior year's inspections, addressing the strength, structural integrity, and loading requirements of the NESC. *See Telecom Inspection Order* at p. 9. The Commission imposed similar inspection requirements on the electric utilities. *See* Order No. PSC-06-0144-PAA-EI (Issued February 27, 2006) in Docket No. 060078-EI. BellSouth is concerned that the Proposed Rules will effectively invalidate the inspection process that is underway.[17]

[15] This cost calculation is a pure estimate based on certain assumptions, including some that represent a "worst-case" scenario based on the scope and extent of any potential hardening. Without additional information from the IOUs, BellSouth is unable to provide a more accurate cost estimate at this time.
[16] *See* August 31, 2006 Tr. at 30.
[17] *Id.* at 30-31.

Given the fact that, even if distribution facilities are "hardened," power outages will still occur following hurricanes due to damage to substations or to the falling of concrete poles, the Commission should conduct a full cost-benefit analysis, including an analysis of data gathered in the pole inspection process, before adopting the Proposed Rules. In doing so, BellSouth submits that the Commission will find that any potential benefits – benefits that are, at a minimum, in serious doubt – are in fact outweighed by the potential costs.

***Second***, the Commission is prohibited from adopting the Proposed Rules because they constitute an improper exercise of legislative authority; and, to the extent such legislative authority exists, the Proposed Rules represent an improper delegation of that authority to the IOUs. Moreover, the Proposed Rules impermissibly conflict with federal law and the Commission is without jurisdiction to adopt them.

***Third***, the Commission, if it is inclined to pursue the Proposed Rules, has a statutory obligation to consider and adopt less costly alternatives that substantially accomplish the statutory objectives. *See* Section 120.54(1)(d), Florida Statutes. BellSouth proposes that the Commission establish the Infrastructure Advisory Committee ("IAC") to comply with this mandate. The IAC will allow the industry participants to jointly evaluate existing standards, analyze pole inspection data, and develop construction, attachment and joint trenching standards to address the reasonable concerns of all entities while also achieving the Commission's goal of reducing electrical outages following extreme weather events.

Specifically, within 30 days, the IAC would (1) evaluate the existing and the proposed construction and attachment standards; (2) increase the efficiency of hurricane

restoration efforts; and (3) identify specific geographic areas to assess all critical infrastructures and necessary hardening efforts. Within 60 days, the IAC would also (1) evaluate target areas; (2) coordinate pole inspections so data can be gathered; (3) communicate hardening projects to allow for consolidated industry coordination; and (4) discuss how to coordinate longer term hardening efforts. The IAC would, within 180 days (the same amount of time given to the IOUs to develop construction standards under Proposed Rule 25-6.034), (1) develop construction standards and attachment standards with all industry participants; (2) develop joint trenching standards for all new construction in a buried facility environment; and (3) determine further actions prompted by the pole inspection data collected.[18]

Alternatively, BellSouth proposes that the Commission recede from the Proposed Rules and adopt the "Alternative Rule" attached as Attachment A to FECA's Supplemental Comments filed on September 15, 2006 in the Docket No. 060512-EU (the "Alternative Rule" and attached hereto as Exhibit 5) and apply it uniformly to IOUs, municipal electrics, and electric cooperatives. The Alternative Rule is clearly a less costly alternative that ensures that the IOUs pay due attention to issues critical to pole reliability and safety: construction standards, facility inspections and vegetation management.

***Fourth***, the Commission should not look at the Proposed Rules in a vacuum. In their previously filed comments, the IOUs made it clear that they plan to use the Proposed Rules to attempt to trigger obligations under the parties' Joint Use Agreements ("JUAs") to shift some of their costs associated with the "hardened poles" to attaching

[18] *See* August 31, 2006 Tr. at Exhibit 3.

entities.[19] This was never intended by the parties and is not supported by the JUAs. Nevertheless, the IOUs will attempt to use the Proposed Rules to argue that "hardening" is mandatory per the Rules, thereby providing them with perceived better arguments in future proceedings to recover their costs from Florida end users and attaching entities. The Commission should not be hood-winked by this financial posturing and, importantly, should not sanction it.

## BACKGROUND

On August 31, 2006, the Commission held a public hearing to discuss the Proposed Rules. The Commission heard arguments and testimony from interested parties, including BellSouth's proposal that the IAC be formed to evaluate overall network hardening before the Commission adopts the Proposed Rules. The Commission set the deadline for filing post-hearing comments as October 2, 2006, to allow the IOUs, ILECs, Competitive Local Exchange Companies ("CLECs") and cable companies a thirty (30) day time period to discuss the IAC proposal and the Proposed Rules. At the close of the workshop, the Commission requested that the following topics, among others, be addressed in the post-hearing comments: (1) the argument that the Proposed Rules result in the improper delegation of the Commission's rulemaking authority to the IOUs; (2) challenges to the Commission's authority to adopt the Proposed Rules; (3) proposals for strengthening the collaboration requirements contained in the Proposed Rules, and; (4) a discussion of the cost estimates and benefits. The Commission also requested that the

[19] By acknowledging the existence of this argument, BellSouth does not concede it or believe that it is appropriate. In fact, in an abundance of caution, BellSouth denies the argument and reserves all rights and defenses associated with its JUAs and any claim that the Proposed Rules impact said agreements.

interested parties submit their proposed changes to the Proposed Rules and report on the progress of the post-hearing collaborative efforts.

## ARGUMENT

### A. The Proposed Rules Constitute an Improper Exercise of Commission Authority.

Adoption of the Proposed Rules results in an improper exercise of the authority delegated to the Commission by the Legislature. Further, even if the Commission did have the authority to adopt the Proposed Rules, it is improperly sub-delegating this authority to the IOUs.

#### 1. Overview of Rulemaking Authority.

The Administrative Procedure Act, Chapter 120, Florida Statutes, contains a variety of limits on the ability of state agencies to adopt agency rules. The Legislature has recognized that no agency has "inherent rulemaking authority" but instead is limited to adopting only rules "that implement or interpret the specific powers and duties granted by the [agency's] enabling statute." *See* Sections 120.54(1)(e), 120.52(8), Florida Statutes. Thus, the rule adopted by the agency must directly correlate to the specific powers and duties granted by the Legislature:

> [A]gencies have rulemaking authority only where the Legislature has enacted a specific statute and authorized the agency to implement it, and then only if the (proposed) rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency.

*See Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 700 (Fla. 1st DCA 2001). In *Day Cruise,* the First Circuit cautioned that, "[i]f reasonable doubt exists as to the 'lawful existence of a particular

power that is being exercised, the further exercise of the power should be arrested.'" *Id.* at 701. Thus, any reasonable doubt as to the existence of the required legal authority is resolved against the agency. *Id.* at 701.

Additionally, the Legislature also requires agencies to evaluate the cost of regulation in the rule adoption process. Specifically, Section 120.54(1)(d), Florida Statutes, requires that all agencies must choose "the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives."[20]

### 2. The Proposed Rules Exceed the Commission's Specific Grant of Authority.

Here, the Commission bases its authority to adopt the Proposed Rules on Sections 366.04(5) and (6), Florida Statutes, and Sections 366.05(1) and (8), Florida Statutes (collectively "the Enabling Statutes"). The Enabling Statutes recognize the Commission's exclusive authority to regulate a coordinated elective power grid, to prescribe and enforce safety standards, to establish standards of quality, and to require installation or repair of necessary facilities. In 2006, the Legislature granted the Commission "the ability to adopt construction standards that exceed the National

[20] Pursuant to 120.56(8), Florida Statutes, a proposed rule may be declared an invalid exercise of delegated legislative authority if any one of the following applies: (a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter; (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1; (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1; (d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; (e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or (f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

Electrical Safety Code," for purposes of ensuring the reliable provision of service. Section 366.05(1), Florida Statutes.

Instead of exercising this grant of authority to adopt construction standards, the Commission, however, through the Proposed Rules, essentially requires the IOUs to adopt and enforce their own standards of construction that purportedly will further the Commission's goal of reducing power outages following extreme weather events. This approach to regulation exceeds the Commission's grant of authority, as nowhere in the Enabling Statutes is the Commission given the authority to sub-delegate its authority to adopt construction standards to private entities. *See Florida Nutrition Counselors Association v. Department of Business and Professional Regulation*, 667 So. 2d 218, 222 (Fla. 1st DCA 1995); *see also Florida Attorney General Opinion* 078-53, issued March 28, 1978.[21]

The Proposed Rules are not legitimized by the fact that the Commission retains the authority to resolve disputes between IOUs and third parties attachers. "Rulemaking is not a matter of agency discretion." Section 120.54(1)(a), Florida Statues. Any construction standards adopted under the Enabling Statutes must be developed through the rulemaking procedure contained in Section 120.54, Florida Statutes. *See id.* Additionally, contrary to suggestions made at the August 31st public hearing, the Commission would not satisfy its statutory rulemaking obligations by amending the Proposed Rules to include a review and approval process. Again, the construction

[21] In that opinion, the Attorney General responded to an inquiry from the Commission regarding its regulation of motor carriers. One of the questions the Attorney General considered was whether the submission of rates by private rate organizations to the Commission for approval was an unlawful delegation of the Commission's statutory responsibility for rate setting. The Attorney General decided that it was not because the Commission made the final determination regarding the appropriate rates. The Attorney General emphasized that the Commission had "an affirmative duty" to determine that all rates approved or promulgated by it were reasonable.

standards themselves must be vetted through the rulemaking process set forth in Section 120.52, Florida Statutes. A construction standard that was merely reviewed and approved by the Commission would be subject to challenge under Section 120.56(4), Florida Statutes as a rule adopted in violation of applicable rulemaking procedures.

Further, the Proposed Rules constitute an improper exercise of legislative authority, because they purport to regulate third party attachments to IOU facilities. The Enabling Statutes do not provide the Commission with any authority to regulate third party attachments. Indeed, as discussed in greater detail below, in *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648 (Fla. 1980), the Florida Supreme Court specifically held that the Commission lacked statutory authority to regulate this subject matter. The Florida Legislature has not seen fit to grant the Commission such authority since the decision in *Teleprompter*. As a result, to the extent the proposed rules purport to regulate third party attachments, they violate Sections 120.52(8)(b) and (c), Florida Statutes, in that they exceed the Commission's grant of rulemaking authority, and enlarge, modify or contravene the specific provisions of law sought to be implemented by the Commission.

Lastly and significantly, the Proposed Rules are invalid pursuant to Section 120.52(8)(g), because they impose costs that could be reduced by the adoption of less costly alternatives that substantially accomplish the same statutory objectives. As more fully discussed below, BellSouth asserts that the Commission could substantially achieve its objective of reducing power outages following extreme weather events by establishing the IAC or adopting the Alternative Rule.

## B. The Commission Does Not Have the Jurisdiction to Adopt the Proposed Rules.

The Proposed Rules impermissibly conflict with federal law. First, the proposed regulations extend beyond implementing safety requirements for electric transmission and distribution poles and attempt to regulate the terms, conditions, and rates of pole attachments. Because the Commission has not certified – indeed, it cannot certify – that it can regulate pole attachments terms, conditions, and rates under 47 U.S.C. § 224(c), the proposed regulations are an impermissible end-run around that certification requirement.

Second, because the Commission lacks the authority to regulate the cable companies, the proposed regulations necessarily lead to discriminatory treatment in violation of § 224(f).

Finally, the proposed regulations vest enforcement of the Attachment Standards and Procedures solely in the hands of the IOUs. Both the FCC and courts agree that this is impermissible and thwarts the goal of nondiscriminatory access to pole attachments guaranteed in § 224(f).

### 1. The Proposed Regulations Circumvent the Certification Requirements of § 224(c).

The certification requirements of 47 U.S.C. § 224(c) allow a state to "regulate[] the rates, terms, and conditions for pole attachments" only if it certifies to the FCC that the state has jurisdiction to "regulate[] such rates, terms, and conditions and ... the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments." 47 U.S.C. § 224(c)(2). However, "a State shall not be considered to regulate the rates, terms, and conditions for pole attachments ... unless the State has issued ... regulations implementing the State's regulatory authority

over pole attachments." *Id.* § 224(c)(3). In this case, the Commission has not certified to the FCC that it has jurisdiction to regulate pole attachments and thus "shall not be considered to regulate" pole attachments.

Just as important, the Commission cannot certify to the FCC that it has the ability to regulate pole attachments. Indeed, the Commission has already attempted to certify under § 224(c) that it could regulate pole attachments, and its decision was overturned by the Florida Supreme Court in *Teleprompter Corp.*, *supra*. Specifically, the Supreme Court rejected the Commission's claim that it had the authority to regulate pole attachments, stating that the Commission had provided "[n]o reason ... for asserting jurisdiction" over pole attachments. *Id.* at 650. The Court further held that the Commission could not certify that it could regulate pole attachments because, among other things, "the [C]ommission does not have the authority to regulate the agreements or consider the interests of cable television subscribers." *Id.* at 649.

Because the Commission has not and cannot certify that it can regulate the terms, conditions, and rates of pole attachments, that job falls solely to the FCC. *See Local Competition Order*[22] ¶ 1154 ("The 1996 Act increased significantly the [FCC's] role with respect to attachments by creating federal rights and obligations, which for decades had been the subject of state and local regulation."). Under § 224(b), if a state does not certify that it has authority to regulate pole attachments, "the [FCC] shall regulate the rates, terms, and conditions for pole attachments ... and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions." 47 U.S.C. § 224(b)(1). The statute clearly sets up a regime in which the

[22] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

states must meet the certification requirements of § 224(c) or else the FCC will have exclusive jurisdiction over pole attachment rates, terms, and conditions. *See Local Competition Reconsideration Order*[23] ¶ 108 ("the 1996 Act expanded the preemptive authority of states to match the expanded scope of the [FCC's] jurisdiction") (emphasis added); *see id.* ¶ 114 ("If a state has not exercised such preemptive authority, the LEC must comply with federal rules.").

The FCC also has interpreted § 224 to give it sole authority to regulate pole attachments unless a state meets the certification requirements of § 224(c). Specifically, the FCC requires that, "if a state that has not previously certified its authority over rates, terms and conditions wishes to begin to assert such jurisdiction, [then] the state must certify its jurisdiction, as required under section 224(c)(2)." *Id.* ¶ 115 (emphasis added). According to the FCC, any other interpretation of the certification requirement would result in "potential confusion and lack of certainty ... and [we] do not believe that Congress intended such a result." *Id.* Here, the proposed regulations thwart that statutory structure and ignore the FCC's requirements – allowing regulation by the Commission in an area that the Commission cannot certify that it regulates. Because the proposed regulation "would upset the uniform regulation ... intended by Congress [and] would contravene the structure and purpose of the federal statute," it is preempted and invalid. *Howard v. Parisian, Inc., 807 F.2d 1560, 1565* (11th Cir. 1987).

[23] Order on Reconsideration, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 18049 (1999) ("*Local Competition Reconsideration Order*").

The one area in which the FCC has allowed states to regulate without certification is in the area of electric pole safety. *See Entergy*[24] ¶ 11 ("state and local [safety] requirements affecting attachments are entitled to deference") (emphasis added). However, allowing states to enact electric transmission safety regulations that may collaterally affect pole attachments is significantly different from authorizing states to issue rules, like the regulations proposed here, that purport to regulate the pole attachments directly. Rather, "the [FCC has] rejected the suggestion ... that state and local regulators, rather than the [FCC], have primary responsibility for determining whether a utility's engineering standards and practices are just and reasonable under section 224." *Id.*

Specifically, proposed Rule 25-6.0342, entitled "Third-Party Attachment Standards and Procedures," purports to directly regulate pole attachments. Additionally, the proposed rule allows the Commission to adopt terms and conditions regarding the "safety, reliability, pole loading capacity and engineering standards and procedures for attachments." 25-6.0342(1). Thus, the proposed rule is aimed directly at regulating attachments. Moreover, the scope of the proposed rule is enormously broad, allowing the IOUs to adopt any pole attachment condition that "meet[s] or exceed[s]" the NESC. *Id.* This broad scope causes the proposed regulations to cover pole attachment issues that the FCC already regulates under its § 224 authority, such as overlashing,[25] the presumptively reasonable amount of safety space on poles,[26] the qualifications of workers who may

[24] Hearing Designation Order, *Arkansas Cable Telecomms. Ass'n v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158 (2006) ("*Entergy*").

[25] *See* Consolidated Partial Order on Reconsideration, *Amendment of the Commission's Rules Governing Pole Attachments*, 16 FCC Rcd 12103, ¶¶ 73-78 (2001) ("*Pole Attachment Reconsideration Order*").

[26] *See id.* ¶ 51.

make pole attachments,[27] and when an electric company must expand pole capacity.[28] The language and reach of the proposed regulations therefore show them to be direct regulation of the terms, conditions, and rates of the pole attachments – which is forbidden unless the state certifies under § 224(c).

**2. The Proposed Regulations Are Necessarily Discriminatory.**

Even if the Commission had jurisdiction to regulate pole attachments without certification, the Proposed Rules would still violate federal law. This is so because the Proposed Rules will necessarily result in discriminatory treatment of cable companies over telecommunication providers, which is prohibited by 47 U.S.C. § 224(f)(1).[29] The discrimination invariably arises because Florida courts have held "that the Public Service Commission does not have jurisdiction to regulate cable television." *Devon-Aire Villas Homeowners Ass'n, No. 4., Inc. v. Americable Assocs., Ltd.*, 490 So. 2d 60, 61 (Fla. Dist. Ct. App. 1985); *see Hawkins*, 384 So. 2d at 649 ("the [C]ommission does not have authority to regulate the agreements or consider the interests of cable television subscribers"). Thus, assuming that the Commission could promulgate proposed rule 25-6.0342 to regulate telecommunications carriers' pole attachments, it has no jurisdiction to regulate the cable companies' pole attachments. Thus, only telecommunications providers would be subject to the proposed regulation, and only the telecommunications providers would be forced to conform to the standards established pursuant to the rule.

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[27] *See Local Competition Order* ¶ 1182.

[28] *See Local Competition Reconsideration Order* ¶¶ 51-52 .

[29] While ILECs are excluded from the definition of "telecommunications carrier" for the purpose of this statutory subsection, BellSouth highlights this legal argument to show that the Proposed Rules will effectively discriminate against other telecommunications providers.

Such discriminatory access to pole attachments is expressly prohibited under 47 U.S.C. § 224(f)(1), which states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole." Moreover, § 224(f)(2), which allows denial of access due to safety or other reasons, still requires that such denial be made only "on a non-discriminatory basis." 47 U.S.C. § 224(f)(2). Such discriminatory denial of access to poles is also prohibited under 47 U.S.C. § 253, which prevents any "State or local statute or regulation [which] may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." *Id.* § 253(a); *see Local Competition Order* ¶ 1155 ("the discretion of state and local authorities to regulate in the area of pole attachments is tempered by section 253"). [30] Like § 224(f), the prohibition in § 253 contains an exception that allows for a state to impose safety regulations, but only if those regulations are imposed "on a competitively neutral basis." 47 U.S.C. § 253(b).[31] Put simply, the proposed regulations are unfair and legally discriminatory to the extent they impose conditions of access to pole attachments on telecommunication providers, while having no impact on cable television providers.

Additionally, there is no merit to the argument that the Commission has power to regulate cable television pole attachments. First, *Hawkins* conclusively holds that the

[30] The FCC has interpreted the phrase "having the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service" as covering a state regulation that "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." Memorandum Opinion and Order, *California Payphone Association Petition for Preemption of Ordinance No. 576 of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, 12 FCC Rcd 14191, ¶ 31 (1997). Denial of access to pole attachments clearly "materially inhibits" the telecommunications carriers' ability to "compete in a fair and balanced legal and regulatory environment."

[31] *See RT Communications, Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000) ("Neither the language of section 253(b) nor its legislative history suggest that the requirement of competitive neutrality applies only to one portion of a local exchange market ... and not to the market as a whole, including the incumbent LEC.").

Commission lacks this power. *See Hawkins*, 384 So. 2d at 649. Second, contrary to the electric companies' assertions, it is impossible to read Section 366.04(6), Florida Statutes as overturning *Hawkins*. Section 366.04(6) confirms that the Commission may "prescribe and enforce safety standards for transmission and distribution facilities," including the ability to adopt construction standards that meet or exceed the NESC to ensure reliable service. It says nothing about extending the Commission's jurisdiction to regulate cable companies. More importantly, as late as 1998, the Commission itself recognized that "we do not have jurisdiction over cable television lines [due to *Devon-Aire*, 490 So. 2d 60, and Fla. Stat. § 364.02(12), which] explicitly exclud[e] cable television companies from [Commission] jurisdiction." *Orange County Order*,[32] at *2 (emphasis added). Thus, assuming that Commission can promulgate the proposed regulations even if it has not certified under 47 U.S.C. § 224(c), the proposed regulations can only apply to the telecommunications companies, which is necessarily discriminatory and a violation of § 224(f).

### 3. Handing Over Enforcement of the Attachment Standards To the Electric Companies Violates Federal Law.

Apart from the question of whether the Commission has the power to enact the proposed regulations in the first instance, the regulations themselves currently conflict with federal law by placing enforcement of the Attachment Standards and Procedures solely at the discretion of the IOUs. Specifically, proposed regulation 25-6.0342(2) states that "[n]o attachment to a utility's electric transmission or distribution poles shall be

[32] Notice of Proposed Agency Action Order Determining PSC Jurisdiction, *Orange County Circuit Court Referral of Issues of Case No. CI 96-1812 (Wellington Property Management, Inc. and Emerson Communications Corporation vs. Parc Corniche Condominium Association, Inc. and Orange County, Florida) to the Florida Public Service Commission for Review and Determination of What Issues, if Any, the Commission has Jurisdiction Over*, Order No. PSC-98-0699-FOF-TP, 1998 WL 479967 (Fla. PSC May 20, 1998) ("*Orange County Order*").

made except in compliance with such utility's Attachment Standards or Procedures," and leaves that determination up to the IOU. This is an unacceptable delegation of authority that undermines the protections put in place by 47 U.S.C. § 224(f).[33]

The FCC has already addressed the IOUs' arguments that the utilities should be in charge of enforcing safety regulations and has "reject[ed] the contention of some utilities that they are the primary arbiters of such concerns, or that their determinations should be presumed reasonable." *Local Competition Order* ¶ 1158. Rather, the FCC has held that placing enforcement solely into the utilities' hands thwarts "Congress' intention that utilities must be prepared to accommodate requests for attachments" and creates an end-run around the protections of § 224(f)(1). *Id.* Any other result would lead to "utility-imposed restrictions that could be used unreasonably to prevent access" to pole attachments. *Id.* ¶ 1150. That is why there must be "procedures that will require utilities to justify any conditions they place on access" to a neutral party, such as the Commission – the utilities may not decide when to deny access on their own. *Id.*

The FCC's distrust of "self-regulation" by the electric companies is supported by *Southern Co. v. FCC*, 293 F.3d 1338 (11th Cir. 2002). There, electric companies challenged FCC regulations restricting the pole owner's rights to reserve space on a given pole in order to ensure the integrity and reliability of the provision of electric service. *See id.* at 1347. The utility companies challenged those rules as contrary to § 224(f)(2), which states – similar to the proposed regulation here – that third parties may not attach to poles "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." 47 U.S.C. § 224(f)(2). The electric utilities

[33] Again, while ILECs are excluded from the definition of "telecommunications carrier" for the purpose of this statutory subsection, BellSouth highlights this legal argument to show that the Proposed Rules will effectively discriminate against other telecommunications providers.

construed § 224(f)(2) to mean that the utilities could deny any attachment that, in their estimation, violated these provisions. *See Southern Co.*, 293 F.3d at 1349. The court disagreed, noting that the utilities' claim that they "enjoy the unfettered discretion to determine when capacity is insufficient[] is not supported by the Act's text." *Id.* at 1348. Rather, "such a construction would undermine the plain intent of the nondiscrimination provisions found in § 224(f)(1)." *Id.* Just as the utilities were not allowed to decide for themselves when § 224(f)(2) applied in *Southern Co.*, the utilities should not be allowed unilaterally to determine when the Attachment Standards are met. Giving the utilities such "unfettered discretion" would destroy the right to nondiscriminatory access to pole attachments, by placing the policing of the statute in the hands of those that are meant to be policed.

Here, the proposed regulations would allow electric companies to unilaterally deny pole attachments on the pretext that the attachment did not meet the Attachment Standards and Procedures; it would encourage the very discrimination that § 224(f) means to prevent. In sum, by allowing electric companies to enforce the Attachment Standards, the proposed regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" and is preempted. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

### C. Any Cost-Benefit Analysis Results in a Finding that the Proposed Rules Should Not Be Adopted.

There is a widespread concern among the attaching entities that the Proposed Rules will lead to significant increases in costs and operational expenses. BellSouth

testified at the August 31st workshop that the Proposed Rules could result in an anticipated cost to BellSouth of between $500 million and $4 billion.[34]

The power outages following the 2005 storm season and specifically Hurricane Wilma prompted the Commission to initiate these rulemaking proceedings. In light of the significant cost impact the Proposed Rules will have on pole owners, attaching entities and ultimately Florida consumers, the Commission must evaluate whether the Proposed Rules will in fact prevent widespread power outages and increase restoration times. The industry's experience from Hurricane Wilma tells us this will likely not be the case. For example, following Hurricane Wilma, the following was reported:

- "Hurricane Wilma did massive damage to Florida Power & Light's electric supply system, knocking out 240 substations . . . That makes Wilma a far more destructive hurricane than Katrina."[35]

- "Flying debris appears to be reason for many of the knocked-out substations. . . ."[36]

- "[e]ach substation must undergo an arduous restart process, in which every element and circuit is checked before the unit is brought back on line."[37]

- Some of the poles that fell as a result of Hurricane Wilma were "installed as recently as last year" and that "many of the [concrete poles] broke during Wilma too."[38]

- "Williams said that while good progress has been made, the severe damage that Wilma dealt to transmission lines and substations was a major challenge and prevented speedier rates of restoration than the company has historically been able to accomplish."[39]

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[34] BellSouth incorporates by reference and adopts herein BellSouth's written hand-out that was marked as Exhibit 3 at the August 31st public hearing. This handout contains a more detailed description of BellSouth's estimated costs, which as previously stated, are pure estimates based on certain assumptions, including some that represent a "worst-case" scenario based on the scope and extent of any potential hardening. Without additional information from the IOUs, BellSouth is unable to provide a more accurate cost estimate at this time.

[35] *FPL Substations "Severely Damaged"*, THE MIAMI HERALD, Oct. 26, 2005, attached hereto as Exhibit 2.

[36] *Id.*

[37] *Id.*

[38] *FPL: Wind Felled Poles – Not Rot*, THE MIAMI HERALD, Nov. 1, 2005, attached hereto as Exhibit 3.

[39] FPL Press Release, Oct. 28, 2005, attached hereto as Exhibit 8.

- "Teams of FPL forensics experts are studying damage to substations where flying debris wrapped itself around equipment, knocking out power to thousands at a time."[40]

- "The roughly 10,000 poles [Wilma] destroyed is fairly miniscule among FPL's 1 million statewide."[41]

- "FPL says the poles are built to a national standard and have weathered other storms just fine."[42]

Despite the fact that the widespread power outages following Hurricane Wilma can certainly be attributed in large part to severe damage sustained by FPL's substations, the Proposed Rules do not address substations. Rather, the Proposed Rules seek to "harden" the electric system by requiring the electric utilities to build certain distribution facilities to extreme wind loading standards, and to adopt third-party attachment standards that meet or exceed the NESC. *See* Proposed Rules 25-6.0342(5) and 25-6.0342(1).

Consistent with the industry's actual experience following Hurricane Wilma, including the failing of substations and the falling of concrete poles, the ILECs, CLECs, and cable companies have all challenged the fundamental premise that these Proposed Rules will, in fact, achieve the Commission's goal of making the electric system more reliable in severe weather conditions. In addition, and significantly, FMEA and FECA – the other owners of electric poles in Florida -- agree with the attaching entities on this point. In his Direct Testimony, William Willingham of FECA asserted that a requirement to use extreme wind loading standards would greatly increase the cost of construction, "possibly without any measurable benefit." *See* Exhibit 1, Willingham's

[40] *Wilma's Destruction Baffles FPL Officials*, THE HERALD TRIBUNE, Oct. 28, 2005, attached hereto as Exhibit 4.
[41] *Id.*
[42] *Id.*

Direct Testimony at 3. In FMEA's May 3, 2006 Comments, FMEA also concluded that "applying extreme wind loading standards to municipal distribution systems will likely not improve the storm-hardiness of those distribution systems." *See* Exhibit 1, FMEA's May 3rd Comments at 13. FMEA also indicated that fallen poles were caused by trees and debris falling on conductors, or vehicles hitting poles. *See id.* FECA also cited debris as the primary cause of pole failures and provided that "[m]any of the poles that failed due to wind were in fact built to meet the extreme wind loading."[43] Moreover, FECA concluded that adoption of extreme wind loading standards would frustrate, rather than improve, storm reliability and storm restoration:

> Compliance with extreme wind loading standards significantly decreases the span lengths, requiring more poles and more spans exposed to the same amount of flying debris. If cooperatives complying with extreme wind loading standards suffered the same amount of line mileage repair due to tornadic winds, trees and flying debris, the number one cause of distribution system loss, restoration time would necessarily increase, because more poles and more spans would have to be replaced.[44]

Dr. Larry Slavin, who has worked in the telecommunications industry for 45 years and sits on the NESC subcommittee that addresses extreme windloading, testified that adoption of the Proposed Rules will likely make the situation in Florida worse. *See* Aug. 31, 2006 Tr. at 36. Dr. Slavin stated that, under the Proposed Rules, the strength of joint use poles would need to be increased by one and a half to four times the present required strength. *See id.* at 37. As an alternative to placing stronger poles, pole owners can place one and a half to four times more poles. *Id.* He concluded that building distribution structures to extreme wind loading requirements would result in large increases in cost

[43] *See* FECA's May 3, 2006 Comments in Docket No. 060172-EU at 4-5 attached hereto as Exhibit 6.
[44] *See* FECA's September 8, 2006 Comments in Docket 060512-EU at 13, attached hereto as Exhibit 7.

and design complexity, without a commensurate increase in safety.[45] *See id.* at 38. Dr. Slavin reported that the NESC subcommittee on extreme wind loading recently rejected a proposed change to the NESC that would have extended extreme wind loading criteria to structures less than 60 feet on the grounds that, even if built to the increased standard, the structures would still be subject to damage from trees, tree limbs and flying debris. *See id.* at 38.

Similarly, George Finn of Embarq testified that pole damage resulted from many factors: "Airborne debris, falling trees, falling tree limbs, flooding, storm surge, sand, as well as wind." Mr. Finn was also "unaware of any data from Florida or any of the other states in which [Embarq] operate[s] that suggests that the existing standards are inadequate, nor [was he] aware of any documented evidence that suggests that exceeding the current standards would provide any additional protection from these violent storms."[46] Moreover, Kirk Smith of BellSouth testified that some of the poles that fell in Hurricane Wilma were new or made of concrete and that the percentage of poles that fell (10,000) "represented a miniscule portion of the overall network damaged."[47]

The opinions of the ILEC witnesses, together with the fact that the MUNIs agree that the Proposed Rules will likely not lessen power outages following hurricanes, undermines the position taken by the IOUs in these dockets. More critically, this significant inconsistency in the positions of the electric pole owners underscores the need for the Commission to first conduct a thorough evaluation of data from pole inspection reports and other relevant sources before adopting rules that will result in significant cost

[45] When asked by Staff Counsel, Mr. Larry Harris, Dr. Slavin stated that while safety and reliability were necessarily synonymous, the NESC committees consider them to be related issues. *See id.* at 66-68.
[46] *Id.* at 71.
[47] *Id.* at 33.

increases to pole owners, attaching entities and Florida consumers with the potential for limited, measurable benefits. Simply put, given the fact that, even if distribution facilities are "hardened," power outages will still occur following hurricanes due to damage to substations or to the falling of concrete poles, BellSouth submits that the potential benefits of the Proposed Rules – benefits that are, at a minimum, in serous doubt – are outweighed by the potential costs.

**D. There Are Less Costly Alternatives to the Proposed Rules.**

In addition to the Commission's obligation to evaluate the cost of regulation in the rule adoption process, the Commission must also choose "the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives." Section 120.54(1)(d), Florida Statutes. At the public hearing, BellSouth proposed that, before adopting the Proposed Rules, the Commission establish the IAC, a multi-industry committee dedicated to the evaluation and application of overall network hardening. *See* August 31, 2006 Tr. at Exhibit 3. Specifically, the IAC would follow a three-stage approach. Within 30 days, the IAC would (1) evaluate the existing and the proposed construction and attachment standards; (2) increase the efficiency of hurricane restoration efforts; and (3) identify specific geographic areas to assess all critical infrastructures and necessary hardening efforts. Within 60 days, the IAC would also (1) evaluate target areas; (2) coordinate pole inspections so data can be gathered; (3) communicate hardening projects to allow for consolidated industry coordination; and (4) discuss how to coordinate longer term hardening efforts. The IAC would, within 180 days (the same amount of time given to the IOUs to develop construction standards under

Proposed Rule 25-6.034), (1) develop construction standards and attachment standards with all industry participants; (2) develop joint trenching standards for all new construction in a buried facility environment; and (3) determine further actions prompted by the pole inspection data collected. *See id.* The IAC proposal could substantially accomplish the Commission's objectives of reducing power outages following hurricanes, but would do so in a way that would be less costly for pole owners, attaching entities and Florida consumers.

Alternatively, the Commission should consider adopting the Alternative Rule proposed by FECA in Docket No. 060512-EU.[48] Unlike the Proposed Rules, the Alternative Rule does not require that the electrics utilities establish construction standards guided by extreme wind loading standards, or third party attachment standards. Rather, the Alternative Rule only defines reporting requirements. It requires the MUNIs to file annual reports with the Division of Economic Regulation regarding (1) construction standards, (2) facility inspections, and (3) vegetation management. In the construction standards report, the municipal electrics and electric cooperatives must address the extent to which their construction standards comply with the minimum requirements of the NESC, are guided by extreme wind loading standards, address the effects of flooding and storm surges on distribution facilities, and include written standards and procedures for third party attachers. There is no requirement that the MUNIs adopt any specific standard, and no reference to the Commission resolving disputes between pole owners and customers or attaching entities.

Significantly, the Alternative Rule represents a lower cost alternative to the Proposed Rules because it does not give the IOUs the unilateral discretion to adopt

[48] *See Exhibit 5* attached hereto.

construction standards that exceed the NESC minimum requirements. By imposing annual reporting requirements on all electric entities; however, the Alternative Rule would substantially accomplish the Commission's objectives by ensuring that proper attention is given to the issues that impact pole reliability and safety (construction, facility inspections and vegetation management), and would facilitate the compilation of data that would be relevant in evaluating the cause of any future electric system failures. The Alternative Rule also minimizes the jurisdiction and sub-delegation concerns raised by numerous impacted industries in these dockets and in Docket No. 060512-EU.

Both of the above-referenced alternatives to the Proposed Rules also give the pole inspection process, mandated by the Commission earlier this year, an opportunity to work. BellSouth has worked very successfully with several major electric companies to approach this pole inspection process in a joint fashion.[49] The initial results of the first inspections are being compiled and the first report is due to the Commission in March 2007. At a minimum, the Commission should adopt an approach that allows this significant research to be analyzed and utilized to determine the best approach for improving service reliability. BellSouth is concerned that, instead, the Proposed Rules will effectively invalidate the inspection process that is underway.[50]

## E. The Commission Should Be Cognizant of and Not Allow the IOUs to Manipulate the Proposed Rules to Attempt to Shift Their Costs to Attaching Entities.

The Commission should not look at the Proposed Rules in a vacuum. In their previously filed comments, the IOUs made it very clear that they plan to use the Proposed Rules to attempt to trigger obligations under the parties' JUAs to shift some of their costs

[49] *See Testimony of Kirk Smith* in Docket No. 060172 at 5.
[50] August 31, 2006 Tr. at 30.

in purchasing "hardened" poles to attatching entities. This was never intended by the parties and is not supported by the JUAs.[51] Traditionally, the "cost causer" pays any costs associated with a facility modification like a pole replacement. As such, if the electric utility decided to upgrade its facilities and replace existing poles with stronger or taller poles, the electric utility would pay the associated costs. The IOUs will attempt to use the Proposed Rules, however, to argue that "hardening" is mandatory per the Rules so they are not in fact the "cost causers." As such, the IOUs will argue that the Proposed Rules give them perceived better arguments in future litigation to recover their costs from Florida end users and attaching entities.

The IOUs might also attempt to use their leverage as the majority pole owners to amend existing agreements so that they can recover the costs resulting from the Proposed Rules. This is surely an unintended consequence of the Proposed Rules that needs to be considered. The Commission should be cognizant of this cost-shifting risk, which potentially results in the IOUs recovering all of the additional costs mandated by the Proposed Rules from attaching entities, and the IOU rate payers through rate-of-return regulation.

Additionally, if electric utilities place new taller or stronger poles, BellSouth and other attaching entities will certainly face higher pole rental rates as electrics will argue that their average historical pole costs and associated carrying costs have increased. To the extent this does occur and as later referenced, BellSouth should receive a credit or reduction against the historical cost of the electric utility's average historical pole cost for

[51] By acknowledging the existence of this argument, BellSouth does not concede it or believe that it is appropriate. In fact, in an abundance of caution, BellSouth denies the argument and reserves all rights and defenses associated with its joint use agreements and any claim that the Proposed Rules impact said agreements.

the customers' contribution-in-aid of construction, and payments made by other attachers, to ensure that pole rental fees are not further skewed.

In sum, any decision of the Commission relating to construction standards for poles, overhead, and underground facilities should take into account the differing situations and relative positions of all industries that use poles, whether as owners or attachers. Critically, in Florida, electric utilities are rate-of-return regulated while the majority of the ILECs, like BellSouth, are price-cap regulated.[52] The Proposed Rules do not take into account, that unlike the electric utility monopolies that can pass along to their customers any costs incurred in complying with the Proposed Rules via rate-of-return regulation, BellSouth is price-regulated and will be economically and competitively disadvantaged in complying with the Proposed Rules.[53] Indeed, unlike the IOUs, BellSouth must compete with regulated and unregulated companies for every customer it obtains in Florida.[54]

Because the "passed-through" costs to BellSouth and other companies could be tremendous, the Commission needs to take into account these regulatory and competitive distinctions in evaluating the impact of the Proposed Rules to ensure that they do not economically or competitively disadvantage a particular type of company.

## F. BellSouth's Specific Comments on the Proposed Rules.

In addition to the foregoing objections to the Proposed Rules, BellSouth offers the following comments on the Proposed Rules:[55]

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[52] *See Direct Testimony of Pam Tipton* in Docket No. 060172-EU and 060173-EU at 8.
[53] *Id.*
[54] *Id.*
[55] For this argument, BellSouth incorporates and cites to the testimony of Kirk Smith filed on August 4, 2006 *in toto*.

**Proposed Rule 25-6.034**

Both the power and telecommunications industries currently follow the NESC as the rule of thumb, nationally. The Proposed Rules alter that national uniform scheme and allow each power company to set its own standards. Specifically, Proposed Rule 25-6.034(2) allows each IOU to establish and maintain its own construction standards for overhead and underground facilities. Given this broad discretion, IOUs may use the Proposed Rules as an opportunity to enhance their infrastructure and pass the associated costs along to attaching entities. For instance, the electric utilities could demand that attachments be upgraded, rearranged or removed, or that poles be replaced, and then attempt to impose those costs on attaching entities, like BellSouth, despite the fact that BellSouth might not be the cost-causer or the beneficiary of the taller or stronger poles. *See* Section E, *supra.*

Furthermore, the fact that the Proposed Rules allow each of the 40-plus electric utilities in Florida to set its own construction standards will also impact the design and construction processes of attaching entities, like BellSouth, and will certainly lead to significant cost increases. For example, in implementing the Proposed Rules, the electrics may decide to enhance their infrastructure by placing non-wood poles, like steel, fiberglass or concrete poles. Currently, BellSouth technicians are not adequately equipped with the tools to place attachments on these types of poles. Taking into account BellSouth providing its technicians with the proper tools and training, and the increase in the time it would take to place attachments on these poles, BellSouth's cost to place attachments could increase by approximately $55 per attachment.

