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Subject: Electronic Filing for Docket No. 060173-EU - Joint Post-Workshop Comments
Attachments: pole attachment post 051906 workshop final clean.doc; Appendix A.doc; Appendix B.doc

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pole ent post 0519 | Appendix A.doc (11 MB) | Appendix B.doc (8 MB)

Electronic Filing

a. Person responsible for this electronic filing:

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b.Docket No. 060173-EU - Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 10 pages and Appendices A and B.

e. The document attached for electronic filing is May 19, 2006 Rule Development Workshop Joint Post-Workshop Comments of the Investor-Owned Electric Utilities Related To Pole Attachment Provisions of Draft Rules dated May 26, 2006

(See attached file: pole attachment post 051906 workshop final clean.doc)

(See attached file: Appendix A.doc)(See attached file: Appendix B.doc)

Thank you for your attention and cooperation to this request.

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COMMENTS
DOCUMENT NUMBER-DATE
04609 MAY 26 06
FPSC-COMMISSION CLERK

APP. A
DOCUMENT NUMBER-DATE
04610 MAY 26 06
FPSC-COMMISSION CLERK

APP. B
DOCUMENT NUMBER-DATE
04611 MAY 26 06
FPSC-COMMISSION CLERK

ORIGINAL

MAY 19, 2006 RULE DEVELOPMENT WORKSHOP
JOINT POST-WORKSHOP COMMENTS OF THE INVESTOR-OWNED ELECTRIC UTILITIES RELATED TO POLE ATTACHMENT PROVISIONS OF DRAFT RULES DATED MAY 26, 2006

- As a result of the increased hurricane activity in 2004 and 2005, this Commission and electric utilities have undertaken a comprehensive review of ways the critical infrastructure of the statewide coordinated grid could be improved to withstand severe weather conditions.
  - The Commission has adopted a multi-pronged approach to its review of electric infrastructure. These approaches include:
    - Overall review: The Commission held a workshop on January 23, 2006 to review means of electric infrastructure improvements. Staff made recommendations on February 20, 2006 for actions to minimize future storm damage and to reduce outages to customers.
    - Pole Inspections: The Commission issued Order No. PSC-06-0144-PAA-EI on February 27, 2006 in Docket No. 060078-EI requiring all wood pole inspections on an 8-year cycle and loading analysis on joint use poles.
    - Storm Plans: On April 25, 2006, the Commission issued Order No. PSC-06-0351-PAA-EI requiring the filing of storm preparedness and implementation plans by June 1, 2006.
    - Rulemaking: Rulemaking Docket Nos. 060172-EU (underground) and 060173-EU (overhead) were opened to develop and adopt rules with respect to construction and operation of underground and overhead facilities.

- In each of these various venues, the Commission has considered the various factors which could cause a pole to fail and considered ways to avoid such failures.
  - Pole attachments have emerged as a very significant concern expressed by this Commission in every phase of your review of critical infrastructure.
    - The Commission pole inspection order issued on February 27, 2006 found:
      1. ". . . non-electric attachments impose additional strength requirements. . ."
      2. "Many pole attachments occur well after the date of pole installation" (pg. 5).
      3. The National Electrical Safety Code ("NESC") requires a pole must be strong enough to support the facilities attached to the pole at all times (pg. 5).
      4. ". . . third parties have completed pole attachments to electric IOU wood poles that were done without full consideration of the requirements of the NESC (pg. 8).
      5. Wood pole strength inspections require remaining strength assessments as well as <u>pole attachment loading assessments</u> (pgs. 5 and 8).
    - This Commission's storm plan order issued 4/25/06 (Order 06-0351) adopted ten iniatives that are required to be in each utilities storm plan to be filed by June 1. These iniatives include:
      1. <u>An audit of joint use attachment agreements.</u>
         - Location of each pole and the type and ownership of the facilities attached, age of the pole and attachments.
         - Verification that such attachments are 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 "[8-year pole inspection requirement].

2. Implementation of a T&D geographic information system.

- **The Commission's Basic Theme**
  - Nothing should be attached to a pole that is not engineered to be there in advance.
  - Pole attachments can have a significant wind loading and stress effect on a pole and can cause overloading.
  - Some attachments are being made without notice or prior engineering.
  - Steps should be taken to assess pole attachment effects on poles to prevent overloading.
- **The Draft Pole Attachment Rules**
  - In recognition of this theme and the very serious situation that this Commission finds exists with respect to pole attachments, Florida Power & Light Company ("FPL"), Progress Energy Florida ("PEF"), Gulf Power Company ("Gulf") and Tampa Electric Company ("TECO") on May 3, 2006 jointly proposed rules that in essence would require each utility to establish, file and maintain safety and engineering standards and procedures for attachment by others to the utilities' electric distribution poles that must meet or exceed NESC and further would require that no attachment to distribution poles be made except in compliance with a utility's attachment standards and procedures.

