Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA ELECTRONIC DELIVERY

October 2, 2006

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

RE: Docket Nos. 060172-EU and 060173-EU – Posthearing Comments of the Florida Cable Telecommunications Association, Inc., (FCTA) and by M.T. (Mickey) Harrelson, Consultant, on behalf of the FCTA

Dear Ms. Bayo:

Attached for filing are the Posthearing Comments of the FCTA, and M.T. (Mickey) Harrelson, Consultant, on behalf of the FCTA.

Copies have been served upon the parties of record by electronic and U.S. Mail delivery.

Thank you for your assistance in this matter. Please contact me with any questions.

Sincerely,

s/ Michael A. Gross

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosure

cc: All Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events.	DOCKET NO. 060172-EU
In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.	DOCKET NO. 060173-EU Filed: October 2, 2006

POST HEARING COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC. AND REQUESTED CHANGES TO RULES 25-6.034, 25-6.0341, 25-6.0342, 25-6.0345, 25-6.064, 25-6.078 AND 25-6.115 FLORIDA ADMINSTRATIVE CODE

The Florida Cable Telecommunications Association, Inc. (FCTA), pursuant to section 120.54(3)(c)1, Rule 28-103.004, Florida Administrative Code, and Order No. PSC-06-0610-PSCO-EU, Order Establishing Procedures to be Followed at Rulemaking Hearing, issued on July 18, 2006, Second Order Establishing Procedures to be Followed at Rulemaking Hearing, issued on August 2, 1006, and Posthearing Schedule established at hearing on August 31, 2006 (Tr. at 187), submits its post hearing comments and suggested rule changes for Rules 25-6.034, 25-6.-0341, 25-6.0342, 25-6.0345, 25-6.064, 25-6.078, and 25-6.115.

INTRODUCTION

Procedural History

The Florida Public Service Commission (Commission) issued a Notice of Rulemaking on June 28, 2006, initiating a rulemaking proposing to adopt Rules 25-

6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, and 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, Florida Administrative Code and proposing to amend Rules 25-6.034 Standard of Construction, 25-6.0345 Safety Standards for Construction of New Transmission and Distribution, 25-6.064 ~~Extension of Facilities~~; Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities, 25-6.078 Schedule of Charges, and 25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~, Florida Administrative Code. In an Order dated July 27, 2006, the Commission granted a motion to bifurcate consideration of Rule 25-6.0343, establishing Docket No. 060512, and stetting a separate schedule and hearing for proposed Rule 25-6.043.

Pre-hearing comments addressing Proposed Rules 25-6.0341 and 25-6.0342 were filed on August 4, 2006, and pre-hearing comments addressing the proposed amendments to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, 25-6.115 were filed on August 11, 2004. A hearing was held on these proposed rules and amendments on August 31, 2006. FCTA incorporates the comments filed by FCTA and Mickey Harrleson on August 4 and August 11.

Background and Summary

The cable industry has invested approximately $110 billion nationally in upgrading its plant since the 1996 Act was passed. FCTA's member cable companies offer a broad array of communications services, including "traditional" cable service as well as broadband information and voice services, to more than 5 million residents

throughout the state of Florida. To deliver these valued services to Florida customers, cable companies rely upon the presence of utility poles as these poles provide virtually the only practical physical medium for the installation of cables.[1] As succinctly summarized by the United States Supreme Court in a 2002 case involving Florida utility Gulf Power, cable operators have long found it "essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents."[2]

To address utility control over essential pole facilities and to ensure just and reasonable rates, terms and conditions for third party attaching entities, in 1978 the United States Congress adopted the Pole Attachments Act. 47 U.S.C. § 224 (Act or Section 224). Congress subsequently amended the Act in 1996 to "accelerate rapidly private sector deployment of advanced telecommunication and information technologies and services."[3] Pursuant to Section 224, as amended, investor owned utilities are obligated under federal law to provide cable operators and telecommunications carriers, other than ILECs, with non-discriminatory access to utility poles that are owned or controlled by such utilities, 47 U.S.C. § 224(f)(1), and must do so pursuant to just and

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[1] *See, e.g., FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) ("Utility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables."); S. REP. NO. 580, 95th Cong. 1st Sess. 13 (1977) ("owing to a variety of factors, including environmental or zoning restrictions and the costs of erecting separate CATV poles or entrenching CATV cables underground, there is often no practical alternative to a CATV system operator except to utilize available space on existing poles"); 123 Cong. Rec. H35008 (1977) (statement of Rep. Broyhill, co-sponsor of Pole Attachment Act) ("The cable television industry has traditionally relied on telephone and power companies to provide space on poles for the attachment of CATV cables. Primarily because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, cable operators are virtually dependent on the telephone and power companies. . . ."); *General Telephone Co. of the Southwest v. United States*, 449 F.2d 846, 851 (5th Cir. 1971) (construction of systems outside of utility poles and ducts is "generally unfeasible")

[2] *NCTA v. Gulf Power*, 534 U.S.327, 330 (2002).

[3] House Conf. Rep. No. 104-458 to 1996 Act, reprinted at 1996 U.S.C.C.A.N. 124 (1996), Joint Explanatory Statement of the Conference Committee.

reasonable rates, terms and conditions. 47 U.S.C. § 224(b)(1). Utilities may only deny access to their poles for reasons of capacity, safety, reliability and general engineering purposes. 47 U.S.C. § 224(f)(2). The Federal Communications Commission (FCC) has authority to regulate pole attachment matters, including denials of access for safety related reasons, as well as the rates, terms and conditions of attachments, except in states that have certified to regulate pole attachments in satisfaction of the certification criteria set forth in Section 224(c)(2). Florida has not so certified.[4]

The electric investor owned utilities own a substantial majority of the pole plant in Florida and will have enormous incentives to use their bottleneck control of the distribution infrastructure to leverage their position in their ongoing disputes with the cable industry over third party attachments.[5] The electric and cable industries have been litigating for over 25 years over pole attachment rates and access rights, including issues involving safety, reliability, capacity and engineering standards. A representative sample of the litigation between the electric and cable industries is set forth in Exhibit MAG-1 hereto.

Accordingly, while FCTA believes that the Commission can adopt lawful rules governing the construction standards applicable to transmission and distribution poles and third party attachments thereon, the scope and design of these standards necessarily are limited by Section 224. Indeed, the Commission's rules cannot ignore the more than 25 years of law and regulation that have developed to mitigate the utility's leverage of monopoly control over essential pole facilities. Consistent with federal law, the

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[4] *See States That Have Certified That They Regulate Pole Attachments*, 7 F.C.C.R. 1498 (1992).

[5] "About 80 percent of the nation's poles are controlled by [electric] utility companies and the remaining 20 percent by phone companies . . . ." Ted Hearn, *Supreme Court Takes Cable Pole Case*, MULTICHANNEL NEWS, Jan. 29, 2001, at 34.

Commission must ensure that its rules do not interfere with attachers' federally protected rights and may not vest too much discretion in the utilities in the development of standards governing pole construction and third-part attachments. Doing so also runs afoul of legal limitations on the Commission's ability to sub-delegate its statutory responsibilities to private entities.

Florida law directs the Commission to prescribe and enforce *fair and reasonable* construction standards for electric transmission and distribution facilities that exceed the National Electrical Safety Code, when doing so is necessary to ensure the reliable provision of electric service. Fla. Stat. §§ 366.04(6), 366.05(1). Commission Staff proposed several rules in furtherance of this statutory requirement. Proposed Rule 25-6.034 requires investor owned utilities (IOUs) to establish construction standards for overhead and underground electric transmission and distribution facilities. Proposed Rule 25-6.0341 dictates the placement of distribution facilities for initial installation, expansion, rebuild, relocation and conversion of overhead facilities to underground. Proposed Rule 25-6.0342 requires IOUs to establish and maintain written safety, reliability, pole loading capacity and engineering standards and procedures for pole attachments.

As currently worded, proposed Rules 25.6-034, 25.6-0341 and 25.6-0342 exceed the Commission's jurisdiction and are unlawful because (a) they give sole and unfettered discretion to utilities to develop construction standards that will enable them to deny access to poles, or assign unreasonable and discriminatory requirements and costs, to cable television and telecommunications providers attached to the poles, in direct conflict with Section 224 and the regulations and precedent of the FCC; and (b) unlawfully

delegate the Commission's regulatory authority and responsibilities to pole owning utilities that have a pecuniary interest in redistributing the costs attributable to upgrading its infrastructure to other entities attached to pole.

This is not to say that FCTA opposes the current efforts by the Florida legislature and Commission to increase the reliability of Florida's electric transmission and distribution infrastructure. To the contrary, as FCTA has stated throughout this proceeding, cable operators applaud the Commission and the Florida legislature for taking positive steps to address the storm damage and protracted power outages that were experienced during the 2005 storm season. However, cable operators also must be assured that any rules that are adopted recognize and account for attachers' federally protected interests to non-discriminatory access and do not vest too much discretion in utility pole owners. The Commission's proposed rules, with the amendments sought by FCTA, would fulfill the Commission's statutory responsibility to prescribe and enforce *fair and reasonable* construction standards while also protecting attachers' federally protected rights and without sub-delegating too much rulemaking responsibility to IOUs.

I. The Commission's Proposed Rules 25-6.034, 25-6.-0341 and 25-6.0342 Conflict With Federal Laws Governing Pole Attachments And Are Therefore Preempted

Federal law completely preempts the field of pole attachments, and clearly enunciates the limited circumstances in which States may regulate the area. Under the Supremacy Clause of the United States Constitution, art. VI, cl. 2, "[w]hen the Federal Government acts within the authority it possesses under the Constitution, it is empowered to pre-empt state laws to the extent it is believed that such action is necessary to achieve

its purposes."[6] Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law.[7] Congress' intent may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose."[8]

Under the Pole Attachment Act, Congress established a system whereby jurisdiction over pole attachment matters would be conferred in the first instance on the FCC. When a state public utility commission certifies pursuant to the procedures set forth in Section 224(c) that it regulates pole attachment matters it can, by operation of law, assume jurisdiction and thereby supplant federal jurisdiction over such matters. *See* 47 C.F.R. § 1.1414. The Florida Public Service Commission has not so certified, meaning that the FCC has jurisdiction over pole attachments in Florida. Nevertheless, the Commission's proposed Rules 25-6.034, 25-6.0341 and 25-6.0342 purport to regulate pole attachments in a manner that impinges on the federal protection afforded by Section 224 and FCC rules and precedent, and therefore are preempted. Specifically, proposed Rules 25-6.034, 25-6.0341 and 25-6.0342 vest too much discretion in IOUs to develop standards impacting third party attachments without a requirement to incorporate meaningful input from attaching entities thereby inviting discrimination. In addition, Proposed Rules 25-6.034(7) and 25-6.0342(4) establish a complaint procedure at the Commission but do not recognize the FCC's jurisdiction over 224 disputes.