BellSouth will likely not only be faced with the increased expense of designing and installing facilities to meet standards that are excessive in light of its infrastructure requirements but will also incur the added costs of training our thousands of employees on the potential 40-plus differing standards and any subsequent revisions to those standards. BellSouth technicians assigned to one wire center generally work on poles owned by multiple power companies operating within the geographical boundaries of that wire center. Currently, technicians rely on the NESC as the uniform construction standard. Under the Proposed Rules, each electric utility within the wire center boundaries could have its own set of standards. Also, though less common, as BellSouth places facilities, especially aerial facilities, it could move from one electric company's serving area into another such that poles one through five in a pole line might be governed by one power company's standards and poles six through ten in the same pole line, by another. It will be a challenge to adhere to differing standards within one wire center and communicate each power company's differing standards to the field technicians to ensure compliance.

Additionally, changes in construction standards and procedures could translate into a significant increase in BellSouth's workload as it may have to hire additional management and non-management employees, as well as buy more equipment and vehicles. BellSouth is unable to estimate the potential increase in these types of expenses because, again, it is unclear as to how the IOUs will implement the Proposed Rules.

To add to the uncertainty, there are no guidelines governing how often an IOU can revise its standards or how quickly BellSouth and other attachers would have to change their operations to comply with those revisions. As a point of interest, Proposed

Rule 25-6.034(4) contemplates that the electrics use the 2002 edition of the NESC as a baseline for developing their individual construction standards. According to the Proposed Rules, the IOUs have 6 months to develop construction standards, putting their deadline in 2007. At a minimum, the Commission should consider postponing adoption of the Proposed Rules until it has had a chance to review the 2007 edition of the NESC to avoid another mandate from this Commission for changes to the electric utilities' newly-issued standards.

BellSouth is also concerned that Proposed Rule 25-6.034(4)(b) expressly grandfathers electric facilities constructed prior to the 2002 edition of the NESC, providing that such facilities are governed by the edition of the NESC in effect at the time of the initial construction. The specific reference to the electric facilities implies that the pre-2002 facilities of the other attaching entities do not enjoy the same grandfathering protection. This is contrary to standard language in joint use contracts that the attachments of all pole users should be governed by the edition of the NESC in effect at the time the attachment was placed.

Further, Proposed Rule 25-6.034(4)(b), together with Proposed Rules 25-6.0342 and 25-6.0343, which require electrics to establish and maintain standards and procedures for third-party attachments, could be read to justify, or even require, random inspections of third-party attachments by the electric utilities to ensure that third party attachments comply with the latest edition of the NESC and the electric utilities' standards. The electric utilities would likely try to pass the cost of these inspections on to the attaching entities – again, through a creative, unreasonable interpretation of an existing provision in

the joint use and pole attachment license agreements, or by using their leverage to amend those agreements.

Moreover, Proposed Rule 25-6.034(5) provides that each investor-owned 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 three different classes of construction: new construction, "major planned work" and "targeted critical infrastructure facilities." The Proposed Rules are overbroad and vague because these terms are not defined. Planned work that is "major" could include distance in feet or miles, number of lanes, length of construction or other factors. "Targeted critical infrastructure" could include electrical substations or gas stations, all community hospitals or some neighborhood walk-in facilities. Again, the Proposed Rules give each electric utility carte blanche to determine where extreme wind loading standards will be applied.

Proposed Rule 25-6.034(6) requires electric utilities to establish guidelines and procedures to prevent damage to underground and overhead facilities from flooding and storm surges. The Commission should consider the impact of this proposed rule on all entities in these geographical areas with underground and overhead facilities, not just electric utilities.

Proposed Rule 25-6.034(7) requires the electric utilities to "seek input" from attaching entities when developing construction standards, but the rule does not require that the electric utilities collaborate with, or obtain the approval of, the attaching entities. Proposed Rules 6.0341(4) and 6.0342(3) contain similar language. Thus, on a case by case basis, BellSouth will have to balance whether to install attachments in accordance

with construction standards it may not agree with, or seek relief from the Commission (assuming the Commission had jurisdiction), presumably with the expense and burden of proving to the Commission why the standards in question are unreasonable. BellSouth anticipates that giving the IOUs broad discretion over construction standards, with no parameters and no mandated level of collaboration from the attaching entities, will likely result in contentious relationships between the parties when, in fact, it is in the best interest of the public for them to act in cooperation.

To that end, and at the specific request of the Commission at the August 31st workshop, BellSouth suggests that the following collaboration language be substituted for the existing language throughout the Proposed Rules:

> In establishing the construction standards, the utility shall seek input from and address concerns raised by attaching entities with existing agreements that share the use of its electric facilities, including input and concerns related to the cost impact of the standards on the attaching entities.

Since the construction standards that will be implemented as a result of the Proposed Rules will not be subject to the scrutiny of the statutory rulemaking process, the proposed language at least minimizes the risk that the electric utilities will unilaterally impose unreasonable obligations on attaching entities.

**Proposed Rule 25-6.0341**

Proposed Rule 25-6.0341 calls for IOUs, as a general rule, to place overhead and underground facilities adjacent to public roads in front of customers' premises. If the electric utility moves its aerial facilities from the rear of a property to a pole line in the front, BellSouth would have to decide whether to stay on the abandoned pole, or relocate to the new pole. It would cost BellSouth an average of $250 - $300 per pole to remain on

the abandoned pole and assume ownership of it, along with resulting administrative costs. BellSouth, as the new pole owner, may also have to expend time, manpower, and money to secure an easement from the property owner. These newly obtained poles would increase BellSouth's pole inspection costs by roughly $30 per pole; and BellSouth would have to expend the time, manpower, and money to negotiate new agreements with the other cable and communications providers attached to the poles.

BellSouth's lines and facilities are attached to approximately 756,000 electric utility poles, including poles owned by investor-owned companies, municipal electrics and rural electric cooperatives. The following table represents assumptions that the electric companies will abandon between 10% and 40% of poles that have BellSouth attachments. It also provides a forecast of cost to BellSouth to assume ownership of those poles for a per pole cost within a range of $250 - $300.

| Cost Per Pole | 10% Abandon Rate | 20% Abandon Rate | 30% Abandon Rate | 40% Abandon Rate |
|---|---|---|---|---|
| $250 | $18,900,000 | $37,800,000 | $56,700,000 | $75,600,000 |
| $275 | $20,790,000 | $41,580,000 | $62,370,000 | $83,160,000 |
| $300 | $22,680,000 | $45,360,000 | $68,040,000 | $90,720,000 |

So, if BellSouth assumes that the electric utilities will abandon 10% of their poles to BellSouth in a given year, BellSouth could potentially face a minimum cost of $18,900,000, which does not include payments made to property owners to secure easements, resources expended to negotiate easements and new pole attachment agreements, and associated administrative costs.

BellSouth's other option would be to relocate its attachments to the new pole at the front of the property.[56] BellSouth estimates that the cost of placing the new aerial facility to be anywhere between $25 and $40 per foot. If BellSouth assumes that it relocated 10% of its existing aerial cable attached to electric utility poles in a given year (which equates to 18,900,000 feet of aerial facilities) to follow the electrics' move to front property lines, BellSouth would face a minimum cost of $472,500,000. The following table provides an impact based on a range of possibilities:

| Cost Per Foot | 10% of Existing Aerial Cable Replaced | 20% of Existing Aerial Cable Replaced | 30% of Existing Aerial Cable Replaced | 40% of Existing Aerial Cable Replaced |
|---|---|---|---|---|
| $25.00 | $472,500,000 | $945,000,000 | $1,417,500,000 | $1,890,000,000 |
| $30.00 | $567,000,000 | $1,134,000,000 | $1,701,000,000 | $2,268,000,000 |
| $35.00 | $661,500,000 | $1,323,000,000 | $1,984,500,000 | $2,646,000,000 |
| $40.00 | $756,000,000 | $1,512,000,000 | $2,268,000,000 | $3,024,000,000 |
| $45.00 | $850,500,000 | $1,701,000,000 | $2,551,500,000 | $3,402,000,000 |
| $50.00 | $945,000,000 | $1,890,000,000 | $2,835,000,000 | $3,780,000,000 |

If the IOU chooses to move aerial facilities from the rear property and bury them in the front and BellSouth chooses to join in the conversion, the costs would increase by approximately $10 per foot so that the cost of conversion would be between $35 and $50 per foot.

Alternatively, should an IOU choose to replace existing poles with taller, stronger poles to strengthen an existing pole line, BellSouth would be required to transfer its facilities. Using the same assumption that the electric utilities will replace between 10% and 40% of their poles, the following table represents an estimate of cost to BellSouth to

[56] It is not unreasonable to think that BellSouth might be forced to choose relocation, even if its facilities on the rear pole line are in excellent condition, if a property owner refuses to grant BellSouth a new easement or seeks to take economic advantage of BellSouth's situation.

transfer facilities from one pole to the other. The BellSouth cost per transfer represents the price range from a simple to a more complex transfer.

| Cost per Transfer | 10% Electric Company Pole Change-out | 20% Electric Company Pole Change-out | 30% Electric Company Pole Change-out | 40% Electric Company Pole Change-out |
|---|---|---|---|---|
| $95 | $7,182,000 | $14,364,000 | $21,546,000 | $28,728,000 |
| $280 | $21,168,000 | $42,336,000 | $63,504,000 | $84,672,000 |
| $470 | $35,532,000 | $71,064,000 | $106,596,000 | $142,128,000 |

Realistically, in response to the Proposed Rules, an IOU would incorporate a varied approach to 'hardening' its network, which would involve a combination of the three aforementioned scenarios. Assuming BellSouth will face a combination of these scenarios, the range of the cost impact is between approximately $500,000,000 for a 10% rate of change and $4,000,000,000 for a 40% rate of change.

In addition to the above costs, it is near certain that a push for IOUs to bury facilities along public roads will also result in an increase in damage to BellSouth's existing buried facilities, as electric utilities will generally need to place their facilities beneath those of telecommunications and cable companies to meet NESC requirements. Through June 2006, BellSouth has already experienced approximately 2,500 incidents of damage to its buried facilities, with a total cost to BellSouth in excess of $3 million. Seventy-five percent of these incidents occurred in street-side environments. While BellSouth diligently tries to recover its damages, BellSouth is not always successful and frequently has to expend resources to pursue collection activities, including litigation against the wrongdoer. Further, BellSouth experiences additional costs in these scenarios because (1) it must pull technicians away from other tasks to address facility damages and; (2) it takes preventative measures by talking to the excavators and making site visits

to ensure, to the extent possible, that BellSouth facilities are protected. Additionally, an increase in burying facilities will result in an increase in BellSouth's locate costs as entities seeking to underground will request that BellSouth locate its existing buried facilities. Accordingly, the Proposed Rules will only result in the exponential increase in the costs BellSouth currently experiences with street-side, underground facilities.

In sum, as evidenced by the above, there can be no dispute that the Proposed Rules will impact BellSouth and other attaching entities on many different fronts, with a great potential for significant cost increases. It is impossible to provide an accurate estimate of the total anticipated costs, because BellSouth has no idea how each of the 40-plus electric utilities in Florida will implement the Proposed Rules.

**Proposed Rule 25-6.0342**

Proposed Rule 25-6.0342 requires electric utilities to establish and maintain standards and procedures for attachments by others to transmission and distribution poles. Critically, this provision mandates that the Third-Party Attachment Standards and Procedures "meet or exceed" the NESC and other applicable standards imposed by state and federal law so that attachments do not, among other things, impair the safety and reliability of the electric system and exceed pole loading capacity; and that third party facilities are "constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." Further, the Proposed Rule prohibits attachments that do not comply with the electric utility's Attachment Standards and Procedures.

As a primary concern and as explained above, the Commission has no jurisdiction over pole attachments and, thus, this Proposed Rule is an improper exercise of the Commission's power.

From an operational perspective, the adoption of this Proposed Rule is premature and nullifies the Commission's orders mandating an 8 year pole inspection cycle. Proposed Rule 25-6.0342 presupposes that third party attachments on poles cause safety or reliability problems. As previously mentioned, there has been no evidence presented to the Commission, nor any data compiled, indicating that this is the case.

Also to the point that the Proposed Rules are premature, Proposed Rule 25-6.0342 mandates that the Third-Party Attachment Standards and Procedures "meet or exceed" the 2002 edition of the NESC. As previously discussed, it would be more efficient, at a minimum, to await the issuance of the 2007 NESC guidelines to avoid the need for further revisions to pole construction standards.

Like previous sections, Proposed Rule 25-6.0342 also disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities carte blanche over pole attachments. While problems may have occurred with certain providers failing to comply with applicable safety requirements, no data has been compiled to indicate that the problems warrant drastic changes to the current uniform procedures in place to ensure safety and reliability. Additionally, as mentioned previously, the chief stress on the distribution infrastructure results from the significant load placed by the power industry, not by telephone or cable. Moreover, other factors such as vegetation affect the reliability of the electric infrastructure. Addressing only attachments in the Proposed Rules paints a misleading and lopsided picture.

Lastly, as more fully explained in the comments on Proposed Rule 25-6.034 contained herein, BellSouth is also concerned that Proposed Rule 25-6.0342 could be read to justify, or even require, random inspections of third-party attachments by the electric utilities and that the electric utilities would likely try to pass the cost of these inspections on to the attaching entities through a creative, unreasonable interpretation of existing provisions in joint use and pole attachment license agreements, or by using their leverage to force an amendment to the those contracts. More significantly, despite the fact that the attaching entity might not be the cost-causer or the beneficiary of the taller or stronger poles, the electric utilities could use the same tactics to demand that attachments be upgraded, rearranged or removed, or that poles be replaced, potentially at considerable cost (capital and expense) to the attaching entities, like BellSouth. This attempted cost-shifting is not supported by the JUAs and, as such, BellSouth is not responsible for such costs.

**Proposed Rule 25-6.064**

Proposed Rule 25-6.064 requires an investor-owned electric utility to calculate amounts due as contributions-in-aid-of-construction from customers who request new facilities or upgraded facilities. As an attacher that pays pole rental fees, BellSouth pays a portion of the electric utility's costs when the electric utility installs a taller pole or a stronger pole of the same class because those costs are used when factoring rental rates. To ensure that pole rental rates are not further skewed, BellSouth should receive a credit or reduction against the historical cost of the electric utility's average pole cost for the contribution-in-aid-of-construction, and for payments made by other attachers.

Proposed Rule 25-6.078

To the extent an electric utility's policy filed pursuant to Proposed Rule 25-6.078 affects the installation of underground facilities in new subdivisions, or the utility's charges for conversion implicates new construction, BellSouth reiterates the concerns raised herein regarding Proposed Rule 25-6.034.

**Proposed Rule 25-6.115**

BellSouth recognizes that several electric utilities have tariffs addressing the recovery of costs for converting existing overhead facilities. Proposed Rule 25-6.115 incorporates language on Undergrounding Fee Options that includes the recovery of conversion costs from the customer. The Commission needs to consider, as explained in the Direct Testimony of Pam Tipton, that BellSouth, unlike electrics, cannot pass conversion costs along to its customers.

**Proposed Rule 6.0343**

To the extent the Commission is considering comments on Proposed Rule 6.0343 in these dockets, BellSouth reiterates its comments on the rule set forth in BellSouth's Comments/Testimony for Rule 6.0343 filed on September 8, 2006 (Docket Numbers 060172-EU and 060173-EU) and BellSouth's Reply Comments for Rule 6.0343 filed on September 22, 2006 in Docket No. 060512.

## STATUS OF NEGOTIATIONS

Following the August 31st workshop, the ILECs, the CATV companies and the IOUs have worked diligently to reach an agreement on the IAC and the Proposed Rules. All companies have expended a significant amount of time and resources and have engaged in good-faith, almost-continuous negotiations. A significant amount of progress has been made; however, as of the date of this filing, the industries have temporarily

postponed negotiations to file the instant comments and to participate in other proceedings. BellSouth is committed to pursuing negotiations with all affected entities.

## CONCLUSION

BellSouth respectfully requests that the Commission refrain from adopting the Proposed Rules on the various grounds identified above. If the Commission is inclined to pursue rulemaking, BellSouth requests that, in lieu of the Proposed Rules, the Commission establish a multi-industry Infrastructure Advisory Committee to evaluate and implement overall network hardening or, alternatively, adopt the Alternative Rule proposed by FMEA and apply it uniformly to IOUS, municipal electrics and electric cooperatives.

Respectfully submitted this 2nd day of October, 2006.

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**CERTIFICATE OF SERVICE**
**DOCKET NO. 060172/060173-EU**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and/or Electronic Mail and (*) facsimile (where applicable) this 2nd day of October, 2006 to the following Interested Persons **(Please note that the exhibits are not attached and will be sent via U.S. Mail only because of their voluminous nature)**:

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James Meza III

# Exhibit 1

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 060512-EU

FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

SEPTEMBER 8, 2006

Q. Please state your name, your position, and your business address.

A. My name is William B. Willingham. I am Executive Vice President of the Florida Electric Cooperative Association, Inc. ("FECA"). My business address is 2916 Apalachee Parkway, Tallahassee, Florida 32301.

Q. Please summarize your background and experience.

A. I received a Bachelors of Industrial Engineering from the Georgia Institute of Technology in 1981, and a Juris Doctor from the FSU College of Law in 1990. From 1981 to 1988, I was employed by the Florida Power & Light Company in various capacities that involved distribution engineering and operations in their Southeast Division. From 1991 through 1997, I was in private practice primarily representing municipally-owned and investor-owned electric, gas, water, and sewer utilities, and investor-owned alternative local exchange companies before the Florida

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Public Service Commission ("Commission"). In January of 1998 I became the Executive Vice President of FECA.

Q. Have you previously testified before the Commission?

A. No. I have appeared before the Commission on behalf of several clients, but I have never testified.

Q. What is the purpose of your testimony?

A. My testimony addresses FECA's specific areas of concerns with the Commission's proposed rule, including (a) the Commission's attempt to define construction standards for co-ops, (b) the Commission's attempt to mandate the application of the extreme wind loading standards in the National Electrical Safety Code ("NESC") to co-op distribution facilities, (c) the Commission's attempt to regulate the placement of a co-op's distribution facilities, and (d) the Commission's attempt to resolve disputes between a co-op and its members, and the Commission's attempt to resolve contractual disputes between a co-op and a third party attacher. I also address the alternative proposed rule that FECA submitted in this proceeding.

Q. Please tell the Commission about FECA.

A. FECA is a membership association that represents two generation co-ops, and 15 of the 16 distribution co-ops that serve end-use customers in Florida. Electric Cooperatives serve almost 1,000,000 meters in Florida, with the smallest co-op serving approximately 10,000 meters and the largest serving approximately 200,000 meters. Florida's cooperatives were formed in the late 1930's and early 1940's in areas that were not served by investor-owned or municipally-owned utilities. All of Florida's co-ops are owned by those they serve, and they are governed by boards that are elected by the co-op members. Each trustee must be a member of the cooperative and must live in the district they represent. The trustees ultimately are responsible to the member-owners for the co-op's service and rates.

Q. Did you file comments on behalf of FECA regarding the Commission Staff's draft rules in Docket Nos. 060172-EU and 060173-EU?

A. Yes, and FECA's stated concerns have not been addressed in Proposed Rule 25-6.0343. For example, in our May 3 comments, a copy of which is attached hereto as Attachment A, we pointed out that the construction standards for most of FECA's members are defined and regulated by the Rural Utilities Service ("RUS"), which is a division of the United States Department of Agriculture. The RUS has an extensive history with nearly 1,000 electric cooperatives in the United States. RUS' standards have

been developed through their own expertise and experience with co-ops and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). This Commission has previously recognized RUS' expertise by adopting RUS' Bulletin 1730B-121 as the basis for pole inspection procedures for investor-owned utilities. Order No. PSC-06-0144-PAA-EI issued on February 27, 2006.

FECA argued then, as it does now, that there is no need for the Commission to adopt a rule requiring the adoption of construction standards by co-ops, given that they already have construction standards and all RUS co-ops must comply with RUS standards. FECA also expressed concern that any construction standards defined by the Commission pursuant to proposed Rule 25-6.0343(1)(a) might interfere with the co-op's contract with RUS, and I reiterate that concern today.

FECA also stated in its earlier comments that a requirement to use the extreme wind loading standards of the NESC would greatly increase our cost of construction, possibly without any measurable benefits. We pointed out that use of the extreme wind loading standards for distribution will do very little to prevent damage from straight-line winds that greatly exceed the extreme wind loading standards, tornadic winds, falling trees and limbs and flying debris, which were the causes for most of the co-op

distribution pole failures during the 2004 and 2005 hurricane seasons. We also attached Exhibit "A" to our comments which showed that Withlacoochee River Electric Cooperative estimates that the cost of materials per mile of line for various applications of the 250B and 250C criteria in the NESC will more than double the cost of construction materials in some cases.[1] Use of the extreme wind loading standards would require Withlacoochee to increase the number of poles by approximately 50%. I share the concerns raised by Verzion witness Dr. Slavin in Docket Nos. 060172-EU and 060173-EU on August 31, that use of the extreme wind loading standards will result in longer outages in many cases due to the requirement to use more poles. Therefore, FECA disagrees with the underlying premise of proposed Rule 25-6.0343(1)(a).

Q. You stated that FECA is opposed to the Commission's attempt in its proposed Rule 25-6.0343(2) to regulate the placement of a co-op's distribution facilities?

[1] FECA disputes the statement on page 24 of the Commission Staff's analysis of proposed Rule 25-6.0343, dated June 8, 2006, that "cooperative utilities did not provide cost impacts of the proposed changes to Rule 25-6.034." We assume the Staff overlooked this cost estimate.

A. Yes, subsection (2) of proposed Rule 25-6.0343 appears to require distribution facilities to be placed adjacent to a public road and in front of the customer's premises unless there are extenuating circumstances, such as failing an unspecified cost-effectiveness test. First and foremost, FECA believes that a cooperative's management and board are uniquely qualified to establish guidelines for the placement of facilities without guidance from the Commission. Second, the front-lot presumption should not apply in rural areas. In many cases the cooperative will construct lines across open fields because it is a significantly shorter and cheaper path to serve a new member. In many cases, an alternative route along established roads would be significantly longer and therefore more expensive, and probably would fail under the cost-effectiveness test. Nevertheless, the presumption in the rule that facilities should be placed adjacent to a public road is troubling and may unintentionally create a legal burden on cooperative boards that dare to place facilities in locations other than along roadways.

FECA also takes exception to the rule's location preference as it applies to commercial buildings. Whenever possible, cooperatives will locate facilities in an area that is accessible to vehicles because it minimizes the time and the effort to install and to maintain the equipment, but the best location is not necessarily the front of the building. In some cases commercial properties have holding ponds and other obstructions in front

of the building that would render the utility's facilities inaccessible by vehicles if placed in the front. In other cases it is advantageous to place a pad mounted transformer in the rear of a commercial building to avoid contact with vehicles that travel at high speeds. Perhaps these are extenuating circumstances that should allow the utility to avoid the presumptions in the rule for commercial properties, but this is not clear from the Rule, and again it may create undesirable liability for cooperatives that chose to install facilities in a place that is not adjacent to a public road or in front of the premises.

Q. In proposed Rule 25-6.0343(4), the Commission states that it shall resolve "[a]ny dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity." Do you think this is a good policy for a cooperative or its members?

A. No. In the first place, I agree with Mr. Martz's testimony regarding the resolution of member issues at the co-op. I would also add that when co-op members call into the Commission's consumer complaint line regarding a co-op issue, they are routinely referred to my office or directly to the co-op's staff. When a co-op member contacts the Governor's office, they receive a standard letter from the Governor stating that co-ops "are not regulated by state government." See Attachment "B" hereto. I

seriously doubt that the Commission has the requisite jurisdiction to interfere with a co-op's dispute resolution process with its members.

I also doubt that the Commission has the requisite jurisdiction to resolve a contract dispute between a co-op and a third party attacher. Co-op pole attachments are not subject to the Federal Communications Commission's jurisdiction. FECA's members have private contracts with third party attachers that define the terms and conditions for attaching to the other party's facilities. Even if the Commission somehow has jurisdiction to resolve private contracts, Section (3) of the proposed rule could result in the impairment of a cooperative's existing contract with an attacher, and it is absolutely unnecessary for cooperatives.

Q. Are you familiar with the alternative rule that FECA filed as Attachment "A" to its comments on September 8?

A. Yes. However, let me be clear. It is FECA's position there is no need for any new rule applicable to co-ops. The Commission first established its construction standard rule well before the passage of the Grid Bill and well before it had any jurisdiction over co-ops. That rule applied only to investor owned public utilities, and even today, thirty-two years after the adoption of the Grid Bill giving the Commission limited jurisdiction over co-ops, it still only applies to investor owned public utilities.

As has been set forth in FECA's comments, there is no apparent need for a construction standards rule for co-ops. Such standards are already in place. They require compliance with the NESC and generally accepted engineering practices. Moreover, RUS co-ops have to comply with extensive standards that have been adopted by the RUS. There has been no demonstration of need for proposed Rule 25-6.0343.

In addition, as set forth above, many issues in the Commission's proposed rule appear to be beyond the Commission's jurisdiction. Even if such matters were within the Commission's limited jurisdiction over co-ops, they would be best left to the co-op's democratically representative boards that are far more familiar with the unique characteristics of the co-op's local service territory, the level of service required by their fellow members and the cost implications of the resolution of such issues.

The remaining issues that the Commission appears to be addressing in proposed Rule 25-6.0343 are tied to the NESC. Consequently, they already are subsumed in the Commission's existing Rule 25-6.0345. As required by Rule 25-6.0345(2), co-ops file their completed work orders with the Commission. In addition, Commission staff inspects the

construction standards and pole attachments of each co-op four times a year.[2] Therefore, a new rule appears to be redundant.

For all the foregoing reasons, FECA encourages the Commission not to adopt any rule applicable to co-ops. Nevertheless, in the spirit of good faith and compromise, FECA is offering an alternative proposed rule. The alternative proposed rule provides a least cost regulatory alternative to the Commission's proposed rule while also accomplishing all of the stated goals of the Commission's proposal. It also has the advantage of allowing FECA and the Commission to avoid a jurisdictional fight on the Commission's proposed rule.

FECA's alternative proposed rule, which is premised upon the Commission's safety jurisdiction, sets forth a procedure for the Commission to review certain standards, procedures and guidelines of co-ops and municipals, and it requires the utilities to file annual reports on pole inspection and vegetation management activities. All of the activities in FECA's alternative rule are related to the NESC and should be within the Commission's limited jurisdiction over co-ops.

[2] Attachment "C" hereto is a letter from Commission staff to Glades Electric Cooperative, Inc. regarding the most recent inspection and the variances found during the inspection.

Q. Does this conclude your testimony?

A. Yes. Thank you for the opportunity to have input into this proceeding which is of great interest to Florida's cooperatives.

# ATTACHMENT A

To

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by the NESC. | ) ) ) | Docket No. 060173-EU |
| 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 Filed: May 3, 2006 |

**POST-WORKSHOP COMMENTS OF THE FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.**

The Florida Electric Cooperatives Association, Inc, ("FECA"), by and through its counsel, submit the following Post-Workshop Comments in the above-referenced dockets on behalf of its fifteen distribution and two generation and transmission member-cooperatives.[1]

**GENERAL COMMENTS ON PROPOSED RULE 25-6.304, STANDARD OF CONSTRUCTION**

FECA and its member-cooperatives share the Commission's desire to minimize the outages that will inevitably result from hurricanes, and we welcome the opportunity to work with staff to craft a rule that promotes improved system reliability. However, the rule must be crafted within the confines of the Commission's limited jurisdiction over cooperatives.

[1] Alabama Electric Cooperative, Inc., Central Florida Electric Cooperative, Inc., CHELCO, Clay Electric Cooperative, Inc., Escambia River Electric Cooperative, Inc., Florida Keys Electric Cooperative Association, Inc., Glades Electric Cooperative, Inc., Gulf Coast Electric Cooperative, Inc., Okefenoke Rural Electric Membership Corporation, Peace River Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., Suwannee Valley Electric Cooperative, Inc., Talquin Electric Cooperative, Inc., Tri-County Electric Cooperative, Inc., West Florida Electric Cooperative, Inc., Withlacoochee River Electric Cooperative, Inc. Lee County Electric Cooperative is not represented by the undersigned counsel.

FECA's comments are directed only to the proposed amendments to Rule 25-6.034. As proposed, Sections 5 and 6 of amended Rule 25-6.034 would mandate that cooperatives expend tremendous amounts on new and modified overhead facilities, and either spend outrageous amounts on new and existing underground facilities or eliminate underground altogether in flood and surge prone areas. These increased costs for both underground and overhead construction will directly increase the rates that cooperatives must charge and will impact the cooperative's policies for Customer in Aid of Construction and Underground Differential charges. Regardless of any jurisdiction the Commission may or may not have under the Grid Bill, FECA believes the expenditures at issue are so significant that they would constitute ratemaking. Ratemaking falls exclusively within the discretion of each cooperative's governing board, and FECA believes the Commission should forgo exercising any jurisdiction that it may have over a cooperative's efforts to harden its facilities. Therefore, unless the proposed amendments to sections 5 and 6 are deleted or significantly modified, FECA recommends that cooperative utilities should continue to be excluded from Rule 25-6.034. This can be accomplished by deleting the following phrase from the end of proposed section 25-6.034(1): "including municipal electric utilities and rural electric cooperative utilities unless otherwise noted."

## SPECIFIC COMMENTS TO PROPOSED RULE 25-6.034, STANDARD OF CONSTRUCTION

If cooperatives are not excluded from the Rule, FECA recommends the following changes to proposed Sections (1), (2), (5) and (6):

Section (1)

Construction specifications for the majority of Florida's cooperatives are defined by the Rural Utilities Service ("RUS"), which is the federal agency that has expertise in the area of designing rural electric facilities. RUS borrowers are required by their loan covenants to comply with the RUS construction specifications. RUS' specifications have been developed over the years based upon RUS' extensive history with nearly 1000 electric cooperatives in the United States, and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). FECA is concerned about potential conflicts between whatever standards the PSC may adopt under this rule and the cooperative's loan covenants.

**Recommendation - Either delete the first 3 lines of proposed Section 1 or clarify that cooperatives may utilize the RUS standards or other nationally recognized standards in lieu of any standards that the Commission adopts or defines.**

Section (2)

The Commission clearly has authority to adopt the NESC for cooperatives as safety standards pursuant to Section 366.04(6), F.S., and in fact has adopted the NESC for all of the electric utilities in its Rule 25-6.0345. Adopting the NESC in Rule 25-6.034 would be redundant. In addition, adopting the NESC as a "construction standard" would be an inappropriate application of the NESC. The NESC expressly disclaims any use of the Code as a "design specification." Section 1.010 of the NESC states:

> The purpose of these rules is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment. These rules contain basic provisions that are considered necessary for the safety of employees and the public under the specified conditions. **This code is not intended as a design specification** or as an instruction manual. (Emphasis added)

Moreover, as set forth above, FECA is concerned that any standards that may be adopted by the Commission could conflict with the standards imposed by RUS upon cooperatives. FECA is not aware of any state or organization that utilizes the NESC as a construction standard, and we believe it should not be so adopted by this Commission.

> **Recommendation - Either delete this proposed Section or insert the following phrase prior to the word "minimum" on page page 3, line 12: "criteria to be incorporated into".**

Section (5)

In addition to the aforementioned jurisdictional issue, FECA questions whether it would be economically prudent to generically impose the extreme wind loading for poles and all other structures less than 60 feet for cooperatives or for any utility. For many electric cooperatives this would at least double[2] the cost per mile of line for new construction and would have a significant rate impact on our member-owners. Moreover, we believe that use of the extreme wind loading would do very little to prevent outages during hurricanes. During the 2004 and 2005 hurricane seasons, most of the poles owned by cooperatives that failed were the result of trees and flying debris hitting the poles or wires, not direct wind.

[2] Withlachoochee River Electric Cooperative has estimated the cost of materials per mile of line for various applications of the 250B and 250C criteria in the NESC, which is attached as Exhibit A.

Many of the poles that failed due to wind were in fact built to meet the extreme wind loading, and we believe the extreme wind loading is not sufficient to protect a pole against all of the winds that a hurricane may generate. For most cooperatives, the number of poles that failed due to wind was so insignificant that the difference in the restoration time between the present criteria and the extreme wind criteria for distribution facilities would have been measured in hours, not days.

FECA believes that a more prudent approach to reducing interruptions is to allow utilities to selectively upgrade facilities that are critical for serving a large number of customers and, if prudent, to make some operational changes. Many cooperatives have become more aggressive with vegetation management[3] and most cooperatives are pursuing generator programs for large and critical loads. In many cases it is cheaper for the cooperative to provide a permanent or portable backup generator during restoration, either on the customer's site or at a substation, than it is to harden a system that may never experience hurricane force winds and may inevitably fail no matter how much you spend to reenforce it.

Cooperatives already have the discretion to build any facilities to meet or exceed the extreme wind criteria, and in some cases they have exercised this option on a targeted basis. At least one cooperative, the Florida Keys Electric Cooperative, has elected to build all of its facilities to meet the extreme wind standards. However, other cooperatives believe that

[3] SB 980 passed out of the Legislature on May 3, 2006, and if it becomes law utilities will be empowered to better maintain vegetation around power lines.

the additional cost cannot be justified. FECA believes that cooperative Boards should be allowed to decide whether the extreme wind standard is justified for their particular circumstances and that proposed Section (5) should not apply to cooperatives.

**Recommendation: Either delete proposed Section (5), or clarify that it does not apply to cooperatives.**

Section (6)

In addition to the aforementioned jurisdictional issue, FECA believes that it is not possible for a cooperative to "assure" that underground facilities in potential surge and flood areas can be protected. FECA is not aware of any practicable construction standards for underground electric facilities that are designed to withstand the surge of a hurricane. In the event that such standards are available and utilities can "assure" that their underground facilities will be protected from both flooding and storm surges, the cost of doing so may be cost-prohibitive.

If cooperatives cannot "assure" the protection of these facilities as required by the proposed rule, they will be placed in a precarious situation when trying to serve those communities that have mandated underground facilities. FECA believes that our member-owners and electric cooperative governing boards should retain the discretion to determine how and where underground facilities may be provided, but we are open to any suggestions as to how the facilities can be protected in flood and surge prone areas.

**Recommendation - If the Commission decides to pursue this provision, Section (6) should be amended to clarify that it does not apply to electric cooperatives. Alternatively, the words "assure", 'practicable", and "protected" in lines 15 and 16 on page 4 need to be substantially softened.**

## CONCLUSION

FECA thanks Staff for the opportunity to participate in the development of rules that give a utility the flexibility to enhance its electric facilities after careful cost/benefit analyses are considered and a determination is made by the utility that such enhancements are practical and cost-effective to all of the utility's customers. It is of utmost importance to each electric cooperative that its governing board of trustees and management retain discretion to make the necessary critical decisions to upgrade and bolster their facilities.

Respectfully submitted,

WILLIAM B. WILLINGHAM, ESQ.
(fecabill@earthlink.net)
MICHELLE HERSHEL, ESQ.
(mhershel@earthlink.net)
Florida Electric Cooperatives Association, Inc.
2916 Apalachee Parkway
Tallahassee, FL 32301
850.877.6166 (Telephone)
850.656.5485 (Facsimile)

Attorneys for the Florida Electric Cooperatives Association, Inc.

## EXTREME WIND LOADING COST COMPARISONS

| Single Phase #2 AAAC | | |
|---|---|---|
| NESC Code | 250B | 250C |
| Pole Type | 40/5 Wood | 40/3 Wood |
| Span Length (ft) | 450 | 270 |
| Cost per Mile | $ 36,694 | $ 60,378 |

| 3 Phase 394 AAAC Single Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/3 Wood | 50/2 Wood | 50/H2 Steel |
| Span Length (ft) | 375 | 170 | 240 |
| Cost per Mile | $ 75,000 | $ 150,624 | $ 147,327 |

| 3 Phase 740 AAAC Single Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/3 Wood | 50/2 Wood | 50/H2 Steel |
| Span Length (ft) | 300 | 140 | 200 |
| Cost per Mile | $ 95,815 | $ 185,494 | $ 179,597 |

| 3 Phase 394 AAAC Double Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/2 Wood | 50/2 Wood | 55/H3 Steel |
| Span Length (ft) | 325 | 110 | 220 |
| Cost per Mile | $ 149,496 | $ 387,690 | $ 251,316 |

| 3 Phase 740 AAAC Double Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/2 Wood | 50/2 Wood | 55/H4 Steel |
| Span Length (ft) | 250 | 90 | 200 |
| Cost per Mile | $ 198,091 | $ 479,739 | $ 297,468 |

Exhibit A

# ATTACHMENT B

To

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

August 9, 2006

Reverend Paul W. Jennings
1795 JA Forehand Road
Bonifay, Florida 32450

Dear Reverend Jennings:

Thank you for your recent letter. I appreciate your asking for my help.

Co-ops are non-profit utilities that are owned by the customer-members they serve and are not regulated by state government. To further assist you, I have forwarded your letter to Bill Willingham, Executive Vice President of the Florida Electric Cooperative Association, for his review.

The person who could best answer your legal questions would be an attorney. If you need assistance in locating a lawyer, please call the Florida Bar's Attorney Referral Service toll-free at 1-800-342-8011. Those with limited financial resources should consider contacting their local legal aid office or foundation for assistance.

Thank you again for sharing your concerns with me. If I can assist you with a state government matter, I hope you will let me know.

Sincerely,

Jeb Bush

JB/cas/rn
cc/enc: Mr. Bill Willingham, Executive Vice President
Florida Electric Cooperative Association
2916 Apalachee Parkway
Tallahassee, Florida 32301
(850) 877-6166

CAS-RTN

7/10/06

OFFICE OF THE GOVER
CITIZEN SERVICES
06 JUL 14 PM 4:2

Governor Jeb Bush
Office of the Governor
The Capitol, Tallahassee Florida
32399-0001

Dear Sir,

The West Fl Electric is coming down JA Forehand Rd. and cutting down most of the beautiful hardwood trees on both sides of residents property. The owners have no say in this matter. Owners rights are gone and destruction of our land is out of control.
It is a constant fight to keep people from claiming more road frontage and power company from taking complete control of what they want.
We have beautiful wild birds and would like to know what can be done to save our property, trees and environment?
A retreat center is planned for the property. Any help (and as soon as possible, the power company has already contracted trees trimmers/cutters) that that you may give is deeply appreciated.

Thank you

Rev. Paul W. Jennings
1795 JA Forehand Rd.
Bonifay, FA. 32450

#611729 Jennings, Paul
Recd: 7/17/2006 DEO: JAJ
To: CAS-N/A-RTN -- PLEASE HANDLE
Due: 7/31/2006

West Florida Electric Cooperation
Mr. William S. Rimes
President & Chief Executive Office
5282 Peanut Rd.
Graceville, Fl. 32440-0127

7/8/06

Dear Sir,

Ref: A Church Property owned by the Church of Plilip the Evangelist. @
1795 J.A. Forehand Rd.
Legal Description: E ½ of S.W. ¼ of Section 28 Township 6 North, Range 15 West.

Your primary transmission electric line comes off the road right of way near the North east corner of this posted property - crosses this posted property - then returns to the right of way near the south east corner.

Does West Fl. Electric Coop have a written legal easement across this property? If not please instruct the crews at West Fl. Electric to remove this primary transmission line and poles as soon as possible, at Coop expense.

Also instruct any coop contractors to <u>not</u> trespass upon this posted property in any way with any equipment.

Your earliest attention this matter is appreciated.