- Subsection 8 of Staff's revised draft Rule 25-6.034 captures the essence of the joint proposal.
    - Staff's proposal requires the utility to establish and file written standards and procedures for attachments by others to the utility's electric transmission or distribution poles. Challenges to these procedures can be made by filing a complaint with the Commission pursuant to subsection 2 of draft rule 25-6.034. This approach is reasonable and balanced, and is adequate to protect the interests of the attaching entities. To make it absolutely clear that the attaching entities may avail themselves of the challenge process set forth in subsection 2, however, the last sentence of subsection 2 could be revised to say "[a]ny challenge by a customer, applicant for service or attaching entity to the utility's filed construction standards ... ." This language addresses one of the specific concerns raised by FCTA at the May 19 rule development workshop.
- As discussed at the workshop, one editorial suggestion is to add the words: "safety, reliability, capacity and engineering" in the first sentence of subsection 8 (at line 1, page 4) between "written" and "standards". This suggested addition is consistent with the language in the second sentence of subsection 8.
- We note that the Florida Cable Television Association ("FCTA") suggested during the workshop that the word "capacity" should be deleted from this addition, apparently because the FCTA believes the Federal Communications Commission ("FCC") has "concurrent" jurisdiction over capacity issues. The FCTA specifically mentioned in this context Gulf's pending pole attachment rate proceeding before the FCC in which the FCC is considering the capacity of a pole

as it may affect the rate Gulf can charge. That is not what this docket or this proposed rule is about. This rule is about protecting the structural integrity of distribution poles, not rate economics, and it is simply not possible to address structural integrity without addressing the capacity of a pole to accept attachments. In the Pole Attachment Act, Congress specifically left the regulation of capacity, along with safety, reliability and engineering, to the State of Florida. *See* 47 USC Sections 224(c)(1) and (f)(2). Omitting reference to capacity issues would leave a significant void in any analysis of the standards and procedures necessary to assure that poles are properly engineered and can withstand severe weather and other hazards. In any event, we believe this Commission is in a better position to set and govern safety, reliability, capacity and engineering standards for distribution facilities in Florida than the FCC.

- This Commission's findings in the pole inspection and storm plan orders recognized the obvious fact that "non-electric pole attachments impose additional strength requirements" and can cause a pole to be overloaded. Consequently, pole "capacity" and windloading and stress effect of pole attachments is a core issue that must be addressed in the context of ensuring the safety and reliability of the electric system.
- The photos in Appendix "A" graphically show how a pole attachment can overload the capacity of a pole and cause it to fail.
- The photos show the overloading of the capacity of a pole by an unnoticed attachment of a 300 foot span of multiple overlashed cable and fiber over 8 lanes of traffic. The second and third photos in Appendix "A" show the

installation of a special order spun concrete pole with sufficient capacity to handle the windloading and stress effects of the pole attachments at this location.

- **PSC Jurisdiction**
  - This Commission has very broad and exclusive jurisdiction over safety and reliability of electric utilities distribution facilities.
    - This jurisdiction extends both to the electric utility and over the facility itself.
    - The draft rules are an appropriate implementation of that jurisdiction.
  - Certification to the FCC is not required in order for this Commission to adopt the draft rules.
    - There are two types of issues regarding third party attachments under the federal Pole Attachment Act.
      - Issues of access including safety, reliability, capacity and engineering issues raised by a request for access to a pole; and
      - Issues of contract including rates, terms and conditions applicable to the attachment.
  - Jurisdiction over each type of issue is handled differently under federal law. Jurisdiction over "rates, terms and conditions" is vested in the FCC unless a state elects to preempt FCC jurisdiction by filing a certification to that effect. 47 USC § 224(c)(2). Jurisdiction over safety, reliability, capacity and engineering issues, on the other hand, rests entirely with the states to the extent they in fact regulate such issues. 47 USC § 224(c)(1). In other words, unlike jurisdiction over contract

issues, which rests initially with the FCC, jurisdiction over safety and reliability issues does not rest with the FCC unless the states fail to exercise such jurisdiction themselves.