A. Absent Certification By Florida, The FCC Has Jurisdiction Over Denials Of Access To Cable Operators By Utility Pole Owners

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[6] *City of New York v. FCC*, 486 U.S. 57, 63 (1988).

[7] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986).

[8] *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 51 L. Ed. 2d 604, 97 S. Ct. 1305 (1977). *See also H. Papas v. The Upjohn Co.*, 985 F.2d 516 (11th Cir. 1993) (finding that federal law clearly articulated that states could not adopt more stringent labeling and packaging practices for pesticides and citing *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 112 S. Ct. 2608, 120 L. Ed. 2d 407 (1992)); *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983 (7th Cir. 2000).

In its first rulemaking order implementing the local competition provisions of the Telecommunications Act of 1996, the FCC established a program for nondiscriminatory access to utilities' poles, ducts, conduits and rights-of-way.[9] The so-called Local Competition Order established a dispute resolution process at the FCC for when pole attachment negotiations fail, and established requirements concerning modifications of attachments and the allocation of the cost of such modifications. In the Local Competition Order, the FCC established several general rules, supplemented by guidelines and presumptions and determined that it would consider the reasonableness of particular conditions of access imposed by a utility on a case-specific basis.[10]

Pole owning utilities in Florida would have this Commission believe that, notwithstanding Section 224 of the Communications Act, setting forth a detailed federal scheme for the regulation of pole attachments and the FCC's established process for adjudicating access disputes, jurisdiction over access, safety, reliability and engineering of cable television and telecommunications attachments and pole capacity is reserved presumptively and exclusively to the states, regardless of whether a state has certified pursuant to Section 224.[11] In support of this argument for bifurcated jurisdiction, the utilities cherry pick quotations from the decisive FCC Order addressing the issue, the FCC's Order on Reconsideration of the Local Competition Order.

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[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499, 15505 ¶1 (1996) (Local Competition Order) (subsequent history omitted).

[10] *Id.*; *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 14 FCCR 18049 ¶¶1-5 (1999) (Reconsideration of Local Competition Order).

[11] *See Joint Reply Comments* filed in Docket No. 060173-EU, filed August 18, 2006 by Florida Power and Light Company, Progress Energy Florida, Tampa Electric Company and Gulf Power Company (hereinafter "FPL Joint Reply Comments") at 3-7 (claiming the lack of inclusion of the word "access" in Section 224(c)(2) relieves states of the obligation to certify jurisdiction of access issues).

Similarly, at the August 31, 2006 hearing Eric Langley, representing Gulf Power, erroneously categorized Section 224 issues as falling into two separate boxes – one box for issues relating to rates, terms and conditions of access, and one relating to issues of access, safety, reliability and engineering. Tr. at 137 – 138. He incorrectly stated that the issues in the second "box" have always been presumed to be regulated by the states and have never required certification. In fact, the position advanced by Mr. Langley and the pole owning utilities that Florida need not certify to regulate denials of access to poles by Florida utilities is squarely contradicted by the law.

Section 224 requires states to certify in order to regulate both the rates, terms and conditions of pole access, as well as denials of pole access. *See* 47 U.S.C. § 224(c). The FCC specifically addressed this issue in its Order on Reconsideration of the Local Competition Order, cited by the Florida utilities. There, the FCC stated:

> [I]f a state that has not previously certified its authority over rates, terms and conditions wishes to begin to assert such jurisdiction, including jurisdiction **over access pursuant to section 224(f), the state must certify its jurisdiction over access pursuant to section 224(c)(2).** We are mindful of the potential confusion and lack of certainty that could result in the absence of any certification, and **do not believe that Congress intended such a result.**

Id. at ¶ 115 (emphasis added). As the expert agency charged with interpreting the Communications Act, the FCC's interpretation of the certification requirements of Section 224(c)(2) is entitled to deference.[12]

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[12] *Chevron U.S.A., Inc. v. Natural Resources Defense Council,* 467 U.S. 837, 842-844 (1984); *see also NCTA v. Gulf Power Co. et al.,* 534 U.S. 327, 151 L.Ed. 2d 794, 806 (2002) (In which the United States Supreme Court deferred to the FCC's regulatory classification of cable modem service for purposes of pole attachment regulation, stating "the subject matter here is technical, complex, and dynamic," and thus, deference to the FCC on how cable modem service should be classified for purposes of pole attachment regulation was appropriate.).

The utilities and Mr. Langley's arguments did not address the FCC's interpretation of the certification requirements of Section 224(c) or attempt to explain why the FCC's ruling is not binding on the Commission. Instead, they simply chose to ignore the relevant paragraph in its entirety, while boldly citing to the paragraphs on either side of it. The utilities and Mr. Langley's omission is telling. As clearly set forth by the FCC, the Commission must certify pursuant to Section 224(c) to regulate both issues relating to access and the grounds for denying access, as well as the rates, terms and conditions of access. The utilities arguments are flatly wrong and must be rejected.

B. The FCC Has Exercised Its Jurisdiction Over Pole Attachments In Numerous Cases Involving Denials of Access, Safety And Construction Issues and the Imposition of Construction Related Costs by Pole Owning Utilities

Contrary to the assertions of the Florida utilities and Mr. Langley, Florida does not have presumptive exclusive jurisdiction over access to poles or engineering standards for pole attachments. Indeed, the FCC repeatedly has asserted its jurisdiction over complaints concerning utility companies' denials of access to poles, including denials based on safety and engineering standards, and has rejected utility efforts to limit its jurisdiction. It did so in the Local Competition Order, and on Reconsideration of the Local Competition Order, and it has done so in specific cases.[13]

As stated by the FCC earlier this year, in response to claims by another utility pole owner, Entergy Arkansas, Inc., that the FCC lacked jurisdiction and "specific expertise with respect to electric utilities and their unique safety and operational issues,"

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[13] *See e.g., In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company, Order and Request for Information*, File No. PA 99-005, DA 00-1250 at ¶¶ 14, 15 (June 7, 2000) *vacated by settlement* 2002 FCC LEXIS 6385 (Dec. 3, 2002 (in issuing the vacatur, the FCC specifically stated that its decision did not "reflect any disagreement with or reconsideration of any of the findings or conclusions contained in" the underlying decision). In *Cavalier*, the FCC addressed both a claim of denial of access as well as a contract provision that would have given the utility the right to deny access for any reason.

the FCC ruled that it had jurisdiction, stating, "The Commission [FCC] thus confirmed that it **has jurisdiction to review and reject a challenged engineering standard or practice as unjust or unreasonable under section 224, even where the standard or practice complies with state or local requirements,**" and clearly stating that the FCC has authority to preempt state and local engineering standards that are inconsistent with its rules and policies.[14]

Indeed, the FCC has examined safety related issues repeatedly over its extensive history of pole attachment regulation. *See, e.g., In the Matter of the Cable Television Assoc. of Georgia v. Georgia Power Company*, 2003 FCC Lexis 4463, *14 (2003) (dismissing a pole owners' alleged safety issues as they were not supported by the record because the pole owner could not point to a single instance of property damage or personal injury caused by the pole attachments); *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*, Order and Request for Information, File No. PA 99-005, DA 00-1250 at ¶ 19 (June 7, 2000) (requiring a utility pole owner to "cease and desist from selectively enforcing safety standards or unreasonably changing the safety standards" that the party seeking to attach to its poles must adhere) *vacated by settlement* 2002 FCC LEXIS 6385 (Dec. 3, 2002 (in issuing the vacatur, the FCC specifically stated that its decision did not "reflect any disagreement with or reconsideration of any of the findings or conclusions contained in" the underlying decision); *In the Matter of Newport News Cablevision, Ltd. Communications, Inc. v. Virginia Electric and Power Company, Order,* 7 FCC Rcd. 2610 ¶ 15 (April 27, 1992) (considering the reasonableness of VEPCO's guying requirements). The FCC also has

[14] *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCCR 2158, ¶¶ 8-11 and n. 37 (rel. March 2, 2006)(internal citations omitted) (emphasis added).

addressed specific safety requirements in rulemaking proceedings, including ruling that utilities may rely on the NESC in prescribing standards as well as other widely-accepted objective industry codes[15] and addressing the issue of overlashing, including the impact on wind and weight load burdens.[16]

The FCC also has jurisdiction over construction related costs that may be imposed on cable companies by pole owning utilities. All of the parties in this proceeding have acknowledged the significant increased costs that will result from the imposition of increased regulation of pole construction standards, and the Commission has sought to clarify the costs associated with its proposed rules. While it is difficult, if not impossible, to estimate the precise costs that will be incurred by cable companies due to the Commission's proposed rules, FCTA has documented in this proceeding the numerous cases that have been litigated at the FCC involving unreasonable billing practices engaged in by pole owning utilities, including such practices as: imposing direct charges for certain services while simultaneously recovering the same costs in their annual rental charges ("double billing"), recovering excessive amounts from attaching entities for services that can only be performed by the pole owners and charging excessive amounts for makeready and inspections ("over billing"), failing to provide sufficient detail for bills, and shifting costs attributable to all parties on the pole to a single attaching entity. See Exhibit MAG-2. Utilities also have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example,

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[15] Local Competition Order at ¶¶ 1151-1158.

[16] *In the Matter of Amendment of Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996,* Consolidated Partial Order on Reconsideration, CS Dkt. Nos, 97-98, 97-151, 16 FCC Rcd. 12103 ¶¶ 73-78 (2001) ("Reconsideration of the Rules and Policies Governing Pole Attachments").

utilities have sought to require full application and engineering studies for overlashing of fiber optic cable to existing strand – a practice the FCC has found to be excessive and unnecessary because of its minimal impact on pole loading. In addition, utilities have unreasonably denied attachment to their anchors – requiring attaching entities instead to set their own anchors and thereby expend unnecessary resources. Again, the FCC has found this practice to be unreasonable.

Attached hereto as Exhibit 2 is a memorandum of FCC cases showing instances where utility pole owners have engaged in unreasonable billing practices, double-billing, over-billing and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves, and unreasonable operational practices which have resulted in significant, unnecessary costs to attaching entities. It is reasonable to expect, based on this lengthy history of abuse by pole owners that in this case as well, pole owners will attempt to unfairly allocate their increased costs onto attaching entities. At a minimum, the Commission may not allow the utilities to recover costs from cable companies in a manner that is inconsistent with FCC rules and precedent.