Thank you

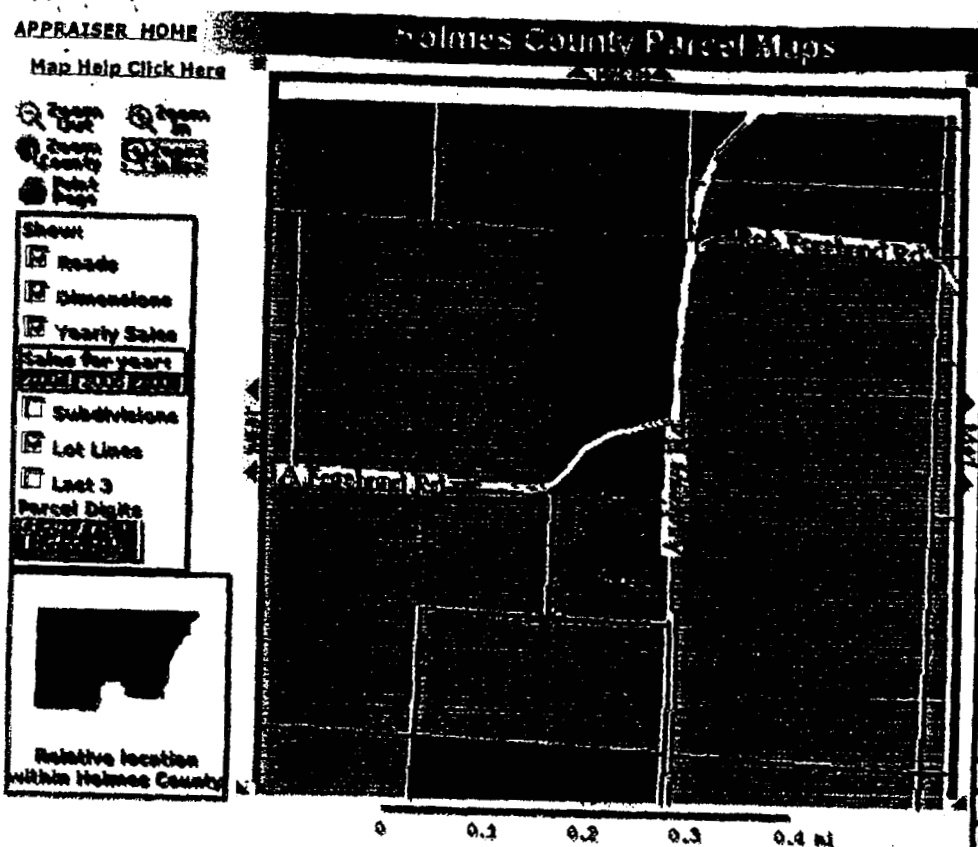
Rev. Paul W. Jennings
1795 J A Forehand Rd.
Bonifay, Fl. 32450

APPRAISER HOME

# Holmes County Parcel Maps

BACK TO SEARCH PAGE

Map Help Click Here




| PARCEL INFORMATION TABL | |
|---|---|
| Selected Parcel | 0828.00-000-000-011.300 (Click for Complete Card) |
| Property Use | PASTURE |
| Acres | 20.00 |
| Land Use | T6 IMP LI |
| OWNERSHIP INFORMATION | |
| Name | THE CHUR OF PHILI THE |
| Mailing Address | EVANGEL OF SANTA ROSA BEA 111 DOLPHIN DRIVE SANTA RO BEACH, FL 32459 |
| Situs Address | |
| VALUES | |
| Land Value | 3,200 |
| Agricultural Value | 2,811 |
| Building Value | 60,765 |
| Misc Value | 16,241 |
| Classified Value | 83,037 |
| Assessed Value | 75,602 |
| Exempt Value | 25,000 |
| Taxable Value | 50,602 |
| Homesteaded | N |

LAST 2 SALES

| Date | Price | Vacant? | |
|---|---|---|---|
| 05-2005 | 77,500 | N | |
| 05-2005 | 77,500 | N | |

The Holmes County Property Assessment Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, it's use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

APPRAISER HOME ---- RETURN TO SEARCH PAGE

# ATTACHMENT C

To

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

STATE OF FLORIDA

# Public Service Commission

TAMPA DISTRICT OFFICE
4950 W. KENNEDY BLVD.
SUITE 310
TAMPA, FLORIDA 33609
(813) 356-1444

August 21, 2006

Mr. L. T. Todd, Jr.
General Manager
Glades Electric Cooperative, Inc.
P. O. Box 519
Moore Haven, Florida 33471-0519

**CERTIFIED MAIL**
**7005 0390 0006 2874 9903**

**Re: Compliance with Commission Rule 25-6.0345, Safety Standards for Construction**

Dear Mr. Todd:

A selected sample of the 2nd and 3rd quarters of 2005 was taken from the list of work orders submitted to the Commission. An evaluation of the electric system construction was made from this sample and completed during July, 2006.

This evaluation was conducted to verify compliance with Commission Rule 25-6.0345, Florida Administrative Code, which adopts the 2002 National Electrical Safety Code as the standard for electric utility construction. Variances from the Code were identified and are listed in the enclosed document.

A written response to this notice of safety variances is required by September 25, 2006. The response must state the anticipated date of correction and the remedial measures that will be taken to prevent future recurrences of the variance. The Commission also requires notification when the corrective action has been completed, and certification that it complies with the National Electrical Safety Code. Send the response to this variance notice and the subsequent completion notification and certification to me at the address in the upper right hand corner of this letter. Response via e-mail to aveluzqu@psc.state.fl.us is also acceptable.

If you have questions regarding the enclosed variances you can contact the inspecting Engineer, Francisco Paez at (305) 470-6907, or me at (813) 356-1432.

Sincerely,

Tony Velazquez

Tony Velazquez, Electric Safety Supervisor
Bureau of Safety

Enclosure

cc: Dan Hoppe, Director, Division of Regulatory Compliance & Consumer Assistance, w/o enclosures
C. Edward Mills, Chief, Bureau of Safety, w/o enclosures
Francisco Paez, Engineering Specialist III, Bureau of Safety, w/o enclosures

DATE: 08/15/2006

UTILITY: GEC QUARTER: 2 YEAR: 2005

INSPECTED BY: FRANCISCO PAEZ MONTH: JULY YEAR: 2006
REQUEST

| # WORK ORDER | TYPE OF VARIANCE | LOCATION OF VARIANCE |
|---|---|---|
| 40490<br>rNum: 052374 | CATV<br>1)11496 CLICK RD<br>A)NESC#234B1<br>CATV NEEDS TO ATTACH TO POLE. | 11496 CLICK RD. GLADES |
| 41089<br>rNum: 052375 | FPL<br>1)ACROSS THE STREET FROM 102 ROSEMARY AVE<br>A)NESC#218A<br>GLADE CO. NEEDS TO TRIM TREE LIMBS IN PRIMARY. | ACROSS THE STREET FROM 102 ROSEMARY AVE GLADES |
| 30461<br>rNum: 052499 | GEC<br>1)F/O 3320 RIVERSIDE DR.<br>A)NESC#214B3<br>GEC NEEDS TO REMOVE OLD POLE AFTER CATV TRANSFER FACILITIES TO NEW POLE.<br>CATV<br>1)F/O 3320 RIVERSIDE DR.<br>NESC#214B3<br>CATV NEEDS TO TRANSFER CABLE AND DOWN GUY TO NEW POLE. | 3320 RIVERSIDE DR. GLADES |

DATE: 08/15/2006

UTILITY: GEC QUARTER: 3 YEAR: 2005

INSPECTED BY: FRANCISCO PAEZ MONTH: JULY YEAR: 2006

REQUEST

| # | WORK ORDER | TYPE OF VARIANCE | LOCATION OF VARIANCE |
|---|---|---|---|
| | 50658 | GEC | V/O POTTER RD GLADES |
| rNum: | 052380 | 1)F/O PROPERTY<br>MAP#463-4-32-0-038<br>A)NESC#9303<br>GROUND WIRE IS NOT SNUG TO POLE<br>(NEAR BOTTOM OF POLE.) | |
| | 51003 | TELEPHONE | 2248 WOLF CREEK RD GLADES |
| rNum: | 052381 | 1)2248 WOLF CREEK RD<br>A)NESC#234B1<br>TELEPHONE NEEDS TO TRANSFER CABLE FROM TREES TO POLE. | |

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|---|---|
| In re: Proposed Rules governing the placement of new electric distribution facilities underground, and the conversion of existing overhead distribution facilities to underground facilities, to address the 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 the National Electric Safety Code. | DOCKET NO. 060173-EU<br>Filed: May 3, 2006 |

POST-STAFF RULE DEVELOPMENT WORKSHOP COMMENTS OF FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.

On April 17, 2006, representatives of Florida Municipal Electric Association, Inc. (FMEA) participated in a staff rule development workshop in the two above captioned dockets. (The transcript of the workshop is referenced as (Tr. at __ ).) Pursuant to the instructions of Florida Public Service Commission (PSC or Commission) Staff, the following comments are hereby submitted by FMEA on behalf of its thirty-four municipal electric utility members in Florida.[1] FMEA members may also file individual comments in this docket.

As applied to municipal electric utilities, it is not clear the Commission has the jurisdiction to adopt the rule amendments[2] that it proposes. There is no statutory grant of

[1] FMEA is comprised of the following municipal electric utility members: City of Alachua, City of Bartow, City of Blountstown, City of Bushnell, City of Chattahoochee, City of Clewiston, City of Fort Meade, Fort Pierce Utilities Authority, City of Gainesville d/b/a Gainesville Regional Utilities, City of Green Cove Springs, Town of Havana, City of Homestead d/b/a Homestead Energy Services, JEA, City of Jacksonville Beach d/b/a Beaches Energy Services, Utility Board of the City of Key West, Florida d/b/a Keys Energy Services, Kissimmee Utility Authority, City of Lake Worth, City of Lakeland d/b/a Lakeland Electric, City of Leesburg, City of Moore Haven, City of Mount Dora, Utilities Commission of the City of New Smyrna Beach, City of Newberry, City of Ocala d/b/a Ocala Electric Utility, Orlando Utilities Commission, City of Quincy, Reedy Creek Improvement District, City of St. Cloud, City of Starke, City of Tallahassee, City of Vero Beach, City of Wauchula, City of Williston, and City of Winter Park.

[2] Memorandum from Lawrence D. Harris, Senior Attorney, Office of General Counsel, Public Ser. Comm'n, to Blanco S. Bayó, Comm'n Clerk & Administrative Services Dir., Public Serv. Comm'n (April 4, 2006) (Doc. No.

jurisdiction to the PSC that permits it to adopt construction standards for municipal electric utility distribution systems. Such an extra-jurisdictional exercise by the Commission unlawfully abridges municipalities' home rule powers and is unconstitutional. However, if properly kept within the Commission's jurisdictional confines, FMEA does not necessarily disagree with the policy goals of the proposed rules. Therefore, FMEA offers in these Comments two proposed ways-forward: first, FMEA suggests a substitute to the Commission's proposed amendments to Rule 25-6.034; as an alternative, FMEA also offers suggested changes and comments on the Commission's proposed amendments to Rule 25-6.034.[3]

## I. IT IS NOT CLEAR THE COMMISSION HAS THE JURISDICTION TO ADOPT THE PROPOSED RULES.

### A. Chapter 366 Does Not Give Jurisdiction to the Commission to Impose Construction Standards on Municipal Electric Distribution Systems.

There is no grant of jurisdiction to the Commission to establish construction standards for the distribution systems of Florida's municipal electric utilities. Nowhere in Section 366.04, Florida Statutes (2005), does it say the Commission has the authority to adopt construction standards for municipal electric utility distribution systems. However, that is exactly what the Commission proposes to do: "the intent of Paragraph 2 is to recognize the current edition, which is the 2002 edition of the National Electric [sic] Safety Code, as the minimum construction standard for transmission and distribution facilities." (Tr. at 12) This is improper, as the Commission would be acting outside its jurisdictional boundaries.

---

03014-06) (on file with Comm'n.) (including proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078, and 25-6.115 of the Florida Administrative Code which are herein referred to as the "proposed rules").

[3] Rules 25-6.064, 25-6.078, and 25-6.115 of the Florida Administrative Code are not applicable to Florida's municipal electric utilities. So, FMEA offers no suggested changes to the proposed amendments to those rules. However, FMEA reserves the right to offer further comments if municipal electric utilities are brought within the reach of any of those rules in future proposed amendments.

The Commission's "Grid Bill" jurisdiction does not reach municipal electric distribution systems. Section 366.04(2)(c), Florida Statutes (2005), does give the Commission the authority "[t]o require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes." Further, section 366.04(5), Florida Statutes (2005), (commonly referred to as the "Grid Bill") provides the Commission with further jurisdiction over:

> [1] the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and [2] the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Id. (emphasis added). However, while subsection (2)(c) expressly grants the Commission the jurisdiction to require "conservation and reliability," § 366.04(2)(c), Fla. Stat. (2005), for the coordinated grid, it is not made express that the distribution systems of municipal electric systems are included within the grid. Similarly, subsection (5) gives the Commission jurisdiction over the "planning, development, and maintenance," § 366.04(5), Fla. Stat. (2005), of the grid to "assure an adequate and reliable source of energy . . . ." Id. Again, it is not made express that the grid includes municipal electric distribution systems. Absent an express grant of jurisdiction to adopt construction standards for municipal electric utility distribution systems, the PSC cannot extra-jurisdictionally adopt rules that impose such mandates.

FMEA recognizes that subsection (5) grants the Commission jurisdiction over distribution systems for "the avoidance of further uneconomic duplication . . ." Id. However, this language is distinct from the Commission's jurisdiction over the coordinated electric power grid. The mention of distribution systems in the second part of the Grid Bill does not necessarily

mean that distribution systems come within the meaning of "grid" as it is used in the first part of the Grid Bill.

It is appropriate to read certain different related provisions of Section 366.04 in pari materia. Certainly, subsection (2)(c) and the first part of subsection (5) echo each other. Compare: "the commission shall have power over electric utilities . . . [t]o require electric power conservation and reliability within a coordinated grid for operational as well as emergency purposes," § 366.04(2)(c), Fla. Stat. (2005), to "[t]he commission shall have further jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida . . .," § 366.04(5), Fla. Stat. (2005). The PSC has the jurisdiction to require conservation and reliability for the grid and has jurisdiction over the planning, development and maintenance of the grid for operational and emergency purposes. However, the Commission's jurisdiction does not extend beyond the grid.

The Commission has itself recognized the interrelatedness of these provisions. In adopting Rule 25-6.0440, regarding the approval of territorial agreements, the Commission cited and relied on both sections 366.04(2)(d), (e) and section 366.04(5). See Fla. Admin. Code R. 25-6.0440(2)(c) (establishing that one of the standards the Commission will use in approving a territorial agreement is "[t]he reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.").

However, the grid does not include distribution systems. Chapter 366, Florida Statutes, itself makes a distinction between the "grid" and distribution systems. Section 366.91(5), Florida Statutes (2005), provides: "A contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system." Id.

(emphasis added). The Grid Bill references the "coordinated electric power grid" and section 366.91(5) uses the term "transmission grid," but the distinction is appropriate. In the Grid Bill, the statute is referring to the transmission systems of all utilities in the State of Florida and the coordinated transmission grid that is composed of all of those transmission systems. In section 366.91(5), the statute refers to the utility's transmission grid that a producer of renewable energy must interconnect to; therefore, there is no reason for section 366.91(5) to refer to the coordinated transmission grid involving all electric transmission systems in the State.

The use of the term "coordinated" in the Grid Bill is also instructive in another manner. If one municipal electric transmission system encounters a problem (for example, that of OUC), the effects of that problem could cascade throughout Florida. Such a cascading event caused the 2003 blackouts in the Northeast and Canada. Therefore, utilities must coordinate their transmission systems. However, if OUC experiences a problem with a distribution line, that problem does not effect neighboring utilities. Distribution systems are not "coordinated." Thus, the coordinated electric grid, see §§ 366.04(2)(c), (5), Fla. Stat. (2005), does not include distribution systems.

Clearly, then, chapter 366 does not permit the Commission to impose construction standards on municipal electric distribution systems.

**B. Florida's Municipal Electric Utilities Have Home Rule Powers that Cannot be Abridged by the Commission.**

Imposition of the proposed rules, as written, constitutes an unlawful abridgement of each municipal electric utility's home rule powers. Every Florida municipality has the right to enact legislation concerning any subject matter on which the Legislature can act, unless otherwise restricted. § 166.021(3), Fla. Stat. (2005). For purposes of the proposed rules, a municipal

electric utility has home rule powers over any subject matter unless "expressly preempted to state or county government by the constitution or by general law . . . ." § 166.021(3)(c), Fla. Stat. (2005). Nowhere is Chapter 366 is the adoption of construction standards expressly preempted to the Commission. Some grants of authority in section 366.04 are exclusive and preempt local control. E.g., § 366.04(6), Fla. Stat. (2005). However, there is no exclusive grant of jurisdiction to the Commission to impose construction standards on municipal electric utilities.

Absent such express preemption, Florida's municipal electric utilities have the home rule right to determine their own construction standards. This home rule authority may not be abridged by the Commission, in the adoption of the proposed rules, absent the requisite statutory preemption which is clearly lacking.

For example, in the City of Tallahassee there is a Tallahassee-Leon County Canopy Road Citizen's Committee that must review all impacts of development activities within a canopy road tree protection zone. See Tallahassee, Fla. Land Development Code § 5-81(a)(2)g. (2006). When the City of Tallahassee wants to install, replace or relocate a distribution line within a canopy road tree protection zone, that activity must be approved by the citizen's committee. Any conflicting construction standards imposed by the Commission, absent express preemption by general law, is an unlawful abridgment of the city's home rule authority. See also, e.g., Key West, Fla. Code §§ 110-251 to -435 (2006) (establishing a tree commission and giving the tree commission certain powers over activities impacting trees similar to the Tallahassee code).

**C. Imposition of the Proposed Rules, as Written, is an Unconstitutional Mandate on Florida's Municipal Electric Utilities.**

Imposing construction standards on municipal electric utility distribution systems is an unconstitutional unfunded mandate. Article VII, section 18(a) of the Florida Constitution provides that:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Art. VII, § 18(a), Fla. Const. It is unconstitutional for the Commission to impose a burden on municipalities that requires municipalities to spend funds, using its statutory jurisdiction, unless the Legislature has determined that such statutory provision fulfills an important state interest and a funding mechanism is provided, unless a particular exemption applies. The constitutional unfunded mandate prohibition applies expressly to general laws. However, it is sound to say that an agency of state government cannot do through rulemaking what the Legislature is constitutionally prohibited from doing through the enactment of general law.

Nowhere in Chapter 366 does the Legislature indicate that the mandating of construction standards for municipal electrical facilities fulfills an important state interest. And, the Legislature has not provided a funding mechanism for the implementation of mandated

construction standards on the thirty-four municipal electric utilities in Florida. Therefore, the proposed rules, as written, are an unconstitutional unfunded mandate on Florida's municipal electric utilities.

## II. FLORIDA'S MUNICIPAL ELECTRIC UTILITIES DO NOT QUARREL WITH THE POLICY GOAL OF IMPROVING SYSTEMS AGAINST STORMS.

Jurisdictional concerns aside, FMEA does not quarrel with the policy goal of improving the ability of Florida's electric transmission and distribution systems to withstand hurricanes. However, it is not clear the Commission has the jurisdiction to adopt the proposed rules, as they are currently written. FMEA's members are governed by boards, commissions, and councils that are locally accountable to the customers served by the electric utility. And, Florida's municipal electric utilities take seriously the task of protecting their electric systems against extreme weather events, preparing their electric systems and their personnel for extreme weather events, and quickly restoring their electric systems after an extreme weather event outage. See, e.g., Fla. Mun. Elec. Ass'n, Pole Inspection Programs of Florida Municipal Electric Utilities (2006) (submitted to the Commission on May 1, 2006). There is no need to bring the Commission outside its jurisdictional boundaries to accomplish its policy objectives. FMEA proposes two alternative ways-forward. First, FMEA suggests a substitute Rule 25-6.034 that does not impose construction standards on municipal distribution systems, but requires all electric utilities to adopt their own construction standards in compliance with the National Electrical Safety Code (NESC). Second, FMEA offers suggested changes and comments on the Commission's proposed Rule 25-6.034.

## III. FMEA'S SUGGESTED SUBSTITUTE RULE 25-6.034.

Given the limitations on the Commission's jurisdiction, FMEA proposes a substitute to the Commission's suggested amendments to Rule 25-6.034. FMEA's substitute rule: (i) establishes a standard for the construction, installation, maintenance and operation of all electric utilities' facilities; (ii) applies that standard to new construction, major expansions, major rebuilds and major relocations of facilities; and (iii) requires all electric utilities to establish construction standards for overhead and underground electric facilities, compliant with the current edition of the NESC, to enhance reliability, and reduce restoration costs and time. FMEA's substitute rule succinctly achieves the policy goals of the Commission, while keeping Rule 25-6.034 within the Commission's jurisdictional boundaries.

FMEA's proposed substitute rule is as follows:

25-6.034

(1) Application and Scope. The facilities of each electric utility shall be constructed, installed, maintained, and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished. This rule applies to all electric utilities, including municipal electric utilities and rural electric cooperative utilities unless otherwise noted.

(2) Except as otherwise provided for in this rule, the standards shall be applicable to (a) new construction and (b) any major expansion, major rebuild, or major relocation of existing facilities for which a work order number is assigned on or after the effective date of this rule. As used in this rule, a major expansion, major rebuild, or major relocation of existing facilities shall be deemed to occur if a distribution line or transmission system segment is being expanded, rebuilt, or relocated such that the entirety of such line or segment is affected by the expansion,

rebuild, or relocation. For clarification, any expansion, rebuild, or relocation work affecting individual or isolated facilities only does not constitute a major expansion, major rebuild, or major relocation for purposes of this rule.

(3) Each electric utility shall establish construction standards for overhead and underground electrical facilities, which shall comply with the applicable requirements of the current edition of the National Electrical Safety Code, to enhance reliability and reduce restoration costs and outage times associated with extreme weather events.

## IV. FMEA'S SUGGESTED CHANGES AND COMMENTS TO THE PROPOSED AMENDMENTS TO RULE 25-6.034.

As an alternative to FMEA's proposed substitute rule, FMEA also offers on behalf of its thirty-four municipal electric utility members the following suggested changes to the proposed amendments to Rule 25-6.034 of the Florida Administrative Code and some further comments. FMEA's suggested changes and comments are in ***bold italics***.

**25-6.034 Standard of Construction.**

(1) Application and Scope. ~~***This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes.***~~ The facilities of each ~~the~~ utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished. This rule applies to all electric utilities, including municipal electric utilities and rural electric cooperative utilities unless otherwise noted.

***Comment: It is not accurate to include the language that FMEA suggests striking. As indicated by Mr. Bryant at the April 17 staff rule***

*development workshop, it is inappropriate to use the NESC as a construction standard. (Tr. at 18) Section 010 of the NESC provides: "These rules contain the basic provisions that are considered necessary for the safety of employees and the public under the specified conditions. The code is not intended as a design specification or as an instruction manual."*

*Nowhere in Chapter 366, Florida Statutes, is the Commission given the jurisdiction to impose construction standards on municipal electric utilities. Commission staff said at the April 17 workshop that the Commission does not desire to write construction standards for Florida's utilities. Mr. Trapp stated: "My problem is I don't think you want us to write construction standards for you." (Tr. at 18) Instead, Commission staff said it was looking for a "base line, a starting point, and we have selected the National Electric [sic] Safety Code because that is pretty much all we are aware of. . . . The burden is on the utility to construct and maintain its facilities in a safe, efficient, effective, adequate, reliable manner. And that is what is [sic] we are trying get [sic] to here. This is just the starting point." (Tr. at 19)*

*While FMEA disagrees with the articulation of the NESC as construction standards, in and of itself, FMEA's suggested changes to section 6 of the proposed rule provides the Staff's desired starting point, with the NESC (already adopted elsewhere in the Commission's rules) as a foundational document.*

~~*(2) The Commission adopts and incorporates by reference the 2002 edition of the National Electric Safety Code (ANSI C-2), published August 1, 2001, as the minimum construction standards for transmission and distribution facilities built by each electric utility. Except as otherwise provided for in this rule, the standards shall be applicable to (a) new construction and (b) the expansion, rebuild, or relocation of existing facilities for which a work order number is assigned on or after the effective date of this rule. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc.(IEEE).*~~

*Comment: Adoption of the NESC as a construction standard is contrary to the language of the NESC itself (reference the quote in the above comment) and outside the jurisdiction of the Commission.*

***The lack of free public access to the NESC is also problematic. Obtaining an electronic copy of the NESC from its publisher (the Institute of Electrical and Electronics Engineers, Inc. or IEEE) costs $110 for an IEEE nonmember. It is inappropriate for a member of the public to have to pay hundreds of dollars to access information adopted as part of a Commission rule.***

(~~3~~2) Distribution and transmission facilities constructed prior to the effective date of this rule shall be governed by the ***construction standards in place and recognized by each electric utility*** ~~***applicable edition of the National Electric Safety Code in effect***~~ at the time of the initial construction.

***Comment: This is a conforming change. It makes the grandfather clause consistent with the suggested changes made in section 6 of the proposed rule.***

(~~4~~3) In addition to the requirements of Sections (5) and (6) of this rule, an electric utility may exceed the minimum requirements of the National Electric Safety Code (ANSI C-2) to enhance reliability and reduce restoration costs and outage times associated with extreme weather events. Each investor-owned electric utility electing to exceed minimum construction standards shall identify and report the effects on total system cost and reliability and shall justify any resulting increase in rates charged to rate-payers.

~~***(5) Notwithstanding the exception contained in Section 25.250.C., Extreme Wind Loading, National Electric Safety Code, structures of 18 meters or less shall be designed to withstand extreme wind speeds as specified by Figure 250-2(d) of the 2002 edition of the National Electric Safety Code. The extreme wind loading standard shall be applicable to (a) new structures, (b) the expansion, rebuild, or relocation of existing facilities for which a work order is 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.*~~

***Comment: Section 5 of the rule is overbroad. Staff's position that these extreme wind loading standards apply to all structures (including buildings) goes far beyond the limits of the Commission's jurisdiction. The NESC also does not appear to generally define the term "structures." However, Mr. Trapp stated his understanding of what the term "structures" in the proposed rule meant: "My understanding is that it's everything above the ground. It's buildings, it's poles, it's wires, it's transformer stations, it's pad mounts, anything." (Tr. at 67) (emphasis added). The Commission has no such broad grant of jurisdiction.***

***There is also no need for such a standard as it applies to municipal electric utilities. In FMEA's report on pole inspections,*** [4] ***it is reported that:***

> ***No municipal electric utility reported that they had experienced a problem with pole failure, even through two significant hurricane seasons. All problems with poles falling were the result of two causes: a) trees and other debris falling on conductors causing one or multiple poles to fall, and 2) vehicles hitting poles (outside of hurricane season).***

**Fla. Mun. Elec. Ass'n,** ***supra*** **note 4, at ii-iii.** ***Therefore, applying extreme wind loading standards to municipal distribution systems will likely not improve the storm-hardiness of those distribution systems. Besides, most municipal distribution facilities are in areas where wind is mitigated by trees, buildings and other structures. Problems are caused by the things that blow into or fall onto a distribution line, not the distribution line itself.***

(~~4~~) Each electric utility shall establish construction standards for ***overhead and*** underground electrical facilities, ***which shall comply with the applicable requirements of the current edition of the National Electrical Safety Code,*** to enhance reliability and reduce restoration costs and outage times associated with extreme weather events. Such construction standards shall ***protect*** ~~***assure***~~, to the extent ***reasonable*** ~~***practicable***~~ and cost-effective, ~~***that***~~ underground and ~~***supporting***~~ overhead electrical facilities ~~***are protected***~~ from flooding and storm

[4] Fla. Mun. Elec. Ass'n, Pole Inspection Programs of Florida Municipal Electric Utilities (2006) (submitted to the Commission on May 1, 2006, in compliance with Commission requests for information regarding municipal electric utility pole inspection programs).

surges ~~*in areas designated as Category 3 Surge Zones by the Department of Community Affairs, Division of Emergency Management*~~. Such construction standards shall be applicable to (a) new construction, (b) ~~*the*~~ *any major* expansion, *major* rebuild, or *major* relocation of existing facilities for which a work order is issued on or after the effective date of this rule, and (c) conversion of existing overhead facilities to underground. ***As used in this rule, a major expansion, major rebuild, or major relocation of existing facilities shall be deemed to occur if a significant segment of a distribution line or transmission system is being expanded, rebuilt, or relocated such that the entirety of such segment is affected by the expansion, rebuild, or relocation. For clarification, expansion, rebuild, or relocation work affecting individual distribution or transmission facilities only do not constitute major expansion, major rebuild, or major relocation for purposes of this rule.***

***Comment:*** ***Suggested changes to section 6 of the proposed rule circumscribes the proposed rule to the jurisdiction of the Commission. Each electric utility has the obligation to enact its own construction standards. It is not clear the Commission has jurisdiction to impose construction standards and Commission staff admitted it did not want to be in the business of writing construction standards. Such construction standards must comply with the applicable provisions of the NESC. All municipal electric utilities are today complying with the NESC.***

***The language of the rule has also been modified by FMEA to allow electric utilities to make their own determination of what is reasonable and cost effective, taking into account public oversight of those determinations, in protecting their systems from the effects of flooding and storm surges. This avoids an ill-fitting "one size fits all" approach and gives individual electric utilities with the expertise over their own systems the opportunity to address the specific needs of their systems.***

***Expansions, rebuilds and relocations of individual or isolated facilities should not trigger system-wide upgrades. Such a requirement provides an inappropriate disincentive for electric utilities to not expand or rebuild their facilities, for fear of the broader retrofit upgrade requirements. Instead, FMEA believes it appropriate to limit such retrofit upgrade requirements for expansions, rebuilds and relocations***

***to those activities that are major, i.e., affecting the entirety of a distribution line or transmission system segment. Then, the retrofit upgrade obligations are limited to the affected line(s) or segment(s).***

(~~7~~5) For initial installation, expansion, rebuild, or relocation of any investor-owned electric utility facilities, utilities are required to use easements, public streets, roads and highways which the utility has the legal right to occupy, and on public lands and private property across which the rights of way and easements satisfactory to the utility have been provided by the applicant by the time construction is required.

(~~8~~6) For initial installation, expansion, rebuild, or relocation of any investor-owned electric utility facilities, including the conversions of existing overhead facilities to underground facilities, all facilities shall be placed at the front edge of the property, unless the utility demonstrates an operational need to use another location.

~~(2) The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard requirements, Terminology and Test Code for Instrument Transformers, ANSI 57.13, and has found them to contain reasonable standards of good practice A utility that is in compliance with the applicable provisions of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices~~.

## V. CONCLUSION.

It is unnecessary for the Commission to further its policy goals in a rulemaking that is without clear jurisdictional support. Florida's municipal electric utilities are serious about the task of protecting their systems and their customers from the impacts of hurricanes. FMEA has offered these Comments in an effort to continue the dialogue with the Commission to take appropriate steps to harden the coordinated electric grid in Florida against extreme weather events. Other recent actions by FMEA members to comply with the Commission's reporting requests demonstrate the municipal electric utilities' commitment to this dialogue and process. We look forward to continuing to work with the Commission and Staff on these important issues.

RESPECTFULLY submitted this 3rd day of May 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. mail this 3rd day of May 2006, to the following:

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# Exhibit 2

Miami Herald, The (FL)

October 26, 2005
**Section:** Metro & State
**Edition:** Final
**Page:** 1B

# FPL SUBSTATIONS `SEVERELY DAMAGED'

*JOHN DORSCHNER, jdorschner@herald.com*

Hurricane Wilma did massive damage to Florida Power & Light's electricity supply system, knocking out 240 substations and trashing the major transmission lines that deliver electricity to customers.

That makes Wilma a far more destructive hurricane than Katrina. In that storm, FPL blamed trees falling on residential power lines for most of the damage and promised power back to 90 percent of South Florida homes within five days.

This time, because of the damage to its substations and transmission lines, Florida Power & Light executives said it may take up to two weeks for more than half of its three million powerless customers to get electricity back.

It could be three weeks for 95 percent to get power, said FPL President Armando Olivera, and four weeks for all customers to be restored.

For reasons that are still unclear, Wilma knocked out 240 substations, each of which serves 10,000 to 30,000 customers, as well as high-power transmission lines and poles.

``We experienced very severe damage to our infrastructure," said FPL Vice President

Geisha Williams.

The worst destruction occurred in Broward and southern Palm Beach counties, Williams said. At one point, all the substations in Broward were knocked out, essentially darkening the entire county.

This was a far worse infrastructure hit than FPL experienced last year during Charley, Frances and Jeanne, or this year during Katrina, Olivera said.

One reason was the broad swath of the hurricane, with strong winds spread across 180 miles, the FPL executives said.

Another reason was was that Wilma reached Category 2 or Category 3 strength in some parts of the utility's territory, considerably stronger than Katrina's Category 1 winds.

Williams reported that surveyors frequently reported they ``have seen poles snapped in two," something rarely reported during Katrina.

Flying debris appeared to be the reason for many of the knocked-out substations, but Olivera said that didn't explain all the damage to the substations, which are combinations of lines and equipment, much of which is exposed to the elements.

``Frankly, it's not 100 percent clear to us why those facilities took a lot of damage," Olivera said. ``That's going to take weeks, months to figure out why."

The large transmission lines carry high-voltage power from the company's generators, which suffered little damage, to substations, which lower the voltage and distribute the power to neighborhood lines to bring to houses.

Williams said 40 substations already have been brought back to power, but each substation must undergo an arduous restart process, in which every element and circuit is checked before the unit is brought back on line.

Then every feeder leading from the substation must be checked, and after that workers must examine the transformer that reduces voltage once again and distributes power to homes.

Olivera said the utility was being cautious in promises for restoration. ``These estimates are based on a really incomplete assessment," he said, because less than 24 hours had passed since Hurricane Wilma cleared the area. Helicopter crews were still examining the major transmission lines on Tuesday afternoon.

County-by-county estimates could be available today, officials said. Neighborhood forecasts might come later in the week.

FPL said it had about 6,000 workers in the field and was bringing in another 3,000 before Sunday from states around the country.

Officials said they expected all hospitals to have power back by the end of Tuesday, as well as Port Everglades, the crucial entrance point for much of the region's gasoline for cars. Miami International Airport was powered up by mid-afternoon.

At 8 p.m., about 412,700 of the 3.2 million customers statewide who had lost power had been restored, FPL said. In Broward, 856,300 homes remained dark; 6,500 had been restored. In Miami-Dade, 870,400 remained without power; 86,100 had their electricity restored.

**Illustration:**photo: FPL trucks gather Tuesday in a staging area at Tamiami Airport Utility officals called Wilma a far more destructive hurricane than Katrina (a)

# Exhibit 3

Miami Herald, The (FL)

November 1, 2005
**Section:** Broward & State
**Edition:** Broward
**Page:** 3B
**Memo:**HURRICANE WILMA / THE AFTERMATH

# FPL: WIND FELLED POLES - NOT ROT

*DAVID OVALLE AND JACK DOLAN, jdolan@herald.com*

Thousands of utility poles snapped and toppled during Hurricane Wilma because of freakishly strong gusts, not because of poor maintenance, Florida Power & Light officials said Monday.

FPL has examined 900 downed poles since last week's storm and found no evidence that deterioration, substandard materials or failure to anchor them deeply enough contributed to their demise, company officials said.
State regulators had criticized the company last summer for failing to document inspections of its poles in Broward and Miami-Dade counties.

The issue had been on the back burner until last week, when Wilma scattered 7,000 to 10,000 poles across three counties, contributing to blackouts that affected more than 6 million FPL customers in Florida.

By comparison, about 1,000 poles failed when Katrina hit the area in August. Katrina was a Category 1 storm. Preliminary data from the National Weather Service show top wind speeds that would make Wilma a Category 1 storm, too.

WEATHERMEN WRONG?

Geisha Williams, vice president for distribution at FPL, said she thinks meteorologists have underestimated Wilma's force, and will eventually conclude that the winds must have been more powerful, at least in some places.

``We just had Katrina in the same area, our poles did not rot overnight,'' Williams said.

FPL engineer John McEvoy said he has seen long strings of poles knocked down by Wilma. Some had been installed in the 1970s, others had been installed as recently as last year.

Many of the downed poles were found next to an open field, or a pond, where the wind could accelerate before hitting them, McEvoy said.

Of the 900 FPL has examined, ``the greatest majority broke well above the ground level and broke in a way that suggests they were exposed to a force far greater than design capabilities,'' McEvoy said.

Most of the wooden poles used in South Florida are designed to endure winds up to 118 mph. Concrete poles are built significantly stronger, but many of those broke during Wilma, too.

Wilma's sustained winds were no higher than 85 mph in both counties, according to the preliminary NWS data. The agency measured gusts up to 112 in Miami-Dade and 108 in Broward.

Crews working in the field on Monday seemed to echo the conclusions reached by FPL engineers.

LITTLE ROT

A crew from Kentucky-based Pike Electric replaced six wooden power poles along Washington Street in Hollywood. The greenish hue of the broken poles indicated that they were relatively new, said Ed Rice, the crew's supervisor.

Out of about 30 downed poles he has encountered, only one appeared to be rotting, Rice said.

A crew from Rock Hill, S.C. working nearby, has replaced about 20 poles. ``Just wind,'' the crew's supervisor, Jimmy Sellers Jr., said of the cause.

Structural engineers have expressed shock that so many poles would fail in the relatively light winds of a Category 1 storm. Deterioration from South Florida's harsh climate, and failure to bury the poles deep enough, are among the reasons a pole might fail in relatively light winds, critics have said.

Last week, FPL officials estimated that Wilma damaged 12,000 to 16,000 poles.

That number was based on a computer model using a Category 2 or 3 storm.

The new, lower estimate, is based on what has been observed in the field, FPL officials said.

**Illustration:**photo: Power crew replaces a shattered pole (a)

DAVID OVALLE/HERALD STAFF POLE WORK: A Rock Hill, S.C., power crew replaces a shattered pole at NW 77th Way and Johnson Street in Hollywood.

# Exhibit 4

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School races ignore tax issue

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Newtown parade loses top sponsor

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**Your comments**
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Good thing U.S. invaded Iraq (61)
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Newest Kathrine Harris interveiw video

# Wilma's destruction baffles FPL officials

*The hurricane left 3.2 million in the dark and knocked down 10,000 poles, more than any of the state's recent storms*

By LAUREN MAYK and CATHY ZOLLO
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While South Florida residents are pining to plug things in, Florida Power & Light's hurricane veterans are scratching their heads about how a storm -- even one as powerful as Category 3 Wilma -- could create the kind of havoc that knocked out the juice to 3.2 million customers.

FPL has never had so many of its customers out, not even when a relatively compact Category 5 Hurricane Andrew roared through Miami-Dade County in 1992.

Bewildered executives are pondering places where severe and inconsistent damage by Wilma felled about 10,000 of the company's poles -- more than any during Florida's recent spate of storms.

Teams of FPL forensics experts are studying damage to substations where flying debris wrapped itself around equipment, knocking out power to thousands at a time.

Zoom

PALM BEACH POST / RICHARD GRAULICH

Hurricane Wilma bent these metal transmission poles like blades of grass in Palm Beach County. Florida Power & Light's wood and concrete poles are designed to withstand the kind of winds Wilma was packing when it hit Florida's east coast, but many still failed.

Accompanied by his brother, Florida Gov. Jeb Bush, the president tours hard-hit region

and notes progress. Page 2A

Four days after Hurricane Wilma, there is a sense of neighborliness among the anxiety and frayed nerves on the east coast. Page 3A

**Linked stories**
Power poles passed by?
10/29/2005

Reciting pledge important (1)
Sarasota Memorial cuts free retiree health plan (22)
NEW STADIUM (22)
Insurers advice is to avoid coast (1)
lakewood ranch condos (5)
15 Year old boy assaulted by police (22)
Ahhh... "Paridise".... worth the price?? (2)
Pledge of Allegiance requirement is wrong (3)
Premiums in Florida still not high enough insurers tell panel (2)
wiretaps (57)

Given this new era of more fierce and frequent hurricanes, Wilma's wrath begs the question of whether the state's largest utility company and the power industry as a whole might need to build to a higher standard if they continue to use overhead lines.

FPL's concrete and wood poles are made to stand up to winds of 119 mph, just below the 125 mph recorded for Wilma as it came ashore near Naples but strong enough for parts of its speedy race across the state.

Building for stronger storms would inevitably be more expensive, but for customers facing a repair time of as much as four weeks, it is likely a conversation they would want FPL managers and the state to have.

Wilma felled wood and concrete poles alike and knocked 241 substations out of service.

"It's going to take us months to understand what happened and why," FPL President Armando Olivera said this week.

The storm is confounding one of the country's most experienced hurricane teams, leaving officials to toss out suggestions of tornadoes, headwinds and microbursts.

"We think we had some strange weather phenomena beyond the hurricane," said Geisha Williams, FPL's vice president for distribution.

Officials at the National Hurricane Center said pockets of greater damage aren't that unusual with a strong storm like Hurricane Wilma.

They have been caused by tornadoes embedded in the storm's eyewall or from Wilma's strength alone, meteorologists say.

The eyewall carries a hurricane's fiercest winds, with or without tornadoes, but twisters do sometimes ride along with hurricanes, said Daniel Brown, forecaster for the National Hurricane Center.

Hurricane Isabel crossed Florida in October 1964 packing tornadoes and followed a path nearly identical to that of Wilma. It produced 13 twisters across the the state.

The pockets of downed poles during Wilma could have been the result of a similar phenomenon, said Mark Johnson, a professor of statistics at the University of Central Florida.

"That sounds like a little tornado that was ... lost in the shuffle," he said. "You're not going to get that kind of damage from a weakening storm."

But forecasters just don't know yet, said Robert Molleda, warning coordinator for the National Weather Service Office in Miami.