- The FCC has generally acknowledged that certification is not required for state regulation of access issues.

> In the *Local Competition Order*, we noted that the authority of a state is clear under section 224(c)(1) to preempt federal regulation for access requests arising solely under section 224(f)(1)... The *Local Competition Order* noted that Congress did not amend section 224(c)(2) to prescribe a certification procedure with respect to access (as distinct from the rates, terms, and conditions of access).

14 FCC Rcd 18049 (1999) at ¶ 114.

> We reiterate that, upon the filing of an access complaint with this Commission, the defending party or the state itself should come forward to apprise us whether the state is regulating such matters. If so, pursuant to the *Local Competition Order*, we shall dismiss the complaint without prejudice to it being brought in the appropriate state forum. We require any party seeking to demonstrate that a state regulates access issues to cite the state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. We continue to believe [**103] that these procedures are consistent with the language and intent of the statute, and unduly burden neither the parties to an access complaint, nor the state entities responsible for pole attachment regulation.

Id. at ¶ 116.

- Florida thoroughly regulates issues of safety and reliability. For example, Section 366.04(6), Florida Statutes, delegates to the Commission "exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities." In addition, Section 366.04(6) directs the Commission to adopt

the 1984 edition and any new editions of the National Electrical Safety Code. With respect to reliability and engineering, Section 366.04(2)(c) grants the Commission authority over electric utilities for the purpose of requiring electric power conservation and reliability within a coordinated grid. In addition, Section 366.04(5) provides that the FPSC has jurisdiction over the "planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy." Pursuant to these statutory provisions, the Commission has promulgated numerous regulations addressing system safety and reliability. *See, e.g.,* Rules 25-6.019, 25-6.034, 25-6.0345, 25-6.037, 25-6.039, 25-6.044, 25-6.0455, Florida Administrative Code (2006).

- Because jurisdiction over safety and reliability issues is clearly reserved to the states and Florida in fact has laws regulating those issues, this Commission has jurisdiction to determine issues of safety and reliability regarding the state's electric distribution facilities as they relate to pole attachments.

- **Time to Act**

  - The Commission has recognized a serious issue that is affecting the safety and reliability of electric and communication services.

    - Now it is crucial for the Commission to help electric utilities deal with this threat to electrical distribution facilities in a fair and reasonable way.

    - Part of the solution is the establishment of attachment standards and procedures and a determination that the attachment is engineered to meet or exceed the NESC before any attachment is made to the facility.

- The utility can first determine if it has a pole attachment agreement with the attaching party and then determine if the proposed attachment will overload the pole before the attachment is made.

- **Current Commission Activities**
  - The Commission's draft rules addressing pole safety and reliability, including attachments to poles, are supplemental to existing regulations and inspection practices of the FPSC.
  - The FPSC, under existing rules, actively inspects utility poles and audits work orders in connection with construction of transmission and distribution facilities to determine whether there are variances to the National Electric Safety Code. [Rule 6.0345]
  - The electric utilities are notified by the FPSC when a variance is observed on the pole, and the FPSC asks the utility to ensure the attaching entity remedies any variances.
- **Review of the Current Situation**
  - There is no question that third party pole attachments increase the wind loading and stress on a pole and can be the cause of the failure of a pole.
    - Appendix A described above shows how pole attachments can overload the capacity of the pole and cause it to fail.
    - Appendix B shows the aftermath of a storm and the obvious effects pole attachments can have in causing or contributing to pole failure in severe weather.

- Each of the utilities has vast expanses of distribution facilities making it difficult to police the interaction of third parties with electric distribution poles.
- There is also increasing concern that third party attachments may be made in the power supply space.
    - This is not only dangerous to workers who make these attachments, it provides greater wind loading and stress to locate these facilities toward the top of the pole rather than in the designated communication space on the pole.
- The concerns raise reliability and safety issues beyond electric service.
    - Electric distribution facilities are widely used for the provision of communications services (telephone, cable television, etc.).
    - The Commission needs to take a prospective engineering and safety view of the critical distribution infrastructure.
    - The Florida Legislature in 1986 specifically conveyed to this Commission safety jurisdiction over electric facilities. The Legislature has also adopted and reenacted jurisdiction over the reliability of the statewide grid.
    - The Commission now has a duty to address pole attachment standards and procedures in its rules.
- The proposed rules are an important additional step in protecting the safety and reliability of the critical distribution infrastructure.