C. Proposed Rules 25-6.034, 25-6.0341 and 25-6.0342 Conflict With FCC Rules and Policies Because They Invite Discriminatory Standards And Cost Allocation And Do Not Adequately Address The Rights of Federally Protected Attaching Entities

Florida utilities argue that the states have a role in prescribing construction and safety standards for poles, and that the states' rules, regardless of how much discretion they give to utilities and regardless of whether they address the needs and interests of attaching entities and their subscribers, will be presumed reasonable. Similarly, Scheffel Wright, representing the Towns of Palm Beach and Jupiter Island Florida, argued at the

August 31, 2006 hearing that state standards affecting pole attachments will be presumed reasonable and are entitled to deference even if the state has not certified. Tr. at 123-124. The utilities' and Mr. Wright's positions are exaggerated.[17]

The utilities' arguments ignore the Section 224 mandates for utilities to provide non-discriminatory access to poles they own or control, and the FCC's retention of jurisdiction over access disputes and costs. While it is true that the FCC has stated "it would not invalidate summarily all local [safety] requirements," in the exact same paragraph the FCC made equally clear that state and local safety requirements apply *only* if there is no "direct conflict with federal policy." [18] The FCC went on to explain, unequivocally, that "Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail."[19] The FCC also reminded states that their ability to regulate in the area of pole attachments is tempered by Section 253, which invalidates all state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[20]

Perhaps most importantly, the FCC "reject[ed] the contention of some utilities that they are the primary arbiters of [capacity, safety, reliability, or engineering] concerns, or that their determinations should be presumed reasonable."[21] Where, as in proposed Rules 25-6.034, 25-6.0341 and 25-6.0342, a state or local authority delegates to the utilities the responsibility to establish pole construction and attachment standards that

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[17] Although Mr. Wright also supports FCTA's proposed savings clause that states that the rules are not intended to conflict with or impinge upon the FCC's jurisdiction. Tr. at 126.

[18] Local Competition Order at ¶ 1154.

[19] *Id.*

[20] *Id.* at ¶1155.

[21] *Id.* at ¶1158.

will undoubtedly touch on the capacity, safety, reliability and engineering of pole attachments, without an obligation to incorporate input from attaching entities, those standards will be discriminatory and will not be presumed reasonable or entitled to deference. Florida cannot, as it has done in the proposed rules, make the utilities the arbiters of standards governing capacity, safety, reliability or engineering, and expect the resulting standards to be presumed reasonable by the FCC. Similarly, the proposed Rules 25-6.034 and 25-6.0342 establish a complaint procedure at the Commission but do not acknowledge the preemptive jurisdiction of the FCC. And, compliance with the Rules will necessarily increase costs for all entities and the FCC rules, not the Commission, must establish the mechanisms for the recovery of those costs.

Not only do the utilities' arguments fail in the face of the law, they also do not make sense when applied to specific construction and engineering issues. For example, the FCC repeatedly has held that the practice of overlashing – in which cable operators overlash fiber to existing cable strand – does not typically impact the pole load, and thus does not require a separate license and does not qualify as a separate attachment for rental purposes.[22] In addition, the FCC has rejected efforts to collect rents for overlashing on the grounds that it allocates pole rental costs based on space occupied, not load capacity. It is too easy to imagine how the utilities will attempt to undermine this federal precedent if they are given unchecked discretion to dictate "construction" standards for third party attachments, as is the case in proposed Rules 25-6.034, 25-6.0341 and 25-6.0342. Already, there are rumblings that overlashing of fiber, and not the placement of heavy electric power cable and equipment, is the cause of existing pole overloading.

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[22] *See, e.g.* Reconsideration of the Rules and Policies Governing Pole Attachments at ¶¶74-78.

Similarly, currently pending before the FCC is a case between FCTA and Gulf Power concerning Gulf Power's attempt to charge unregulated rents based on a lack of sufficient capacity to accommodate additional attachments on its poles. In *Southern Company v. FCC*, [23] the 11th Circuit held that the FCC's regulations requiring utilities to "expand" capacity were overbroad in light of the statutory language in Section 224(f) of the Act and vacated the rule.[24] However, the court also found that utilities may not make a unilateral determination that capacity is insufficient for third-party attachments.[25] Specifically, the court explained that electric utilities do not have "unfettered discretion" to determine insufficient capacity because that could only be found as to a particular pole "*when it is agreed* that capacity is insufficient."[26] Thus, only where a third-party attacher agrees that a taller pole, rearrangement, or other make-ready is not feasible could capacity be deemed "insufficient" to justify a denial of access. Proposed Rules 25-6.034, 25-6.0341 and 25-6.0342 give too much discretion to IOUs to establish construction standards that end-run years of federal regulation and judicial precedent establishing the rights of access by cable companies to IOU owned and controlled poles. In the case of overlashing and determinations of capacity, the FCC, and not the Commission, is the final arbiter of such matters with respect to cable operators in Florida.

Again, FCTA is not suggesting that the Commission may not adopt rules that prescribe reasonable construction standards for Florida pole owners and even for third party attachments. However, in doing so, the Commission must not interfere with the

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[23] *Southern Company, et al. v. Federal Communications Commission,* 293 F.3d 1338, (11th Cir. 2002) ("*Southern Company*").

[24] *Southern Company,* 293 F.3d at 1347-49.

[25] *Id.*

[26] *Id.* at 1347 (emphasis added).

federally protected rights of cable operators and competitive telecommunications carriers to obtain non-discriminatory access to poles upon just and reasonable rates, terms and conditions, and to dispute denials of such access at the FCC.

II. Proposed Rules 25-6.034 and 25-6.0342 Unlawfully Assign Too Much Responsibility To Utility Companies To Develop Construction Standards To Fulfill The Commission's Statutory Mandate

Federal law is not the only bar to making the utilities the arbiters of pole access, safety, construction and engineering issues. The Florida legislature, Florida courts and the Attorney General all have recognized that administrative agencies are limited in the responsibilities they may delegate to private entities.[27] Under the prevailing cases, including the cases cited by the utilities in this proceeding, agencies can not delegate a *governmental* function to private entities. Agencies may delegate technical matters of implementation but even then, agencies must retain ultimate decision making authority and sufficient control over the delegated function.[28] A private entity may only play an advisory role and the agency may not simply "rubber stamp" the private entity's findings. Rather, discretion and ultimate supervision and control must rest with the governmental

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[27] Fla. Stat. § 120.52 (2006); *County Collection Services, Inc. v. Thomas C. Charnock, aka C.T. Charnock aka Tom Charnock, et al.*, 789 So. 2d 1109 (Fla. App. 2001) (recognizing that county could not delegate its taxing authority to a private entity); *City of Belleview v. Belleview Fire Fighters, Inc.*, 367 So. 2d 1086 (Fla. App. 1979) (recognizing city could not delegate its police power functions to private entity); *Florida Nutrition Counselors Association v. Department of Business and Professional Regulation, Board of Medicine, Dietetics and Nutrition Practice Council*, 667 So. 2d 218, 228 (Fla. App. 1995) (striking down a rule that relied too heavily upon role of private educational institutions in setting standards for medical devices); *State of Florida v. State Road Department*, 173 So. 2d 693, 695-96 (Fla. 1965); *Florida Attorney General Op. 078-53*, issued March 28, 1978 at 5-6 (recognizing that state cannot delegate its rate making authority to private entities).

[28] *Brown v. Apalachee Regional Planning Council*, 560 So. 2d 782, 784-85 (Fla. 1990) (distinguishing between delegation of a technical matter of implementation with sufficient constraints including considerable detail and specific criteria about the review process and delegation of a policy function).

entity. [29] This is especially true where the private entity has a stake in the project for which it is performing a technical function.[30]

Proposed Rules 25-6.034 and 25-6.0342 require the investor owned utilities to develop construction standards that will govern third-party attachments. While proposed Rules 25-6.034(7) and 25.6-0342(4) provide that a dispute or challenge to a utility's construction standards shall be handled by the Commission, this does not give the Commission the requisite control it must retain over the development of standards. The proposed rules do not contain any provision for approval of the standards by the Commission; rather the utilities need only make a copy of the standards available on request. The Commission is not obligated to request a copy of the standards, and there is no further language about what might happen if the Commission were to request and/or review a copy of the standards. Further, the Commission's right to review challenges to the utility standards on an ad hoc basis is undermined by the FCC's jurisdiction over Section 224 pole attachment disputes. FCC jurisdiction may be triggered by standards that are facially unreasonable or by an unjust and unreasonable application of the standards. Thus, the proposed rules lack effective control by, or final decision making authority in, the Commission and Proposed Rules 25-6.034 and 25-6.0342 are therefore an unauthorized sub-delegation of Commission authority.

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[29] *Florida Attorney General Op. 078-53*, issued March 28, 1978 a6t 5-6 (recognizing that state cannot delegate its rate making authority to private entities) (citing *State of Florida v. State Road Department*, 173 So. 2d 693, 696 (Fla. 1965).

[30] *Sierra Club v. Lynn*, 502 F. 2d 43, 59 (5th Cir. 1974) (Florida was part of the 5th Circuit until 1980, when the 11th Circuit was created) (finding that HUD had the obligation to "independently perform its reviewing, analytical, and judgmental functions, and participate actively and significantly in the preparation and drafting process" and could not "abdicate its statutory duties by reflexively rubber stamping a statement prepared by others."); *Sierra Club v. Sigler*, 695 F. 2d 957 , 962, n. 3(5th Cir. 1983) ("The role of the private firm in preparation of [the draft and final version of environmental impact statement] is particularly troubling in this case because the consulting firm also had a stake in the project which it was evaluating.").

III. Proposed Rules 25-6.034, 25-6.0341, and 25-6.0342 are Anti-Competitive and Not Factually Supported as the Most Effective Means of Meeting the Goals of Reducing Storm Damage and Protracted Outages

There has been no competent evidence that storm damage and power outages in Florida from the recent hurricane seasons were caused by third-party attachments and/or inadequate construction and NESC standards. Third-party cable attachments are almost exclusively on distribution poles. The most effective effort to reduce widespread and lengthy power outages is to inspect transmission poles and substations and inspect distribution poles and to take remedial or corrective actions to repair or restore them to design strengths and performance criteria. The three-year vegetation management cycle will be very effective. Distribution lines and poles are often surrounded by trees and buildings, particularly in urban areas. It is not effective to build stronger distribution lines, only to have them brought down by tall trees and flying debris. Urban areas are also where the greatest concentration of communications cables are attached to distribution poles. It is rare that a distribution pole is broken by wind force alone resulting from the added wind load caused by communications cable attachments. In essence, inspection and repair of transmission poles and substations, and improved inspections, maintenance, and vegetation management for tree trimming are the most effective means to increase the safety and reliability of Florida's electrical grid in the face of increased extreme weather events. The major causes of problems with distribution lines during hurricanes are trees, tree limbs, flying building and other debris, poles rotten at the ground line, and broken or ineffective guy wires. Therefore a priority should be vegetation management or tree trimming. The cited rules give anticompetitive advantages to utilities and are not factually supported as the most effective means of

meeting the goals of reducing storm damage and protracted outages. The record shows that there are more effective means of accomplishing these goals.