"There is not substantial evidence that there were tornadoes embedded in the eyewall that caused isolated pockets of greater damage, but you

don't need a tornado to do this kind of damage," he said.

No eyewitness reports of tornadoes came in and twister signatures just weren't on radar, he said.

Other factors, such as tall buildings, can come into play when it comes to localized damage, Molleda said.

"There could be some funneling of the wind in certain areas," he said.

In some parts of FPL's east coast territory -- from St. Lucie County to southern Miami-Dade County -- crews found pockets of 40 or 50 poles broken by the storm, said Williams, who is in charge of the post-hurricane restoration effort.

"We've had very weird situations here where concrete poles have been, completely unencumbered by anything, snapped in two."

Pole strength

Wilma will likely go down in the record books as causing more pole damage than any other recent hurricane in FPL's territory.

The roughly 10,000 poles it destroyed is fairly minuscule among FPL's 1 million statewide.

But it is a lot more than the 7,100 poles knocked over by a more intense Hurricane Charley and multiples of the 3,800 claimed by Frances and 2,300 by Jeanne.

FPL says the poles are built to a national standard and have weathered other storms just fine.

But Florida's coasts and its power system are seeing a devastating flurry of hurricane activity, with eight storms ripping into the state in the past 15 months.

Higher standards are something that FPL might at least consider in Wilma's wake.

"It's something we probably should look at as we look at all the different pieces of our infrastructure," Williams said.

In the meantime, FPL has tapped those in-house forensics teams who will try to figure out what was so different about Wilma.

They already have some hints. For example, they think gravel roofs gave way and blew into substations in some places.

"We haven't seen this before," Williams said about the substation damage. "This is an oddity."

The 119 mph resistance that FPL quotes for its pole strength is actually the end result of a complicated calculation that involves basic wind

speed, three-second gust speeds and other factors.

The formula for this standard and others comes from the National Electrical Safety Code, published by the Institute of Electrical and Electronics Engineers.

The standards in the code are updated every five years, with the last revision out in 2002 -- before hurricanes became more than just an occasional threat in Florida.

The next revision comes out in 2007.

But even if industry officials raise their expectations for pole strengths and other standards, the big storms might still win.

Utility companies have to build their systems for what you would normally expect, not for the rogue tornado or localized burst, said Jim Bouford, an electrical engineer and senior member of IEEE.

"A portion of it is going to withstand ... and some of it you're going to lose," he said.

Plus, building for the extreme case is expensive.

"You can't buy the ruggedness without paying for it," Bouford said. "You have to find the break point with serving the customers with reasonable reliability based upon expected conditions you're going to have."

Otherwise, you might build a strong system that no one can afford to be served by, he said.

"Somewhere, you're going to have trade-offs."

Despite the cost of restoring power after hurricanes, putting lines underground would be even more expensive, FPL managers said.

"You can never overcome the cost difference between an overhead and underground system," Williams said.

A study by the state's Public Service Commission earlier this year said that it would cost $51.8 billion to put just the transmission lines of the state's investor-owned electric utilities underground.

That would result in an almost 50 percent increase in rates for a decade.

To put the smaller distribution lines and feeders underground, it would cost another $94.5 billion and raise rates 81.1 percent over 10 years if the cost was shared by all ratepayers or 141.5 percent if just residential customers paid.

In total, that would bring the cost of putting the system underground to $146.3 billion.

That's more than 330 times the amount FPL got to recover its costs from last year's storms.

Last modified: October 28, 2005 5:32AM

# Exhibit 5

ATTACHMENT A
FECA'S ALTERNATIVE RULE

25-6.0343 Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements

(1) Application and Scope. The purpose of this rule is to define certain reporting requirements by municipal electric utilities and rural electric cooperatives providing distribution service to end-use customers in Florida.

(2) The reports required by sections (3), (4), and (5) of this rule shall be filed with the Director of the Division of Economic Regulation by March 1 of each year for the preceding calendar year.

(3) Standards of Construction. Each municipal electric utility and rural electric cooperative shall report the extent to which its construction standards, policies, practices, and procedures are designed to storm harden the transmission and distribution facilities. Each utility report shall, at a minimum, address the extent to which its construction standards, policies, guidelines, practices, and procedures:

(a) Comply, at a minimum, with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(b) Are guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC for:

1. new construction;

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

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

(c) Address the effects of flooding and storm surges on underground distribution facilities and supporting overhead facilities.

(d) Provide for placement of new and replacement distribution facilities so as to facilitate safe and efficient access for installation and maintenance.

(e) Include written safety, pole reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles.

(4) Facility Inspections. Each municipal electric utility and rural electric cooperative shall report, at a minimum, the following information pertaining to its transmission and distribution facilities:

(a) A description of the utility's policies, guidelines, practices, and procedures for inspecting transmission and distribution lines, poles, and structures including, but not limited to, pole inspection cycles and pole selection process.

(b) The number and percentage of transmission and distribution inspections planned and completed.

(c) The number and percentage of transmission poles and structures and distribution poles failing inspection and the reason for the failure.

(d) The number and percentage of transmission poles and structures and distribution poles, by pole type and class of structure, replaced or for which remediation was taken after inspection, including a description of the remediation taken.

(5) Vegetation Management. Each municipal electric utility and rural electric cooperative shall report, at a minimum, the following information pertaining to the utility's vegetation management efforts:

(a) A description of the utility's policies, guidelines, practices, and procedures for vegetation management, including programs addressing appropriate planting, landscaping, and problem tree removal practices for vegetation management outside of road right-of-ways or easements, and an explanation as to why the utility believes its vegetation management practices are sufficient.

(b) The quantity, level, and scope of vegetation management planned and completed for transmission and distribution facilities.

Specific Authority: 350.127(2), 366.05(1) FS.

Law Implemented: 366.04(2)(f), 366.04(6) FS.

History New_____.

# Exhibit 6

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by the NESC. | ) ) ) | Docket No. 060173-EU |
| 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 Filed: May 3, 2006 |

**POST-WORKSHOP COMMENTS OF THE FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.**

The Florida Electric Cooperatives Association, Inc, ("FECA"), by and through its counsel, submit the following Post-Workshop Comments in the above-referenced dockets on behalf of its fifteen distribution and two generation and transmission member-cooperatives.[1]

**GENERAL COMMENTS ON PROPOSED RULE 25-6.304, STANDARD OF CONSTRUCTION**

FECA and its member-cooperatives share the Commission's desire to minimize the outages that will inevitably result from hurricanes, and we welcome the opportunity to work with staff to craft a rule that promotes improved system reliability. However, the rule must be crafted within the confines of the Commission's limited jurisdiction over cooperatives.

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[1] Alabama Electric Cooperative, Inc., Central Florida Electric Cooperative, Inc., CHELCO, Clay Electric Cooperative, Inc., Escambia River Electric Cooperative, Inc., Florida Keys Electric Cooperative Association, Inc., Glades Electric Cooperative, Inc., Gulf Coast Electric Cooperative, Inc., Okefenoke Rural Electric Membership Corporation, Peace River Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., Suwannee Valley Electric Cooperative, Inc., Talquin Electric Cooperative, Inc., Tri-County Electric Cooperative, Inc., West Florida Electric Cooperative, Inc., Withlacoochee River Electric Cooperative, Inc. Lee County Electric Cooperative is not represented by the undersigned counsel.

FECA's comments are directed only to the proposed amendments to Rule 25-6.034. As proposed, Sections 5 and 6 of amended Rule 25-6.034 would mandate that cooperatives expend tremendous amounts on new and modified overhead facilities, and either spend outrageous amounts on new and existing underground facilities or eliminate underground altogether in flood and surge prone areas. These increased costs for both underground and overhead construction will directly increase the rates that cooperatives must charge and will impact the cooperative's policies for Customer in Aid of Construction and Underground Differential charges. Regardless of any jurisdiction the Commission may or may not have under the Grid Bill, FECA believes the expenditures at issue are so significant that they would constitute ratemaking. Ratemaking falls exclusively within the discretion of each cooperative's governing board, and FECA believes the Commission should forgo exercising any jurisdiction that it may have over a cooperative's efforts to harden its facilities. Therefore, unless the proposed amendments to sections 5 and 6 are deleted or significantly modified, FECA recommends that cooperative utilities should continue to be excluded from Rule 25-6.034. This can be accomplished by deleting the following phrase from the end of proposed section 25-6.034(1): "including municipal electric utilities and rural electric cooperative utilities unless otherwise noted."

## SPECIFIC COMMENTS TO PROPOSED RULE 25-6.034, STANDARD OF CONSTRUCTION

If cooperatives are not excluded from the Rule, FECA recommends the following changes to proposed Sections (1), (2), (5) and (6):

**Section (1)**

Construction specifications for the majority of Florida's cooperatives are defined by the Rural Utilities Service ("RUS"), which is the federal agency that has expertise in the area of designing rural electric facilities. RUS borrowers are required by their loan covenants to comply with the RUS construction specifications. RUS' specifications have been developed over the years based upon RUS' extensive history with nearly 1000 electric cooperatives in the United States, and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). FECA is concerned about potential conflicts between whatever standards the PSC may adopt under this rule and the cooperative's loan covenants.

**Recommendation - Either delete the first 3 lines of proposed Section 1 or clarify that cooperatives may utilize the RUS standards or other nationally recognized standards in lieu of any standards that the Commission adopts or defines.**

**Section (2)**

The Commission clearly has authority to adopt the NESC for cooperatives as safety standards pursuant to Section 366.04(6), F.S., and in fact has adopted the NESC for all of the electric utilities in its Rule 25-6.0345. Adopting the NESC in Rule 25-6.034 would be redundant. In addition, adopting the NESC as a "construction standard" would be an inappropriate application of the NESC. The NESC expressly disclaims any use of the Code as a "design specification." Section 1.010 of the NESC states:

> The purpose of these rules is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment. These rules contain basic provisions that are considered necessary for the safety of employees and the public under the specified conditions. **This code is not intended as a design specification** or as an instruction manual. (Emphasis added)

Moreover, as set forth above, FECA is concerned that any standards that may be adopted by the Commission could conflict with the standards imposed by RUS upon cooperatives. FECA is not aware of any state or organization that utilizes the NESC as a construction standard, and we believe it should not be so adopted by this Commission.

> **Recommendation - Either delete this proposed Section or insert the following phrase prior to the word "minimum" on page page 3, line 12: "criteria to be incorporated into".**

**Section (5)**

In addition to the aforementioned jurisdictional issue, FECA questions whether it would be economically prudent to generically impose the extreme wind loading for poles and all other structures less than 60 feet for cooperatives or for any utility. For many electric cooperatives this would at least double[2] the cost per mile of line for new construction and would have a significant rate impact on our member-owners. Moreover, we believe that use of the extreme wind loading would do very little to prevent outages during hurricanes. During the 2004 and 2005 hurricane seasons, most of the poles owned by cooperatives that failed were the result of trees and flying debris hitting the poles or wires, not direct wind.

[2] Withlachoochee River Electric Cooperative has estimated the cost of materials per mile of line for various applications of the 250B and 250C criteria in the NESC, which is attached as Exhibit A.

Many of the poles that failed due to wind were in fact built to meet the extreme wind loading, and we believe the extreme wind loading is not sufficient to protect a pole against all of the winds that a hurricane may generate. For most cooperatives, the number of poles that failed due to wind was so insignificant that the difference in the restoration time between the present criteria and the extreme wind criteria for distribution facilities would have been measured in hours, not days.

FECA believes that a more prudent approach to reducing interruptions is to allow utilities to selectively upgrade facilities that are critical for serving a large number of customers and, if prudent, to make some operational changes. Many cooperatives have become more aggressive with vegetation management[3] and most cooperatives are pursuing generator programs for large and critical loads. In many cases it is cheaper for the cooperative to provide a permanent or portable backup generator during restoration, either on the customer's site or at a substation, than it is to harden a system that may never experience hurricane force winds and may inevitably fail no matter how much you spend to reenforce it.

Cooperatives already have the discretion to build any facilities to meet or exceed the extreme wind criteria, and in some cases they have exercised this option on a targeted basis. At least one cooperative, the Florida Keys Electric Cooperative, has elected to build all of its facilities to meet the extreme wind standards. However, other cooperatives believe that

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[3] SB 980 passed out of the Legislature on May 3, 2006, and if it becomes law utilities will be empowered to better maintain vegetation around power lines.

the additional cost cannot be justified. FECA believes that cooperative Boards should be allowed to decide whether the extreme wind standard is justified for their particular circumstances and that proposed Section (5) should not apply to cooperatives.

**Recommendation: Either delete proposed Section (5), or clarify that it does not apply to cooperatives.**

Section (6)

In addition to the aforementioned jurisdictional issue, FECA believes that it is not possible for a cooperative to "assure" that underground facilities in potential surge and flood areas can be protected. FECA is not aware of any practicable construction standards for underground electric facilities that are designed to withstand the surge of a hurricane. In the event that such standards are available and utilities can "assure" that their underground facilities will be protected from both flooding and storm surges, the cost of doing so may be cost-prohibitive.

If cooperatives cannot "assure" the protection of these facilities as required by the proposed rule, they will be placed in a precarious situation when trying to serve those communities that have mandated underground facilities. FECA believes that our member-owners and electric cooperative governing boards should retain the discretion to determine how and where underground facilities may be provided, but we are open to any suggestions as to how the facilities can be protected in flood and surge prone areas.

**Recommendation - If the Commission decides to pursue this provision, Section (6) should be amended to clarify that it does not apply to electric cooperatives. Alternatively, the words "assure", 'practicable", and "protected" in lines 15 and 16 on page 4 need to be substantially softened.**

## CONCLUSION

FECA thanks Staff for the opportunity to participate in the development of rules that give a utility the flexibility to enhance its electric facilities after careful cost/benefit analyses are considered and a determination is made by the utility that such enhancements are practical and cost-effective to all of the utility's customers. It is of utmost importance to each electric cooperative that its governing board of trustees and management retain discretion to make the necessary critical decisions to upgrade and bolster their facilities.

Respectfully submitted,

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## EXTREME WIND LOADING COST COMPARISONS

| Single Phase #2 AAAC | | |
|---|---|---|
| NESC Code | 250B | 250C |
| Pole Type | 40/5 Wood | 40/3 Wood |
| Span Length (ft) | 450 | 270 |
| Cost per Mile | $ 36,694 | $ 60,378 |

| 3 Phase 394 AAAC Single Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/3 Wood | 50/2 Wood | 50/H2 Steel |
| Span Length (ft) | 375 | 170 | 240 |
| Cost per Mile | $ 75,000 | $ 150,624 | $ 147,327 |

| 3 Phase 740 AAAC Single Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/3 Wood | 50/2 Wood | 50/H2 Steel |
| Span Length (ft) | 300 | 140 | 200 |
| Cost per Mile | $ 95,815 | $ 185,494 | $ 179,597 |

| 3 Phase 394 AAAC Double Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/2 Wood | 50/2 Wood | 55/H3 Steel |
| Span Length (ft) | 325 | 110 | 220 |
| Cost per Mile | $ 149,496 | $ 387,690 | $ 251,316 |

| 3 Phase 740 AAAC Double Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/2 Wood | 50/2 Wood | 55/H4 Steel |
| Span Length (ft) | 250 | 90 | 200 |
| Cost per Mile | $ 198,091 | $ 479,739 | $ 297,468 |

Exhibit A

# Exhibit 7

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| In Re: Adoption of new rule 25-6.0343, F.A.C., standards of construction -municipal electric utilities and rural electric cooperatives | ) ) ) | Docket No. 060512-EU |

**COMMENTS OF THE FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC. TO PROPOSED RULE 25-6.0343**

The Florida Electric Cooperatives Association, Inc. ("FECA"), on behalf of its member cooperatives,[1] by and through its counsel, files the following comments to proposed Rule 25-6.0343, Municipal Electric Utilities and Rural Electric Cooperatives, that was issued on June 28, 2006 in Order No. PSC-06-0556-NOR-EU. While proposed Rule 25-6.0343 was proposed in Docket Nos. 060172-EU and 060173-EU, the Commission has created a separate docket for consideration of the proposed rule, Docket No. 060512-EU. See, Order PSC-06-0632-PCO-EU. FECA also adopts and incorporates herein its written comments filed on May 3 and 26, 2006, and oral comments given on April 17, May 19 and June 20, 2006. Contemporaneous with these comments, FECA is also filing with the Florida Public Service Commission's ("Commission") the testimony of Mr. John Martz and Mr. William B. Willingham.

[1]Alabama Electric Cooperative, Inc., Central Florida Electric Cooperative, Inc., CHELCO, Clay Electric Cooperative, Inc., Escambia River Electric Cooperative, Inc., Florida Keys Electric Cooperative Association, Inc., Glades Electric Cooperative, Inc., Gulf Coast Electric Cooperative, Inc., Okefenoke Rural Electric Membership Corporation, Peace River Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., Suwannee Valley Electric Cooperative, Inc., Talquin Electric Cooperative, Inc., Tri-County Electric Cooperative, Inc., West Florida Electric Cooperative, Inc., Withlacoochee River Electric Cooperative, Inc. Lee County Electric Cooperative is not a member of FECA.

# I
# INTRODUCTION

In response to the impacts of hurricanes over the last two years and in anticipation of future storms which could interrupt service and require significant time for restoration of electric infrastructure, the Commission has proposed rules requiring all electric utilities subject to its jurisdiction to undertake conduct which the Commission believes will enhance the reliability of transmission and distribution facilities and reduce storm restoration time. FECA shares with the Commission a concern about the reliability of electric transmission and distribution facilities in severe weather events and the need to minimize storm restoration time through acts that are reasonable, practical, feasible and cost-effective. Indeed, in response to the storms of the last two years, FECA's members have undertaken a number of actions designed to enhance the reliability of their systems during severe storm weather events. See pages 13 - 14.

While FECA shares the Commission's concerns about enhanced storm reliability, FECA is concerned about the Commission's approach thus far. The Commission has proposed that the same requirements should apply to not-for-profit, self-governing rural electric cooperatives ("cooperatives") which have elected boards comprised of members served by the cooperatives, as apply to investor-owned electric public utilities ("IOUs"). Given the dramatically different relationship between cooperatives and their members and IOUs and their ratepayers as well as the sharply different relationship between the Commission and comprehensively regulated IOUs and the Commission and cooperatives, FECA respectfully submits that no rule for cooperatives is warranted. If the Commission believes a rule for cooperatives is warranted, a separate rule tailored to the circumstances of cooperatives would be appropriate. Any rule adopted regarding cooperatives must necessarily recognize the much more limited jurisdiction the Commission has

over cooperatives than it does over IOUs. The proposed rule fails to recognize any jurisdictional difference.

The Commission, in response to the request of the cooperatives and municipalities, has agreed to propose a separate rule for those entities. More recently, the Commission has agreed to a separate docket for that rule and those entities. Those are positive and encouraging developments. However, the rule proposed for cooperatives is, in its current form, the same rule as has been proposed for IOUs.

FECA respectfully submits there are multiple reasons why no rule for cooperatives is warranted or that if a rule for cooperatives is to be adopted, the rule applicable to cooperatives should be different from the rule proposed for IOUs. FECA appreciates the opportunity the Commission has provided the cooperatives with a separate docket to develop those differences, explore whether a rule for cooperatives is needed and to propose a reasonable alternative. FECA is optimistic that when the record is fully developed, the Commission will acknowledge that (a) the significantly different relationship between self-governed, not-for-profit cooperatives and their members (customers) relative to the relationship of IOUs and their ratepayers, (b) the significantly different relationship of the Commission to cooperatives and their members relative to the relationship between for-profit, IOUs and their ratepayers, (c) the role of the Rural Utilities Service ("RUS") with most Florida cooperatives, and (d) the comprehensive jurisdictional grant of authority to the Commission over IOUs and the limited jurisdictional grant of authority to the Commission relative to cooperatives, all warrant either no rule for cooperatives or at most, a less prescriptive rule for cooperatives than the rule proposed for IOUs.

While FECA still advances the option of the Commission proposing no rule for

cooperatives, FECA has proposed an alternative rule to the Staff of the Commission which should meet the Commission's goals in this proceeding. The proposed alternative rule would reinforce the cooperative relationship that has evolved between the Commission and rural electric cooperatives over the last thirty years. FECA's proposed alternative, which is attached hereto as Attachment A, is a least cost regulatory alternative that addresses all of the stated goals of proposed rules 25-6.034, 25-6.341 and 25-6.0342. FECA requests that if the Commission determines that any rule is necessary for cooperatives, that the Commission adopt the attached rule in lieu of proposed Rule 25-6.0343.

FECA's Comments are divided into five sections in addition to this Introduction. Section II addresses the historic relationship of cooperatives, their members and the Commission and provides a rationale for no rule for cooperatives or a rule for cooperatives separate and distinct from IOUs. Section III addresses RUS requirements applicable to and followed by RUS cooperatives. Section IV addresses the unique customer density and cost profiles of cooperatives, the high costs associated with implementing extreme wind load standards for cooperatives, and the efforts cooperatives have undertaken to address system storm reliability. Section V addresses FECA's proposed alternative rule. Section VI addresses Rule 25-6.0343 as proposed by the Commission.

Once again, FECA thanks the Commission for its recognition thus far that cooperatives warrant their own rule and docket. FECA is confident that the same understanding that led to a separate rule and separate proceeding will lead the Commission to the conclusion either that no rule for cooperatives should be adopted or that rule requirements different than IOU rule requirements are warranted.

II

## THE RELATIONSHIP OF COOPERATIVES, THEIR MEMBERS AND THE COMMISSION

Before addressing whether to adopt a rule for cooperatives or whether to adopt either FECA's alternative rule or the Commission's proposed rule for cooperatives and municipalities, it is important to recognize and discuss the unique relationship of not-for-profit, self-governed cooperatives with the members they serve and the Commission's role in that relationship relative to the relationship between for-profit IOUs and their ratepayers and the Commission's role in that relationship. These are very different relationships and roles, and they provide a fundamental rationale for not adopting a rule for cooperatives or for adopting a different rule for cooperatives than for IOUs.

Rural electric cooperatives were organized to meet a growing need for reliable electricity service in rural areas of America. In 1935 when President Roosevelt created the Rural Electrification Administration ("REA") by executive order, nine out of ten rural homes were without electricity. This lack of an essential service was frustrating economic development of rural areas, forcing them to retain an agrarian economy. A year later Congress passed the Rural Electrification Act, creating a low cost lending program administered by REA that allowed rural electric systems to organize and fund necessary facilities.

Florida's electric cooperatives have a proud history of providing reliable, at-cost electric service to the rural and suburban areas of Florida. Florida's electric cooperatives were formed in the 1930s to serve areas that were not being served by other utilities. Cooperatives were created by the people and businesses that needed electricity, and today they are still owned by those they serve.

In 1940 the Florida legislature acted to facilitate the creation of rural electric cooperatives in Florida by enacting the Rural Electric Cooperative Law, which was codified as Chapter 425, Florida Statutes. Section 425.01, Florida Statutes. Under Chapter 425, each cooperative is a "cooperative, nonprofit, membership corporation ... organized ... for the purpose of supplying electric energy and promoting and extending use thereof in rural areas." Section 425.02, Florida Statutes.

Each cooperative organized under Chapter 425 is governed by a board of trustees, which consists of members (customers) served by the cooperative. Section 425.10, Florida Statutes. The trustees are elected by the members of the cooperatives. Id. In addition, cooperatives conduct annual, open meetings of its members as well as special meetings called by the board of trustees or at least ten percent of the members. Section 425.09, Florida Statutes.

Simply stated, cooperatives are democratic organizations controlled by their members who actively participate in setting policies and making decisions. The boards are comprised of members who have no interest to serve other than those of their fellow members. There are no shareholders with profit expectations. Since the members own the cooperative and control its policies through democratic processes, there is no motive for the cooperative to act in any fashion that is not in the interests of its members.

Recognizing the not-for-profit, self-governing aspects of cooperatives, from 1940 until 1974, the Florida Legislature withheld from the Commission any regulatory oversight of rural electric cooperatives. Since 1974, when the Legislature gave the Commission limited jurisdiction over rural electric cooperatives, the Legislature has continued to recognize there is not the need for the Commission to act to protect cooperative members in the same fashion as it

needs to act to protect ratepayers of investor-owned public utilities. Just as the Legislature has recognized there is not the need to regulate cooperatives as there is the need to regulate IOUs, the Commission should recognize that the same rule is not necessary for cooperatives and IOUs.

Just as there is no need for the Commission to set rates to protect cooperative customers, there is not the same level of need for the Commission to act to assure reliability of distribution facilities owned by the members of cooperatives. These facilities are owned by the members they serve. The facilities exist solely to provide reliable service to the members. They are not owned by shareholders who expect a market based return on their investment. The boards of trustees when making decision regarding construction standards and vegetation policies and other matters that affect reliability do not have to balance competing interests of shareholders and ratepayers. The boards of trustees are simply acting, as democratically elected representatives, to preserve and enhance the reliability and quality of service to their fellow members. Thus, the fundamental relationship between cooperatives and their members suggests there is far less need for the Commission to act to protect the interests of members of cooperatives. This should be considered by the Commission in its rulemaking. It is a rational, indeed compelling, basis for making distinctions between the rule proposed for IOUs and the rule proposed for cooperatives or for deciding not to adopt at all for cooperatives.

## III
## RURAL UTILITIES SERVICE REQUIREMENTS

Most of Florida's cooperatives have low interest loans from the RUS. RUS borrowers are required by their loan covenants to comply with the RUS' rules and regulations. Most of those Florida cooperatives which are not RUS borrowers nonetheless follow RUS guidelines to

preserve their future ability to borrow from RUS.

The RUS has expertise in the area of designing rural electric facilities and has created construction specifications that its borrowers must use. RUS' specifications have been developed over decades based upon RUS' extensive history with nearly 1000 electric cooperatives in the United States, and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). The RUS also requires borrowers to maintain and test their Emergency Response Plans.

RUS' requirements regarding distribution system planning, construction, operation and maintenance are extensive and are contained not only in regulations in the Code of Federal regulations ("CFR"), but also in Bulletins and Information Publications. The Commission is familiar with RUS Bulletins and their guidance, as RUS pole inspection requirements were relied upon, in part, by the Commission in entering Order No. PSC-06-0144-PAA-EI, its pole inspection order in Docket No. 060078-EI. Some of the RUS Bulletins are incorporated by reference into the CFR regulations.

It is not practical for FECA to forward to the Commission as part of its comments all applicable RUS regulations and bulletins. However, it is helpful to provide to the Commission indices of the RUS regulations and bulletins and the text of the RUS regulations applicable to distribution systems and storm restoration. It is important for the Commission to understand that RUS has already acted extensively in the areas covered by the Commission's proposed rule and that in significant measure the Commission's rule is redundant, unnecessary and could possibly even conflict with RUS requirements.

The Rural Utilities Service Electric Program Regulations are posted on the United States Department of Agriculture's ("USDA") web site. The index of those regulations is found on the following website: http://www.usda.gov/rus/electric/regs/index.htm. A copy of that index is attached as part of Attachment C. At a minimum, the Commission should be aware of the following regulations mentioned in that index:

(1) 7 CFR Part 1724, Electric engineering, architectural services and design policies and procedures.
(2) 7 CFR Part 1726, Electric system construction policies and procedures
(3) 7 CFR Part 1728, Electric standards and specifications for materials and construction
(4) 7 CFR Part 1730, Electric system operations and maintenance

For the Commission's ease of reference, all those regulations are also found in Attachment C.

The RUS requires compliance with the National Electrical Safety Code ("NESC"). 7 CFR Part 1724.50. It then goes beyond the requirements of the NESC and requires for distribution facilities conformance "to the applicable RUS construction standards" and utilization of "RUS accepted materials." 7 CFR Part 1724.51(a). RUS also requires the preparation of work plans and specifications for distribution facilities, 7 CFR part 1724.53, and RUS approval of such plans, 7 CFR Part 1724.54(a)(b).

In 7 CFR Part 1728, RUS provides extensive guidance regarding specifications and standards for materials, equipment and construction units that will be used for RUS financial assistance. RUS uses standards from national groups (American National Standards Institute, American Wood Preservers' Association, national engineering societies and the NESC) "to the greatest extent practical." 7 CFR 1728.20(a). RUS has an extensive procedure for including items for its standards listings or technical acceptance, 7 CFR Part 1728.30 – 1728.60, and requires borrowers to procure listed items, 7 CFR Part 1728.70. RUS incorporates by reference

numerous electric bulletins that it has issued. 7 CFR Part 1728.97 through 1728.202.

RUS' regulations also contain various operations and maintenance requirements that are relevant to this proceeding. Each borrower must maintain its system in compliance with "prudent utility practice ... and all applicable laws, regulations and orders" and "shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements...." 7 CFR Part 1730.20. Each borrower must also perform Vulnerability and Risk Assessments and maintain an Emergency Restoration Plan. Id. RUS borrowers also must conduct necessary inspections and tests, and the inspections must include determinations of compliance with the NESC. 7 CFR Part 1730.21. Borrowers must periodically analyze and document its security and O&M practices and performs ratings, which are subject to RUS review. 7 CFR Part 1730. 22 through 24.

As previously noted, there are extensive Bulletins issued by the RUS that supplement the requirements of RUS' regulations. An index of those Bulletins is found in Attachment D. The index is found at the following website, where specific Bulletins can be accessed: http://www.usda.gov.rus/electric/bulletins.htm. As one can see from the index, the vast bulk of the Bulletins corresponds to and supplements Parts 1724 through 1730 of the regulations.

FECA respectfully submits that given the existing requirements of RUS in the form of its regulations and bulletins applicable to RUS cooperatives, there is no need for the Commission to require by rule the adoption of construction standards or compliance with the National Electrical Safety Code. Exacting and demanding standards already are in place for RUS cooperatives. Moreover, Florida's cooperatives borrowing or hoping to borrow from the RUS already have to

comply with not only the NESC but also RUS' requirements.

## IV
## COOPERATIVE DEMOGRAPHICS, COSTS AND STORM RESPONSES

The demographics and nature of a cooperative's service territory are unique. Cooperatives serve more than sixty percent of Florida's landmass, but they serve less than twelve percent of Florida's population. Nationally, the majority of most cooperatives' service territories are rural, and cooperatives have only seven (7) member-owners per mile of line. This compares to average customers per mile of line for IOUs and municipalities of 35 and 47, respectively.[2]

Despite the low density and the corresponding high cost per customer of serving the rural areas, cooperatives' rates are competitive with their neighboring utilities. However, cooperatives are concerned that if the same rule requirements are applied to cooperatives as are applied to IOUs, given the cooperatives' low customer density and high cost service characteristics, cooperatives rates will be forced to increase rates without any assurance of improved reliability or storm restoration time.

For instance, in earlier comments, FECA provided cost estimates associated with complying with extreme wind loading standards. Those costs are significant, and they appear to have been overlooked. They warrant re-emphasis here, given the Commission's proposed rule that requires cooperatives "to be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC."

Withlacoochee River Electric Cooperative, Inc., which is located in an extreme wind loading area of 130 mph, has estimated the materials cost of complying with the extreme wind

[2] This is based on 2004 EIA and RUS data.

loading standards of NESC 250 C rather than the applicable wind loading standard of NESC 250 B. Those materials cost estimates (exclusive of labor, vehicles, etc.) are shown on Attachment B. The materials cost of construction of new distribution facilities would escalate alarmingly for Withlacoochee and similarly situated cooperatives. Different pole types would be required; span lengths would be significantly shortened; and the resulting costs per mile for various circuits would increase dramatically. The estimated increase in materials costs associated with compliance with extreme wind loading standards is as follows:

| Facility | Materials Cost Increase |
|---|---|
| Single Phase #2 AAAC | 65% |
| 3 Phase 394 AAAC Single Circuit | 96 - 101% |
| 3 Phase 740 AAAC Single Circuit | 87 - 94% |
| 3 Phase 394 AAAC Double Circuit | 68 - 159% |
| 3 Phase 740 AAAC Double Circuit | 50 – 142%. |

These dramatic projected cost increases associated with following extreme wind load standards are sobering, but given other testimony the Commission has heard, it is difficult to understand why the Commission is proposing a rule for cooperatives to be guided by extreme wind load standards.

Compliance with extreme wind load standards is very expensive, but it would not even address the primary cause of loss of distribution facilities during storm events – trees and flying debris hitting lines. As FECA has previously testified, during the 2004 and 2005 hurricane seasons, most cooperative pole failure (more than 50%) was due not to direct wind within the cooperatives' applicable extreme wind ratings (which is what the extreme wind loading

standards address), but to tornadic winds and flying debris (which the extreme wind load standards do nothing to prevent). For most cooperatives, the number of poles that failed due to straight wind within applicable ratings was insignificant, and many of those poles were built to meet extreme wind loading. Adherence to extreme wind loading standards by cooperatives appears to be a costly but ineffective approach.

Moreover, the adoption by cooperatives of extreme wind loading standards likely would increase rather than decrease storm restoration time. Compliance with extreme wind loading standards significantly decreases the span lengths, requiring more poles and more spans exposed to the same amounts of flying debris. If cooperatives complying with extreme wind standards suffered the same amount of line mileage repair due to tornadic winds, trees and flying debris, the number one cause of distribution system loss, restoration time would necessarily increase, because more poles and more spans would have to be replaced.

Thus, FECA respectfully submits that a rule requiring cooperatives to be guided by extreme wind loading standards would actually frustrate rather than improve storm reliability and storm restoration. That is a decision best left to cooperative's representative boards, which are far more familiar with their service territories, their vulnerability to storm related outages and the service requirements of their members.

Cost considerations aside, in deciding whether to proceed with the existing proposed rule, a less prescriptive rule commensurate with the Commission's more limited jurisdiction over cooperatives, or no rule at all for cooperatives, the Commission should also be aware of the actions Florida's cooperatives have undertaken and are undertaking to improve storm reliability. Florida's cooperatives have been proactive in regard to storm recovery, and their actions suggest

there is no need for a prescriptive Commission rule.

As noted previously, most of Florida's cooperatives already comply with RUS' extensive requirements, requirements that the Commission is already relying upon in its pole inspection docket. Thus, there is no need for the Commission to require construction standards for cooperatives.

All of FECA's members have increased their vegetation management programs. Of course, this directly addresses the primary cause of hurricane related, cooperative distribution outages in the two recent hurricane seasons – tornadic winds, trees and flying debris.

Most Florida cooperatives have created generator programs for large and critical loads. In many cases it is less expensive for a cooperative to provide a permanent or portable backup generator during restoration, either on the customer's site or at a substation, than it is to harden a system.

Many cooperatives have also lowered the underground differential charge. This promotes the installation and use of underground facilities.

Some cooperatives are building ties between feeders to add redundancy to the system. This enhances reliability, avoids storm related outages and decreases storm restoration time.

In many cases cooperatives are using stronger poles and more expensive materials for targeted facilities. They have taken this action because the cooperatives' boards have determined that the increased cost is justified and the members are willing to pay higher associated rates.

On their own initiative, cooperatives have considered whether to adopt extreme wind loading standards. One cooperative, Florida Keys Electric Cooperative Association, Inc., has decided to adopt extreme wind loading standards, despite the associated cost. Other

cooperatives, such as Withlacoochee River Electric Cooperative, Inc., have considered the higher materials costs associated with adopting extreme wind loading standards and have targeted transmission facilities and feeders for upgrades to extreme wind loading standards but have declined to adopt such standards across the board.

Before proposing a prescriptive rule for cooperatives, the Commission should seriously consider whether such a rule, particularly one with high associated costs, is warranted. The democratically representative boards of Florida's cooperatives are uniquely qualified to evaluate and implement storm reliability and restoration measures. Their members expect the boards to act to diminish vulnerability to extreme weather events, and those boards have acted and will continue to act. Of course, it is those boards and not the Commission that also have rate making authority. So, they are better positioned than the Commission to consider the cost implications of each of the alternatives available. Thus, FECA respectfully submits that the Commission should think long and hard about proposing a prescriptive rule that imposes significant costs. If any rule is to be adopted for cooperatives, a rule much less prescriptive than the Commission proposed rule should be adopted.

## V
## FECA'S PROPOSED ALTERNATIVE RULE

While FECA advocates that the Commission decline to adopt any rule for cooperatives, as an alternative, FECA is proposing a less prescriptive rule. FECA's proposed alternative rule is set forth in Attachment E. It abandons language in the Commission's proposed rule that requires cooperatives to adopt various standards, recognizing that such standards are already in place for RUS cooperatives. Instead, it creates requirements for certain standards to be made

available for Commission review. In addition, the rule contemplates an annual report to be submitted by each cooperative that addresses compliance with the NESC, pole inspections, vegetation management and other matters the cooperatives deems appropriate, including the extent to which facilities may be upgraded to extreme wind loading standards in the NESC. A section by section analysis follows.

Section (1) of FECA's proposed alternative Rule 25-6.0343 makes it clear that the rule is applicable only to those electric utilities as defined in Chapter 366, Florida Statutes, (municipal electric utilities and rural electric cooperatives) that provide distribution services to end use customers. It was FECA's understanding from discussions with the Commission Staff that the Commission's proposed rule was not intended to address generation and transmission cooperatives, only distribution cooperatives, so this was written into FECA's alternative rule as well.

Section (2) of FECA's proposed rule requires each municipal electric utility and rural electric cooperative serving end use customers to maintain at its corporate headquarters the following information: construction standards, pole inspection standards, vegetation management standards and guidelines, and procedures or methodologies for inspecting transmission structures and poles and distribution poles. These materials are to be readily available to the Commission Staff, and if Staff is unwilling to travel to review these materials, arrangements are to be made to provide Staff access to these materials in Tallahassee.

Section (3) of FECA's alternative rule requires the filing of an annual report with the Commission by March 1 of each year. The report would contain: (a) a statement of compliance with the NESC regarding construction standards (b) a statement of compliance with the NESC

regarding pole attachment contract; (b) a pole inspection report; (c) a vegetation management report; and (d) other appropriate information such as whether facilities were upgraded to meet extreme wind loading standards in the NESC.

FECA's proposed rule recognizes and addresses the many differences between IOUs, cooperatives and municipal utilities, including the differences between the organizational structures, the fiduciary duty of directors to consumers, and the jurisdiction of this Commission, the Federal Communications Commission's ("FCC") and the RUS. Cooperatives are not-for-profit, self-governing entities run by elected boards and commissions that serve at the will of the cooperative's member-owners. Every trustee must be a member of the cooperative, and they must be elected by the member-owners of the cooperative at the cooperative's annual meeting. *See* Section 425.10, F.S. As not-for-profit consumer controlled organizations, cooperatives do not have a conflicting profit incentive and they serve only one master, the consumer. The elected boards of cooperatives have a fiduciary duty to the cooperative and its member-owners to insure that the cooperative provides reliable service at a reasonable cost. In short, cooperatives' trustees assure distribution reliability; there is no need for the Commission to act to address such distribution reliability, whether storm related or in general. FECA's rule limits its scope to matters within the Commission's safety jurisdiction and calls for cooperatives and municipal's voluntary offering to make other matters available to the Commission and its Staff.

FECA's proposed rule stops short of the Commission mandating that cooperatives and municipal electric utilities adopt standards that go beyond safety standards and which address distribution reliability. So, this alternative proposed rule avoids the cooperatives and municipal electric utilities having to litigate the Commission's jurisdiction (or lack of jurisdiction) over

cooperatives and municipal's distribution facility reliability.

## VI
## PROBLEMS WITH PROPOSED RULE 25-6.0343

Proposed Rule 25-6.0343 is not based upon sound policy for cooperatives. It is nothing more than a mere restatement of the requirements of the rules proposed for the IOUs. The proposed rule completely disregards the dramatically different relationship between cooperatives and their members and IOUs and their ratepayers as well as the Commission's relationship to IOUs and cooperatives. It disregards cooperatives' unique cost characteristics, the high costs that would be imposed on cooperatives by the proposed rule and the fact that it is cooperatives' boards and not the Commission that has to balance customer service expectations with rate impacts. The proposed rule also fails to take into account the existing requirements of the RUS applicable to cooperatives that borrow or wish to borrow money from the RUS as well as the existing requirements of Commission rules that cooperatives comply with the NESC. Thus, it requires standards that are already in place and requires consideration of other standards not required by the RUS or necessary to meet the service expectations of cooperative members.

FECA especially takes issue with the Commission's attempt to resolve conflicts between the cooperative and its members, to define what is cost-effective for a cooperative, to require the use of the extreme wind loading standards, to define construction standards for cooperatives without regard to the existing contracts between cooperatives and their lenders, to require the placement of facilities adjacent to roadways, and to regulate pole attachments for cooperatives. While FECA's members share the Commission's goals of establishing and maintaining adequate construction standards and improving restoration times, FECA maintains that the Commission's

rule must be restricted to subjects that are within its jurisdictional limits and must advance sound public policy.