IV. RULE 25-6.0345

The FCTA's Comments on Rule 25-6.345 are addressed in the Comments of M.T. (Mickey) Harrelson, consultant, submitted on behalf of the FCTA.

V. RULES 25-6.064, 25-6.078 AND 25-6.115[31]

Rule 25-6.064(5) requires that the cost formula for calculating the contribution-in-aid-of-construction (CIAC) for new or upgraded overhead facilities pursuant to Rule 25-6.064(2) and the cost formula for CIAC for new or upgraded underground facilities pursuant to Rules 25-6.064(3) shall be based on the requirements of Rule 25-6.034, Standards of Construction. Consequently, Rule 25-6.064(2), (3), and (5) are invalid as all references to CIAC throughout the amended rule are rendered invalid as a result of being based on the requirements of invalid Rule 25-6.034, Standards of Construction.

Rule 25-6.078(2) is also based on the requirements of Rule 25-6.034 with the effect of rendering Rule 25-6.078(2) invalid. Rule 25-6.115(8)(a) and (9) are also invalid, since they are based on invalid Rule 25-6.034. However, the FCTA would withdraw its objections to these references to the Construction Standard Rule if FCTA suggested changes to Rule 25-6.034 are accepted.

VI. FCTA's Proposed Amendments Save The Proposed Rules

FCTA believes that the Commission may prescribe rules for the adoption of fair and reasonable construction standards for poles and pole attachments pursuant to its statutory mandate, and such standards may be guided by the NESC and the extreme wind

[31] Existing Rule 25-6.034 requires utilities to construct their facilities in accordance with generally accepted engineering practices and to comply with the applicable edition of the NESC, but does not require the utilities to establish construction standards.

loading conditions of the NESC, where doing so is necessary to ensure the reliable provision of electric service. However, such standards may not conflict with federal policies governing pole attachments, including non-discriminatory access and just and reasonable rates terms and conditions, or supplant FCC jurisdiction over access, safety, reliability and engineering of pole attachments, or the rates, terms and conditions governing such attachments.[32] Accordingly, to withstand judicial scrutiny, rules impacting attachers' rights must be developed in collaboration with attaching entities, and must include a right to challenge the rules and the application of the rules at the FCC. Moreover, the Commission's rules cannot vest too much discretion in *interested* pole owning utilities to establish the standards, and thus, the standards must be reviewed and approved by the Commission. The proposed rules, as currently worded, fail in all of these regards and thus would violate Section 224 of the Communications Act as well as principles against sub-delegation of administrative authority.

FCTA's proffered amendments to Proposed Rules 25-6.034(2)(4)(5)(7) and (8), 25-6.0341(4) and 25-6.0342(2)(3) and (5), which ensure that the prescribed construction and third-party attachment standards are jointly developed with third party attaching entities, are reviewed and approved by the Commission, and are not intended to interfere with the access rights afforded to cable operators and telecommunications carriers under Section 224, would help ensure that the proposed rules withstand judicial scrutiny. If cable operators and other third party attaching entities are afforded an opportunity to provide meaningful input into the construction and third party attachment standards, and

[32] The exception to this would be if the State of Florida were to satisfy the certification requirements in Section 224(c).

the utilities are obligated to incorporate such input, the standards are less likely to be discriminatory in violation of Section 224. If the Commission is obligated to review and approve the standards then the utilities will not be the ultimate arbiter of access issues. As long as attaching entities' input is incorporated into the rules and they retain the right to challenge the construction and pole attachment standards and their application at the FCC, then the Commission has not usurped the FCC's jurisdiction over access. Accordingly, FCTA's proposed amendments should be adopted.

Respectfully submitted this 2nd day of October 2006.

s/ Michael A. Gross

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CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing Posthearing Comments of Florida Cable Telecommunications Association and expert witness, Mickey Harrelson, has been served upon the following parties electronically and by U.S. Mail this 2nd day of October 2006.

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/s Michael A. Gross

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- *Florida Power Corp. v. FCC*, 480 U.S. 285 (1987) held that no taking had occurred because Florida Power had voluntarily agreed to the cable companies' attachments. The 1978 Act did not require mandatory access.

- *Gulf Power Co. v. United States*, 187 F. 3d 1324 (11th Cir. 1999) (*Gulf Power I*) held that the 1996 Act authorized a taking of Gulf Power's property, but declined to rule on the just compensation issue because it was not ripe for review.

- *Gulf Power v. FCC*, 208 F. 3d 1263 (11th Cir. 2000) (*Gulf Power II*) held that FCC has no jurisdiction to regulate attachments for Internet service under the 1996 Act, and therefore the FCC pole rate formula does not apply to pole attachments that carry commingled cable video and Internet service.

- Alabama Power and Gulf Power are emboldened by *Gulf Power II* to unilaterally raise pole rates in Alabama and Florida 500 %. *Gulf Power II* is stayed pending appeal.

- Alabama Cable Telecommunications Association (ACTA) files complaint against Alabama Power on June 22, 2000. Cable Services Bureau grants complaint on September 8, 2000, and FCC affirms on May 25, 2001.

- FCTA files complaint against Gulf Power on July 19, 2000, and Complaint is granted by the FCC Enforcement Bureau on May 13, 2003 (FCTA action was held in abeyance during pendency of appeal of *NCTA v. Gulf Power* concluded on January 16, 2002 and *Alabama Power* case that concluded on November 14, 2002).

- *NCTA v. Gulf Power Co.*, 534 U.S. 327 (2002) held on January 16, 2002 that Pole Attachment Act covers attachments that provide high-speed Internet access at the same time as cable television. Reversed 11th Circuit's decision in *Gulf Power II*.

- *Alabama Power Co. and Gulf Power Co. v. FCC,* 311 F. 3d 1357 (11th Cir. 2002) (ACTA and FCTA were intervenors in appeal) held on November 14 , 2002 that FCC Cable Formula that provides more than marginal costs (and hence more than just compensation) provides adequate compensation for use of APCo's poles, unless pole owner proves lost opportunity by showing full capacity and a higher valued use on a pole-by-pole basis. APCo neither alleged nor proved these facts.

- In litigation pending between the FCTA and Gulf Power at the FCC, *Florida Cable Telecommunications Ass'n, Inc.,* et al. the Gulf Power Co.; E.B. Docket No. 04-381, on Sept 27, 2004, the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC") released a *Hearing Designation Order* ("HDO"), initiating an evidentiary hearing in connection with a Petition for Reconsideration and Request for Evidentiary Hearing filed by Gulf Power in Florida Cable Operators' pole attachment rate complaint proceeding.

- In *Alabama Power Co .v FCC*, the Eleventh Circuit established a limited set of factual circumstances whereby a utility might be able to justify compensation greater than that received under the Cable Formula and payment of make-ready expenses. The Court concluded that, to do this, a utility must be able to show "*with regard to each pole* that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is able to put the space to a higher-valued use with its own operations."

- A final hearing in this matter was held before the administrative law judge (ALJ) at the FCC in Washington, D.C. from April 24-27, 2006, and concluded on May 2, 2006.

- Reply proposed findings of fact and conclusions of law are scheduled to be filed on August 16, 2006, after which the ALJ will issue an order.

EXHIBIT MAG-2

A. Unreasonable Billing Practices by Utilities

1. Double Billing:

- Collected money from attachers for unnecessary, duplicative, or defective make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 26 (2003) (identifying at least 29 examples of engineering errors or duplicative charges that Georgia Power unreasonably forced Knology to pay).

- Required cable operators to pay a share of indirect costs associated with the functions performed by dedicated employees and simultaneously to pay for the dedicated employees amounting to an unreasonable duplicative charge. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 53 (2003) (demonstrating that Georgia Power included management and supervisory functions in the calculation of the indirect overhead expenses when these same functions were already paid by Knology through the direct expense of the two dedicated Georgia Power employees).

- Charged for cost of private easements when the cost was already recovered in the pole attachment rent. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 27 (2003) (holding that Georgia Power was not entitled to additional payment for private easements because the Commission's rate formula assures that Georgia Power receives just compensation as required by the Fifth Amendment).

- Imposed a direct charge for anchors while also recovering the costs of anchors in the pole attachment rent. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶¶ 28, 33 (1983) (holding VEPCO's $7.00 charge for use of each anchor rod was unjust and unreasonable because the rate formula takes into account the cost of a bare pole and the investment in anchors). *See also Capital Cities Cable v. Mountain States Telephone & Telegraph Co.*, Memorandum Opinion & Order, 56 RR 2d 393 ¶¶ 40-42 (1984) (holding the utility was double recovering the cost of the anchors by charging a separate anchor fee when the cost of the anchors was already included in the rate formula by way of the bare pole cost).

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

2. Over Billing:

- Imposed charges without any discernable backup or itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 50 (2003) (holding Georgia Power's $190,805.86 charge to Knology for "GPESS SUPR & ADMIN" costs was unreasonable because Georgia Power provided no explanation or support for this figure).

- Charged excessive penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶¶ 11, 13 (2000) (holding the unauthorized pole attachment penalty charge of up to $250 per pole was unreasonable in light of the industry practice of charging between $15 and $25 per unauthorized pole attachment).

- Imposed unreasonably high markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding the "margin of error" surcharge of approximately 10.5% on all make-ready bills was unreasonable because no evidence was provided to justify the percentage).

- Provided insufficient detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding that VEPCO's make-ready bills to Cavalier Telephone were insufficiently detailed).

- Failed to provide refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO never provided a make-ready overcharge refund despite charging a margin of error surcharge).

- Applied make-ready surcharges across an entire category of attachers without regard to the underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO charged all CLECs the margin of error surcharge without any connection to the work performed).

- Imposed administrative fees that exceeded actual costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Soutwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the "Billing Event Fee" and the "CATV Pole License Agreement" fee do not represent actual costs).

- Imposed engineering survey fees unrelated to the actual costs. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138 ¶¶ 6, 10 (1999) (holding the engineering fee was inappropriate because it was not based on non-recurring actual costs; therefore, by definition, the engineering survey fee was already included in the annual pole attachment fee based on fully allocated costs).

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

- Charged new attacher for make-ready work to remedy pre-existing safety violations. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 16 (2000) (illustrating VEPCO's attempt to push costs associated with correcting pre-existing safety violations onto Cavalier Telephone).

- Charged new attacher to replace poles to remedy pre-existing safety violations. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 40 (2003) ("Having rejected Georgia Power's defenses regarding pole change-outs, we order Georgia Power to refund Knology the costs of any change-outs necessitated by the safety violations of other attachers. . . .").