In the following discussion, FECA addresses some of the specific flaws in the proposed rule. More detailed FECA comments are also reflected in Attachment F, on a section by section basis.

Subsection (1)(e)

Proposed subsection (1)(e) appears to require use of the extreme wind loading standards of the NESC for new distribution facilities unless there are extenuating circumstances, such as failing a cost-effectiveness test. However, there are no definitions in the rule for the terms "reasonably practical", "feasible" or "cost-effective". Under a purely monetary cost-effectiveness test the extreme wind loading standards would never be implemented because they will always be more expensive than the minimum standards of the NESC. Presumably, there are unidentified factors that must be considered for this test, or else this provision would have no purpose other than to prevent the use of the extreme wind loading standards.

While FECA appreciates the fact that the rule appears to give great discretion to the utilities to determine what is cost-effective, feasible and reasonably practicable, cooperatives already have this discretion. Moreover, when the decision only involves distribution facilities that are for the exclusive use of the cooperative and its members, the Commission lacks authority to review the decision of a cooperative's board unless it is related to a territorial issue. FECA also is concerned that a strict application of the rule would be counterproductive to cooperatives that are building to a standard higher than the minimum.

It cannot be disputed that building to the extreme wind loading standards is more

expensive than building to the minimum standard. This has been discussed in detail above and is shown on Attachment B. In some cases the extreme wind loading standard would more than double construction costs for materials, possibly without providing any significant benefits. More importantly, there is no research or evidence in this record that supports a finding that use of the extreme wind loading standards is the best approach for cooperatives. As FECA demonstrated in its presentation to the Commission on June 5, many poles that were constructed to the extreme wind loading standards nevertheless failed due to tornadic wind and tree limbs during hurricanes Charley, Ivan and Wilma.

There are alternatives to improving system performance that may be more effective and cheaper for a cooperative than to double construction costs for infrastructure that may inevitably fail no matter how much is spent to reinforce it. The majority of cooperatives' pole failures in the hurricanes of 2004 and 2005 were the result of tornadic winds and trees falling into the lines or on poles. As explained above, FECA's members have all undertaken specific actions to improve their storm reliability. FECA respectfully submits that a cooperative's board is uniquely qualified to evaluate and implement these alternatives. Moreover, cooperative Boards are the exclusive entity to make rate decisions for their members. It is far better for the body charged with rate making to decide which storm reliability measures should be undertaken by cooperatives.

For some cooperatives moving to the extreme wind loading standards will result in substantial rate increases. While the Commission has rate structure jurisdiction over cooperatives, it does not have ratemaking jurisdiction. *City of Tallahassee v. Mann,* 411 So.2d 162 (Fla. 1981). Ratemaking falls exclusively within the discretion of each cooperative's

governing board, and mandating or imposing significant costs on an electric utility constitutes ratemaking or is inconsistent with the exercise of ratemaking authority. See, *Florida Power Corp. v. Seminole County*, 579 So.2d 105, 107 (Fla. 1991).

FECA's also is concerned that a strict application of the proposed rule could prohibit the use of construction standards that exceed the minimum standards of the NESC. The higher standards are more expensive, and arguably would not pass a cost effectiveness test unless factors other than cost are considered. At least two cooperatives are building all of their distribution facilities to a standard that exceeds the minimum criteria of the NESC. In both cases the cooperative's board determined that the higher construction standard was desired by their members and that the members were willing to pay higher rates for the higher standard. FECA believes that regardless of any tests set forth by the Commission, cooperative boards have the right to build to standards that exceeded the minimum loading criteria of the NESC, and the Commission is without jurisdiction to prevent such construction.

FECA is further concerned that the test set forth in this subsection may conflict with the standards imposed by RUS. Therefore, the Commission's proposed rule may impair a cooperative's contract with RUS.

Section (2)

Proposed subsection (2) appears to require distribution facilities to be placed adjacent to a public road and in front of the customer's premises unless there are extenuating circumstances, such as failing a cost-effectiveness test. There are no definitions in the rule for the terms "reasonably practical", "feasible" or "cost-effective". FECA appreciates the fact that the rule appears to give great discretion to the utilities to determine what is cost-effective, feasible and

reasonably practicable, but cooperatives already have this discretion. A cooperative's management and board are uniquely qualified to establish guidelines for the placement of facilities without rule mandated preferences from the Commission which fail to recognize legitimate alternatives that might be superior in individual circumstances.

A front-lot presumption should not apply in rural areas. In many cases the cooperative will construct lines across open fields because it is a significantly shorter and cheaper path to serve a new member. An alternative route along established roads would be significantly longer and therefore more expensive, and it probably would fail under the cost-effectiveness test. Nevertheless, the presumption in the rule that facilities should be placed adjacent to a public road is troubling and may unintentionally create a legal burden on cooperative boards that dare to place facilities in locations other than along roadways.

FECA also takes exception to the rule as it applies to commercial buildings. FECA agrees that in residential neighborhoods it usually is a good policy to place distribution facilities in the front of the building so that the equipment is more readily accessible (but even that preference is not universal, as there are instances where there is better or equal access to other sides of residential lots). However commercial buildings are different. In some cases commercial properties have holding ponds and other obstructions in front of the building that would render the utility's facilities inaccessible by vehicles. In some cases it is advantageous to place a pad mounted transformer in the rear of a commercial building to avoid contact with vehicles that travel at high speeds. Arguably, these are extenuating circumstances that should allow the utility to avoid the presumptions in the rule for commercial properties, but the lack of definitions in the rule are cause for concern, and may create undesirable liability for cooperatives

and other utilities that chose to install facilities in a place that is not adjacent to a public road or in front of the premises.

Section (3)

Pole attachment rates for cooperatives and municipals are exempt from the FCC's rate, terms and conditions regulation. If an entity wishes to attach to cooperative facilities, they must pay the full cost of changes to our facilities that are required to maintain the minimum criteria set forth in the NESC. Cooperatives have contracts with entities that attach to their facilities, and RUS cooperatives attachment contracts require attachments to comply with the NESC. Section (3) of the proposed rule could result in the impairment of a cooperative's contracts with attachers and is absolutely unnecessary for cooperatives.

Section (4)

Proposed section (4) usurps the right of a cooperative to resolve disputes with its members. It also usurps the jurisdiction of the courts to resolve contract disputes and other cases between a cooperative and an attacher. These actions are clearly beyond the Commission's limited jurisdiction over cooperatives. In addition, it will be unnecessarily burdensome and costly for the cooperative's member and the cooperative if they are forced to travel to Tallahassee for a hearing on an issue that could have been resolved at home.

## CONCLUSION

FECA respectfully submits no rule for cooperatives is warranted. Existing Commission rules and/or RUS requirements already sufficiently address cooperatives. As a second best alternative, FECA has suggested an alternative proposed rule. If the Commission decides to

proceed with the adoption of a rule for cooperatives, the proposed alternative rule attached hereto as Attachment A provides a least cost regulatory alternative to the Commission's proposed rule while also accomplishing all of the stated goals of the Commission's proposal. FECA respectfully requests that the Commission not adopt any rule for cooperatives, but that if the Commission decides to adopt a rule for cooperatives, the Commission adopt its alternative rule in lieu of proposed rule 25-6.0343.

Respectfully submitted,

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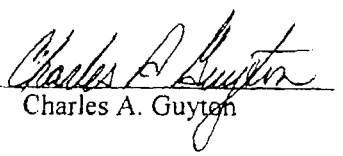
By: 
Charles A. Guyton

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments Of The Florida Electric Cooperatives Association, Inc. To Proposed Rule 25-6.0343 was furnished by Hand Delivery (*) or U.S. Mail this 8th day of September, 2006, to the following:

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Attachment

**ATTACHMENT A**
**FECA'S ALTERNATIVE RULE**

**25-6.0343 Access to Standards of Municipal Electric Utilities and Rural Electric Cooperatives and Reporting of Pole Inspections and Vegetation Management**

(1) Application and Scope. The purpose of this rule is to define certain reporting requirements by municipal electric utilities and rural electric cooperatives providing distribution service to end-use customers in Florida.

(2) Each municipal electric utility and rural electric cooperative shall maintain at its corporate headquarters a copy of its construction standards, pole attachment standards, vegetation management standards and the guidelines, procedures or methodologies for inspecting transmission structures and poles and distribution poles, including the pole inspection cycle and pole selection process information. Upon request, the utility shall provide access to a copy of these standards, guidelines, procedures and methodologies to the Commission staff at the utility's headquarters. If the Commission staff is unable to travel to the municipal's or cooperative's headquarters, arrangements will be made to provide access to the documents in Tallahassee.

(3) Each utility shall submit a report to the Director of the Division of Economic Regulation by March 1 of each year for the preceding calendar year which shall include:

(a) A statement of whether the utility's current construction standards comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(b) A statement of whether the utility contractually requires attachments by others to the utility's transmission and distribution facilities to comply with the applicable edition of the NESC.

(c) A pole inspection report which shall include information for the previous 12 months on the following:

(1) The number and percentage of transmission structure and pole and distribution pole inspections planned and completed.

(2) The number and percentage of transmission structures and poles and distribution poles failing the inspection and the cause for such failure, if known.

(3) The number and percentage of transmission structures and poles and distribution poles replaced or for which remediation was taken, including a description of the remediation taken.

(d) A vegetation management report which shall describe the utility's vegetation management plan, including the percentage of the cycle completed for transmission, three-phase distribution, distribution secondary and lateral circuits in the previous 12-month period, if available.

(e) Any other information the utility deems appropriate, which may include facilities which were upgraded to the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC.

**History: New**

**Legislative Authority: 366.04(6)**

**ATTACHMENT B**
**EXTREME WIND LOADING COST COMPARISONS**

| Single Phase #2 AAAC | | |
|---|---|---|
| NESC Code | 250B | 250C |
| Pole Type | 40/5 Wood | 40/3 Wood |
| Span Length (ft) | 450 | 270 |
| Cost per Mile | $ 36,694 | $ 60,378 |

| 3 Phase 394 AAAC Single Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/3 Wood | 50/2 Wood | 50/H2 Steel |
| Span Length (ft) | 375 | 170 | 240 |
| Cost per Mile | $ 75,000 | $ 150,624 | $ 147,327 |

| 3 Phase 740 AAAC Single Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/3 Wood | 50/2 Wood | 50/H2 Steel |
| Span Length (ft) | 300 | 140 | 200 |
| Cost per Mile | $ 95,815 | $ 185,494 | $ 179,597 |

| 3 Phase 394 AAAC Double Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/2 Wood | 50/2 Wood | 55/H3 Steel |
| Span Length (ft) | 325 | 110 | 220 |
| Cost per Mile | $ 149,496 | $ 387,690 | $ 251,316 |

| 3 Phase 740 AAAC Double Circuit | | | |
|---|---|---|---|
| NESC Code | 250B | 250C | 250C |
| Pole Type | 50/2 Wood | 50/2 Wood | 55/H4 Steel |
| Span Length (ft) | 250 | 90 | 200 |
| Cost per Mile | $ 198,091 | $ 479,739 | $ 297,468 |

**ATTCHMENT C**
**APPLICABLE RUS REGULATIONS**


Committed to the future of rural communities.

**Electric Programs**



Electric Home Page
About the Electric Programs
Frequently Asked Questions (FAQ's)
Interagency Electric Energy Market Competition Task Force
GIS Resources
Success Stories
Staff Directory
Loan Programs
Grant Programs
Interest Rates
Box Score
Cushion of Credit
List of Materials
Federal Register
Regulations
Bulletins
Engineering
Renewable Energy
Photovoltaic Systems
Environmental
Forms
Data Collection System (DCS)
Borrower Directory
Links
Recently Revised Pages

Electric Programs >> Regulations

# *Rural Utilities Service Electric Program Regulation*

Regulations
Bulletins Codified or Incorporated by Reference
Federal Register Issuances

The regulations are available in **html** format for viewing in your browser and in Adobe Acrobat **PDF** format for downloading and printing. The regulations below are from the Code of Federal Regulations (**CFR**) as of January 1, 2006. Amendments since that date are noted in the description.

The E-CFR beta site, maintained by the National Archives and Records Administration, provides a copy of the CFR which is updated daily.

## Regulations

| 7 CFR Part | HTML | PDF | Description |
|---|---|---|---|
| 1709 | html | pdf | Assistance to high energy cost rural communities |
| 1710 | html | pdf | General and pre-loan policies and procedures common to insure and guaranteed electric loans |
| 1714 | html | pdf | Pre-loan policies and procedures for insured electric loans |
| 1717 | html | pdf | Post-loan policies and procedures common to insured and guaranteed electric loans |
| 1718 | html | pdf | Loan security documents for electric borrowers |
| 1720 | html | pdf | Guarantees for bonds and notes issued for electrification or telephone purposes |
| 1721 | html | pdf | Post-loan policies and procedures for insured electric loans |
| 1724 | html | pdf | Electric engineering, architectural services and design policies and procedures |
| 1726 | html | pdf | Electric system construction policies and procedures |
| 1728 | html | pdf | Electric standards and specifications for materials and construction. |
| 1730 | html | pdf | Electric system operations and maintenance |
| 1767 | html | pdf | Accounting requirements for RUS electric borrowers |
| 1773 | html | pdf | Policy on audits of RUS borrowers |
| 1785 | html | pdf | Loan account computations, procedures and policies for electric and telephone borrowers |

| | | | |
|---|---|---|---|
| **1786** | html | pdf | Prepayment of RUS guaranteed and insured loans to electric an telephone borrowers |
| **1788** | html | pdf | RUS fidelity and insurance requirements for electric and telephone borrowers |
| **1789** | html | pdf | Use of consultants funded by borrowers |
| **1792** | html | pdf | Compliance with other Federal statutes, regulations, and Executive orders |
| **1794** | html | pdf | Environmental policies and procedures |

## Bulletins Codified or Incorporated by Reference

| Bulletin | Size (.doc) | Text | MS Word | PDF | Description |
|---|---|---|---|---|---|
| **1728F-803** | 10.6M | N/A | N/A | .pdf | Specifications and Drawings for 24.9/14.4 kV Line Construction (Incorporated by reference - §1728.97). See letter dated March 7, 2001, letter concerning assembly numbering (html) (pdf). |
| **1728F-804** | 12.8M | N/A | N/A | .pdf | Specifications and Drawings for 12.5/7.2 kV Line Construction (Incorporated by reference - §1728.97) (4/21/2005) |
| **1728F-806** | 4.2M | N/A | N/A | .pdf | Specifications and Drawings for Underground Electric Distribution (Incorporated by reference - §1728.97) |
| **1728F-700** | 4.1M | N/A | .doc | .pdf | Specification for Wood Poles, Stubs and Anchor Logs (Incorporated by reference - §1728.97) |
| **1728H-701** | 30K | .txt | .doc | .pdf | Specifications for wood crossarms, transmission timbers, and pole keys (Codified - §1728.201) |
| **1728H-702** | 24K | .txt | .doc | .pdf | Specifications for quality control and inspection of timber products (Codified - §1728.202) |

For bulletins and informational publications, see the Electric Program Bulletins Page.

The free Adobe Adobat Reader is required to view PDF files. You may download it from: http://www.adobe.com/prodindex/acrobat/readstep.html

Electric Programs borrowers will be notified of new and revised regulations by memo or hard copy. Borrowers should notify their business associates of the availability of these regulations. All new and revised Electric Program regulations will be available here upon issuance. If you have any questions regarding these documents or documents not included here, call (202) 720-8674 or FAX (202) 205-3654.

For other Rural Development Utilities Programs regulations, visit the main Utilities Programs Publications and Directives Page.

E-mail suggestions and comments to the Electric Programs Webmaster. Please include your name, e-mail address, telephone number, and company affiliation in the body of your message so that we may be able to contact you for additional information, if necessary.

begin with the next payment. For example: the amount deferred in the October payment will be reamortized over a 84 month period starting with the next payment (November if paying on a monthly basis). When a Borrower defers principal under any of these programs the scheduled payment on the account will increase by an amount sufficient to pay off the deferred amount, with interest, by the date specified in the agreement (usually 84 months (28 quarters)).

[67 FR 485, Jan. 4, 2002, as amended at 68 FR 37954, June 26, 2003]

### § 1721.107 Agreement.

After approval of the Borrower's request for a deferment of principal and interest, an extension agreement, containing the terms of the extension, together with associated materials, will be prepared and forwarded to the Borrower by RUS. The extension agreement will then be executed and returned to RUS by the Borrower.

### § 1721.108 Commencement of the deferment.

The deferment of principal and interest will not begin until the extension agreement and other supporting materials, in form and substance satisfactory to RUS, have been executed by the Borrower and returned to RUS. Examples of other supporting materials are items such as approving legal opinions from the Borrower's attorney and approvals from the relevant regulatory body for extending the maturity of existing debt and for the additional debt service payment incurred.

### § 1721.109 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572-0123.

## PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

### Subpart A—General



### Subpart B—Architectural Services



### Subpart C—Engineering Services



### Subpart D—Electric System Planning



### Subpart E—Electric System Design



### Subpart F—RUS Contract Forms



AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 63 FR 35314, June 29, 1998, unless otherwise noted.

## Subpart A—General

### § 1724.1 Introduction.

(a) The policies, procedures and requirements in this part implement certain provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers.

(b) All borrowers, regardless of the source of financing, shall comply with RUS' requirements with respect to design, construction standards, and the use of RUS accepted material on their electric systems.

(c) Borrowers are required to use RUS contract forms only if the facilities are financed by RUS.

### § 1724.2 Waivers.

The Administrator may waive, for good cause on a case-by-case basis, requirements and procedures of this part.

### § 1724.3 Definitions.

Terms used in this part have the meanings set forth in § 1710.2 of this chapter. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in § 1710.2 of this chapter, the following terms have the following meanings for the purposes of this part:

*Architect* means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

*Engineer* means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

*Force account construction* means construction performed by the borrower's employees.

*GPO* means Government Printing Office.

*NESC* means the National Electrical Safety Code.

*RE Act* means the Rural Electrification Act of 1936 as amended (7 U.S.C. 901 *et seq.*).

*Repowering* means replacement of the steam generator or the prime mover or both at a generating plant.

*RUS* means Rural Utilities Service.

*RUS approval* means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given orally followed by a confirming letter.

*RUS financed* means financed or funded wholly or in part by a loan made or guaranteed by RUS, including concurrent supplemental loans required by § 1710.110 of this chapter, loans to reimburse funds already expended by the borrower, and loans to replace interim financing.

[63 FR 35314, June 29, 1998, as amended at 63 FR 58284, Oct. 30, 1998]

### § 1724.4 Qualifications.

The borrower shall ensure that:

(a) All selected architects and engineers meet the applicable registration and licensing requirements of the States in which the facilities will be located;

(b) All selected architects and engineers are familiar with RUS standards and requirements; and

(c) All selected architects and engineers have had satisfactory experience with comparable work.

### § 1724.5 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS. (See part 1700 of this chapter.)

(b) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B and C of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by a certified copy of the board resolution awarding the contract.

(c) *Contract amendments requiring RUS approval.* The borrower shall submit to

RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval. Each contract amendment submittal to RUS must be accompanied by a certified copy of the board resolution approving the amendment.

### § 1724.6 Insurance requirements.

(a) Borrowers shall ensure that all architects and engineers working under contract with the borrower have insurance coverage as required by part 1788 of this chapter.

(b) Borrowers shall also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than $500,000.

### § 1724.7 Debarment and suspension.

Borrowers shall comply with the requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g. procurement contracts for goods or services.

### § 1724.8 Restrictions on lobbying.

Borrowers shall comply with the restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

### § 1724.9 Environmental compliance.

Borrowers shall comply with the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers.

### § 1724.10 Standard forms of contracts for borrowers.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through E of this part prescribe when and how borrowers are required to use RUS standard forms of contracts for engineering and architectural services. Subpart F of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for engineering and architectural services.

[63 FR 58284, Oct. 30, 1998]

### §§ 1724.11–1724.19 [Reserved]

## Subpart B—Architectural Services

### § 1724.20 Borrowers' requirements—architectural services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower shall select a qualified architect to perform the architectural services required for the design and construction management of headquarters facilities. The selection of the architect is not subject to RUS approval unless specifically required by RUS on a case by case basis. Architect's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(b) The architect retained by the borrower shall not be an employee of the building supplier or contractor, except in cases where the building is prefabricated and pre-engineered.

(c) The architect's duties are those specified under the Architectural Services Contract and under subpart E of this part, and, as applicable, those duties assigned to the "engineer" for competitive procurement procedures in part 1726 of this chapter.

(d) If the facilities are RUS financed, the borrower shall submit or require the architect to submit one copy of each construction progress report to RUS upon request.

(e) Additional information concerning RUS requirements for electric borrowers' headquarters facilities are set forth in subpart E of this part. See also RUS Bulletin 1724E-400, Guide to Presentation of Building Plans and Specifications, for additional guidance.

This bulletin is available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522.

### § 1724.21 Architectural services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS Form 220, Architectural Services Contract, must be used by electric borrowers when obtaining architectural services.

(b) The borrower shall ensure that the architect furnishes or obtains all architectural services related to the design and construction management of the facilities.

(c) Reasonable modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Such modifications or additions shall not relieve the architect or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. All substantive changes must be approved by RUS prior to execution of the contract.

(d) Architectural services contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(e) *Closeout.* Upon completion of all services and obligations required under each architectural services contract, including, but not limited to, submission of final documents, the borrower must closeout that contract. The borrower shall obtain from the architect a final statement of cost, which must be supported by detailed information as appropriate. For example, out-of-pocket expense and per diem types of compensation should be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation. RUS Form 284, Final Statement of Cost for Architectural Service, may be used. All computations of the compensation must be made in accordance with the terms of the architectural services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

### §§ 1724.22-1724.29 [Reserved]

## Subpart C—Engineering Services

### § 1724.30 Borrowers' requirements—engineering services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower shall select one or more qualified persons to perform the engineering services involved in the planning, design, and construction management of the system.

(b) Each borrower shall retain or employ one or more qualified engineers to inspect and certify all new construction in accordance with § 1724.32. The engineer must not be the borrower's manager.

(c) The selection of the engineer is not subject to RUS approval unless specifically required by RUS on a case by case basis. Engineer's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(d) The engineer's duties are specified under the Engineering Services Contract and under part 1726 of this chapter. The borrower shall ensure that the engineer executes all certificates and other instruments pertaining to the engineering details required by RUS.

(e) Additional requirements related to appropriate seismic safety measures are contained in part 1792, subpart C, of this chapter, Seismic Safety of Federally Assisted New Building Construction.

(f) If the facilities are RUS financed, the borrower shall submit or require the engineer to submit one copy of each construction progress report to RUS upon RUS' request.

### § 1724.31 Engineering services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS contract forms for engineering services shall be used. Reasonable

modifications or additions tc the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Any such modifications or additions shall not relieve the engineer or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. All substantive changes to the RUS contract form shall be approved by RUS prior to execution of the contract.

(b) RUS Form 236, Engineering Service Contract—Electric System Design and Construction, shall be used for all distribution, transmission, substation, and communications and control facilities. These contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) RUS Form 211, Engineering Service Contract for the Design and Construction of a Generating Plant, shall be used for all new generating units and repowering of existing units. These contracts require RUS approval.

(d) Any amendments to RUS approved engineering services contracts require RUS approval.

(e) *Closeout.* Upon completion of all services and obligations required under each engineering services contract, including, but not limited to, submission of final documents, the borrower must closeout the contract. The borrower shall obtain from the engineer a completed final statement of engineering fees, which must be supported by detailed information as appropriate. RUS Form 234, Final Statement of Engineering Fee, may be used. All computations of the compensation shall be made in accordance with the terms of the engineering services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

### §1724.32 Inspection and certification of work order construction.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) The borrower shall ensure that all field inspection and related services are performed within 6 months of the completion of construction, and are performed by a licensed engineer, except that a subordinate of the licensed engineer may make the inspection, provided the following conditions are met:

(1) The inspection by the subordinate is satisfactory to the borrower;

(2) This practice is acceptable under applicable requirements of the States in which the facilities are located;

(3) The subordinate is experienced in making such inspections;

(4) The name of the person making the inspection is included in the certification; and

(5) The licensed engineer signs such certification which appears on the inventory of work orders.

(b) The inspection shall include a representative and sufficient amount of construction listed on each RUS Form 219, Inventory of Work Orders (or comparable form), being inspected to assure the engineer that the construction is acceptable. Each work order that was field inspected shall be indicated on RUS Form 219 (or comparable form.) The inspection services shall include, but not be limited to, the following:

(1) Determination that construction conforms to RUS specifications and standards and to the requirements of the National Electrical Safety Code (NESC), State codes, and local codes;

(2) Determination that the staking sheets or as-built drawings represent the construction completed and inspected;

(3) Preparation of a list of construction clean-up notes and staking sheet discrepancies to be furnished to the owner to permit correction of construction, staking sheets, other records, and work order inventories;

(4) Reinspection of construction corrected as a result of the engineer's report;

(5) Noting, initialing, and dating the staking or structure sheets or as-built drawings and noting the corresponding work order entry for line construction; and

(6) Noting, initialing, and dating the as-built drawings or sketches for generating plants, substations, and other major facilities.

(c) *Certification.* (1) The following certification must appear on all inventories of work orders:

I hereby certify that sufficient inspection has been made of the construction reported by this inventory to give me reasonable assurance that the construction complies with applicable specifications and standards and meets appropriate code requirements as to strength and safety. This certification is in accordance with acceptable engineering practice.

(2) A certification must also include the name of the inspector, name of the firm, signature of the licensed engineer, the engineer's State license number, and the date of signature.

**§§ 1724.33–1724.39 [Reserved]**

## Subpart D—Electric System Planning

### § 1724.40 General.

Borrowers shall have ongoing, integrated planning to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements for their electric systems. The primary components of the planning system consist of long-range engineering plans and construction work plans. Long-range engineering plans identify plant investments required over a long-range period, 10 years or more. Construction work plans specify and document plant requirements for a shorter term, 2 to 4 years. Long-range engineering plans and construction work plans shall be in accordance with part 1710, subpart F, of this chapter. See also RUS Bulletins 1724D-101A, Electric System Long-Range Planning Guide, and 1724D-101B, System Planning Guide, Construction Work Plans, for additional guidance. These bulletins are available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522.

**§§ 1724.41–1724.49 [Reserved]**

## Subpart E—Electric System Design

### § 1724.50 Compliance with National Electrical Safety Code (NESC).

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) A borrower shall ensure that its electric system, including all electric distribution, transmission, and generating facilities, is designed, constructed, operated, and maintained in accordance with all applicable provisions of the most current and accepted criteria of the National Electrical Safety Code (NESC) and all applicable and current electrical and safety requirements of any State or local governmental entity. Copies of the NESC may be obtained from the Institute of Electrical and Electronic Engineers, Inc., 445 Hoes Lane, Piscataway, NJ 08855. This requirement applies to the borrower's electric system regardless of the source of financing.

(b) Any electrical standard requirements established by RUS are in addition to, and not in substitution for or a modification of, the most current and accepted criteria of the NESC and any applicable electrical or safety requirements of any State or local governmental entity.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B and C. Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

### § 1724.51 Design requirements.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Distribution.* All distribution facilities must conform to the applicable RUS construction standards and utilize RUS accepted materials.

(b) *Transmission lines.* (1) All transmission line design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, transmission line design data summary, general description of terrain, right-of-way calculations, discussion concerning conductor and structure selection, conductor sag and tension information, design clearances, span limitations due to clearances, galloping or conductor separation, design loads, structure strength limitations, insulator selection and design, guying requirements, and vibration considerations. For lines composed of steel or concrete poles, or steel towers, in which load information will be used to purchase the structures, the design data shall also include loading trees, structure configuration and selection, and a discussion concerning foundation selection.

(3) Line design data for uprating transmission lines to higher voltage levels or capacity must be approved by RUS.

(4) Transmission line design data which has received RUS approval in connection with a previous transmission line construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(c) *Substations.* (1) All substation design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, a discussion of site considerations, oil spill prevention measures, design considerations covering voltage, capacity, shielding, clearances, number of low and high voltage phases, major equipment, foundation design parameters, design loads for line support structures and the control house, seismic considerations, corrosion, grounding, protective relaying, and AC and DC auxiliary systems. Reference to applicable safety codes and construction standards are also to be included.

(3) Substation design data which has received RUS approval in connection with a previous substation construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(d) *Generating facilities.* (1) This section covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (e) of this section. Generation plant buildings must meet the requirements of paragraph (e)(1) of this section.

(2) For all new generation units and for all repowering projects, the design outline shall be approved by RUS, unless RUS determines that a design outline is not needed for a particular project.

(3) The design outline will include all significant design criteria. During the early stages of the project, RUS will, in consultation with the borrower and its consulting engineer, identify the specific items which are to be included in the design outline.

(e) *Headquarters*—(1) *Applicable laws.* The design and construction of headquarters facilities shall comply with all applicable Federal, State, and local laws and regulations, including, but not limited to:

(i) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794), which states that no qualified individual with a handicap shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Uniform Federal Accessibility Standards (41 CFR part 101–19, subpart 101–19.6, appendix A) are the applicable standards for all new or altered borrower buildings, regardless of the source of financing.

(ii) The Architectural Barriers Act of 1968 (42 U.S.C. 4151), which requires that buildings financed with Federal funds are designed and constructed to

be accessible to the physically handicapped.

(iii) The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR 1990 Comp., p. 269). Appropriate seismic safety provisions are required for new buildings for which RUS provides financial assistance. (See part 1792, subpart C, of this chapter.)

(2) The borrower shall provide evidence, satisfactory in form and substance to the Administrator, that each building will be designed and built in compliance with all Federal, State, and local requirements.

(f) *Communications and control.* (1) This section covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The performance considerations for a new or replacement master system must be approved by RUS. A master system includes the main controller and related equipment at the main control point. Performance considerations include all major system features and their justification, including, but not limited to, the objectives of the system, the types of parameters to be controlled or monitored the communication media, alternatives considered, and provisions for future needs.

### § 1724.52 Permitted deviations from RUS construction standards.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Structures for raptor protection.* (1) RUS standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large raptors to protect such birds from electric shock due to physical contact with energized wires. Where raptor protection in the design of overhead line structures is required by RUS; a Federal, State or local authority with permit or license authority over the proposed construction; or where the borrower voluntarily elects to comply with the recommendations of the U.S. Fish and Wildlife Service or State wildlife agency, borrowers are permitted to deviate from RUS construction standards, provided:

(i) Structures are designed and constructed in accordance with "Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996" (Suggested Practices for Raptor Protection); and,

(ii) Structures are in accordance with the NESC and applicable State and local regulations.

(2) Any deviation from the RUS construction standards for the purpose of raptor protection, which is not in accordance with the Suggested Practices for Raptor Protection, must be approved by RUS prior to construction. "Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996," published by the Edison Electric Institute/Raptor Research Foundation, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be obtained from the Raptor Research Foundation, Inc., c/o Jim Fitzpatrick, Treasurer, Carpenter Nature Center, 12805 St. Croix Trail South, Hastings, Minnesota 55033. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246-S, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the RUS standard transformer secondary neutral connections may be modified in accordance with Rule 97D2 of the NESC.

(c) *Lowering of neutral conductor on overhead distribution lines.* (1) It is permissible to lower the neutral attachment on standard construction pole-

top assemblies an additional distance not exceeding two feet (0.6 m) for the purpose of economically meeting the clearance requirements of the NESC.

(2) It is permissible to lower the transformer and associated neutral attachment up to two feet (0.6 m) to provide adequate clearance between the cutouts and single-phase, conventional distribution transformers.

(3) It is permissible to lower the neutral attachment on standard construction pole-top assemblies an additional distance of up to six feet (2 m) for the purpose of performing construction and future line maintenance on these assemblies from bucket trucks designed for such work.

[63 FR 35314, June 29, 1998, as amended at 69 FR 18803, Apr. 9, 2004]

### § 1724.53 Preparation of plans and specifications.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *General.* (1) The borrower (acting through the engineer, if applicable) shall prepare plans and specifications that adequately represent the construction to be performed.

(2) Plans and specifications for distribution, transmission, or generating facilities must be based on a construction work plan (as amended, if applicable), engineering study or construction program which has been approved by RUS if financing for the facilities will at any time be requested from RUS.

(b) *Composition of plans and specifications package.* (1) Whether built by force account or contract, each set of plans and specifications must include:

(i) *Distribution lines.* Specifications and drawings, staking sheets, key map and appropriate detail maps;

(ii) *Transmission lines.* Specifications and drawings, transmission line design data manual, vicinity maps of the project, a one-line diagram, and plan and profile sheets;

(iii) *Substations.* Specifications and drawings, including a one-line diagram, plot and foundation plan, grounding plan, and plans and elevations of structure and equipment, as well as all other necessary construction drawings, in sufficient detail to show phase spacing and ground clearances of live parts;

(iv) *Headquarters.* Specifications and drawings, including:

(A) A plot plan showing the location of the proposed building plus paving and site development;

(B) A one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown; and

(C) An outline specification including materials to be used (type of frame, exterior finish, foundation, insulation, etc.); and

(v) *Other facilities (e.g., generation and communications and control facilities).* Specifications and drawings, as necessary and in sufficient detail to accurately define the scope and quality of work required.

(2) For contract work, the appropriate standard RUS construction contract form shall be used as required by part 1726 of this chapter.

### § 1724.54 Requirements for RUS approval of plans and specifications.

The provisions of this section apply only to RUS financed electric system facilities.

(a) For any contract subject to RUS approval in accordance with part 1726 of this chapter, the borrower shall obtain RUS approval of the plans and specifications, as part of the proposed bid package, prior to requesting bids. RUS may require approval of other plans and specifications on a case by case basis.

(b) *Distribution lines.* RUS approval of the plans and specifications for distribution line construction is not required if standard RUS drawings, specifications, RUS accepted material, and standard RUS contract forms (as required by part 1726 of this chapter) are used. Drawings, plans and specifications for nonstandard distribution construction must be submitted to RUS and receive approval prior to requesting bids on contracts or commencement of force account construction.

(c) *Transmission lines.* (1) Plans and specifications for transmission construction projects which are not based on RUS approved line design data or do not use RUS standard structures must

receive RUS approval prior to requesting bids on contracts or commencement of force account construction.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for transmission construction which use previously approved design data and standard structures do not require RUS approval. Plans and specifications for related work, such as right-of-way clearing, equipment, and materials, do not require RUS approval unless required by paragraph (a) of this section.

(d) *Substations.* (1)(i) Plans and specifications for all new substations must receive RUS approval prior to requesting bids on contracts or commencement of force account construction, unless:

(A) The substation design has been previously approved by RUS; and

(B) No significant NESC revisions have occurred.

(ii) The borrower shall notify RUS in writing that a previously approved design will be used, including identification of the previously approved design.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for substation modifications and for substations using previously approved designs do not require RUS approval.

(e) *Generation facilities.* (1) This paragraph (e) covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (f) of this section.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $1,500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

(f) *Headquarters buildings.* (1) This paragraph (f) covers office buildings, warehouses, and equipment service buildings. Generating plant buildings are covered under paragraph (e) of this section.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for headquarters buildings do not require RUS approval. The borrower shall submit two copies of RUS Form 740g, Application for Headquarters Facilities. This form is available from Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. The application must show floor area and estimated cost breakdown between office building space and space for equipment warehousing and service facilities, and include a one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown. The information concerning the planned building may be included in the borrower's construction work plan in lieu of submitting it with the application. (See 7 CFR part 1710, subpart F.) Prior to issuing the plans and specifications for bid, the borrower shall also submit to RUS a statement, signed by the architect or engineer, that the building design meets the Uniform Federal Accessibility Standards (See § 1724.51(e)(1)(i)).

(g) *Communications and control facilities.* (1) This paragraph (g) covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

(h) Terms and conditions include the RUS standard form of contract, general and special conditions, and any other non-technical provisions of the contract. Terms and conditions which have received RUS approval in connection with a previous contract for a particular borrower are considered approved by RUS for that borrower.

[63 FR 35314, June 29, 1998, as amended at 65 FR 63196, Oct. 23, 2000]

**§ 1724.55 Dam safety.**

(a) The provisions of this section apply only to RUS financed electric system facilities.

(1)(i) Any borrower that owns or operates a RUS financed dam must utilize the "Federal Guidelines for Dam Safety," (Guidelines), as applicable. A dam, as more fully defined in the Guidelines, is generally any artificial barrier which either:

(A) Is 25 feet (8 m) or more in height; or

(B) Has an impounding capacity at maximum water storage elevation of 55 acre-feet (68,000 $m^3$) or more.

(ii) The "Federal Guidelines for Dam Safety," FEMA 93, June, 1979, published by the Federal Emergency Management Agency (FEMA), is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "Federal Guidelines for Dam Safety" may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246-S, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) The borrower shall evaluate the hazard potential of its dams in accordance with Appendix E of the U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110-2-1155, July 31, 1995. A summary of the hazard potential criteria is included for information as Appendix A to this subpart. The U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110-2-1155, July 31, 1995, published by the United States Army Corps of Engineers, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program may be obtained from the U. S. Army Corps of Engineers, Publications Depot, 2803 52nd Ave., Hyattsville, MD 20781. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246-S, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(3) For high hazard potential dams, the borrower must obtain an independent review of the design and critical features of construction. The reviewer must have demonstrated experience in the design and construction of dams of a similar size and nature. The reviewer must be a qualified engineer not involved in the original design of the dam or a Federal or State agency responsible for dam safety. The reviewer must be approved by RUS.

(4) The independent review of design must include, but not necessarily be limited to, plans, specifications, design calculations, subsurface investigation reports, hydrology reports, and redesigns which result from encountering unanticipated or unusual conditions during construction.

(5) The independent review of construction shall include:

(i) *Foundation preparation and treatment.* When the foundation has been excavated and exposed, and before critical structures such as earth embankments or concrete structures are placed thereon, the borrower shall require the reviewer to conduct an independent examination of the foundation to ensure that suitable foundation material has been reached and that the measures proposed for treatment of the foundation are adequate. This examination must extend to the preparation and treatment of the foundation for the abutments.

(ii) *Fill placement.* During initial placement of compacted fill materials, the borrower shall require the reviewer to conduct an independent examination

to ensure that the materials being used in the various zones are suitable and that the placement and compaction procedures being used by the contractor will result in a properly constructed embankment.

(6) If the reviewer disagrees with any aspect of the design or construction which could affect the safety of the dam, then the borrower must meet with the design engineer and the reviewer to resolve the disagreements.

(7) *Emergency action plan.* For high hazard potential dams, the borrower must develop an emergency action plan incorporating preplanned emergency measures to be taken prior to and following a potential dam failure. The plan should be coordinated with local government and other authorities involved with the public safety and be approved by the borrower's board of directors.

(b)(1) For more information and guidance, the following publications regarding dam safety are available from FEMA:

(i)"Emergency Action Planning Guidelines for Dams,"FEMA 34.

(ii)"Federal Guidelines for Earthquake Analysis and Design of Dams,"FEMA 65.

(iii)"Federal Guidelines for Selecting and Accommodating Inflow Design Floods for Dams,"FEMA 94.

(iv)"Dam Safety: An Owner's Guidance Manual,"FEMA 145, August, 1987.

(2) These publications may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794.

[63 FR 35314, June 29, 1998, as amended at 69 FR 18803, Apr. 9, 2004]

**§§1724.56-1724.69 [Reserved]**

## APPENDIX A TO SUBPART E OF PART 1724—HAZARD POTENTIAL CLASSIFICATION FOR CIVIL WORKS PROJECTS

The source for this appendix is U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110-2-1155, Appendix E. Appendix E is available from the address listed in §1724.55(a)(2).

| Category [1] | Low | Significant | High |
|---|---|---|---|
| Direct Loss of Life [2] | None expected (due to rural location with no permanent structures for human habitation) | Uncertain (rural location with few residences and only transient or industrial development) | Certain (one or more extensive residential, commercial or industrial developments). |
| Lifeline Losses [3] | No disruption of services—repairs are cosmetic or rapidly repairable damage | Disruption of essential facilities and access | Disruption of critical facilities and access. |
| Property Losses [4] | Private agricultural lands, equipment and isolated buildings | Major public and private facilities | Extensive public and private (facilities. |
| Environmental Losses [5] | Minimal incremental damage | Major mitigation required | Extensive mitigation cost or impossible to mitigate. |

NOTES:

[1] Categories are based upon project performance and do not apply to individual structures within a project.

[2] Loss of life potential based upon inundation mapping of area downstream of the project. Analysis of loss of life potential should take into account the extent of development and associated population at risk, time of flood wave travel and warning time.