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

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

included in the maintenance costs account and allocated to each attacher in accordance with the Commission's formula . . .").

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

B. Unreasonable Operational Practice by Utilities

- Imposed a consent requirement on cable operators for overlashing that contravened Commission policy. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 13 (2003) (rejecting Georgia Power's requirement that cable operators seek written consent prior to overlashing because the Commission's policy was that "neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment").

- Denied anchor attachments for safety reasons without explanation or support. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶ 33 (1983) (rejecting VEPCO's denial of anchor attachments because VEPCO made no detailed showing that its poles were engineered in such a way that separate anchors were necessary).

C. Actual Costs Relating to Pole Attachments

1. Pole Replacement:

- $2,146 per pole. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶¶ 40-41 (2003) (ordering Georgia Power to refund Knology for 16 pole replacements at $2,146 per pole for a total refund of $34,366).

- $3,000 - $5,000 per pole. *Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, Consolidated Order, 14 FCC Rcd 11599 ¶ 9 (1999) (The Cable Services Bureau did not comment on the reasonableness of the pole replacement estimate.).

2. Pole audit:

- $0.70 per pole. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶ 9 n.62 (2000) (commenting that this may be a reasonable rate).

- "The just and reasonable cost for the 1996 [Pole] Count is $1.40 [per pole]." *Cable Tex., Inc. v. Entergy Services, Inc.*, Order, 14 FCC Rcd 6647 ¶ 16 (1999).

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

- $150 per pole. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 19 (2003) (The Enforcement Bureau was silent on the reasonableness of this estimate.).

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events.	DOCKET NO. 060172-EU
In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.	DOCKET NO. 060173-EU Filed: October 2, 2006

POSTHEARING COMMENTS OF M.T. (MICKEY) HARRELSON, CONSULTANT, SUBMITTED ON BEHALF OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC.

A great improvement to the electric supply reliability for Florida has been initiated by the Florida PSC requirements to inspect transmission poles and lines, substations and distribution poles and take remedial action. Aggressive vegetation management required will also be very effective.

These programs and associated information gathered will be of great value in deciding what additional rules, if any, are prudent.

The proposed rules in Order No. PSC-06-0556-NOR-EU require electric utilities to establish distribution standards guided by extreme wind loading standards. However, the details are left to the individual IOU to decide. Other rules regarding line location and third party attachments need more collaboration in order to avoid disputes between utilities and third-party attachers. The application of new rules to new construction is much more prudent than rebuilding and/or relocating existing lines.

Many initiatives in these proposed rules leave much to be disputed after the rules are adopted. The proposed rules should be revised to provide more detailed guidance if adopted.

The following are comments and suggested changes to certain of the rules.

25-6.034 Standard of Construction

(1) Application and Scope. No comments at this time.

(2) The "input" or collaboration by other entities to the IOU's in establishing the construction standards should begin early in the 180 days allowed for the IOU to establish construction standards. The "input" should involve a collaborative process, not be limited to input and at the end of 180 days see the results. FCTA members require access to the electric utility's construction standards in order to effectively participate in the establishment of the standards as provided for in paragraph 25-6.034(2). FCTA members also require access to the construction standards as approved by the FPSC for use in make ready engineering for new attachments, review of existing attachments compliance with attachment standards and evaluating feasible rearrangement of cable and power facilities where necessary to correct violations. Some power companies will want the attacher to sign confidentiality agreements. Without reasonable access to the power utility's overhead and underground distribution construction standards FCTA members cannot adequately engineer, operate or manage their cable systems. Upon request by a third party attacher, the utility shall provide a copy of its construction standards to the attaching company. In establishing the construction standards, the utility should be required to collaborate with attaching entities within the first 30 days of the 180 days allowed. FCTA expects to participate actively to provide responsible input to the proposed standards as they affect FCTA members. We look forward to the opportunity.

(3) No comments at this time

(4) If a company complies with the NESC it meets the requirements of the code. If one exceeds the various requirements of the code, they still comply. The phrase "at a minimum" is confusing in this context. Therefore, please strike "at a minimum."

The NESC Handbook, Fifth Edition, published in 2001 is intended specifically to aid users in understanding and correctly applying the requirements of the 2002 NESC. The Handbook states the following in a discussion of the purpose of the NESC on page 4 and 5:

"The 1990 Edition of the NESC was specifically editorially revised to delete the use of the word 'minimum' because of intentional or inadvertent misuse of the term by some to imply that the NESC values were some kind of minimum number that should be exceeded in practice; such is not the case."

(a) "2002 edition" should be changed to "2007 edition" since the 2007 edition is now available and mandatory compliance goes into effect 180 days after its publication date. The 2007 Edition of the NESC was published on August 1, 2006.

See NESC *Section 1. Rule 016 which states:*

016. ***Effective Date***

This edition may be used at any time on or after the publication date. Additionally, this edition shall become effective no later than 180 days following its publication date for application to new installations and extensions where both design and approval were started after the expiration of that period, unless otherwise stipulated by the administrative authority.

(b) This paragraph is not a correct statement of NESC Section 1 Rules 013.B.1., 2. and 3. The NESC covers "electric supply and communications lines and associated equipment," not just electric facilities. The paragraph should read: Facilities constructed prior to the effective date of the 2007 edition of the NESC shall be governed by the applicable edition of the NESC as stated in NESC Rule 013.B.1., 013.B.2, and 013B3.

There is no reason to apply rule 013.B known as the grandfathering provision to electric facilities and not to communications facilities. FCTA supports the inclusion of this

paragraph, as revised, as a clear statement emphasizing that Rule 013.B. is a fundamental principle of the NESC and applies to electric and communications facilities alike.

The NESC 2002 rule states:

Rule 013.B. Existing Installations

1. *Where an existing installation meets, or is altered to meet, these rules, such installation is considered to be in compliance with this edition and is not required to comply with any previous edition.*
2. *Existing installations, including maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply with these rules except as may be required for safety reasons by the administrative authority.*
3. *Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with either (a) the rules that were in effect at the time of the original installation, or (b) the rules in effect in a subsequent edition to which the installation has been previously brought into compliance, or (c) the rules of this edition in accordance with Rule 013B1.*

(5) This paragraph instructs each utility to establish guidelines and procedures governing the use of extreme wind loading standards. Utility appears to mean electric utility. Electric utilities already have construction standards which meet or exceed NESC requirements. Florida electric utilities are already utilizing numerous construction standards which exceed NESC requirements, all with no need for a FPSC rule requiring them to do so. Regarding strength of construction, the NESC defines grade C, which is required for a large percentage of distribution lines; grade B, which is twice as strong as grade C; grade N, which

has no specific strength specified, and extreme wind for structures greater than 60 feet high.

Dr. Slavin clearly explained many reasons why the extreme wind loading standard is inappropriate for distribution poles less than 60 feet tall. The alternative of using grade B in certain applications, which is twice as strong as grade C, should be and is actually used by some electric companies even though grade C meets NESC requirements. At a minimum, the use of extreme wind loading for distribution should be very limited, and the option of selecting grade B or grade C should be available.

The fact remains that even the extreme wind design strength is not sufficient to withstand winds such as were seen in Hurricane Wilma or broken trees falling into lines at lesser wind speeds.

The proposed rule requires "each (electric) utility, to the extent reasonably practical, feasible, and cost effective, be guided by the extreme wind loading standards..." It is becoming clear that the strength of construction selected for specific lines should be grade C, grade B, extreme wind, or other as determined to be appropriate. The proposed rule allows each electric utility to determine cost-effectiveness of extreme wind loading, but does not require considering cost effects on attached communication lines or in some cases a telephone company which owns a high percentage of poles in a given line.

Please consider changing (5) to read: 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(b) of the 2007 edition of the NESC and select the appropriate strength of construction from the 2007 edition of the NESC. Grades N, C, B, and extreme wind should be considered for sections of the line as appropriate. The strongest grade of construction justified should be selected. In considering what is reasonably practical, feasible and cost-effective for individual projects, affecting existing third-party attachments, third-party attachers shall be provided notice and an

opportunity to participate and the utility shall take into account whether the project is reasonably practical, feasible, and cost-effective as to customers and third-party attachers as well as the utilities. If the project is to be constructed, the utility shall take into account the needs and requirements of third-party attachers in coordinating the construction of its distribution facilities with the third-party attachers. The electric utility shall provide third-party attachers with reasonable and sufficient advanced notice of its construction plans, but in no event less than 20 days prior notice, to permit third-party attachers to evaluate their construction alternatives and to make necessary budgeting plans. The intent of this subsection is to promote the review of existing Construction Standards, assure that those standards comply with current NESC rules, and include extreme wind design criteria to the extent reasonably practical, feasible, and cost-effective, rather than to develop a completely new Construction Standard. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the different grades of construction to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) new construction

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

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

The guidelines and procedures to be developed by each electric utility and approved by the FPSC should take a conservative approach of applying the stronger designs only to areas which would obviously benefit from the high cost required for the extra strength. Where storm guying of poles is feasible, it is a very effective and cost efficient means of

strengthening distribution lines. The areas considered for extreme wind loading would include only areas near the coast or very exposed open areas such as lines with little or no shelter effect from high winds by trees, buildings, etc. The major engineering justification for designing lines to withstand extreme wind loads is that such lines will be exposed directly to high winds. That is a major reason the NESC has chosen only poles or structures greater than 60 feet in height to which to apply the extreme wind design requirements.

Again, it makes no sense to expend limited valuable resources constructing lines to extreme wind standards, only to have them torn down by overhanging or nearby trees or roof tops, signboards, etc. which cannot withstand the extreme winds.

FCTA believes this conservative philosophy is well covered in the phrase "to the extent reasonably practical, feasible, and cost-effective." However, we believe the determination of feasibility and cost effectiveness must include the costs to utilities, as well as third-party attachers.

Other initiatives to inspect wood poles and guys and repair or replace deficiencies and vegetation management are much more certain to be prudent expenditures of limited funds.

(6) None at this time.

RULE NO. 25-6.0341 LOCATION OF THE UTILITY'S ELECTRIC DISTRIBUTION FACILITIES.

FCTA members prefer that new overhead electric lines be constructed in accessible locations such as (we believe) are required by this rule. Expansion, rebuild or relocation of overhead lines with cable attachments will be a great expense to FCTA members where existing line relocation results. Full consideration of the costs to all customers, third-party attachers, and the utilities should be given in a cost-to-benefit analysis of these type line relocations.

Poles on rear lot lines with narrow alleys or no alleys at all can usually serve houses directly from the main line poles to the rear of the houses with aerial drop wires, both communications and electric. Overhead lines along front streets usually require "lift" poles across the street from the main line to access the sides or corners of houses for attachment of aerial drop wires. In some cases there are no houses on the opposite side of front streets. Line relocation in this case would require twice as much cable plant to serve the same customers overhead. If CATV lines are relocated from back lot lines aerial to front streets underground, complete cable lines down each side of each street is often more feasible than boring under the street for all drop connections to houses which were already served overhead.