[3] Indirect threats to life caused by the interruption of lifeline services due to project failure, or operation, i.e., direct loss of (or access to) critical medical facilities or loss of water or power supply, communications, power supply, etc.

[4] Direct economic impact of value of property damages to project facilities and down stream property and indirect economic impact due to loss of project services, i.e., impact on navigation industry of the loss of a dam and navigation pool, or impact upon a community of the loss of water or power supply.

[5] Environmental impact downstream caused by the incremental flood wave produced by the project failure, beyond which would normally be expected for the magnitude flood event under a without project conditions.

## Subpart F—RUS Contract Forms

### § 1724.70 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. (See section 5.16 of appendix A to subpart C of part 1718 of this chapter.) This subpart prescribes RUS procedures in promulgating electric program standard contract forms and identifies those forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1724.74(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms identified in the List of Guidance Contract Forms contained in §1724.74(c) that the borrowers may but are not required to use in the planning, design, and construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

[63 FR 58284, Oct. 30, 1998]

### § 1724.71 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the RE Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called "listed contract forms") identified in the List of Required Standard Contract Forms contained in § 1724.74(c).

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS with a written request explaining the need for the waiver.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

[63 FR 58285, Oct. 30, 1998, as amended at 69 FR 7108, Feb. 13, 2004]

### § 1724.72 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are published by RUS. Interested parties may obtain the forms from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522,

1400 Independence Avenue, SW., Stop 1522, Washington, DC 20250-1522, telephone number (202) 720-8674. The list of contract forms can be found in §1724.74(c), List of Required Contract Forms.

[63 FR 58285, Oct. 30, 1998]

### §1724.73 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the FEDERAL REGISTER announcing, as appropriate, a revision in, or a proposal to amend §1724.74, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. A copy of each such FEDERAL REGISTER document shall be sent by regular or electronic mail to all borrowers.

[63 FR 58285, Oct. 30, 1998]

### §1724.74 List of electric program standard contract forms.

(a) *General.* The following is a list of RUS electric program standard contract forms for architectural and engineering services. Paragraph (c) of this section contains the list of required contract forms, *i.e.*, those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section contains the list of guidance contract forms, *i.e.*, those forms of contracts provided as guidance to borrowers in the planning, design, and construction of their systems. All of these forms are available from RUS. See §1724.72(b) for availability of these forms.

(b) *Issuance date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms in paragraph (c) of this section, as most recently published as of the date the borrower executes the contract.

(c) *List of required contract forms.* (1) RUS Form 211, Rev. 4-04, Engineering Service Contract for the Design and Construction of a Generating Plant. This form is used for engineering services for generating plant construction.

(2) RUS Form 220, Rev. 6-98, Architectural Services Contract. This form is used for architectural services for building construction.

(3) RUS Form 236, Rev. 6-98, Engineering Service Contract—Electric System Design and Construction. This form is used for engineering services for distribution, transmission, substation, and communications and control facilities.

(d) *List of guidance contract forms.* (1) RUS Form 179, Rev. 9-66, Architects and Engineers Qualifications. This form is used to document architects and engineers qualifications.

(2) RUS Form 215, Rev. 5-67, Engineering Service Contract—System Planning. This form is used for engineering services for system planning.

(3) RUS Form 234, Rev. 3-57, Final Statement of Engineering Fee. This form is used for the closeout of engineering services contracts.

(4) RUS Form 241, Rev. 3-56, Amendment of Engineering Service Contract. This form is used for amending engineering service contracts.

(5) RUS Form 244, Rev. 12-55, Engineering Service Contract—Special Services. This form is used for miscellaneous engineering services.

(6) RUS Form 258, Rev. 4-58, Amendment of Engineering Service Contract—Additional Project. This form is used for amending engineering service contracts to add an additional project.

(7) RUS Form 284, Rev. 4-72, Final Statement of Cost for Architectural Service. This form is used for the closeout of architectural services contracts.

(8) RUS Form 297, Rev. 12-55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9-58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

[63 FR 58285, Oct. 30, 1998, as amended at 65 FR 63196, Oct. 23, 2000; 69 FR 52595, Aug. 27, 2004]

§§ 1724.75-1724.99 [Reserved]

# PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

## Subpart A—General

Sec.



## Subpart B—Distribution Facilities



## Subpart C—Substation and Transmission Facilities



## Subpart D—Generation Facilities



## Subpart E—Buildings



## Subpart F—General Plant



## Subpart G—Procurement Procedures



## Subpart H—Modifications to RUS Standard Contract Forms



## Subpart I—RUS Standard Forms



## Subpart J—Contract Closeout

(8) RUS Form 297, Rev. 12-55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9-58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

[63 FR 58285, Oct. 30, 1998, as amended at 65 FR 63196, Oct. 23, 2000; 69 FR 52595, Aug. 27, 2004]

§§ 1724.75–1724.99 [Reserved]

# PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

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## Subpart D—Generation Facilities



## Subpart E—Buildings



## Subpart F—General Plant



## Subpart G—Procurement Procedures



## Subpart H—Modifications to RUS Standard Contract Forms



## Subpart I—RUS Standard Forms



## Subpart J—Contract Closeout

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 60 FR 10155, Feb. 23, 1995, unless otherwise noted.

## Subpart A—General

### §§ 1726.1-1726.9 [Reserved]

### § 1726.10 Introduction.

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers. Unless prior written approval is received from RUS, borrowers are required to comply with RUS policies and procedures as a condition to RUS providing loans, loan guarantees, or reimbursement of general funds for the construction and improvement of electric facilities. Requirements relating to RUS approval of plans and specifications, duties and responsibilities of the engineer and architect, and engineering and architectural services contracts, are contained in other RUS regulations. The terms "RUS form", "RUS standard form", "RUS specification", "and RUS bulletin" have the same meanings as the terms "REA form", "REA standard form", "REA specification", "and REA bulletin", respectively, unless otherwise noted.

### § 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. RUS, as a secured lender, has a legitimate interest in accomplishing RUS's programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

### § 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric borrowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, the borrower must comply with the procedures required by this part. In the case of jointly owned projects, RUS will determine on a case by case basis the applicability of the requirements of this part.

### § 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. RUS reserves the right, as a condition of providing loans, loan guarantees, or other assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator.

### § 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

*Approval of proposed construction* means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate requirements of part 1794 of this chapter.

*Architect* means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

*Bona fide bid* means a bid which is submitted by a contractor on the borrower's list of qualified bidders for the specific contract, prior to bid opening.

*"Buy American" certificate* means a certification that the contractor has complied with the "Buy American" requirement (see § 1726.15).

*Competitive procurement* means procurement of goods or services based on lowest evaluated bid for similar products or services when three or more bids are received.

*Construction unit* means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

*Contracting committee* means the committee consisting of three to five members representing the borrower's management and board of directors and the engineer. The contracting committee represents the borrower during contract clarifying discussions or negotiations under informal competitive bidding or multiparty negotiation, respectively.

*Encumbrance* means the process of approval for advance of loans funds by RUS.

*Engineer* means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

*Equipment* means a major component of an electric system, e.g., a substation transformer, heat exchanger or a transmission structure.

*Force account construction* means construction performed by the borrower's employees.

*Formal competitive bidding* means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

*Goods or services* means materials, equipment, or construction, or any combination thereof.

*Informal competitive bidding* means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

*Material* means miscellaneous hardware which is combined with equipment to form an electric system, e.g., poles, insulators, or conductors.

*Minor error or irregularity* means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. A minor error or irregularity is not an exception for purposes of determining whether a bid is responsive.

*Minor modification or improvement* means a project where the cost is less than $50,000, exclusive of the cost of owner furnished materials.

*Multiparty lump sum quotations* means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received. (See § 1726.205).

*Multiparty negotiation* means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower's best interest (see § 1726.203).

*Multiparty unit price quotations* means the procurement of goods or services on a unit price basis, based on the lowest evaluated offering, when three or more offers are received (See § 1726.204).

*Net utility plant (NUP)* means Part C, Line 5 of RUS Form 7 for distribution borrowers or Section B, Line 5 of RUS Form 12a for power supply borrowers for the immediately preceding calendar year.

*Procurement method* means a procedure, including, but not limited to, those in subpart G of this part, that a borrower uses to obtain goods and services.

*Owner furnished materials* means materials or equipment or both supplied by the borrower for installation by the contractor.

*Responsive bid* means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

*RUS approval* means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given over the telephone followed by a confirming letter.

*Unit prices* means individual prices for specific construction units defined in accordance with RUS approved units specified in RUS standard contract forms.

**§ 1726.15 "Buy American".**

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by RUS complies with the "Buy American" provisions of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended by the North American Free Trade Agreement Implementation Act (107 Stat 2129). When a "Buy American" certificate is required by this part, this must be on RUS Form 213.

**§ 1726.16 Debarment and suspension.**

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

**§ 1726.17 Restrictions on lobbying.**

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

**§ 1726.18 Preloan contracting.**

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

**§ 1726.19 Use of competitive procurement.**

RUS borrowers' procurement is not subject to the provisions of the Federal Acquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a RUS loan or loan guarantee is involved except:

(a) As specifically provided for in subparts B through F of this part; or

(b) A waiver is granted.

**§ 1726.20 Standards and specifications.**

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

[69 FR 7109, Feb. 13, 2004]

**§ 1726.21 New materials.**

The borrower shall purchase only new materials and equipment unless otherwise approved by RUS, on a case by case basis, prior to the purchase.

**§ 1726.22 Methods of construction.**

The borrower is generally responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. RUS reserves the right to require contract construction in lieu of force account construction on a case by case basis.

**§ 1726.23 Qualification of bidders.**

(a) *Qualified bidder list (QBL).* The borrower shall (acting through its engineer, if applicable) review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience. It is also important to consider the firm's performance record, safety record, and similar factors in determining whether to include that firm on the QBL, since the borrower may not evaluate these factors when evaluating a bid from a qualified and invited bidder.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

**§ 1726.24 Standard forms of contracts for borrowers.**

(a) *General.* The standard loan agreement between RUS and the borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through H and J of this part prescribe when and how borrowers are required to use RUS standard forms of contracts in procurement and construction. Subpart I of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for procurement and construction.

(b) *Amendments to contracts*—(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements associated with the proposed construction have been met.

(3) *Amendment approval requirements.* (i) If a RUS approved form of contract is required by this part, an amendment must not alter the terms and conditions of the RUS approved form of contract without prior RUS approval.

(ii) The borrower must make a contract amendment subject to RUS approval if the underlying contract was made subject to RUS approval and the total amended contract price exceeds 120 percent of the original contract price (excluding any escalation provision contained in the contract).

(iii) Contract amendments, except as provided in paragraph (b)(3)(ii) of this section, are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 63 FR 58286, Oct. 30, 1998; 69 FR 7109, Feb. 13, 2004]

**§ 1726.25 Subcontracts.**

Subcontracts are not subject to RUS approval and need not be submitted to

RUS unless specifically requested by RUS on a case by case basis.

[69 FR 7109, Feb. 13, 2004]

### § 1726.26 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

[63 FR 58286, Oct. 30, 1998]

### § 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(c) Surety companies providing contractor's bonds shall be listed as acceptable sureties in the U.S. Department of the Treasury Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Copies of the circular and interim changes may be obtained directly from the Government Printing Office (202) 512-1800. Interim changes are published in the FEDERAL REGISTER as they occur. The list is also available through the Internet at *http://www.fms.treas.gov/c570/index.html* and on the Department of the Treasury's computerized public bulletin board at (202) 874-6887.

[63 FR 58286, Oct. 30, 1998, as amended at 69 FR 7109, Feb. 13, 2004]

### §§ 1726.28–1726.34 [Reserved]

### § 1726.35 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS (see part 1700 of this chapter.)

(b) *Borrower certification.* When a borrower certification is required by this part, it must be made by the borrower's manager unless the board of directors specifically authorizes another person to make the required certification. In such case, a certified copy of the specific authorizing resolution must accompany the document or be on file with RUS.

(c) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B through F of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by:

(1) A bid tabulation and evaluation and, if applicable, a written recommendation of the architect or engineer.

(2) For awards made under the informal competitive bidding procedure or the multiparty negotiation procedure, a written recommendation of the contracting committee (See §§ 1726.202 and 1726.203).

(3) Three copies of an executed contractor's bond on RUS approved bond forms as required in the contract form (at least one copy of which must be an original signed in ink) and one copy of the bid bond or facsimile of the certified check.

(4) A certification by the borrower or chairperson of the contracting committee, as applicable, that the appropriate bidding procedures were followed as required by this part.

(5) A certified copy of the board resolution awarding the contract.

(6) Evidence of clear title to the site for substations and headquarters construction contracts, if not previously submitted.

(7) Documentation that all reasonable measures were taken to assure competition if fewer than three bids were received.

(d) *Contract amendments requiring RUS approval.* The borrower must submit to RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval under § 1726.24(b). Each contract amendment submittal to RUS must be accompanied by:

(1) A certified copy of the board resolution approving the amendment; and

(2) A bond extension, where necessary.

(e) *Encumbrance of loan or loan guarantee funds.* (1) For contracts subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for such contracts.

(2) For contracts not subject to RUS approval (except for generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can show good cause for a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed contract, provided it meets all applicable RUS requirements.

(3) For generation project contracts not subject to RUS approval, the borrower must submit to RUS the following documentation:

(i) A brief description of the scope of the contract, including contract identification (name, number, etc.);

(ii) Contract date;

(iii) Contractor's name;

(iv) Contract amount;

(v) Bidding procedure used;

(vi) Borrower certification that:

(A) The board of directors approved the contract;

(B) The bidding procedures and contract award for each contract were in conformance with the requirements of Part 1726, Electric System Construction Policies and Procedures;

(C) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract have not been altered;

(D) If RUS has approved plans and specifications for the contract, the contract was awarded on the basis of those plans and specifications; and

(E) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

(4) *Contract amendments.* (i) For amendments subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for contract amendments requiring RUS approval.

(ii) For amendments not subject to RUS approval (except generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can justify a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed amendment, providing it meets all applicable RUS requirements.

(iii) For each generation project contract amendment not subject to RUS approval, the borrower must submit to RUS the following information and documentation:

(A) The contract name and number;

(B) The amendment number;

(C) The amendment date;

(D) The dollar amount of the increase or the decrease of the amendment;

(E) Borrower certification that:

(*1*) The amendment was approved in accordance with the policy of the board of directors (the borrower must ensure that RUS has a certified copy of the board resolution establishing such policy);

(*2*) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract has not been altered; and

(*3*) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

### § 1726.36 Documents subject to RUS approval.

Unless otherwise indicated, the borrower shall make all contracts and

amendments that are subject to RUS approval effective only upon RUS approval.

**§ 1726.37 OMB control number.**

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572-0107.

**§§ 1726.38–1726.49 [Reserved]**

## Subpart B—Distribution Facilities

**§ 1726.50 Distribution line materials and equipment.**

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $500,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Distribution line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing any unlisted distribution line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for the purchase of material and equipment to be used in distribution line construction

(d) *Contract approval.* Contracts for purchases of distribution line materials and equipment are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

**§ 1726.51 Distribution line construction.**

(a) *Contract forms.* The borrower must use RUS Form 790, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $250,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for all other distribution line construction.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) In addition to the cumulative total stipulated in paragraph (b)(1) of this section, a borrower may use Multiparty Unit Price Quotations to award contracts in amounts of up to a cumulative total of $350,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(3) The borrower shall use formal competitive bidding for all other distribution line contract construction. The amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(4) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Contracts for distribution line construction are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

§§ 1726.52–1726.74 [Reserved]

## Subpart C—Substation and Transmission Facilities

### § 1726.75 General.

As used in this part, "substations" includes substations, switching stations, metering points, and similar facilities.

### § 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower must use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $500,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Substation and transmission line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing of any unlisted substation or transmission line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of material and equipment to be used in substation and transmission line construction.

(d) *Contract approval.* Contracts for purchases of substation and transmission line materials and equipment are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

### § 1726.77 Substation and transmission line construction.

(a) *Contract forms.* The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for construction of substations, except for minor modifications or improvements.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) The borrower shall use formal competitive bidding for all other contract construction, including all contracts requiring RUS approval. The amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(3) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Individual contracts in amounts of $250,000 or more or one percent of NUP (not to exceed $500,000 for distribution borrowers or $1,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and

RUS approval and the closeout documents need not be sent to RUS unless specifically requested by RUS.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7111, Feb. 13, 2004]

### § 1726.405 Inventory of work orders (RUS Form 219).

Upon completion of the contract closeout, the borrower shall complete RUS Form 219, Inventory of Work Orders, in accordance with part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, of this chapter.

## PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

Sec.



AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

### § 1728.10 General purpose and scope.

(a) The requirements of this part are based on contractual provisions between RUS and the organizations which receive financial assistance from RUS.

(b) RUS will establish certain specifications and standards for materials, equipment, and construction units that will be acceptable for RUS financial assistance for the electric program. Materials and equipment purchased by the electric borrowers or accepted as contractor-furnished material must conform to RUS standards and specifications where they have been established and, if included in RUS Bulletin 43-5, "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers" (List of Materials), must be selected from that list or must have received technical acceptance from RUS. RUS, through its Technical Standards Committees, will evaluate certain materials, equipment and construction units, and will determine acceptance.

[50 FR 47710, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1728.20 Establishment of standards and specifications.

(a) *National and other standards.* RUS will utilize standards of national standardizing groups, such as the American National Standards Institute (ANSI), American Wood Preservers' Association (AWPA), the various national engineering societies and the National Electrical Safety Code (NESC), to the greatest extent practical. When there are no national standards or when RUS determines that the existing national standards are not adequate for rural electric systems, RUS will prepare standards for material and equipment to be used on systems of electric borrowers. RUS standards and specifications will be codified or listed in § 1728.97, Incorporation by Reference of Electric Standards and Specifications. RUS will also prepare specifications for materials and equipment when it determines that such specifications will result in reduced costs, improved materials and equipment, or in the more effective use of engineering services.

(b) *Deviations from Standards.* No member of the RUS staff will be permitted to authorize deviations from the standard specifications, or to establish or change the technical standards, or to authorize the use of items that have not received acceptance by the Technical Standards Committees, except as provided for under § 1728.70, or by authorization and/or delegation of authority by the Administrator of RUS.

(c) *Category of Items.* Items appearing in the List of Materials are listed by categories of generic items which are used in RUS construction standards incorporated by reference in § 1728.97. RUS will establish and define these

categories and will establish all criteria for acceptability within these categories.

[50 FR 47710, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 55 FR 53487, Dec. 31, 1990]

### § 1728.30 Inclusion of an item for listing or technical acceptance.

(a) *Scope.* RUS, through its Technical Standards Committees "A" and "B" will determine the acceptability of certain standards, standard specifications, standard drawings, and items of materials and equipment to be used in transmission, distribution and general plant (excluding office equipment, tools, and work equipment and consumer-owned electric wiring facilities).

(b) *Addresses of Committees.* The address of Technical Standards Committee "A" is: Chairman, Technical Standards Committee "A" (Electric), Rural Utilities Service, U.S. Department of Agriculture, Washington, DC 20250-1500. The address of Technical Standards Committee "B" is: Chairman, Technical Standards Committee "B" (Electric), Rural Utilities Service, U.S. Department of Agriculture, Washington, DC 20250-1500.

(c) *Review by Technical Standards Committee "A".* All proposals for listing a product in the List of Materials must be addressed to Technical Standards Committee "A." This committee will consider all proposals made by sponsors of specifications, drawings, materials, or equipment in categories for which RUS has established criteria for acceptability. A sponsor may be a manufacturer, supplier, contractor or any other person or organization which has made an application for listing or has requested an action by the committee. Committee "A" will consider all relevant information presented in determining whether an item should be accepted by Technical Standards Committee "A." Formal rules of evidence and procedure shall not apply to proceedings before this committee.

(d) *Action by Technical Standards Committee "A".* (1) Committee "A" may take one of the following actions:

(i) Accept an item for listing without conditions (domestic items only),

(ii) Reject an item (domestic or nondomestic),[1]

(iii) Accept an item for listing with conditions (domestic items only),

(iv) Table an item for a time period sufficient to allow the sponsor to be notified and furnish additional information (domestic or nondomestic),

(v) Grant technical acceptance with or without conditions for a period of one year from the date of notification by RUS (nondomestic items only).

(2) All committee decisions regarding the actions listed above must be unanimous. If the vote is not unanimous, the item shall be referred to Technical Standards Committee "B." Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(3) Items accepted without conditions by the Technical Standards Committees will be considered to be accepted on a general basis. No restrictions as to quantity or application will be placed on items which have received general acceptance. Items accepted subject to certain conditions, such as limited use to gain service experience, or limited use appropriate to certain areas and conditions, will be considered to be accepted on a conditional basis. The conditions will be cited as a part of the listing provided for in § 1728.60, or as part of the technical acceptance for nondomestic items.

(e) *Appeal to Technical Standards Committee "B".* A sponsor may request a review of an adverse decision by Technical Standards Committee "A" within ten (10) days of notification of such decision by submitting a letter requesting such review to Technical Standards Committee "B" (Electric).

(f) *Action by Technical Standards Committee "B".* Committee "B" may take any of the actions listed for Committee "A" in § 1728.30(d). However, for a Committee "B" action to be effective it must be by majority vote. Failure to obtain a majority on one of the proposed actions shall mean that the product will not be listed or accepted. Committee "B's" determination shall be

[1] Nondomestic items are items which do not qualify as domestic products pursuant to RUS "Buy American" requirement.

based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of procedure and evidence shall not apply to proceedings before Committee "B." Written notice of Committee "B's" decision, stating the basis of the decision, will be provided to the sponsor.

(g) *Appeal to the Administrator.* In the event of an adverse decision by Committee "B," the sponsor may, within ten (10) days of notification of such decision, request a review of this decision by submitting a letter to the Administrator requesting such a review.

(h) *Change in Design.* RUS acceptance of an item will be conditioned on the understanding that no design changes (material or dimensions) affecting the quality, strength, or electrical characteristics of the item shall be made without prior concurrence of Technical Standards Committee "A."

[50 FR 47711, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1728.40 Procedure for submission of a proposal.

(a) *Written Request.* Consideration of an item of material or equipment will be obtained by the sponsor through the submission of a written request in an original and five copies addressed to the Chairman, Technical Standards Committee "A" (Electric). The letter must include the catalog number or other identifying number or code as well as a description of the item. In the event that an item being submitted is also intended for consideration by Technical Standards Committee "A" (Telephone), a separate request must be made to the telephone committee. (See part 1755 of this chapter).

(b) *Technical and Performance Data.* Six copies of the specification of manufacture, drawings and test data must be submitted to the committee. Six copies of the performance history shall also be submitted unless RUS determines that such performance history is not reasonably available.

(c) *Sample.* One sample of the item must be submitted to the Chairman, Technical Standards Committee "A," unless RUS waives the requirements of the sample. In case of large, bulky or extremely heavy samples, the sponsor should contact the Chairman, Technical Standards Committee "A" (Electric), at the above address, before any sample is shipped.

(d) *Action on Proposal.* RUS will inform a sponsor of the action taken on the sponsor's proposal.

[50 FR 47711, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1728.50 Removal of an item from listing or technical acceptance.

(a) *Removal Actions.* An item of material or equipment may be removed from the listing or technical acceptance in accordance with the following procedures upon determination that the item is unsatisfactory or has been misrepresented to the owner or RUS.

(b) *Notification by the Committee.* The sponsor of an item of material or equipment will be notified in writing of a proposal to remove such item from the listing or technical acceptance.

(c) *Supplemental Information.* Within ten (10) days of receipt of such notification, the sponsor may submit to Committee "A" a letter expressing the sponsor's intent to submit written supplemental technical information relevant to Committee "A's" determination. The sponsor must submit such information within twenty (20) days from the submission of its letter to Committee "A." Committee "A" will have the discretion of making a decision following the expiration of the time periods provided in this paragraph.

(d) *Review by the Technical Standards Committee "A".* Committee "A" will consider all relevant information presented in determining whether an item should be removed from the listing or technical acceptance. Formal rules of evidence and procedure shall not apply to proceedings before Technical Standards Committee "A."

(e) *Action by the Technical Standards Committee "A".* Committee "A" may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which will adequately protect the interest of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to Technical Standards Committee "B."

All committee "A" decisions regarding the actions listed above must be by unanimous vote. If the vote is not unanimous, the item will be referred to Technical Standards Committee "B."

Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(f) *Additional Opportunity to Present Information.* At the request of the sponsor, RUS may afford additional opportunity for consideration of relevant information. Such additional opportunity may include, without limitation, a meeting between RUS and the sponsor in such a forum that RUS may determine. In making this decision, RUS will consider, among other things, the best interests of RUS, its borrowers, and the sponsor, and the best manner to develop sufficient information relating to the proposed action.

(g) *Appeal to the Technical Standards Committee "B".* Within ten (10) days of notification of Committee "A's" decision, a sponsor may appeal in writing to Technical Standards Committee "B" to review Committee "A's" decision, specifying the reasons for such a request. Committee "B's" determination, in response to such request, shall be based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of procedure and evidence shall not apply to proceedings before Committee "B."

(h) *Action by Technical Standards Committee "B".* Committee "B," by majority vote, may take one of the following actions:

(1) Order the immediate removal of the item from listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which adequately protects the interests of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to the Administrator of RUS.

Failure to obtain a majority vote on any of the above actions shall mean that the product will continue to be listed or accepted.

Written notice of Committee "B's" decision stating the basis of the decision will be provided to the sponsor.

(i) *Appeal to the Administrator.* Within ten (10) days of the receipt of Committee "B's" decision, a sponsor may appeal to the Administrator to review Committee "B's" decision. If an appeal is made, the sponsor shall submit a written request to the Administrator, Rural Utilities Service, Room 4053, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500 specifying the reasons to request reconsideration. The Administrator will have the option to decline the request, in which case the decision of Committee "B" shall stand. If a review is granted, the determination by the Administrator or the Administrator's designee shall be based on the record developed before Committee "A" and Committee "B" and such additional information as the Administrator may request. Formal rules of procedure and evidence shall not apply to the actions of the Administrator.

(j) *Action by the Administrator.* The Administrator may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition its continued listing, or technical acceptance, or

(3) Recommend a basis of settlement which adequately protects the interests of the Government.

Written notice of the Administrator's determination, stating the basis for the decision, will be provided to the sponsor.

The Administrator's actions are final.

[50 FR 47711, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1728.60 List of materials and equipment.

(a) *General.* Those items of material or equipment accepted by Technical Standards Committee "A" or "B," with the exception of technically accepted nondomestic items, will be listed in the List of Materials. Items

which do not qualify as domestic products may be accepted on a technical basis only (technical acceptance) for a period of one year as provided in § 1728.30(c)(1) and will not be included in the List of Materials.

(b) *Publishing and Revisions.* RUS will reissue the List of Materials every year, dated July, and issue supplements, if needed, dated October, January, and April of every year. An RUS office copy, which is the official current copy, of the List of Materials, will be updated every time changes are made by the Technical Standards Committees.

(c) *Dual Listings.* RUS, through its Technical Standards Committees, will accept for listing only one item of a particular type of material or equipment for each manufacturer. If a manufacturer submits an item to perform the identical function of a listed item, RUS, through its Technical Standards Committees, may accept that item and remove the one previously listed. RUS will list only new items of material and equipment in the List of Materials. Used items will not be considered for listing.

[50 FR 47712, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1728.70 Procurement of materials.

(a) *By Owner.* When purchasing the type of materials included in the List of Materials, RUS borrowers shall purchase only materials listed in the List of Materials, or materials which have a current technical acceptance by RUS and meet the "Buy American" requirement.

(b) *By Contractor.* When performing work for an RUS borrower, contractors shall supply only items from the general acceptance pages of the List of Materials, or obtain the borrower's concurrence prior to purchase and use of a technically nondomestic item or any item listed on a conditional basis.

(c) *Procurement of Unlisted Items.* (1) The borrower shall request prior approval from RUS for use of an item that does not fall in categories established by RUS in the List of Materials for which acceptability has been established by the Technical Standards Committees.

(2) RUS will also determine, on a case-by-case basis, whether to allow use of an unlisted item in emergency situations and for experimental use or to meet a specific need. For purposes of this part 1728, an emergency shall mean a situation wherein the supply of listed material and equipment from the industry is not readily available, or the standard designs are not applicable to the borrower's specific problem under consideration.

(3) RUS will make arrangements for test or experimental use of newly developed items requiring limited trial use. RUS, working with the borrower and the manufacturer, will establish test locations for the items to facilitate installation and observation.

[50 FR 47712, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

### § 1728.97 Incorporation by reference of electric standards and specifications.

(a) The following electric bulletins have been approved for incorporation by reference by the Director of the Office of the Federal Register. The bulletins containing construction standards (50-4 and 1728F-803 to 1728F-811), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bulletins containing specifications for materials and equipment (50-15 to 50-99 and 1728F-700) may be obtained from the Rural Utilities Service, Program Development and Regulatory Analysis, Stop 1522, Room 4028-S, Washington, DC 20250-1522. The terms "RUS form", "RUS standard form", "RUS specification", and "RUS bulletin" have the same meanings as the terms "REA form", "REA standard form", "REA specification", and "REA bulletin", respectively unless otherwise indicated. The bulletins are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials are incorporated as they exist on the date of the approval and a notice of any

change in these materials will be published in the FEDERAL REGISTER.

(b) *List of Bulletins.*

Bulletin 50-4 (D-801), Specification and Drawings for 34.5/19.9 kV Distribution Line Construction (11-86)

Bulletin 50-15 (DT-3), RUS Specifications for Pole Top Pins with 1⅜" Diameter Lead Thread (1-51)

Bulletin 50-16 (DT-4), RUS Specifications for Angle Suspension Brackets (3-52)

Bulletin 50-19 (DT-7), RUS Specifications for Clevis Bolts (8-53)

Bulletin 50-23 (DT-18), RUS Specifications for 60" Wood Crossarm Braces (2-71)

Bulletin 50-31 (D-3), RUS Specifications for Pole Top Pins with 1" Diameter Lead Threads (2-79)

Bulletin 50-32 (D-4), RUS Specifications for Steel Crossarm Mounted Pins with 1" Diameter Lead Threads (10-50)

Bulletin 50-33 (D-5), RUS Specifications for Single and Double Upset Spool Bolts (2-51)

Bulletin 50-34 (D-6), RUS Specifications for Secondary Swinging Clevises (2-70)

Bulletin 50-35 (D-7), RUS Specifications for Service Swinging Clevises (9-52)

Bulletin 50-36 (D-8), RUS Specifications for Service Deadend Clevises (9-52)

Bulletin 50-40 (D-14), RUS Specifications for Pole Top Brackets for Channel Type Pins (9-51)

Bulletin 50-41 (D-15), RUS Specifications for Service Wireholders (11-51)

Bulletin 50-55 (T-2), RUS Specifications for Overhead Ground Wire Support Brackets (5-53)

Bulletin 50-56 (T-3), RUS Specifications for Steel Plate Anchors for Transmission Lines (12-53)

Bulletin 50-60 (T-9), RUS Specification—Single Pole Steel Structures, Complete with Arms (12-71)

Bulletin 50-70 (U-1), RUS Specification for 15 kV and 25 kV Primary Underground Power Cable (12-22-87)

Bulletin 50-72 (U-4), RUS Specification for Electrical Equipment Enclosures (5-35 kV) (10-79)

Bulletin 50-73 (U-5), RUS Specifications for Pad-Mounted Transformers (Single and Three-Phase) (1-77)

Bulletin 50-74 (U-6), RUS Specification for Secondary Pedestals (600 Volts and Below) (10-79)

Bulletin 50-91 (S-3), RUS Specifications for Step-Down Distribution Substation Transformers (34.4-138 kV) (1-78)

Bulletin 1728F-700, RUS Specification for Wood Poles, Stubs and Anchor Logs (8-93).

Bulletin 1728F-803, Specifications and Drawings for 24.9/14.4 kV Line Construction (10-98).

Bulletin 1728F-804 (D-804), Specification and Drawings for 12.47/7.2 kV Line Construction October 2005.

Bulletin 1728F-806 (D-806), Specifications and Drawings for Underground Electric Distribution, June 2000.

Bulletin 1728F-810, Electric Transmission Specifications and Drawings, 34.5 kV to 69 kV (3-98).

Bulletin 1728F-811, Electric Transmission Specifications and Drawings, 115 kV to 230 kV (3-98).

[48 FR 31853, July 12, 1983, as amended at 52 FR 22289, June 11, 1987; 52 FR 48799, Dec. 28, 1987; 53 FR 39229, Oct. 6, 1988; 53 FR 44176, Nov. 2, 1988; 55 FR 8909, Mar. 9, 1990. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 1563, Jan. 16, 1991; 58 FR 41398, Aug. 3, 1993; 59 FR 66440, Dec. 27, 1994; 63 FR 11591, Mar. 10, 1998; 63 FR 72104, Dec. 31, 1998; 65 FR 34047, May 26, 2000; 69 FR 18803, Apr. 9, 2004; 70 FR 20703, Apr. 21, 2005]

### § 1728.201 RUS Bulletin 1728H-701, RUS Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.

(a) *General provisions.* (1) This section implements contractual provisions between RUS and borrowers receiving financial assistance from RUS. The contractual agreement between RUS and its borrowers requires the borrower's system to be constructed in accordance with RUS accepted plans and specifications. Each RUS electric borrower must purchase only wood crossarms produced in accordance with the specification in this section.

(2) Each RUS electric borrower shall require each contractor to agree in writing to furnish only materials produced in accordance with the specification in this section.

(3) This specification describes the minimum acceptable quality of wood distribution crossarms and transmission crossarms (hereinafter called crossarms) that are purchased by or for RUS borrowers. Where there is conflict between this specification and any other specification referred to in this section, this specification shall govern.

(4) Various requirements relating to quality control and inspection are contained in § 1728.202 of this part, RUS Specification for Quality Control and Inspection of Timber Products. Section 1728.201 of this part and the American National Standards Institute (ANSI) 05.2, 1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, shall be followed exactly and

shall not be interpreted or subjected to judgment by the quality control person or an independent inspector.

(5) The borrower shall purchase from producers only material that meets the requirements of this specification. Each purchaser shall use a written purchase order to purchase material for use in RUS financed systems in order to insure compliance with the standards and specifications of this part. The written purchase order shall contain a provision that specifically requires the producer to comply with the provisions of this part. The purchase order shall contain a provision that specifically requires the producer to make the treating plant, and storage areas available, during normal business hours, in order for representatives of either the purchaser or RUS to inspect such to determine compliance with the standards and specifications of this part.

(6) The borrower shall insure that the producer provides the inspectors with full information (drawings, etc.) relating to the requirements contained in purchase order which is supplementary to this specification.

(7) The borrower shall insure that the producer maintains, or has access to, adequate laboratory facilities at or very near the treating plant. All chemical tests, assays or analyses associated with the treatment shall be independently performed in this laboratory by both the quality control designee and the borrower's inspector. If acceptable to RUS on a case-by-case basis, the producer may use a central laboratory.

(8) Inspection and treatment of all timber products produced under this specification should be performed after receipt of the order from the purchaser, except as provided for reserve treated stock.

(9) The borrower shall insure that each inspection agency maintains its own central laboratory with qualified staff capable of completely analyzing the preservative and treatments. If acceptable to RUS, this central laboratory may be used for the independent inspector's routine assays, with results made available the next working day.

(10) The testing and inspection of the lamination process shall be in accordance with American Institute of Timber Construction (AITC) 200-83, Inspection Manual.

(11) With the exception of reserve treated stock, all invoices for treated timber products shall be accompanied, in duplicate, by a copy of the producer's Certificate of Compliance and a copy of either the Independent Inspection Report or a Quality Assurance Plan Certificate. The certificate shall be presented to the purchaser with the invoice. For reserve treated stock, inspection reports shall be available from the inspection agency. When shipped from reserve stock, the invoice shall bear an endorsement and a further certification by the producer that the material meets the requirements of this specification and any supplementary requirements cited in the purchase order under which it is purchased.

(12) Crossarms shall be warranted to conform to this specification. If any crossarm is determined to be defective or does not conform to this specification within 1 year after shipment to the borrower, it shall be replaced as promptly as possible by the producer. In the event of failure to do so, the purchaser may make such replacement and the cost of the crossarm, at destination, recoverable from the producer.

(b) *Definitions.*

*Arm* refers to structural wood member used to support electrical conductors.

*Certificate of compliance* is a certification by an authorized employee of the producer that the material shipped meets the requirements of this specification and any supplementary requirements specified in a purchase order from a borrower or the borrower's contractor.

*Crossarm* is a term used interchangeably with arm.

*Independent inspection* relates to examination of material by an independent inspector employed by a commercial inspection agency.

*Inspection* means an examination of material in sufficient detail to insure conformity to all phases of the specification under which it was purchased.

*Lot* is a quantity of crossarms of like size, conditioning, and fabrication, usually making up one treating charge.

*Producer* is used to describe the party who manufactures and treats crossarms.

*Purchaser* refers to either the RUS borrower or contractors acting as the borrower's agent, except where a part of the specification specifically refers to only the RUS borrower or the contractor.

*Quality control designee* refers to an individual designated by the producer to be responsible for quality control.

*Reserve treated stock* consists of timber products treated in accordance with this specification, prior to and in anticipation of the receipt of specific orders, and held in storage ready for immediate shipment.

*Supplier* is a term used interchangeably with producer, or in some cases, may be the distributor selling crossarms to the borrower.

*Treating plant* is the organization that applies the preservative treatment to the crossarms.

(c) *Related specifications and standards incorporated by reference.* The following specifications and standards are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each reference are available for inspection during normal business hours at RUS, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of these standards and specifications may be purchased from the addresses shown below.

(1) West Coast Lumber Inspection Bureau, Standard No. 17, Grading Rules for West Coast Lumber, September 1, 1991, available from West Coast Lumber Inspection Bureau, P.O. Box 23145, Portland, Oregon 97223, telephone (503) 639–0651, Fax (503) 684–8928.

(2) Southern Pine Inspection Bureau, Standard Grading Rules for Southern Pine Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434–2611.

(i) Southern Pine Inspection Bureau, Special Product Rules for Structural, Industrial, and Railroad-Freight Car Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434–2611.

(ii) [Reserved]

(3) American Wood Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163–0286.

(i) A1–91, Standard Methods for Analysis of Creosote and Oil-Type Preservatives.

(ii) A2–91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3–91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5–91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6–89, Method for the Determination of Oil-Type Preservatives and Water in Wood.

(vi) A7–75, Standard Wet Ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9–90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Spectroscopy.

(viii) A11–83, Standard Method for Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1–91, All Timber Products—Preservative Treatment by Pressure Processes.

(x) C4–91, Poles—Preservative Treatment by Pressure Processes.

(xi) C8–91, Western Red Cedar and Alaska Yellow Cedar Poles—Preservative Treatment by the Full-Length Thermal Process.

(xii) C10–91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12–90, Western Larch Poles—Full-Length Preservative Treatment by Thermal Process.

(xiv) M1–90, Standard for the Purchase of Treated Wood Products.

(xv) M2–91, Standard for Inspection of Treated Timber Products.

(xvi) M3-81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4-91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13-91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5-91, Standards for Waterborne Preservatives.

(xx) P8-91, Standards for Oil-Borne Preservatives.

(xxi) P9-91, Standards for Solvents and Formulations for Organic Preservative Systems.

(4) American Institute of Timber Construction (AITC) 200-83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110, telephone (303) 761-3212.

(5) American National Standards Institute (ANSI) 05.2-1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(6) American Society for Testing and Materials (ASTM) D9-87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, PA 19103-1187, telephone number (215) 299-5585.

(d) *Independent inspection plan.* This plan or a Quality Assurance Plan, as described in paragraph (e) of this section, is acceptable for supplying crossarms. All crossarms produced under the independent inspection plan for use on an RUS financed system shall be inspected by a qualified independent inspector in accordance with § 1728.202 of this part.

(1) The borrower has the prerogative to contract directly with the inspection agency for service. The borrower should, where practical, select the inspection agency so that continual employment is dependent only on performance acceptable to the borrower and in accordance with this specification. The selected inspection agency shall not subcontract the service to any other inspection agency without the prior written consent by the borrower.

(2) The producer shall not be a party to the selection of the inspection agency by the borrower and shall not interfere with the work of the inspector, except to provide notification of the readiness of material for inspection. To obtain the inspection services for reserve stock, the producer may deal directly with the inspection agency. Under the Independent Inspection Plan, the producer shall not treat material before it has been properly inspected in the white, as evidenced by the inspector's hammer mark.