Underground electric lines can be located in a joint trench with communications lines. However, there is no widespread use of this practice in Florida. Most FCTA members have to provide their own trench or conduit. When electric lines are relocated to underground locations where communications cables are already buried, the risk of cable cuts is great. The associated disruption of service and the cost of repairs are excessive but can and should substantially be avoided by the power companies during construction.

For conversions of overhead lines to underground, the disruption and cost to FCTA members can be extreme with no increase in revenue. We believe that prudent evaluation of alternatives will indicate that good vegetation management and maintenance of poles and lines will be much more cost effective in most circumstances. Access to lines can also be improved by community and customer awareness initiatives.

In limited instances it will be practical for telephone companies to assume ownership of abandoned poles after power lines are relocated. FCTA members could then remain on the poles with telephone.

Coordination and effective communication among all joint users will be extremely important to the success of this initiative. Language should be added in Rule 25-6-0341 to assure that line location is practical, feasible and cost effective for customers, attachers, and utilities. When jointly used lines are relocated and/or placed underground, costly changes must be made to customers' wiring as well as to attached utilities and other pole owners' poles.

FCTA supports the location of new lines in accessible locations but believes that relocation of existing lines with attachments should be fully justified based on costs and benefits to all attachers and customers. We believe relocations will and should have limited application after complete analysis.

Rule No. 35-6.0342 Third Party Attachment Standards and Procedures (Background Information)

Order No. PSC-06-0351-PAA-EI initiative (2) required:

"*Each investor-owned electric utility shall develop a plan for auditing joint-use agreements that includes pole strength assessments. These audits shall include both poles owned by the electric utility to which other utility attachments are made (i.e., telecommunications and cable) and poles not owned by the electric utility to which the electric utility has attached its electrical equipment. The location of each pole, the type and ownership of the facilities attached, and the age of the pole and the attachments to it should be identified. Utilities shall verify that such attachments have been made pursuant to a current joint-use agreement. Stress calculations shall be made to ensure that each joint-use pole is not overloaded or approaching overloading* for instances not already addressed by Order No. PSC-06-0144-PAA-EI."

The investor owned electric utilities have submitted plans and answered questions by PSC staff to implement this order.

Plans by TECO and Gulf indicate that stress calculations are not necessary on every joint use pole. The FCTA agrees that some form of screening and/or sampling is practical and effective to achieve the goals of the audits. FCTA believes that the objective of the audits is to determine the pole overloading caused by attachments including electric facilities attached to the poles.

Proposed Rules 25-6.034, 25-6.0341, and 25-6.0342, are anti-competitive and not factually supported as the most effective means of meeting the goals of reducing storm damage and protracted outages. There has been no competent evidence that storm damage and power outages in Florida from the recent hurricane seasons were caused by third-party attachments and/or inadequate construction and NESC standards. Third-party cable attachments are almost exclusively on distribution poles. The most effective effort to reduce widespread and lengthy power outages is to inspect transmission poles and substations and inspect distribution poles and to take remedial or corrective actions to repair or restore them to design strengths and performance criteria. The three-year vegetation management cycle will also be very effective. Distribution lines and poles are often surrounded by trees and buildings, particularly in urban areas. It is not effective to build stronger distribution lines, only to have them brought down by tall trees and flying debris. Urban areas are also where the greatest concentration of communications cables are attached to distribution poles. It is rare that a distribution pole is broken by wind force alone resulting from the added wind load caused by communications cable attachments. In essence, inspection and repair of transmission poles and substations, and improved inspections, maintenance, and vegetation management for tree trimming are the most effective means to increase the safety and reliability of Florida's electrical grid in the face of increased extreme weather events. The major causes of problems with distribution lines during hurricanes are trees, tree limbs, flying building and other debris, poles rotten at the ground line, and broken or ineffective guy

wires. Therefore a priority should be vegetation management or tree trimming. The cited rules give anticompetitive advantages to utilities and are not factually supported as the most effective means of meeting the goals of reducing storm damage and protracted outages. The record shows that there are more effective means of accomplishing these goals.

TECO has estimated the cost of pole audits to be $53,000,000 over 10 years while its cost of tree trimming is estimated to be $97,000,000. TECO also stated that it intends to conduct a complete safety audit of required clearances and all TECO attachment standards on poles with "unauthorized attachments." This will be far beyond the FPSC requirement to determine the effect of third party attachments on pole strength.

Order No. PSC-06-0351-PAA-EI requires that utilities "verify that such attachments have been made pursuant to a current joint-use agreement." Many "joint use" or "license to attach" agreements in Florida are in renegotiation or litigation and not current. The associated term "Unauthorized Attachment" has not been defined in this proceeding and has been the subject of litigation in other states. Other power companies have claimed that no attachment is "Authorized" unless a permit approved by the power company for each attachment can be produced. This is completely unrealistic considering the extreme variations in formal and informal procedures which have been practiced over the years. Many attachments in other disputes have been alleged to be "Unauthorized" even though they have been in place many years, inventoried in attachment counts, and pole rent paid for years. Therefore, there are many instances where third-party attachments without current joint-use agreements or documentation of permits for the attachments may nevertheless be authorized.

The reasonable goal of this rule is to assure that existing attachments, including power, are evaluated to determine if the pole is overloaded for the appropriate wind speed and remaining pole strength. A second goal is to assure that all attachers, including power,

are to perform sufficient engineering of future attachments to comply with the appropriate wind loading for each pole and comply with all other reasonable attachment standards of the pole owner.

These audits could quickly become complete safety audits (based on power company rules) completely bog down in lengthy disputes, and have little effect on hurricane preparedness.

THE PRESENT ORDER PSC-06-0556-NOR-EU (NOTICE OF RULEMAKING)

Rule No.: 25-6.034 proposes to order all electric utilities to establish construction standards "guided by the extreme wind loading" requirements of the NESC. Rule No.:25-6.0342 proposes: As part of the construction standards, each utility shall establish third party attachment standards. Each electric utility shall seek input from attached entities into its construction and attachment standards.

The proposed rules to require construction standards and third party attachment standards which incorporate the extreme wind design criteria would be much more marginally effective in reducing power outages than the pole inspection and vegetation management initiatives.

Audits of third party attachments to all poles in Florida would be a monumental and costly task. The audit guidelines, attachment standards, and associated definitions should be negotiated in advance and agreed upon by all parties involved; if not the results of the attachment audits are sure to be challenged. Construction standards, attachment standards, and attachment contracts already exist between power companies and third party attachers. Many disputes are already on-going regarding contract terms and attachment standards. The contracts and attachment standards are supposed to be negotiated between the parties.

A requirement by the Florida PSC for power companies to "establish third party attachment standards and procedures," without first negotiating terms acceptable to third

parties, will complicate an already contentious issue. More importantly, it will disrupt the otherwise good progress being made to better prepare for hurricanes in Florida by slowing the rule-making. If the complete audits implied by the proposed rules and the Storm Preparedness Orders are required, they will drain resources from more productive initiatives already discussed. Specifically, wood distribution pole inspection should proceed without the simultaneous audit of third party attachments. The many issues related to the audits including third-party attachment standards and procedures should be resolved before the audits are done.

All attachments to utility poles should be designed and constructed to comply with the NESC. Unfortunately, some are not, including power attachments.

There is certainly a need to develop reasonable attachment standards which must comply with the NESC. Many "attachment standards" in Florida are in dispute or not complied with by multiple parties including power companies. Power companies should comply with their own construction standards and attachment standards. Many do not. Power company construction standards should be available to attaching companies for reference during construction and maintenance activities. Rearrangement of power facilities is frequently necessary to correct NESC violations. Many NESC violations are caused by power facilities being added which violate the construction and attachment standards. Again these attachment standards should be negotiated. If the FPSC staff can facilitate successful negotiations or perhaps recommend model attachment standards, that may be very helpful.

A much slower pace should be taken to address the problems caused by the proposed order requiring power companies to establish engineering standards and procedures for attachments by others to the utilities poles. The standards and procedures should be approved first by the FPSC before the attachment audits are incorporated into the wood pole inspections.

The purposes and scope of the audits should also be determined before the audits begin.

The case for resolving these issues now is supported by the following reasons.

1. Third party attachments are not a major part of the power outage problems.

2. Reasonable attachment standards should be established before any substantial auditing effort is expended.

3. The purpose and scope of the audits, if required, must be made clear.

4. Reasonable construction standards and attachment standards approved by the FPSC should be complied with for all new construction, relocations etc.

5. A practical strategy and plans to address existing problems should be developed.

25-6.0345 Safety Standards

The NESC 2007 is now in publication and in effect no later than 180 days after the publication date. Change the references to the 2002 NESC to the 2007 NESC.

The phrase "at a minimum comply with the standards..." is misleading and implies that the NESC is a minimum standard. Delete the phrase "at a minimum."

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FCTA PROPOSED CHANGES TO RULE 25-6.034

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. This rule applies to all investor-owned electric utilities. ~~The facilities of 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.~~

(2) 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. No later than 30 days after the effective date of this rule, third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account the construction and service requirements of third-party attachers in developing the Construction Standards, as well as subsequent updates, changes, and modifications to the utility's Construction Standards. The jointly developed Construction Standards shall be submitted to the Commission for approval. The Commission shall have an independent obligation, whether the Construction Standards are adopted by agreement of the parties or as a result of an evidentiary hearing, to assure that the Construction Standards further the goals of reducing storm damage to transmission and distribution poles, and any attachments thereto, and any protracted outages.[1] Each utility shall maintain a copy of its construction

[1] The requested changes in this subsection are to assure proper exercise of the Commission's delegated authority and to assure that the construction and service requirements of third-party attachers are taken into account in developing Construction Standards. Michael A. Gross (MAG)/FCTA Comments at pages 1 through 22. M.T. (Mickey) Harrelson (MTH)/FCTA Comments at pages 1 and 2, 4 through 7, and 10 through 14.

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 at the utility's offices in Tallahassee. Upon request by a third-party attacher, the utility shall provide a copy of its Construction Standards to the attaching entity.[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.~~

(3) 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.

(4) Each utility shall, ~~at a minimum,~~[3] comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 20072[4] edition of the

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[2] It is necessary for cable third-party attachers to have access to the electric utility's Construction Standards for numerous reasons related to third-party attachments. MTH/FCTA Comments at page 2.

[3] The 1990 Edition of the NESC deleted the use of the word "minimum" to avoid any implication that the NESC standards represented a minimum that should be exceeded, which is not the case. MTH/FCTA Comments at pages 2 through 4.

[4] The 2007 Edition is now available and may be used at any time on or after the publication date. MTH/FCTA Comments at pages 2 through 4.

NESC, published August 1, 20061[5]. 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).

(b) ~~Electrical~~ Ffacilities constructed prior to the effective date of the 20072 edition of the NESC shall be governed by the applicable edition of the NESC as stated in NESC Rule 013.B.1., 013.B.2., and 013.B.3. ~~in effect at the time of the initial construction.~~[6]

(5) 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 20072 edition of the NESC; and select the appropriate strength of construction from the 2007 edition of the NESC. Grade N, C, B, and extreme wind should be considered for sections of the line as appropriate. The strongest grade of construction justified should be selected.[7] In considering what is reasonably practical, feasible, and cost-effective for individual projects affecting existing third-party attachments, third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account whether the project is reasonably practical, feasible, and cost-effective as to customers and third-party attachers, as well as the utility. If the project is to be constructed, the utility shall take into account the needs and requirements of third-party attachers in coordinating the construction of its distribution facilities with the third-party attachers. The electric utility shall provide third-party attachers with reasonable and sufficient advanced notice of its construction plans, but in no event less than 20 days prior notice, to permit third-party attachers to evaluate

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[5] The 2007 Edition of the NESC was published on August 1, 2006. MTH/FCTA Comments at page 3.

[6] See footnote 4 for applicability of the 2007 Edition of the NESC. This subsection is not a correct statement of NESC Section 1 Rules 013.B.1., 2, and 3, since the NESC covers electric supply and communications lines and associated equipment, not just electric facilities. MTH/FCTA Comments at pages 3 and 4.

[7] The guidelines and procedures to be developed by each electric utility and approved by the FPSC should take a conservative approach of applying the stronger design only to areas which would obviously benefit from the high cost required for the extra strength. MTH/FCTA Comments at page 4 through 6.

their construction alternatives and to make necessary budgeting plans.[8] The intent of this subsection is to promote the review of existing Construction Standards, assure that those standards comply with current NESC rules, and include extreme wind design criteria to the extent reasonably practical, feasible, and cost-effective, rather than to develop a completely new Construction Standard.[9] As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the different grades of construction ~~extreme wind loading standards~~ to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) new construction;

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

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

(6) 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.

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[8] The requested changes to this subsection are for the purpose of assuring that the budget and construction requirements of third-party attachers are taken into account by utilities in coordinating construction of their facilities with the third-party attacher. The notice requirement is for the purpose of providing third-party attachers reasonable and sufficient notice of the utility's construction plans to enable third-party attachers to evaluate their construction alternatives and make necessary budgeting plans. These requested changes are calculated to minimize costs, increase efficiency, mitigate the risks of cable cuts and the costs of repair, and to require consideration of less costly alternatives, especially when good maintenance will be more cost-efficient than relocation. MTH/FCTA Comments at pages 5 and 6. The requested change referring to section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224 are for the purpose of assuring that cable third-party attachers' rights to mandatory, non-discriminatory access to poles are preserved.

[9] See footnote 4 for applicability of the 2007 Edition of the NESC. The additional language has been inserted to clarify the intent of this subsection in the context of existing practices. MTH/FCTA Comments at pages 2 through 6.

(7) ~~In establishing the construction standards, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities.~~[10] 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.

(8) Nothing in these rules shall be construed to abrogate the FCC's jurisdiction or to limit or impair the rights to attach to poles, conduits and rights-of-way under just and reasonable rates, terms and conditions as set forth in 47 U.S.C.A. § 224.[11]

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

Law Implemented 366.04(2)(c)(f), (5)(6), 366.05(1)(7)(8) FS.

History–Amended 7-29-69, 12-20-82, Formerly 25-6.34, Amended _____.

[10] The deleted language has been replaced by additional language inserted in subsection (2). MAG/FCTA Comments at pages 1 through 22. MTH/FCTA Comments at pages 1 and 2, 4 through 7, and 10 through 14.

[11] The requested changes in this subsection are for the purpose of assuring that cable third-party attachers' rights to mandatory, non-discriminatory access to poles under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224 are preserved. MAG/FCTA Comments at pages 1 through 22.

FCTA PROPOSED CHANGES TO RULE 25-6.0341

25-6.0341 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 for customers and third-party attachers, as well as the utilities[12], electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(1) 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.

(2) 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.

(3) 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.

(4) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account the needs and requirements of third-party

[12] When jointly used lines are relocated and/or placed underground, costly changes must be made to customers' wiring, as well as to third-party attachments and utility poles. The FCTA supports the location of new lines in accessible locations, but believes that relocation of existing loans with attachments should be fully justified based on costs and benefits to third-party attachers, customers, and utilities. MTH/FCTA Comments at pages 7 through 9.

attachers in coordinating ~~the electric utility shall seek input from and, to the extent practical, coordinate~~ the construction of its facilities with the third-party attachers. The electric utility shall provide third-party attachers with reasonable and sufficient advance notice of its construction plans, in no event less than 20 days prior notice, to permit third-party attachers to evaluate their construction alternatives and to make necessary budgeting plans. Nothing in these rules shall be construed to abrogate the FCC's jurisdiction or to limit or impair the rights to attach to poles, conduits and rights-of-way under just and reasonable rates, terms and conditions as set forth in 47 U.S.C.A. § 224.[13]

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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History– New.

[13] The requested changes to this subsection are for the purpose of assuring that the budget and construction requirements of third-party attachers are taken into account by utilities in coordinating construction of their facilities with the third-party attacher. The notice requirement is for the purpose of providing third-party attachers reasonable and sufficient notice of the utility's construction plans to enable third-party attachers to evaluate their construction alternatives and make necessary budgeting plans. These requested changes are calculated to minimize costs, increase efficiency, mitigate the risks of cable cuts and the costs of repair, and to require consideration of less costly alternatives, especially when good maintenance will be more cost-efficient than relocation. MTH/FCTA Comments at pages 7 through 9. The requested change referring to section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224 are for the purpose of assuring that cable third-party attachers' rights to mandatory, non-discriminatory access to poles are preserved. MAG/FCTA Comments at pages 1 through 22.

FCTA PROPOSED CHANGES TO RULE 25-6.0342

25-6.0342 Third-Party Attachment Standards and Procedures.

(1) As part of its construction standards adopted pursuant to Rule 25-6.034, F.A.C., 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 25-6.034(4) 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.

(2) No later than 30 days after the effective date of this rule, third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account the construction and service requirements of third-party attachers in developing Attachment Standards and Procedures. The jointly developed Attachment Standards and Procedures shall be submitted to the Commission for approval. The Commission shall have an independent obligation, whether the Attachment Standards and Procedures are adopted by agreement of the parties or as a result of an evidentiary hearing, to assure that the Attachment Standards and Procedures further the goals of reducing storm damage to transmission and distribution poles, and any attachments thereto, and any protracted outages.[14]

[14] The requested changes in this subsection are to assure proper exercise of the Commission's delegated authority and to assure that the construction and service requirements of third-party attachers are taken into account in developing Attachment Standards and Procedures. MAG//FCTA Comments at pages 1 through 22. MTH/FCTA Comment at pages 1 and 2, 4 through 7, and 10 through 14.

(3) ~~(2)~~ 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., except that a utility shall not deny access if the Attachment Standards and Procedures are in conflict with federal law in contravention of an attacher's rights to mandatory, non-discriminatory access under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224. A utility shall not make a unilateral determination to deny access on the basis that there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes. Third-party attachers shall be given reasonable notice, and any determination to deny access shall be based upon agreement of the parties or if the parties cannot agree, after review by the Federal Communications Commission as the agency possessing jurisdiction to adjudicate an attacher's rights and obligations in a manner consistent with the section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224.[15]

(4)~~(3) In establishing 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 arising from the implementation of this rule shall be resolved by the Commission.

(5) Nothing in these rules shall be construed to abrogate the FCC's jurisdiction or to limit or impair the rights to attach to poles, conduits and rights-of-way under just and reasonable rates, terms and conditions as set forth in 47 U.S.C.A. § 224.[16]

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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

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[15] The requested changes in this subsection are for the purpose of assuring that cable third-party attachers' rights to mandatory, non-discriminatory access to poles under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224 are preserved. MAG/FCTA Comments at pages 1 through 22.

[16] See footnotes 11 and 13 above. MAG/FCTA Comments at pages 1 through 22.

FCTA PROPOSED CHANGES TO RULE 25-6.0345

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 20072 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 20061, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall~~, at a minimum~~[17], comply with the standards in these provisions. Standards contained in the 20072 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.[18]

(2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by the utility or one of its contractors, at the end of each quarter of the year. The report shall be filed with the Director of the Commission's Division of Regulatory Compliance and Consumer Assistance ~~Auditing and Safety~~ no later than the 30th working day after the last day of the reporting quarter, and shall contain, at a minimum, the following information for each work order:

(a) Work order number/project/job;

(b) Brief title outlining the general nature of the work;~~ and~~

(c) Estimated cost in dollars, rounded to nearest thousand and;~~.~~

(d) Location of project.

(3) The quarterly report shall be filed in standard DBase or compatible format, DOS

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[17] See footnote 3.
[18] See footnotes 4 and 5.

ASCII text, or hard copy, as follows:

(a) DBase Format

Field Name	Field Type	Digits
1. Work orders	Character	20
2. Brief title	Character	30
3. Cost	Numeric	8
4. Location	Character	50
~~5. Kv~~	~~Numeric~~	~~5~~
~~6. Contiguous~~	~~Character~~	~~1~~

(b) DOS ASCII Text.

1. – 5.(c) No change.

The following format is preferred, but not required:

Completed Electrical Work Orders For PSC Inspection

Work Order	Brief Title	Estimated Cost	Location	~~KV Rating~~	~~Contiguous (y/n)~~

(4) No change.

(5) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report to the Commission any accident occurring in connection with any part of its transmission or distribution facilities which:

(a) – (b) No change.

(6) Each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report each accident or malfunction, occurring in connection with any part of its transmission or distribution facilities, to the Commission within 30 days after it learns of the occurrence, provided the accident or malfunction:

(a) – (7) No change.

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

Law Implemented 366.04(2)(f), (6), 366.05(7) FS.

History–New 8-13-87, Amended 2-18-90, 11-10-93, 8-17-97, 7-16-02

FCTA PROPOSED CHANGES TO RULE 25-6.064

25-6.064 ~~Extension of Facilities;~~ Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities.

(1) Application and scope ~~Purpose~~. The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities ~~subject to this rule will~~ calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities ~~require extensions of distribution facilities~~ in order to receive electric service, except as provided in Rule 25-6.078, F.A.C..