(3) The methods of inspection described in this section and in § 1728.202 of this part shall be used no matter which plan crossarms are produced under, i.e., Independent Inspection Plan, or Quality Assurance Plans, as described in this section. The number of crossarms actually inspected by monitors of quality control under a Quality Assurance Plan may vary from the number of crossarms inspected under the Independent Inspection Plan.

(e) *Quality assurance plans.* The producer shall furnish crossarms conforming to this specification as monitored by a Quality Assurance Plan acceptable to RUS. RUS borrower groups or agents for borrower groups endeavoring to operate Quality Assurance Plans shall submit their plan for assuring quality control to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250-1500, for specific approval prior to contracting with RUS borrowers under such plans.

(f) *Material requirements*—(1) *Material and grade.* All crossarms furnished under this specification shall be free of brashy wood, decay, and insect holes larger than 3/32 of an inch (0.24 cm), and shall meet additional requirements as shown on specific drawings. They shall be made of one of the following:

(i) Douglas-fir which conforms to the applicable crossarm provisions of paragraphs 170 and 170a, or the applicable transmission arm provisions of paragraphs 169 and 169a of the 1991 Standard Grading Rules for West Coast Lumber No. 17. All references to Douglas-fir shall be of coastal origin;

(ii) Southern Yellow Pine which conforms to the provisions of Dense Industrial Crossarm 65, as described in paragraph 31.2 in Southern Pine Inspection Bureau 1991 Special Product Rules for Southern Pine; or

(iii) Laminated wood crossarms shall conform to ANSI 05.2–1983, and have at least the same load carrying capacity as the solid sawn arm it replaces. The load carrying capacity of the laminated arms shall be determined by one of the procedures outlined in ANSI 05.2.

(2) Borrowers may use alternative wood crossarms that are listed in RUS Bulletin 1728C-100, List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers.

(3) *Knots.* Sound, firm, and tight knots, if well spaced, are allowed.

(i) Slightly decayed knots are permitted, except on the top face, provided the decay extends no more than 3/4 of an inch (1.91 cm) into the knot and provided the cavities will drain water when the arm is installed. For knots to be considered well spaced, the sum of the sizes of all knots in any 6 inches (15.24 cm) of length of a piece shall not exceed twice the size of the largest knot permitted. More than one knot of maximum permissible size shall not be in the same 6 inches (15.24 cm) of length. Slightly decayed, firm, or sound "Pin knots" (3/8 of an inch (0.95 cm) or less) are not considered in size, spacing, or zone considerations.

(ii) Knots are subject to the following limits on size and location:

KNOT LIMITS FOR DISTRIBUTION ARMS
DRAWING M-19 (SEE FIGURE 1, EXHIBIT A)
ALL DIMENSIONS IN INCHES

| Class of Knot and Location | Maximum Knot Diameter | |
|---|---|---|
| | Close Grain | Dense Grain |
| Round Knots | | |
| Single Knot: Maximum Diameter. | | |
| Center Section*. | | |
| Upper Half | 3/4 | 1 |
| Lower Half | 1 | 1–1/4 |
| Elsewhere | 1–1/4 | 1–1/2 |
| Sum of Diameters in a 6-Inch Length: Maximum | | |
| Center Section. | | |
| Upper Half | 1–1/2 | 2 |
| Lower Half | 2 | 2–1/2 |
| Elsewhere | 2–1/2 | 3 |

| Inch | Cm |
|---|---|
| 3/4 | 1.91 |
| 1 | 2.54 |
| 1–1/4 | 3.18 |
| 1–3/8 | 3.49 |
| 1–1/2 | 3.81 |
| 1–3/4 | 4.45 |
| 1–7/8 | 4.76 |
| 2 | 5.08 |
| 2–1/4 | 5.72 |
| 2–1/2 | 6.35 |
| 3–1/4 | 8.26 |
| 3–1/2 | 8.89 |
| 3–5/8 | 9.21 |
| 4–5/8 | 11.75 |
| 5–5/8 | 14.29 |
| 7–3/8 | 18.73 |
| 9–3/8 | 23.81 |

KNOT LIMITS FOR TRANSMISSION ARMS
(SEE FIGURE 2, EXHIBIT A)
ALL DIMENSIONS IN INCHES

| Pole Mounting Hole Zone* | Maximum Diameter For Single Knot |
|---|---|
| Upper Half (inner zone) | 3/4 |
| Upper Half (outer zone) | 1 for close grain<br>1–1/4 dense grain |

| Other Locations Transmission Arm Size** | Narrow Face | Wide Face (Two Sides) | |
|---|---|---|---|
| | | Edge | Along Centerline |
| 4–5/8x5–5/8 or less | 1 | 1–1/4 | 1–1/4 |
| 5–5/8x7–3/8 | 1–1/4 | 1–3/8 | 1–7/8 |
| 3–5/8x9–3/8 | 3/4 | 1–3/4 | 2–1/4 |

*No knot will be closer than its diameter to the pole mounting hole.
**For cross sections not shown, refer to grading rules.

(iii) Knot clusters shall be prohibited unless the entire cluster, measured on the worst face, is equal to or less than the round knot allowed at the specific location.

(iv) Spike knots shall be prohibited in deadend arms. Any spike knot across the top face shall be limited to the equivalent displacement of a knot 3/8 of an inch (0.95 cm) deep on one face and the maximum round knot for its particular location on the worst face, with a maximum width of 1 inch (2.54 cm) measured at the midpoint of the spiked section. Elsewhere across the bottom or side faces, spike knots shall not exceed 1/2 the equivalent displacement of a round knot permitted at that location, provided that the depth of the knot on the worst face shall not exceed the maximum round knot allowed at that location.

(v) Loose knots and knot holes shall drain water when the arm is normally

installed. In the center section, upper half, they shall not be greater than 1/2 the dimensions of round knots. Elsewhere, they shall not be greater than the round knot dimension. They shall be prohibited in deadend arms.

(vi) All knots except those "spike" knots intersecting a corner shall be measured on the least diameter of the knot.

(vii) A knot shall be considered to occupy a specific zone or section if the center of the knot (i.e. pith of knot) is within the zone or on the zone's boundary.

(viii) If a round or oval knot appears on two faces and is in two zones, each face shall be judged independently. When this does not occur, average the least dimension showing on both faces. Knots which occur on only one face of a free of heart center (FOHC) arm shall be permitted to be 25 percent larger than the stated size.

(ix) *Knot spacing.* Two or more knots opposite each other on any face shall be limited by a sum not to exceed the size of a maximum single knot permitted for the location. On all four faces, all knots shall be well spaced.

(x) Knots which have a maximum of 5/8 inch (1.59 cm) diameter may intersect pin holes in the center section. One inch (2.54 cm) diameter knots may intersect pin holes elsewhere.

(4) *Miscellaneous characteristics, features and requirements.* (i) The top face of distribution crossarms shall not have more than four medium pitch and bark pockets in 8 foot (2.4 m) arms, and not more than five pitch and bark pockets in 10 foot (3.0 m) arms. Elsewhere a maximum of six medium pockets in 8 foot (2.4 m) arms and eight in 10 foot (3.0 m) arms shall be permitted. Equivalent smaller pockets shall be permissible. An occasional large pocket is permissible.

(ii) Shakes shall be prohibited.

(iii) *Checks.* Prior to treatment on properly seasoned arms, single face checks shall not exceed an average penetration of 1/4 the depth from any face and shall be limited to 10 inches (25.40 cm) long on the top face, and 1/3 the arm length on the other faces. Checks shall not be repeated in the same line of grain in adjacent pin holes. The sum of the average depths of checks occurring in the same plane on opposite faces shall be limited to 1/4 the face depth.

(iv) Compression wood shall be prohibited on any face. It is permitted if wholly enclosed in the arm, more than six annual rings from the surface, and not over 3/8 of an inch (0.95 cm) in width.

(v) Insect holes larger than 3/32 of an inch (0.24 cm) shall be prohibited. Pin holes (i.e. holes not over 1/16 of an inch (0.16 cm) diameter) shall be allowed if scattered and not exceeding 10 percent of the arm girth.

(vi) Wane shall be allowed on one edge, limited to approximately 1 inch (2.54 cm), measured across the corner. Outside of the top center section, an aggregate length not to exceed 2 feet may have wane up to 1-1/2 inches (3.81 cm) on an occasional piece on one or both edges. Bark shall be removed.

(vii) Prior to preservative treatment, crook, bow, or twist shall not exceed 1/2 of an inch (1.27 cm) in 8 foot arms (2.4 m) and 5/8 of an inch (1.59 cm) in 10 foot (3.0 m) arms.

(g) *Manufacture.* (1) All dimensions and tolerances shall conform to those shown on the drawings in this section or drawings supplied with the purchase order. Drawings supplied shall meet or exceed minimum dimensions and tolerances shown on the drawings in this section. Cross-sectional dimensions shall be measured and judged at about 1/4 the arm length, except when the defects of "skip dressing" or "machine bite or offset" are involved.

(2) Lamination techniques shall comply with ANSI 05.2-1983.

(3) Pin and bolt holes shall be smoothly bored without undue splintering where drill bits break through the surface. The center of any hole shall be within 1/8 of an inch (0.32 cm) of the center-line locations on the face in which it appears. The holes shall be perpendicular to the starting and finishing faces.

(4) *Shape.* The shape of the arms at any cross section, except for permissible wane, shall be as shown on the respective drawings in this section or supplied with the order. The two top edges may be either chamfered or rounded 3/8 of an inch (0.95 cm) radius. The two bottom edges may be slightly

eased 1/8 of an inch (0.32 cm) radius for the entire length.

(5) *Incising.* The lengthwise surfaces of Douglas-fir crossarms shall be incised approximately 1/4 of an inch (0.64 cm) deep. The incision shall be reasonably clean cut with a spacing pattern that insures uniform penetration of preservative.

(6) *Workmanship.* All crossarms shall be first quality workmanship. Crossarms shall be dressed on four sides, although "hit and miss skips" may occur on two adjacent faces on occasional pieces. Five (5) percent of a lot or shipment may be 1/8 of an inch (0.32 cm) scant in thickness or width at the ends for a length not exceeding 6 inches (15.24 cm), or may have 1/8 of an inch (0.32 cm) machine bite on offset.

(h) *Conditioning prior to treatment.* (1) All solid sawn crossarms shall be made of lumber which has been kiln-dried. Douglas-fir arms shall have an average moisture content of 19 percent or less, with a maximum not to exceed 22 percent. Southern Yellow Pine arms shall have an average moisture content of 22 percent or less, with a maximum not to exceed 30 percent.

(2) Moisture content levels shall be measured at about 1/4 the length and at a depth of about 1/5 the crossarm's thickness. Additionally, the moisture content gradient between the shell (i.e. 1/4 of an inch (0.64 cm) deep) and the core (i.e. about 1 inch (2.54 cm) deep) shall not exceed 5 percentage points.

(3) A minimum of at least 20 solid sawn crossarms per treating charge shall be measured to verify moisture content and shall be duly recorded by the quality control designee or independent inspector.

(4) The moisture content of lumber used in laminating shall, at the time of gluing, be within the range of 8 to 12 percent, inclusive.

(i) *Preservatives.* (1) The preservatives shall be:

(i) Creosote which conforms to the requirements of AWPA Standard P1 when analyzed in accordance with the methods in AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6;

(ii) Pentachlorophenol which contains not less than 95 percent chlorinated phenols and conforms to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5 or A9. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A; or

(iii) Waterborne preservatives, which may only be one of the following:

(A) Ammoniacal Copper Arsenates (ACA) and Ammoniacal Copper Zinc Arsenate (ACZA) which shall meet the requirements of AWPA Standard P5, when analyzed in accordance with methods in AWPA Standards A2, A9, or A11; and

(B) Chromated Copper Arsenates (CCA) which shall meet the requirements of one of the formulations given in AWPA Standard P5, sections 4, 5 or 6, and 10. Tests to establish conformity shall be made in accordance with AWPA Standards A2, A9, or A11.

(1) The pH of treating solutions of the waterborne preservatives shown in AWPA Standard P5, section 10, shall be determined in accordance with AWPA Standard A2, section 8.

(2) Waterborne preservatives are available either as oxides, which form non-ionizing chemical compounds in the wood, or as salts, which leave ionizing compounds as well as non-ionizing compounds in the wood. Salt formulations of a waterborne preservative are more corrosive to metal than the oxide formulation and may cause surface deposits. Unless otherwise specified in the purchase order, the oxide formulations of waterborne preservatives shall be supplied.

(3) Douglas-fir crossarms shall not be treated with CCA preservatives.

(4) Materials treated with waterborne preservatives shall be free of visible surface deposits.

(iv) Copper Naphthenate (CuN) concentrate used to prepare wood preserving solutions shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and shall conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A.

(2) [Reserved]

(j) *Preservative treatment.* (1) All timber products treated under this specification shall be treated by either a pressure or a thermal (nonpressure) process.

(2) These materials may be further conditioned by steaming, or by heating in hot oil (Douglas-fir), within the following limits:

| | Time Hours (max.) | Temperature Deg. F (max.) |
|---|---|---|
| Steam | 3 | 220 (104.4C) |
| Heating in Preservative | 3 | 210 (98.8C) |

(3) A final steam or hot oil bath may be used only to meet cleanliness requirements of paragraph (k) of this section. Total duration of the final steam bath shall not exceed 2 hours and the temperature shall not exceed 240 degrees Fahrenheit (115.6C).

(k) *Results of treatments.* (1) The quality control designee shall test or supervise the testing of each treated charge for penetration and retention

(2) *Method of sampling.* When testing penetration and retention, a borer core shall be taken from not less than 20 crossarms in each treating charge. The borings shall be taken from any face except the top face at a point as close to the end as possible, being at least 3 inches (7.62 cm) from the end of the arm and no closer than 3 inches (7.62 cm) from the edge of the holes. The bored holes shall be plugged with preservative-treated plugs driven into the arm. Borings from laminated arms shall not be taken from the same laminate unless there is an end joint separation.

(3) Penetration by the preservative, as determined in accordance with AWPA Standard A3, shall be 100 percent of the sapwood in crossarms. In the heartwood of Douglas-fir crossarms, the penetration shall be not less than 3 inches (7.62 cm) longitudinally from the edge of holes and ends, and at least 3/16 inch (0.45 cm) from the surface of any face.

(4) Retention of preservative in the outer 6/10 of an inch (1.52 cm) for Douglas-fir and one inch (2.54 cm) for Southern Yellow Pine assay zones at the treating plant shall be not less than:

| Preservative | Retention (pcf) | AWPA Analysis Method |
|---|---|---|
| Creosote | 8 | A6 |
| Pentachlorophenol | 0.4* | A5 |
| ACA, ACZA, or CCA | 0.4 | A2, A7, A9, or A11 |
| Copper Naphthenate | 0.04 | A5, A9, or A11 |

*This retention is for the lime ignition method. The copper pyridine method, retention 0.36 pcf, is required when timbers may have been in contact with salt water, and for all species native to the Pacific coast region. It is not required when it specifically states on the rough sawn material invoice that this material has not been in contact with salt water or is shown by analysis to have no additional chlorides present in the wood before treating.

(5) Cleanliness of lengthwise surfaces of all crossarms shall be free from tarry, greasy, or sticky material, and from oil exudation and pentachlorophenol crystallization (blooming).

(6) Re-treatment of materials which do not meet the penetration and retention requirements of this specification may be done only twice. Initial treatment steaming time plus re-treatment steaming time, combined, shall not exceed time allowed in paragraph (i) of this section.

(l) *Marks and brands.* (1) All crossarms shall be branded (hot brand) or die-stamped legibly and to a depth of approximately 1/16 of an inch (0.16 cm) before treatment.

(2) The letters and figures shall be not less than 1/2 of an inch (1.27 cm) in height. The top of the brand shall be oriented to the top of the arm.

(3) The brand or die-stamp shall include:

(i) The manufacturer's identification symbol;

(ii) Month and year of manufacture;

(iii) Species of timber such as DF for Douglas-fir and SP for Southern Yellow Pine; and

(iv) The preservative notated with a C for creosote, P for penta, S for salts, or N for Copper Naphthenate.

(4) An example is:

M-6-72 Manufacturer—Month—Year
DF-P Douglas-fir—penta treated

(5) The brand or stamp shall be placed on either of the wide surfaces of the arms, oriented with letters right side up towards the top of the arm and preferably about 1 foot (30.48 cm) from the midpoint of the arm.

(6) The mark should be approximately the same location on each type of crossarm of each producer

(7) Brands, inspection marks, or quality assurance marks shall be removed from arms that do not meet these specifications

(m) *Storage.* (1) Producers may treat crossarms for reserve stock under any of the RUS approved plans. Prior to treating reserve stock, and annually thereafter, producers shall notify the Director of the Electric Staff Division of their intent to treat reserve stock. The letter of notification shall be addressed to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250-1500.

(2) RUS shall acknowledge, by letter, each notification of intent to treat material for reserve stock under the RUS specification.

(3) RUS's letter acknowledging the plant's advance notice of intent to treat material for reserve treated stock for the calendar year in question shall be evidence of compliance with the notification requirements.

(4) Producers shall notify RUS of:

(i) The locations of all storage or distribution yards where reserve treated stock will be maintained;

(ii) The designation of the RUS-approved plan;

(iii) The name of the selected inspection agency, where applicable and

(iv) Any changes that occur during the year.

(5) Crossarms treated with oil-borne preservatives which have been held in storage for more than 1 year before shipment to the borrower, shall be reassayed before shipment and shall be re-treated if found nonconforming for retention on orders placed in accordance with this section.

(6) The crossarms shall meet the assay after re-treatment in accordance with paragraph (k) of this section.

(7) Crossarms which are held in storage after final acceptance shall be stacked in piles or on skids in such a manner as to assure good ventilation. The stacks shall be covered or stored indoors for protection from the sun and weather to reduce checking, bending, and loss of preservative.

(8) Borrowers or their contractors shall not purchase reserve treated stock from plants that fail to comply with the notification requirements.

(n) *Drawings.* (1) The drawings of Exhibit B of this section, Crossarm Drilling Guide, have a type number and show in detail the hole size, shape, and pattern desired for crossarms ordered under this specification.

(2) Purchase orders shall indicate the type required.

(3) Crossarms shall be furnished in accordance with the details of these drawings or in accordance with drawings attached to the purchase order

(4) Technical drawings for transmission crossarms are published in RUS Bulletin 1728F-T805B (formerly 50-1), Electric Transmission Specifications and Drawings, 115kV through 230kV, and RUS Bulletin 1728F-T805A (formerly 50-2), Electric Transmission Specification and Drawings, 34.5kV through 69kV.

(5) Appropriate drawings for transmission arms are to be specified and included with purchase orders.

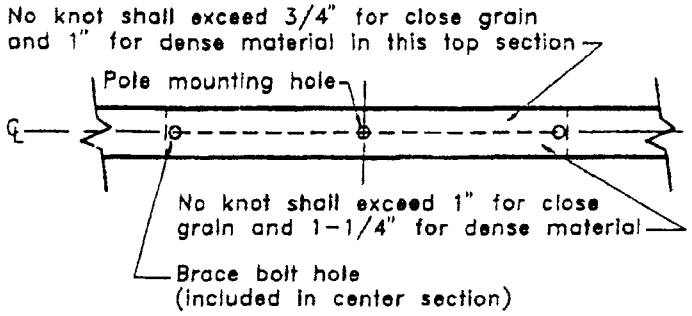
(o) *Destination inspection.* (1) When cross-sectional tolerances are measured at destination, average shrinkage allowance shall be considered using the arm's current moisture content and actual size.

(2) Using the average shrinkage allowances for Douglas-fir and Southern Yellow Pine as 1 percent size change for each four point moisture content change below the fiber saturation point, calculations can be made to determine if the arm met the minimum size at time of manufacture, when the arm was to meet the average moisture content.

EXHIBIT A TO § 1728.201—DISTRIBUTION AND TRANSMISSION ARMS

## DISTRIBUTION ARMS

Figure 1




## TRANSMISSION ARMS

POLE MOUNTING HOLE ZONE

Figure 2

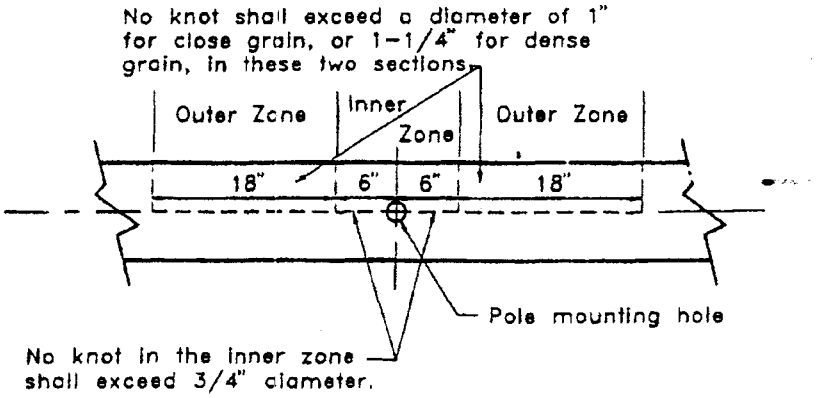
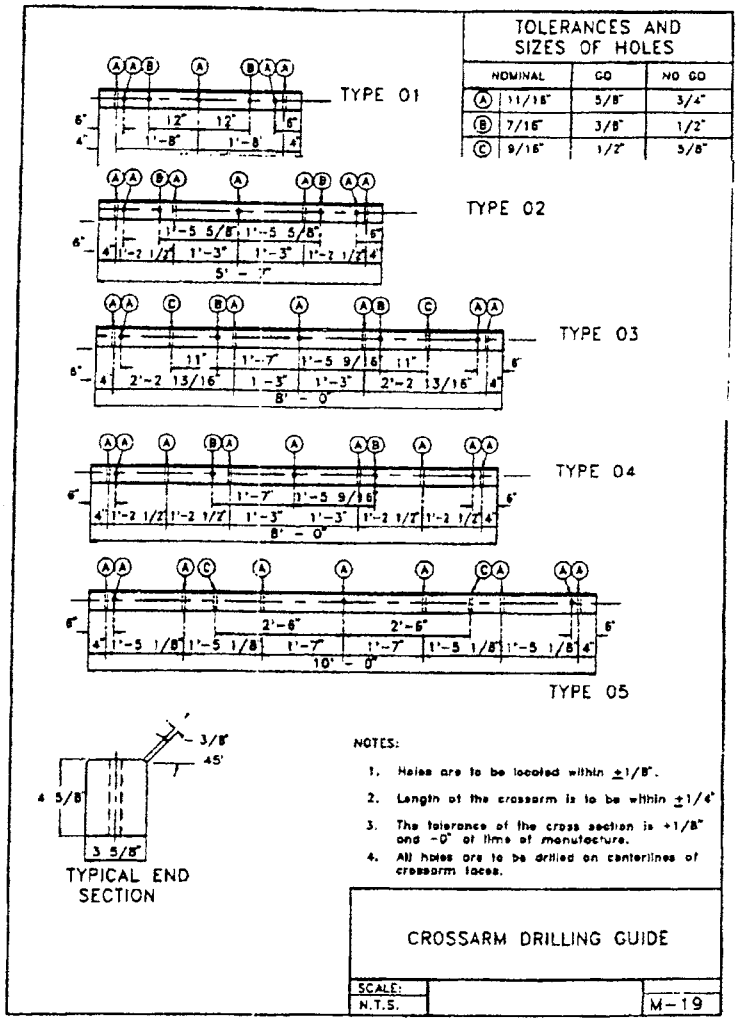


EXHIBIT B TO § 1728.201—CROSSARM DRILLING GUIDE




[58 FR 41396, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004]

**§ 1728.202 RUS Bulletin 1728H-702, RUS Specification for Quality Control and Inspection of Timber Products.**

(a) *Scope.* This specification describes in more detail the responsibilities and procedures pertaining to quality control for crossarms, as specified in § 1728.201 of this part, and poles, covered in RUS Bulletin 1728F-700, incorporated by reference in § 1728.97 of this part and in § 1755.97 of 7 CFR part 1755.

(b) *Related specifications and standards incorporated by reference.* The following specifications and standards referenced throughout this section are incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each are available for inspection during normal business hours at RUS, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of these standards and specifications may be purchased from the addresses shown below.

(1) American Wood-Preservers' Association (AWPA). Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163-0286.

(i) A1-91, Standard for Coal Tar Creosote for Land and Fresh Water Use.

(ii) A2-91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3-91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5-91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6-89, Method for the Determination of Water and Oil-Type Preservatives in Wood.

(vi) A7-75, Wet ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9-90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Emission Spectroscopy.

(viii) A11-83, Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1-91, Standard for Preservative Treatment by Pressure Processes All Timber Products.

(x) C4-91, Standard for the Preservative Treatment of Poles by Pressure Processes.

(xi) C8-91, Standard for the Full-Length Thermal Process Treatment of Western Red Cedar Poles.

(xii) C10-91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12-90, Western Larch Poles—Full-Length preservative Treatment by Thermal Process.

(xiv) M1-90, Standard for the Purchase and Preservation of Forest Products.

(xv) M2-91, Standard Instructions for the Inspection of Preservative Treatment of Wood.

(xvi) M3-81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4-91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13-91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5-91, Standards for Water-Borne Preservatives.

(xx) P8-91, Standards for Oil-Borne Preservatives.

(xxi) P9-91, Standards for Solvents for Organic Preservative Systems.

(2) American Institute of Timber Construction (AITC) 200-83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110.

(3) American National Standards Institute (ANSI) 05.2-1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(4) American National Standards Institute/American Institute of Timber Construction (ANSI/AITC) A190.1-1983, American National Standard for Wood Products—Structural Glued Laminated Timber, available from ANSI, 1430 Broadway, New York, New York 10018.

(5) American Society for Testing and Materials (ASTM) D9-87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103-1187, telephone number (215) 299-5585.

(c) *General stipulations.* (1) Each RUS electric borrower shall submit to the Director, Electric Staff Division, Rural Utilities Service, room 1250-S, 14th and Independence Avenue, SW., Washington, DC 20250-1500, in January of each year a list of plants from which it obtained poles or crossarms during the preceding calendar year.

(2) Ultimate quality control is the responsibility of the producer's management; however, a member of the producer's staff shall be designated quality control designee and charged with the responsibility for the exercise of proper quality control procedures. The requirements in American Wood Preservers' Association (AWPA) Standard M3, covering records, adequate laboratory, plant gauges, and other plant facilities including proper storage, shall be followed.

(3) The methods of inspection described in this section shall be used no matter which plan timber products are purchased under, i.e., Insured Warranty Plan, Independent Inspection Plan, or Quality Assurance Plans as described in § 1728.201 of this part or RUS Bulletin 1728F-700. The number of poles and crossarms actually inspected by monitors for quality control under a Quality Assurance Plan or the Insured Warranty Plan may vary from the number of poles and crossarms inspected under the Independent Inspection Plan. Under the Independent Inspection Plan, each pole and a sample number of crossarms shall be inspected.

(4) Under the Independent Inspection Plan, the RUS borrower should designate in the purchase order which inspection agency it has selected. Unless the RUS borrower contracts for inspection as a separate transaction, the treating company shall obtain the services of the RUS borrower's designated inspection agency. For reserve treated stock for purchase under the Independent Inspection Plan, the treating company shall obtain the services of an inspection agency. Selection of and changes in inspection agencies for reserve treated stock shall be promptly reported to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250-1500, in accordance with RUS Bulletin 1728F-700, and § 1728.201.

(5) Individual inspectors in the employ of Independent Inspection Agencies shall be experienced and competent. The inspector shall perform all phases of the inspection personally and in the proper sequence. The primary responsibility of the inspector is to determine, for the borrower, by careful inspection and verification, that the timber products, preservative, and treatment meet the requirements of RUS Bulletin 1728F-700 and Bulletin 1728H-701 and that the methods, storage facilities, and production equipment conform to applicable RUS specifications. For details of the recommended inspector's qualifications see appendix A of this section.

(6) Laminated materials for use on RUS borrower systems shall follow manufacturing and quality control requirements as specified in ANSI 05.2—1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, and ANSI/AITC A190.1-1983, American National Standard for Wood Products—Structural Glued Laminated Timber. The product shall be marked and certified.

(i) Laminated material shall be inspected by a qualified inspection and testing agency.

(ii) Quality control of material shall be performed to determine conformance with § 1728.201 of this part and AITC 200-83, Inspection Manual.

(d) *Quality control and inspection procedures for product acceptance.* It is the responsibility of the plant quality control designee to perform the following procedures to insure that a particular lot of material conforms to the requirements of the applicable RUS specification prior to treatment. After the plant quality control designee has performed these procedures, a particular lot of material shall be released to the inspector for verification of conformance.

(1) Poles can be purchased under any of the three purchase plans. These

plans are Insured Warranty Plan, Independent Inspection Plan, or a Quality Assurance Plan. Under the Independent Inspection Plan, all poles in a lot shall be inspected. Under the Insured Warranty Plan and a Quality Assurance Plan, the number of poles in a lot actually inspected may be less than every pole, depending on the terms of the plans.

(i) Ample space and assistance shall be provided by the treating plant for handling and turning to insure that the surfaces of all items can be adequately inspected.

(ii) Under the Independent Inspection Plan, all poles shall be inspected for conformance to the requirements of RUS Bulletin 1728F-700. If a pole is rejected and the cause of rejection is corrected, the rejected pole may be offered again for inspection as new material.

(iii) Dimensions, length, and circumference shall be measured by a standard steel pole tape to determine that they are in agreement with the details for class and length in the brand and butt stamp. If it is obvious by visual comparison with a measured pole that the brand information is correct, individual poles need not be measured. Pole circumference dimensions made prior to treatment shall govern acceptance. Reduction in dimension due to treatment and shipping shall be not more than 2 percent below the minimum for the pole class.

(iv) If 15 percent of the poles in a lot offered for inspection are defective, the inspector shall terminate the inspection. Re-examination of an entire lot by plant quality control shall be required when the number of rejected poles equals or exceeds 15 percent of the lot inspected. All defective or nonconforming poles either shall be removed from the lot or marked out.

(v) Poles in a lot inspected for decay shall be of the same seasoning condition. If the independent inspector suspects that decay has occurred, he shall cut a slice from both ends for closer examination. If 5 percent of the inspected poles in a lot shows evidence of decay, the entire lot shall be unconditionally rejected without further sorting.

(vi) Moisture content, when limited by the purchaser, as stated on the borrower's purchase order, shall be measured by calibrated electric moisture meter. Calibration of the meter shall include not only the zero settings for the X and Y readings, but also two resistance standards for 12 and 22 percent moisture content.

(vii) Material failing to conform for moisture content may be retested upon request after a recalibration of the instrument. The results of the second test shall govern disposition of the lot.

(viii) Re-examination for any mechanical damage or deterioration and for original acceptance shall be conducted on timber products not treated within 10 days after original inspection.

(2) Crossarms can be purchased only under either of two purchase plans. These plans are the Independent Inspection Plan or Quality Assurance Plans. Under the Independent Inspection Plan, crossarms are to be inspected prior to manufacture, during manufacture, and after treatment. Under a Quality Assurance Plan, crossarms are monitored according to the terms of the quality assurance program acceptable to RUS.

(i) Inspection prior to treatment shall include:

(A) Surface inspection of all ends of all arms. This is usually done on the stacks of arms prior to manufacture. Particular attention shall be paid to defects commonly found in the ends, such as compression wood, red heart and other forms of decay, shakes, splits, through checks, scantiness, honeycomb, and low density, determined by rings per inch (centimeter) and percent of summerwood. Whenever the number of nonconforming arms is found to exceed 0.5 percent of the lot or one arm, whichever is greater, the entire lot shall be rejected for excess number of defective ends. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(B) Surface inspection of the lengthwise sides performed on a random representative sample. The sample size shall equal 20 percent of a lot size or 200 arms, whichever is smaller. The inspector shall examine side surfaces as they are slowly rotated. When necessary, the rotation may be stopped for

closer inspection. Whenever the number of nonconforming arms is found to exceed 2 percent of the sample size, the entire lot shall be rejected. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(C) Check of moisture content of the random sample by a calibrated moisture meter.

(D) Check of crossarm dimensions of the random sample measured after surfacing.

(ii) Inspection during manufacture shall consist of:

(A) Checking bolt and insulator pin holes for squareness and excessive splintering;

(B) Checking brands for completeness, location, and legibility; and

(C) Checking arms for conformance.

(iii) Under the Independent Inspection Plan, there shall be a final inspection during and after treatment for preservative retention and penetration and for damage.

(3) Structural glued laminated timber shall be tested and inspected in accordance with AITC 200-83, Inspection Manual. Grade of lumber shall be inspected by a qualified grader for specified quality, and so marked, in accordance with grading rules of the American Lumber Standards. Adhesives used for all structural arms shall meet requirements of ANSI 05.2-83, paragraph 5.2. Melamine urea adhesives shall not be used. End joint spacings and limitations shall be in accordance with ANSI 05.2-83.

(e) *Preservatives.* (1) Creosote shall conform to the requirements of AWPA Standard P1 when analyzed by AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6.

(i) Each occasional charge, all material treated in a cylinder at one time, shall be analyzed.

(ii) The first charge and one of every five charges randomly selected in consecutive charges shall be analyzed.

(2) Solutions of waterborne preservatives shall be analyzed for components in accordance with AWPA Standards A2, A9, or A11, and shall meet the requirements of P5 for composition. AWPA A2 shall be used as a referee method.

(3) Pentachlorophenol shall contain not less than 95 percent chlorinated phenols and conform to AWPA Standard P8 in hydrocarbon solvent AWPA P9 Type A.

(4) Copper Naphthenate in hydrocarbon solvent (AWPA P9 Type A) shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5.

(f) *Plant facilities and inspection during treatment.* (1) Manufacturing and treating plant facilities shall conform to AWPA Standard M3, paragraph 3. Pressure plants shall be equipped with recording instruments to register time, pressure, temperature and vacuum during each cycle of treatment. They shall also be equipped with indicating thermometers and pressure and vacuum gauges to check the accuracy of the recorders. Work tanks shall be equipped with a thermometer. Thermal treating vats shall be equipped with a time and temperature recorder and with an indicating thermometer. Temperature recording devices are not mandatory for plants treating exclusively with waterborne preservatives.

(2) Under the Independent Inspection Plan, the inspector shall be present during the treatment procedure, except at times when it may be impractical, such as during late night or early morning treatments. At such times, temperature, pressure, and vacuum data shall be taken from the recording charts.

(3) Recording instruments shall be checked with indicating gauges and thermometers. Inaccuracies shall be referred to the treating company for prompt correction. In the event of an inaccuracy, indicating possible damage to the material, the inspector shall reject the charge.

(g) *Results of treatment.* (1) Poles shall be tested for retention and penetration by means of a calibrated increment borer 0.2 inches (0.51 cm) ±0.02 inches (0.05 cm) in diameter in accordance with procedures in AWPA Standard M2, paragraph 5.22. Under the Independent Inspection Plan, all treating charges

shall be tested for retention and penetration. Plant quality control and independent inspection shall do their analyses separately. Under the Insured Warranty Plan and Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) Western red and northern white cedars and western larch poles shall be bored at any point of the periphery approximately 6-12 inches (15.24-30.48 cm) above ground line and all other species approximately 1 foot (30.48 cm) above or below the brand.

(ii) Penetration shall be determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(iii) *Retention sampling.* (A) When there are 20 or more poles in the treating charge, the retention sample for creosote shall consist of 20 assay zones from southern pine and Douglas-fir poles. All poles in charges with fewer than 20 poles shall be bored once. Charges with less than 15 poles shall be bored once and bored again on a random basis to obtain a minimum of 15 assay zones.

(B) Retention samples shall be taken from 20 poles in charges of 20 or more poles.

(C) Retention samples for Alaska yellow, western red, and northern white cedars shall be comprised of a minimum of 30 assay zones for creosote and waterborne preservatives. For penta charges of fewer than 30 poles, the sample shall contain the assay zone from each pole in the lot.

(D) Retention samples shall be comprised of borings, representative of pole volumes for each class and length in the charge. Further selection and marking of poles of mixed seasoning, volume, and location on the tram shall be made as illustrated in the following table:

| Number of Poles | Class/Length | Vol. in cu. ft. | Total Volume | Number of Borings |
|---|---|---|---|---|
| 27 | 7/30(09.1 m) | 232 | 15 | 3 |
| 26 | 4/35(10.7 m) | 447 | 29 | 6 |
| 11 | 5/35(10.7 m) | 153 | 10 | 2 |
| 55* | 6/35(10.7 m) | 704 | 46 | 9 |
| Total | | 1,546 | | |

*If a portion of these poles were green and some partially seasoned, then the number of borings should reflect the approximate percentage of each.

(iv) When material in a lot consists of fewer pieces than the designated minimum number of samples for assay, additional borings shall be taken so as to make up at least the minimum sample, and in such manner that the sample is representative of the lot of material with respect to any variations in size, seasoning condition, or other features that might affect the results of treatment.

(v) Analyses for preservative retention shall be performed.

(A) Creosote shall be analyzed by AWPA Standard A6.

(B) Penta shall be analyzed by AWPA Standard A5 or A9. Copper pyridine method is required when timber may have been in contact with salt water and for all species native to the Pacific coast region, unless the raw material invoice specifically states that the material either has not been in contact with salt water or has been shown by analysis to have contained no additional chlorides before treating.

(C) Copper Naphthenate shall be analyzed by tests in accordance with AWPA Standards A5 or A9.

(D) Waterborne preservatives shall be analyzed by tests in accordance with AWPA Standards A2, A7, A9, or A11.

(E) Prior to unloading a tram, the inspectors may take their own samples and analyze them concurrently with the quality control designee, but each shall work independently, and quality control data shall be presented before acceptance of the charge.

(vi) *Penetration sampling of poles.* (A) Group A poles consist of poles with a circumference of 37.5 inches (95.25 cm) or less at 6 feet (1.8 m) from butt.

(1) Bore 20 Group A poles or 20 percent of the poles, whichever is greater. Accept if 100 percent of the sample conform; otherwise, bore all poles.

(*2*) Re-treat the charge if more than 15 percent of the borings are found to be nonconforming.

(*3*) Re-treat all nonconforming poles if 15 percent or fewer fail the requirement.

(B) Group B poles consist of poles with circumference greater than 37.5 inches (95.25 cm) at 6 feet (1.8 m) from the butt.

(*1*) For Group B poles 50 feet (15.2 m) and shorter, bore each pole and re-treat only those found to be nonconforming, unless more than 15 percent fail; in that case, re-treat the entire lot.

(*2*) For Group B poles longer than 50 feet (15.2 m), bore each pole twice at 90 degrees apart around the pole and accept only those poles conforming to the penetration requirement in both borings. All nonconforming poles may be re-treated only twice.

(vii) All holes (nominal 0.2 of an inch (0.05 cm) diam. bit) shall be promptly filled with treated, tight-fitting wood plugs.

(2) Under the Independent Inspection Plan, all treating charges of crossarms shall be tested for retention and penetration. Plant quality control inspectors and independent inspectors shall do their analyses *independently*. Under the Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) The penetration and retention sample shall consist of 20 (48 for creosote) outer 6/10 of an inch (1.52 cm) for Douglas-fir and 1 inch (2.54 cm) for Southern Yellow Pine zones from borings taken from any face except the top face at a location as close to the end as possible being at least 3 inches (7.62 cm) from the end of the arm and no closer than 3 inches from the edge of any holes. For laminated material, borings shall be taken from laminates on a random basis.

(ii) Penetration shall be tested by taking not less than 20 borings from 20 crossarms in each charge, determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(3) Laminated material shall be checked for any evidence of delamination due to treatment and for the identifying quality stamp of AITC or American Plywood Association (APA).

(4) When x-ray fluorescence (XRF) instruments are used to analyze preservative or retention, Periodic Instrument Checks (PIC) shall be made by the treating plant and any outside inspection agency using the treating plant's instrument or its own. Appendix B of this section outlines a recommended procedure.

(5) At a minimum, treating plants shall perform the PIC weekly and record the results in the instrument's log, which shall be stored with the instrument. Independent inspection agencies shall use their own samples to perform the PIC on treater's instrument once per visit, not to exceed one PIC per week. Inspection agencies shall record their results in the instrument's log and state the date of its latest PIC on all treating reports.

(6) XRF instruments shall be accurate and reliable, and they shall generate reproducible results. Instruments shall have thorough instructions which should include recommendations on drying techniques, equipment, and density calculations. These drying recommendations shall be followed when using these instruments.

(h) *Product acceptance.* Under the Independent Inspection Plan, the inspector shall signify acceptance by marking each piece of accepted material with a clear, legible hammer stamp in one end prior to treatment and in the other end after treatment. The inspector shall personally mark each piece, and shall not delegate this responsibility to another person.