(2) ~~Applicability. This rule applies to all investor owned electric utilities in Florida as defined in Section 366.02, F.S.~~ Contributions-in-aid-of-construction for new or upgraded overhead facilities ($CIAC_{OH}$) shall be calculated as follows:

$CIAC_{OH}$	=	Total estimated work order job cost of installing the facilities	-	Four years expected incremental base energy revenue	-	Four years expected incremental base demand revenue, if applicable

(a) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.

(b) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.

(c) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.

(d) In no instance shall the $CIAC_{OH}$ be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities ($CIAC_{UG}$) shall be calculated as follows:

$CIAC_{UG}$	=	$CIAC_{OH}$	±	Estimated difference between cost of providing the service underground and overhead

~~(3) Definitions. Actual or estimated job cost means the actual cost of providing the specified line extension facilities, calculated after the extension is completed, or the estimated cost of providing the specified facilities before the extension is completed.~~

~~(4) In developing the policy for extending overhead distribution facilities to customers, the following formulas shall be used to determine the contribution in aid of construction owed by the customer.~~

~~(a) For customers in rate classes that pay only energy charges, i.e., those that do not pay demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters) − (4 × nonfuel energy charge per KWH × expected annual KWH sales over the new line)~~

~~(b) For customers in rate classes that pay both energy charges and demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors) − (4 × nonfuel energy charge per KWH × expected annual KWH) − (4 × expected annual demand charge revenues from sales~~

~~and appropriate sales over the new line) over the new line)~~

~~fixtures required to~~

~~provide service,~~

~~excluding transformers,~~

~~service drops, and meters)~~

~~(c) Expected demand charge revenues and energy sales shall be based on an annual period ending not more than five years after the extension is placed in service.~~

~~(5) In developing the policy for extending underground distribution facilities to customers, the following formula shall be used to determine the contribution in aid of construction.~~

~~$CIAC_{ug}$ = (Estimated difference between + $CIAC_{oh}$ (as above)~~

~~the cost of providing the~~

~~distribution line extension~~

~~including not only the distribution~~

~~line extension itself but also~~

~~the transformer, the service drop,~~

~~and other necessary fixtures, with~~

~~underground facilities vs. the cost~~

~~of providing service using overhead~~

~~facilities)~~

~~(6) Nothing in this rule shall be construed as prohibiting a utility from collecting from a customer the total difference in cost for providing underground service instead of overhead service to that customer.~~

~~(7) In the event that amounts are collected for certain distribution facilities via the URD~~

~~differential tariff as permitted by Rule 25-6.078, F.A.C., that would also be collected pursuant to this rule, the utility shall give an appropriate credit for such amounts collected via the URD differential tariff when calculating the line extension CIAC due pursuant to this rule.~~

(4)~~(8)~~ Each utility shall apply the ~~above~~ formulas in subsections (2) and (3) of this rule uniformly to residential, commercial and industrial customers requesting new or upgraded facilities at any voltage level. ~~requiring line extensions.~~

~~(5) The costs applied to the formula in subsections (2) and (3) shall be based on the requirements of Rule 25-6.034, Standards of Construction.~~[19]

~~(9) Each utility shall calculate an appropriate CIAC for line extensions constructed to serve customers who receive service at the primary distribution voltage level and the transmission voltage level. This CIAC shall be based on the actual or estimated cost of providing the extension less an appropriate credit.~~

(5)~~(6)~~[20]~~(10)~~ All CIAC calculations under this rule shall be based on estimated work order job costs. In addition, each ~~The~~ utility shall use its best judgment in estimating the total amount of annual revenues ~~and sales~~ which the new or upgraded facilities are ~~each line extension is~~ expected to produce ~~in the near future~~.

(a) A customer may request a review of any CIAC charge within 12 months following the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the CIAC to reflect the actual costs of construction and actual base revenues received at the time the request is made.

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[19] This subsection has been deleted as a result of the invalidity of Rule 25-6.034, Standards of Construction, in its current form. Existing Rule 25-6.034 requires utilities to construct their facilities in accordance with generally accepted engineering practices and to comply with the applicable edition of the NESC, but does not require the utilities to establish construction standards. The FCTA agrees to the reinstatement of this subsection if the FCTA's suggested changes to Rule 25-6.034 are accepted. MAG/FCTA Comments at page 20.

[20] This paragraph number has been conformed to be consistent with the deletion of paragraph 5.

(b) In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(6)~~(7)~~[21]~~(11)~~ The utility may elect to waive all or any portion of the ~~line extension~~ CIAC for customers, even when a CIAC is found to be applicable ~~owing~~. If h~~H~~owever, ~~if~~ the utility waives a ~~the~~ CIAC, the utility shall reduce net plant in service as though the CIAC had been collected, unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived CIAC. ~~Commission will reduce the utility's net plant in service by an equal amount for ratemaking purposes, as though the CIAC had been collected, except when the company's annual revenues from a customer are sufficient to offset the unpaid line extension CIAC under subsection (4) or (5).~~ Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.

~~(12) In cases where larger developments are expected to be served by line extensions, the utility may elect to prorate the total line extension costs and CIAC's owed over the number of customers expected to connect to the new line.~~

(7)~~(8)~~[22]~~(13)~~ A detailed statement of its standard facilities extension and upgrade policies~~y~~

[21] See footnote 19.

[22] See footnote 19.

shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform application and shall be nondiscriminatory.

(8)~~(9)~~[23] ~~(14)~~ If a utility and applicant are unable to agree on the CIAC amount, ~~in regard to an extension,~~ either party may appeal to the Commission for a review.

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

Law Implemented 366.03, 366.05(1), 366.06(1) FS.

History–New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended ____.

[23] See footnote 19.

FCTA PROPOSED CHANGES TO RULE 25-6.078

25-6.078 Schedule of Charges

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

~~(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.034, Standards of Construction.~~[24]

(2)~~(3)~~[25]~~(2)~~ On or before October 15~~th~~ of each year each utility shall file with the Commission's Division of Economic Regulation Form PSC/ECR 13-E, Schedule 1, using current material and labor costs. If the cost differential as calculated in Schedule 1 varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (~~4~~3) and (5~~4~~) of this rule on or before April 1 of the following year; however, each utility shall file a written policy and supporting data and analyses at least once every 3 ~~three~~ years.

(3)~~(4)(3)~~ Differences in Net Present Value of operational ~~operating and maintenance~~ costs, including average historical storm restoration costs over the life of the facilities, between

[24] See footnote 19.

[25] Paragraphs 3, 4, 5, 6 and 10 have been renumbered as paragraphs 2, 3, 4, 5 and 9 as a result of the deletion of paragraph 2.

underground and overhead systems, if any, shall ~~may~~ be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(4)~~(5)~~(4) Detailed supporting data and analyses used to determine the Estimated Average Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period. The utility shall record these data and analyses on Form PSC/ECR 13-E (10/97). Form PSC/ECR 13-E, entitled "Overhead/Underground Residential Differential Cost Data" is incorporated by reference into this rule and may be obtained from the Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6900.

(5)~~(6)~~(5) Numbers (5) through (8) ~~renumbered to (6) through (9)~~ No change.

(9)~~(10)~~(9) Nothing in this rule ~~herein contained~~ shall be construed to prevent any utility from waiving ~~assuming~~ all or any portion of a cost differential for ~~of~~ providing underground facilities. ~~distribution systems, provided, however, that such assumed cost differential shall not be chargeable to the general body of rate payers, and any such policy adopted by a utility shall have uniform application throughout its service area.~~ If, however, the utility waives the differential, the utility shall reduce net plant in service as though the differential had been collected unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived differential.

Specific Authority 350.127(2), ~~366.04(2)(f),~~ 366.05(1) FS.

Law Implemented 366.03, 366.04(1), ~~(4),~~ 366.04(2)(f), 366.06(1) FS.

History–New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97,___.

FCTA PROPOSED CHANGES TO RULE 25-6.115

25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions.~~

(1) Each investor-owned ~~public~~ utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing ~~new construction and~~ the conversion of existing overhead electric distribution facilities to underground facilities ~~excluding new residential subdivisions~~. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of ~~new construction or~~ convertingsion ~~of~~ existing overhead ~~electric~~ facilities to underground ~~electric~~ facilities. The non-refundable deposit amounts shall be calculated in the same manner as ~~approximate~~ the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

(2) For ~~the~~ purposes of this rule, the applicant is the person or entity requesting the conversion ~~seeking the undergrounding~~ of existing overhead electric distribution facilities to underground facilities. In the instance where a local ordinance requires developers to install underground facilities, the developer who actually requests the construction for a specific location is ~~when a developer requests local government development approval, the local government shall not be~~ deemed the applicant for purposes of this rule.

(3) No change:

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

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

(c) sSuch agreement is not expected to cause the general body of ratepayers to incur additional ~~greater~~ costs.

(4) No change.

(5) Upon an applicant's request and payment of the deposit amount, an investor-owned ~~public~~ utility shall provide a binding cost estimate for providing underground electric service.

(6) An applicant shall have at least 180 days from the date the estimate is received~~,~~ to enter into a contract with the public utility based on the binding cost estimate. The deposit amount shall be used to reduce the charge as indicated in subsection (7) only when the applicant enters into a contract with the public utility within 180 days from the date the estimate is received by the applicant, unless this period is extended by mutual agreement of the applicant and the utility.

(7) – (8) No change:

(a) t~~T~~he estimated cost of construction of the underground distribution facilities ~~based on the requirements of Rule 25-6.034, Standards of Construction,~~[26] including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and

(b) ~~For conversions,~~ the estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.

(9) For the purpose of this rule, the charge for overhead facilities shall be the estimated construction cost to build new overhead facilities, including the service drop(s) to the meter(s) of the customer(s). ~~Estimated construction costs shall be based on the requirements of Rule 25-6.034, Standards of Construction.~~[27]

(10) An applicant requesting ~~to a public utility for~~ construction of underground

[26] See footnote 19.

[27] See footnote 19.

distribution facilities under this rule may ~~petition~~ challenge the utility's cost estimates ~~the Commission~~ pursuant to Rule 25-22.032, F.A.C.

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already been paid, credited to the customer. At no time will the costs to the customer be less than zero.

(12) Nothing in this rule shall be construed to prevent any utility from waiving all or any portion of the cost for providing underground facilities. If, however, the utility waives any charge, the utility shall reduce net plant in service as though those charges had been collected unless the Commission determines that there is quantifiable benefits to the general body of ratepayers commensurate with the waived charge.

(13~~1~~) Nothing in this rule shall be construed to grant any investor-owned electric utility any right, title or interest in real property owned by a local government.

Specific Authority 350.127(2) ~~366.04~~,366.05(1) FS.

Law Implemented 366.03, 366.04, 366.05 FS.

History–New 9-21-92, Amended.