(i) *Charge inspection reports.* (1) Inspection Reports shall cover the following:

(i) The total pieces in the lot, number of and causes for rejection;

(ii) The conditioning of the material prior to treatment;

(iii) The analyses of preservative identified by the analyst's signature or certification;

(iv) The details of treatment; and

(v) The results of treatment. These results shall include the following:

(A) The depth of penetration for retention sample and a summary of all

poles rejected for insufficient penetration;

(B) Worksheets for retention analyses, each identified by quality control designee and independent inspector;

(C) The number of pieces offered and rejected, together with the cause(s) for rejection;

(D) The date of latest Periodic Instrument Check.

(2) On each inspection report the independent inspector and the plant quality control designee shall certify, in writing, that the material listed on the report has been inspected before, during, and after treatment, and that the preservative used was analyzed in accordance with the requirements of this section.

(3) Each inspector or inspection agency shall retain for a period of 1 year a copy or transcript of each report of inspection, together with laboratory worksheets covering retention by assay and preservative analyses for the purchaser, and on request shall furnish a copy or transcript of any of these reports to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250-1500.

(j) *Charge numbers on re-treat poles.* The letter "R" shall be added to the original charge number in the butts of all poles that are re-treated for insufficient penetration or retention of preservative. All poles that fail to meet treatment requirements after two retreatments shall be permanently rejected.

(k) *Safety provisions.* Poles intended for RUS borrowers shall not be inspected when, in the opinion of the inspector, unsafe conditions are present.

APPENDIX A TO § 1728.202—RECOMMENDED INSPECTORS' QUALIFICATIONS

(a) Inspection agencies should see that inspectors assigned to the inspection of timber products and treatment for RUS borrowers are competent and experienced.

(b) *Recommended experience.* In general, any of the following examples are recommended as minimum qualifying experience before a new inspector may be permitted to inspect timber products for RUS borrowers:

(1) Three years' experience as an inspector of timber and the preservative treatment of timber.

(2) Three years' experience in timber treating plant quality control work.

(3) Under the direct supervision of an experienced, well-qualified inspector, who has performed the following:

(i) Inspected at least 2,500 poles and/or crossarms "in the white."

(ii) Checked preservative penetration results on at least 500 poles and crossarms.

(iii) Made at least 35 wood assays for preservative retention.

(iv) Made at least 25 analyses of each type preservative used on material the person is assigned to inspect.

(v) In both (b)(1) and (b)(2) of this appendix A, the experience should be not less than that required in (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv).

(4) Inspectors experienced in the inspections of one product, such as poles, should not be qualified to inspect another product, such as crossarms, until the above experience is gained.

(5) The inspector should be especially well informed in wood preservation and the operation of a timber treating plant, and be competent in preservative analysis and other laboratory work.

(6) In all cases, an inspector should be thoroughly instructed in the application of RUS specifications and the standards pertaining thereto before being permitted to independently inspect timber products and the treatments applied to them. Knowledge of these specifications and standards, as well as the inspector's proficiency, may be checked routinely by members of the RUS staff.

APPENDIX B TO § 1728.202—PERIODIC INSTRUMENT CHECK X-RAY FLUORESCENCE

(a) *General.* The following sample calibration standards and procedures may be used in lieu of comparison with analysis by wet ash or lime ignition methods.

(b) *Penta.* Until such time as AWPA approves calibration standards for penta, the following method should be used to run a salt water solution to measure Cl (chloride).

(1) *Standard Solution.* Dry approximately 15 grams of reagent grade NaCl at 105 °C for 1 hour. Weigh 10.00 grams into a tared beaker. Add distilled water until the total weight is 100.00 grams. Stir until completely dissolved. This will give a 10 percent weight to weight solution of NaCl.

(2) *Baseline Check.* (i) Insure that the instrument is in good agreement with lime ignition.

(ii) Record any user correction factors.

(iii) Stabilize and standardize the instrument.

(iv) Run the salt solution five times using the PENTA-OIL calibration mode.

(v) Record the average and standard deviation of the values for percent penta. The average value will now be considered the nominal value.

(3) *Periodic Instrument Check.* Run the salt solution two times and average the results. If the value is more than ±5 percent of the nominal value, the instrument needs further calibration, following manufacturer's recommendation.

(c) *Waterborne preservatives.* Treaters and inspection agencies should purchase AWPA Committee P-5 Standard Reference Materials to analyze on their instruments. Reference materials should be in the retention range of the material being produced at the plants. If the value is more than ±5 percent of the nominal value, the instrument needs further calibration. AWPA Committee P-5 Standard Reference Materials may be purchased from:

American Wood Preservers' Association, P.O. Box 286, Woodstock, Maryland 21163, Phone: (410) 456-3169.

[58 FR 41406, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004]

# PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

## Subpart A—General



## Subpart B—Operations and Maintenance Requirements



AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 63 FR 3450, Jan. 23 1998, unless otherwise noted.

## Subpart A—General

### § 1730.1 Introduction.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) related to electric borrowers' operation and maintenance practices and RUS' review and evaluation of such practices.

(b) The policies and procedures included in this part apply to all electric borrowers (both distribution borrowers and power supply borrowers) and are intended to clarify and implement certain provisions of the security instrument and loan contract between RUS and electric borrowers regarding operations and maintenance. This part is not intended to waive or supersede any provisions of the security instrument and loan contract between RUS and electric borrowers.

(c) The Administrator may waive, for good cause, on a case by case basis, certain requirements and procedures of this part.

### § 1730.2 RUS policy.

It is RUS policy to require that all property of a borrower be operated and maintained properly in accordance with the requirements of each borrower's loan documents. It is also RUS policy to provide financial assistance only to borrowers whose operations and maintenance practices and records are satisfactory or to those who are taking corrective actions expected to make their operations and maintenance practices and records satisfactory to RUS.

### § 1730.3 RUS addresses.

(a) Persons wishing to obtain forms referred to in this part should contact: Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522, telephone (202) 720-8674. Borrowers or others may reproduce any of these forms in any number required.

(b) Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's assigned RUS General Field Representative (GFR) or such other office as designated by RUS.

### § 1730.4 Definitions.

Terms used in this part have the meanings set forth in 7 CFR Part 1710.2. References to specific RUS forms and other RUS documents, and

to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR Part 1710.2, the term *Prudent Utility Practice* has the meaning set forth in Article 1, Section 1.01 of Appendix A to Subpart B of 7 CFR Part 1718—Model Form of Mortgage for Electric Distribution Borrowers, for the purposes of this Part.

**§§ 1730.5–1730.19 [Reserved]**

## Subpart B—Operations and Maintenance Requirements

### § 1730.20 General.

Each electric program distribution, transmission and generation borrower (as defined in § 1710.2) shall operate and maintain its system in compliance with prudent utility practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, individually or regionally performing a system security Vulnerability and Risk Assessment (VRA), establishing and maintaining an Emergency Restoration Plan (ERP), maintaining records of the physical, cyber and electrical condition and security of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system and annually exercise its ERP in accordance with the requirements of this part. An actual manmade or natural event on the borrowers system in which a borrower utilizes a significant portion of its ERP shall count as an annual exercise for that calendar year, provided that after conclusion of the event, the borrower verifies accuracy of the emergency points-of-contact (POC) and the associated contact numbers as listed in their ERP. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

[69 FR 60540, Oct. 12, 2004]

### § 1730.21 Inspections and tests.

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, annually exercise its ERP, and maintain records of such inspections and tests. For the purpose of this part, "Exercise" means a borrower's Tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. Such Exercise may be performed singly by an individual borrower, or as an active participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) Tabletop execution or actual full implementation of the ERP. For the purpose of this part, "Tabletop" means a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response.

(b) The frequency of inspection and testing will be determined by the borrower in conformance with applicable laws, regulations, national standards, and Prudent Utility Practice. The frequency of inspection and testing will be determined giving due consideration to the type of facilities or equipment, manufacturer's recommendations, age, operating environment and hazards to which the facilities are exposed, consequences of failure, and results of previous inspections and tests. The records of such inspections and tests will be retained in accordance with applicable regulatory requirements and Prudent Utility Practice. The retention period should be of a sufficient time period to identify long-term trends. Records must be retained at

least until the applicable inspections or tests are repeated.

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations and whether additional security measures are considered necessary to reduce the vulnerability of those facilities which, if damaged or destroyed, would severely impact the reliability and security of the electric power grid, cause significant risk to the safety and health of the public and/or impact the ability to provide service to consumers over an extended period of time. The electric power grid, also known as the transmission grid, consists of a network of electrical lines and related facilities, including certain substations, used to connect distribution facilities to generation facilities, and includes bulk transmission and subtransmission facilities as defined in §1710.2 of this title. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

[63 FR 3450, Jan. 23, 1998, as amended at 69 FR 60540, Oct. 12, 2004]

### § 1730.22 Borrower analysis.

(a) Each borrower shall periodically analyze and document its security, operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical or cyber condition or the operational effectiveness of the system or suggest a need for changes in security, operations or maintenance policies, practices and procedures. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's security, operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

(1) Conduct the analysis required by paragraph (a) of this section not more than 90 days prior to the scheduled RUS review;

(2) Complete RUS Form 300, Review Rating Summary, and other related forms, prior to RUS' review and evaluation; and

(3) Make available to RUS the borrower's completed RUS Form 300 (including a written explanation of the basis for each rating) and records related to the operations and maintenance of the borrower's system.

(c) For those facilities not included on the RUS Form 300 (e.g., generating plants), the borrower shall prepare and complete an appropriate supplemental form for such facilities.

[63 FR 3450, Jan. 23, 1998, as amended at 69 FR 60541, Oct. 12, 2004]

### § 1730.23 Review rating summary, RUS Form 300.

RUS Form 300 in Appendix A shall be used when required by this part.

### § 1730.24 RUS review and evaluation.

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every three years. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its complete system. Reports made by other inspectors (e.g., other Federal agencies, State inspectors, etc.) will also be made available, as applicable. RUS will not duplicate these other reviews but will use their reports to supplement its own review. RUS may inspect facilities, as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected

are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower. The borrower's management will discuss this review and evaluation with its Board of Directors.

**§ 1730.25 Corrective action.**

(a) For any items on the RUS Form 300 rated unsatisfactory (i.e., 0 or 1) by the borrower or by RUS, the borrower shall prepare a corrective action plan (CAP) outlining the steps (both short term and long term) the borrower will take to improve existing conditions and to maintain an acceptable rating. The CAP must include a time schedule and cost estimate for corrective actions, and must be approved by the borrower's Board of Directors. The CAP must be submitted to RUS for approval within 90 days after the completion of RUS' evaluation noted in § 1730.24.

(b) The borrower must periodically report to RUS in writing progress under the CAP. This report must be submitted to RUS every six months until all unsatisfactory items are corrected unless RUS prescribes a different reporting schedule.

**§ 1730.26 Certification.**

(a) *Engineer's certification.* Where provided for in the borrower's loan documents, RUS may require the borrower to provide an "Engineer's Certification" as to the condition of the borrower's system (including, but not limited to, all mortgaged property.) Such certification shall be in form and substance satisfactory to RUS and shall be prepared by a professional engineer satisfactory to RUS. If RUS determines that the Engineer's Certification discloses a need for improvements to the condition of its system or any other operations of the borrower, the borrower shall, upon notification by RUS, promptly undertake to accomplish such improvements.

(b) *Emergency Restoration Plan certification.* The borrower's Manager or Chief Executive Officer shall provide written certification to RUS stating that a VRA has been satisfactorily completed that meets the criteria of § 1730.27 (a), (b), (c), or (d), as applicable and § 1730.27(e)(1) through (e)(8), and that the borrower has an ERP that meets the criteria of § 1730.28 (a), (b), (c), or (d), as applicable, and § 1730.28 (e), (f), and (g). The written certification shall be in letter form. Applicants for new RUS electric loans, loan guarantees or grants shall include the written certification in the application package submitted to RUS. If the self-certification of an ERP and VRA are not received as set forth in this section, approval of the loan, loan guarantees or grants will not be considered until the certifications are received by RUS.

[63 FR 3450, Jan. 23, 1998, as amended at 69 FR 60541, Oct. 12, 2004]

**§ 1730.27 Vulnerability and Risk Assessment (VRA).**

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall perform an initial VRA of its electric system no later than July 12, 2005. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and July 12, 2005 shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after July 12, 2005 shall include with its application package a letter certification that such applicant has performed an initial VRA of its electric system. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(e) The VRA shall include identifying:

(1) Critical assets or facilities considered necessary for the reliability and security of the electric power grid as described in §1730.21(c);

(2) Facilities that if damaged or destroyed would cause significant risk to the safety and health of the public;

(3) Critical assets or infrastructure owned or served by the borrower's electric system that are determined, identified and communicated as elements of national security by the consumer, State or Federal government;

(4) External system impacts (interdependency) with loss of identified system components;

(5) Threats to facilities and assets identified in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section;

(6) Criticality and risk level of the borrower's system;

(7) Critical asset components and elements unique to the RUS borrower's system; and

(8) Other threats, if any, identified by an individual borrower.

[69 FR 60541, Oct. 12, 2004]

**§ 1730.28 Emergency Restoration Plan (ERP).**

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall have a written ERP no later than January 12, 2006. The ERP should be developed by the borrower individually or in conjunction with other electric utilities (not all having to be RUS borrowers) through the borrower's unique knowledge of its system, prudent utility practices (which includes development of an ERP) and the borrower's completed VRA. If a joint electric utility ERP is developed, each RUS borrower shall prepare an addendum to meet the requirements of paragraphs (e), (f), and (g) of this section as it relates to its system.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall have a written ERP in accordance with § 1730.28(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and January 12, 2006, shall have a written ERP in accordance with §1730.28(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after January 12, 2006 shall include with its application package a letter certification that such applicant has a written ERP.

(e) The ERP shall include:

(1) A list of key contact emergency telephone numbers (emergency agencies, borrower management and other key personnel, contractors and equipment suppliers, other utilities, and others that might need to be reached in an emergency);

(2) A list of key utility management and other personnel and identification of a chain of command and delegation of authority and responsibility during an emergency;

(3) Procedures for recovery from loss of power to the headquarters, key offices, and/or operation center facilities;

(4) A Business Continuity Section describing a plan to maintain or re-establish business operations following an event which disrupts business systems (computer, financial, and other business systems); and

(5) Other items, if any, identified by the borrower as essential for inclusion in the ERP.

(f) The ERP must be approved and signed by the borrower's Manager or Chief Executive Officer, and approved by the borrower's Board of Directors.

(g) Copies of the most recent approved ERP must be made readily available to key personnel at all times.

(h) The ERP shall be Exercised at least annually to ensure operability and employee familiarity. Completion of the first exercise of the ERP must occur on or before January 12, 2007.

(i) If modifications are made to an existing ERP:

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (e), (f), and (g) of this section; and

(2) Additional Exercises may be necessary to maintain employee operability and familiarity.

(j) Each borrower shall maintain records of such Exercises.

[69 FR 60541, Oct. 12, 2004]

**§ 1730.29 Grants and Grantees.**

For the purposes of this part, the terms "borrower" shall include recipients of RUS electric program grants, and "applicant" shall include applicants for such grants. References to "security documents" shall, with respect to recipients of RUS electric program grants, include grant agreements and other grant-related documents.

[69 FR 60541, Oct. 12, 2004]

**§§ 1730.30–1730.99 [Reserved]**

APPENDIX A TO SUBPART B OF PART 1730—REVIEW RATING SUMMARY, RUS FORM 300

Borrower Designation _____
Date Prepared _____

Ratings on form are:

0: Unsatisfactory—no records
1: Unsatisfactory—corrective action needed
2: Acceptable, but should be improved—see attached recommendations
3: Satisfactory—no additional action required at this time
N/A: Not applicable

PART I—TRANSMISSION and DISTRIBUTION FACILITIES

1. Substations (Transmission and Distribution)
   a. Safety, Clearance, Code Compliance—Rating: _____
   b. Physical Condition: Structure, Major Equipment, Appearance—Rating: _____
   c. Inspection Records Each Substation—Rating: _____
   d. Oil Spill Prevention—Rating: _____
2. Transmission Lines
   a. Right-of-Way: Clearing, Erosion, Appearance, Intrusions—Rating: _____
   b. Physical Condition: Structure, Conductor, Guying—Rating: _____
   c. Inspection Program and Records—Rating: _____
3. Distribution Lines—Overhead
   a. Inspection Program and Records—Rating: _____
   b. Compliance with Safety Codes: Clearances—Rating: _____
   Compliance with Safety Codes: Foreign Structures—Rating: _____
   Compliance with Safety Codes: Attachments—Rating: _____
   c. Observed Physical Condition from Field Checking: Right-of-Way—Rating: _____
   Observed Physical Condition from Field Checking: Other—Rating: _____
4. Distribution—Underground Cable
   a. Grounding and Corrosion Control—Rating: _____
   b. Surface Grading, Appearance—Rating: _____
   c. Riser Poles: Hazards, Guying, Condition—Rating: _____
5. Distribution Line Equipment: Conditions and Records
   a. Voltage Regulators—Rating: _____
   b. Sectionalizing Equipment—Rating: _____
   c. Distribution Transformers—Rating: _____
   d. Pad Mounted Equipment—Safety: Locking, Dead Front, Barriers—Rating: _____
   Pad Mounted Equipment—Appearance: Settlement, Condition—Rating: _____
   e. Kilowatt-hour and Demand Meter Reading and Testing—Rating: _____

PART II—OPERATION AND MAINTENANCE

6. Line Maintenance and Work Order Procedures
   a. Work Planning and Scheduling—Rating: _____
   b. Work Backlogs: Right-of-Way Maintenance—Rating: _____
   Work Backlogs: Poles—Rating: _____
   Work Backlogs: Retirement of Idle Services—Rating: _____
   Work Backlogs: Other—Rating: _____
7. Service Interruptions
   a. Average Annual Hours/Consumer by Cause (Complete for each of the previous 5 years)
   1. Power Supplier _____
   2. Major Storm _____
   3. Scheduled _____
   4. All Other _____
   5. Total _____
   Rating: _____
   b. Emergency Restoration Plan—Rating: _____
8. Power Quality
   General Freedom from Complaints—Rating: _____
9. Loading and Load Balance
   a. Distribution Transformer Loading—Rating: _____
   b. Load Control Apparatus—Rating: _____
   c. Substation and Feeder Loading—Rating: _____
10. Maps and Plant Records
   a. Operating Maps: Accurate and Up-to-Date—Rating: _____
   b. Circuit Diagrams—Rating: _____
   c. Staking Sheets—Rating: _____

PART III—ENGINEERING

11. System Load Conditions and Losses
   a. Annual System Loses, _____%—Rating: _____
   b. Annual Load Factor, _____%—Rating: _____

c. Power Factor at Monthly Peak, _____%—Rating:_____
d. Ratio of Individual Substation Peak kW to kVA. _____—Rating:_____
12. Voltage Conditions
a. Voltage Surveys—Rating:_____
b. Substation Transformer Output Voltage Spread—Rating:_____
13. Load Studies and Planning
a. Long Range Engineering Plan—Rating:_____
b. Construction Work Plan—Rating:_____
c. Sectionalizing Study—Rating:_____
d. Load Data for Engineering Studies—Rating:_____
e. Load Forecasting Data—Rating:_____

PART IV—OPERATION AND MAINTENANCE BUDGETS

For Previous 2 Years:
Normal Operation—Actual $_____
Normal Maintenance—Actual $_____
Total—Actual $_____
For Present Year:
Normal Operation—Budget $_____
Normal Maintenance—Budget $_____
Total—Budget $_____
For Future 3 Years:
Normal Operation—Budget $_____
Normal Maintenance—Budget $_____
Additional (Deferred) Maintenance—Budget $_____
Total—Budget $_____
14. Budgeting:
Adequacy of Budgets For Needed Work—Rating:_____
15. Date Discussed with Board of Directors _____
Remarks: _____

EXPLANATORY NOTES

Item No. _____ Comments _____
Rated by _____ _____ Title _____ Date _____
Reviewed by _____ Manager _____ Date _____
Reviewed by _____ RUS GFR _____ Date _____

# PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

## Subpart A—General

Sec.


## Subpart B—Loan Purposes and Basic Policies



## Subpart C—Types of Loans



## Subpart D—Terms of Loans



## Subpart E—Basic Requirements for Loan Approval



## Subpart F—Mortgage Controls on Acquisitions and Mergers



## Subpart G—Acquisitions Involving Loan Funds

**ATTACHMENT D**
**INDEX OF APPLICABLE RUS BULLETINS**

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Electric Programs

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# Electric Programs Bulletins and Informational Publications

The publications are available in a variety of formats, depending on the publication. Available formats include **html** format for viewing in your browser and in Adobe Acrobat **pdf** format for downloading and printing, as well as Microsoft Word.

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| Informational Publication | Size (.doc) | Text | MS Word | PDF | Description |
|---|---|---|---|---|---|
| 100-1 | 1M | N/A | N/A | .pdf | Rural Electrification Act of 1936, as amended, 7 U.S.C. 901-950b (as of 1/23/2004) |
| 200-3 | 17K | .txt | .doc | .pdf | Index of Electric Program Issuances (updated 5/12/98) |
| 202-1 | N/A | N/A | N/A | N/A | List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers. Visit the LIST OF MATERIALS page to download the latest copy in Adobe Acrobat pdf format. |
| 250-B6 | 104K | N/A | N/A | .pdf | Electric Program Directory (February 2006) |
| 250-B10 | 219K | N/A | N/A | .pdf | Electric and Telecommunications Programs - General Field Representatives (GFR); Program Accounting and Regulatory Analysis - Field Accountants (FA) (May 2005) |

| Bulletin | Size (.doc) | Text | MS Word | PDF | Description |
|---|---|---|---|---|---|
| 43-9 | - | - | - | .pdf | "Buy American" Requirement with related Federal Register Notices (7/28/1955) (also available in html) |
| 65-1 | - | - | - | - | Design Guide for Rural Substations - No Longer Available - Replaced by Bulletin 1724E-300 |
| 180-2 | 217K | - | .doc | .pdf | Record Retention Recommendations for RUS Electric Borrowers (6/26/03) |

| | | | | | |
|---|---|---|---|---|---|
| **1717B-2** | - | - | .doc | .pdf | Guide for Preparing Financial and Statistical Reports for Electric Distribution Borrowers (files located on DCS website) |
| **1717B-3** | 217K | - | - | .pdf | Guide For Preparing Financial and Statistical Reports For Power Supply Borrowers and Electric Distribution Borrowers with Generating Facilities (5/12/2006) |
| **1717M-2** | 199K | - | - | .pdf | Sale or Transfer of Capital Assets by Electric Borrower (2/9/2005) |
| **1717-Y** | 85K | .txt | .doc | .pdf | Settlement of Debt Owed by Electric Borrowers (9/26/97) |
| **1724D-101A** | 72K | .txt | .doc | .pdf | Electric system long-range planning guide |
| **1724D-101B** | 65K | N/A | N/A | .pdf | System Planning Guide - Construction Work Plans (2000) (also available in html format) |
| **1724D-103** | 2K | .txt | .doc | .pdf | System planning guide, system mapping guide [only the 328k .pdf file includes all pages] {revised 7/19/93} |
| **1724D-104** | 2K | .txt | .doc | .pdf | Engineering Economics Computer Workbook Procedure - Also available: Economic Analysis Worksheet (.xls format) |
| **1724D-106** | 32K | N/A | N/A | .pdf | Considerations For Replacing Storm-Damaged Conductors (6/1/05) |
| **1724D-112** | 736K | N/A | N/A | .pdf | The Application of Capacitors on Rural Electric Systems (Replaces Bulletin 169-1) (4/27/01) |
| **1724E-104** | 102K | N/A | N/A | .pdf | Reduced Size Neutral Conductors for Overhead Rural Distribution Lines (Supersedes REA Bull. 61-4) {revised September 23, 1999} |
| **1724E-150** | 249K | N/A | N/A | .pdf | Unguyed Distribution Poles – Strength Requirements (7/30/03) |
| **1724E-151** | 511K | N/A | N/A | .pdf | Mechanical Loading on Distribution Crossarms (11/21/02) |
| **1724E-152** | 225K | N/A | N/A | .pdf | The Mechanics of Overhead Distribution Line Conductors (7/30/03) |
| **1724E-153** | 345K | N/A | N/A | .pdf | Electric Distribution Line Guys and Anchors (4/25/01) |
| **1724E-154** | 317K | N/A | N/A | .pdf | Distribution Conductor Clearances and Span Limitations (7/30/03) |
| **1724E-200** | 7.6M | N/A | N/A | .pdf | Design Manual for High Voltage Transmission Lines (9/23/04) (with May 2005 revisions)<br>May 2005 Revisions (pdf format) |
| **1724E-202** | 52K | .txt | .doc | .pdf | An overview of transmission system studies |
| **1724E-203** | 34K | .txt | .doc | .pdf | Guide for upgrading transmission lines |
| **1724E-204** | 680K | N/A | N/A | .pdf | Guide Specifications for Steel Single Pole and H-Frame Structures {revised 9/6/1997} |
| **1724E-205** | 1456K | N/A | N/A | .pdf | Design guide: Embedment depths for concrete and steel poles {revised 8/22/95} |
| **1724E-206** | 160K | .txt | .doc | .pdf | Guide Specification for Spun, Prestressed Concrete Poles and Concrete Pole Structures (1997) |
| **1724E-214** | 950K | N/A | N/A | .pdf | Guide Specification for Standard Class Steel Transmission Poles (7/2/2001) |

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|---|---|---|---|---|---|
| **1724E-216** | 2.2M | N/A | N/A | .pdf | Guide Specification for Standard Class Spun, Prestressed Concrete Transmission Poles (2000) (also available in html format) |
| **1724E-220** | 478K | N/A | N/A | .pdf | Procurement and Application Guide for Non-Ceramic Composite Insulators, Voltage Class 34.5 kV and Above (3/17/2005) |
| **1724E-300** | 10M | N/A | N/A | .pdf | Design Guide for Rural Substations {issued June 2001} - replaces Bulletin 65-1 |
| **1724E-301** | 241K | .txt | .doc | .pdf | Guide for the Evaluation of Large Power Transformer Losses {revised 12/17/97} |
| **1724E-302** | 227K | .txt | .doc | .pdf | Design guide - oil spill prevention and control at substations |
| **1724E-400** | 25K | .txt | .doc | .pdf | Building plans and specifications |
| **1726-601** | 55K | - | - | .pdf | Electric System Construction Policies and Procedures - Interpretations {revised 7/27/2004} |
| **1726A-125** | 4K | .txt | .doc | .pdf | Joint use agreements with CATV companies (The PDF file contains scanned images of the pages in the Appendix.) |
| **1726C-115** | 4K | N/A | .doc | .pdf | Checking sag in a conductor using the return wave method<br>[The .doc file is MS Word 7] |
| **1726I-602** | 1.18M | N/A | .doc | .pdf | Attachments to Electric Program Standard Contract Forms (2/19/04) |
| **1728F-700** | 4101K | N/A | .doc | .pdf | Specification for Wood Poles, Stubs and Anchor Logs [The .doc file is MS Word 7] |
| **1728F-800** | 112K | N/A | N/A | .pdf | Construction Assembly Unit Numbers and Standard Format |
| **1728F-803** | 10.6M | N/A | N/A | .pdf | Specifications and Drawings for 24.9/14.4 kV Line Construction |
| **1728F-803 Notice** | 22K | N/A | N/A | .pdf | Compliance with Bulletin 50-5 or 1728F-803. Also available in html format. See also letter dated March 7, 2001, letter concerning assembly numbering (PDF) (HTML). |
| **1728F-804** | 12.8M | N/A | N/A | .pdf | Specifications and Drawings for 12.5/7.2 kV Line Construction (4/21/2005) |
| **1728F-806** | 4.2M | N/A | N/A | .pdf | Specifications and Drawings for Underground Electric Distribution |
| **1728H-701** | 30K | .txt | .doc | .pdf | Specifications for wood crossarms, transmission timbers, and pole keys |
| **1728H-702** | 24K | .txt | .doc | .pdf | Specifications for quality control and inspection of timber products |
| **1730B-2** | 195K | N/A | N/A | .pdf | Guide for Electric System Emergency Restoration Plan (1/7/2005) (includes revised page 20 - 3/1/2005) |
| **1730B-121** | 2247K | N/A | N/A | .pdf | Pole Inspection and Maintenance (4/15/96) |
| **1730-1** | 32K | .txt | .doc | .pdf | Electric System Operation and Maintenance (O&M) (1/26/98) |
| **1767B-1** | 1M | .txt | .doc | .pdf | Uniform System of Accounts - Electric Program |
| **1767B-2** | 116K | .txt | .doc | .pdf | Work order procedures - Electric Program |
| | | | | | Preparation and use of the RUS Form 254, Construction |

| | | | | | |
|---|---|---|---|---|---|
| **1767B-3** | 2K | txt | .doc | .pdf | Inventory |
| **1794A-600** | 232K | N/A | .doc | .pdf | Guide for Preparing an Environmental Report for Categorically Excluded Projects {revised 12/15/98} |
| **1794A-601** | 210K | N/A | .doc | .pdf | Guide for Preparing an Environmental Report for Electric Projects Requiring an Environmental Assessment {revised 12/9/98} |
| **1794A-603** | 260K | - | - | .pdf | Scoping Guide for RUS Funded Projects Requiring Environmental Assessments with Scoping and Environmental Impact Statements |

For regulations, see the Electric Programs Regulations page.

For RUS Accounting Bulletins, see the Program Accounting Services Division Regulations and Bulletins page.

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**ATTACHMENT F**
**FECA COMMENTS ON PROPOSED RULE 25-6.0343**

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

**FECA Comments:**

*(1) There is no need for the Commission to define construction standards for cooperatives. The RUS has already defined construction standards for RUS cooperatives which ensure the provision of adequate and reliable electric service. Those standards have worked well.*

*(2) There is no need for the Commission to act to protect cooperative members (customers) as there is for the Commission to protect IOU ratepayers. Unlike IOUs, cooperatives do not have to balance the interests of customers with shareholders. In cooperatives there are no shareholders with profit expectations. There is no incentive to limit expenditures to maximize return. The only basis to determine the appropriate level of expenditures is the reliability of service. Moreover, there is already a democratically-elected organization of members in place to protect the interests of members – each cooperative's board*

*of trustees The Commission does not need to, indeed should not act to protect members and supplant the role of the cooperatives' boards.*

*(3) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities, which under the plain language of the Grid Bill are not part of the "coordinated electric grid." This conclusion is also supported by more recent expressions of legislative intent as well as more than thirty years of Commission application of the Grid Bill where it has not once asserted jurisdiction over the distribution facilities for purposes of reliability.*

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

**FECA Comments:**

*(1) Because of RUS requirements, RUS cooperatives already have construction standards in place. There is no need for the Commission to require the adoption of construction standards.*

*Cooperatives have volunteered to make their construction standards available to Commission Staff at corporate headquarters and in Tallahassee if Staff is unable to travel.*

*(2) There is no need for the Commission to act to protect cooperative members (customers) as there is for the Commission to protect IOU ratepayers.*

*(3) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.*

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

**FECA Comments:**

*(1) This subsection of the rule is unnecessary. Existing Rule 25-6.0345, F.A.C. already requires compliance with the NESC. In addition, Section 366.04(6), Florida Statutes states that compliance with the NESC constitutes "good engineering practice by the utilities." Thus, this rule mandate is already covered by existing rules and statutes.*

*(2) Because of RUS requirements, RUS cooperatives already are required to construct, install, maintain and operate facilities in accordance with generally accepted engineering practice. 7 CFR Part 1728. Indeed, RUS' standards are more demanding than generally accepted engineering practice.*

*(3) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.*

*(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.*

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

**FECA Comments:**

*(1) Because of RUS requirements, RUS cooperatives already must comply with the NESC. 7 CFR Part 1724.50(a). Indeed, RUS' standards are more demanding than the NESC. 7 CFR Part 1724.50(b).*

*(2) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.*

*(3) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.*

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. 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:

1. new construction;

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

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

**FECA Comments:**

*(1) Because of RUS requirements, RUS cooperatives already are required to construct, install, maintain and operate facilities in accordance with the NESC and RUS requirements. 7 CFR Parts 1724.50(a)(b), 1728. In addition, RUS cooperatives are required to perform Vulnerability and Risk Assessments that address risks to critical assets or facilities and other facilities that if*

*damaged would cause significant risk to the safety and health of the public. 7 CFR Part 1730.27.*

*(2) The boards of trustees of cooperatives, who are democratically elected members of the cooperatives, are already assessing the standards necessary to assure reliable service to fellow members. It is presumptuous for the Commission to imply that they are not. Some boards have adopted extreme wind load standards for their systems and other have chosen not to adopt such standards. Setting aside legitimate jurisdictional questions, there is no need for the Commission to promulgate a rule that requires cooperatives' boards to perform their roles in a certain fashion. These boards are already acting in a fashion they deem reasonable, practical and cost-effective, and they should not be told to adopt construction standards with guidelines and procedures governing the applicability and use of the extreme wind loading standards. This presumes an absence of responsible conduct which has not been established by the evidence in this proceeding as well as jurisdiction that the Commission does not have. The extreme wind loading standard does not apply to structures less than 60 feet in height; thus, they are not applicable to most, if not all, distribution facilities. This proposed rule requirement simply goes too far for no apparent purpose.*

*(3) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.*

*(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.*

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

**FECA Comments:**

*(1) There is no need for the Commission to define construction standards or guidelines and procedures to deter flood and storm surge damage for cooperatives. The RUS has already defined construction standards for RUS cooperatives which ensure the provision of adequate and reliable electric service. Those standards have worked well. Because of RUS requirements, RUS cooperatives already are required to construct, install, maintain and operate facilities in accordance with generally accepted engineering practice. 7 CFR Part 1728. Indeed, RUS' standards are more demanding than generally accepted engineering practice. Id. Because of RUS requirements, RUS cooperatives already must comply with the NESC. 7 CFR Part 1724.50(a). Indeed, RUS' standards are more demanding than the NESC. 7 CFR Part 1724.50(b). RUS standards apply to both overhead and underground facilities.*

*(2) The boards of trustees of cooperatives, who are democratically elected members of the cooperatives, are already assessing the standards necessary to assure reliable service to fellow members. It is presumptuous for the Commission to imply that they are not. Setting aside legitimate jurisdictional questions, there is no need for the Commission to promulgate a rule that requires cooperatives' boards to perform their roles in a certain fashion. These boards are already acting in a fashion they deem reasonable, practical and cost-effective, and they should*

*not be told to adopt guidelines and procedures to deter storm surge and flood damage. This presumes an absence of responsible conduct which has not been established by the evidence in this proceeding as well as jurisdiction that the Commission does not have.*

*(3) There is no need for the Commission to act to protect cooperative members (customers) as there is for the Commission to protect IOU ratepayers. Unlike IOUs, cooperatives do not have to balance the interests of customers with shareholders. In cooperatives there are no shareholders with profit expectations. There is no incentive to limit expenditures to maximize return. The only basis to determine the appropriate level of expenditures is the reliability of service. Moreover, there is already a democratically-elected organization of members in place to protect the interests of members – each cooperative's board of trustees The Commission does not need to, indeed should not act to protect members and supplant the role of the cooperatives' boards*

*(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities which under the plain language of the Grid Bill are not part of the "coordinated electric grid." This conclusion is also supported by more recent expressions of legislative intent as well as more than thirty years of Commission application of the Grid Bill where it has not once asserted jurisdiction over the distribution facilities for purposes of reliability*

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-

effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(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.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements 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 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.

**FECA Comments:**

*(1) This stated preference for the location of facilities is unnecessary. RUS Bulletin 1724D-101A already addresses the appropriate consideration of factors regarding the construction and replacement of distribution lines. These factors note that a right-of-way adjacent to a highway might provide more economical maintenance, but the Bulletin stops short of stating a preference for construction front of customer premises. This is appropriate, for in some instance construction in the rear of premises would be appropriate – for instance where there is an alleyway or road and an existing easement or right to use an existing right of way.*

*(2) The remaining prescriptions once again presume that cooperative boards are not properly performing their responsibilities in terms of design of facilities and presume a Commission jurisdiction which it does not have. More importantly, these standards are unnecessary, as they are already being followed to the extent they are not overridden by other appropriate considerations.*

*(3) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.*

*(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.*

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(c) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and

operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

**FECA Comments:**

*(1) Pole attachment rates for cooperatives and municipals are exempt from the FCC's rates, terms and conditions regulation. If an entity wishes to attach to cooperative facilities, they must pay the full cost of changes to our facilities that are required to maintain the minimum criteria set forth in the NESC.*

*(2) Cooperatives have contracts with entities that attach to their facilities, and the contracts require attachments to comply with the NESC. Section (3) of the proposed rule could result in the impairment of a cooperative's contract with an attacher, and is absolutely unnecessary for cooperatives.*

*(3) RUS already has Bulletins in place addressing joint use agreements with CATV companies (1726A-125).*

*(4) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.*

*(5) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.*

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

**FECA Comments:**

*(1) Proposed section (4) usurps the right of a cooperative to resolve disputes with its members.*

*(2) It also usurps the jurisdiction of the courts to resolve contract disputes and other cases between a cooperative and an attacher. This action is clearly beyond the Commission's limited jurisdiction over cooperatives.*

*(3) This section potentially runs afoul of constitutional provisions prohibiting impairment of contract, as pole attachments for cooperatives are already matters subject to contract.*

*(4) In addition, it will be unnecessarily burdensome and costly for the cooperative's member and the cooperative if they are forced to travel to Tallahassee for a hearing on an issue that could and should have been resolved at home.*

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's

general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

**FECA Comments:**

*(1) The standard for exemption is unclear. Less reliable than what?*

*(2) There is already a statutory standard for rule waiver, and this does not appear to comply.*

*(3) There is no need for the Commission to require the promulgation of municipal or cooperative standards of construction, as set forth above in detail. Thus, there is no corresponding need for exemption.*

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2) (c) (f), (5), (6), and 366.05(8) F.S.

# Exhibit 8

**October 28, 2005**

# FPL reaches 50 percent restoration milestone; 1.6 million customers affected by Hurricane Wilma returned to service

**View recent outage and restoration numbers by county**

**MIAMI, Fla.** - As it ended its fourth full day of restoration since Hurricane Wilma cut a swath across the state, Florida Power & Light Company announced that it has now restored power to more than half of its customers impacted by the major storm, more than one week ahead of forecast. By 8 p.m., FPL had turned the lights on for more than 1.6 million customers of the 3.2 million impacted by Wilma.

"We are extremely pleased that we have been able to reach this milestone earlier than expected," said Geisha Williams, vice president of distribution and the executive in charge of FPL's restoration effort. "By having more than 1,000 out-of-state restoration works positioned in the state prior to Wilma's landfall and ready to work alongside our FPL crews, we were able to get an earlier start than in prior storms. We also have been fortunate to be able to add to our team on a steady basis throughout the week."

FPL has mobilized nearly 16,000 workers in its restoration effort and expects another 1,500 restoration workers to arrive throughout the weekend. Assisting personnel come from 33 states and Canada and are working out of 15 staging sites throughout South Florida.

The company said that it has restored power to nearly three-fourths of the community-designated critical infrastructure such as hospitals, police, fire and other services that are deemed to be critical to public safety and well being. As it brought service to these community functions, it also began to energize main lines that provide electric service to basic service providers such as grocery stores and gasoline stations.

Williams said that while good progress has been made, the severe damage that Wilma dealt to transmission lines and substations was a major challenge and prevented speedier rates of restoration than the company has historically been able to accomplish. "By bringing on line the substations and a good number of main lines throughout our service territory, we have been able to reach the half way mark in four days. But we expect it to be slower going in some areas over the next weeks, particularly in the hardest hit areas of Palm Beach and Broward counties, and the northern portions of Miami-Dade," she said.

The company has maintained its target of restoring power to approximately 95 percent of its affected customers no later than November 15. Today, it announced some target dates better than earlier forecast and also provided more specific information for customers on a sub-county area basis.

Florida Power & Light Company is the principal subsidiary of FPL Group, Inc. (NYSE: FPL), nationally known as a high quality, efficient and customer -driven organization focused on energy-related products and services. With annual revenues of more than $10 billion and a growing presence in 26 states, FPL Group is widely recognized as one of the country's premier power companies. Florida Power & Light Company serves 4.3 million customer accounts in Florida . FPL Energy, LLC, FPL Group's wholesale electricity generating subsidiary, is a leader in producing electricity from clean and renewable fuels. Additional information is available on the Internet at **www.FPL.com**, www.FPLGroup.com and **www.FPLEnergy.com**.

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