

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rules governing the placement of new electric distribution facilities underground, and the conversion of existing overhead distribution facilities to underground facilities, to address the effects of extreme weather events.	DOCKET NO. 060172-EU
In re: Proposed amendments to Rules regarding overhead electric facilities to allow more stringent construction standards than required by the National Electric Safety Code.	DOCKET NO. 060173-EU Filed: May 26, 2006

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

On May 19, 2006, counsel for the Florida Municipal Electric Association, Inc. (FMEA) participated in the second staff rule development workshop in the two above captioned dockets. Pursuant to the instructions of Florida Public Service Commission (PSC or Commission) Staff, the following comments are hereby submitted by FMEA on behalf of its thirty-four municipal electric utility members in Florida.¹ FMEA members may also file individual comments in this docket.

FMEA appreciates the consideration given to its workshop remarks and previously filed comments by Staff. Staff should be commended for bringing the important policy decisions embodied in the proposed rules to the fore in a professional manner. However, as stated in

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

FMEA's earlier comments, which by this reference are incorporated herein, it remains uncertain whether the Commission has the jurisdiction to adopt the proposed rules as they have now been revised by Staff.²

I. RECENT LEGISLATIVE ACTS FURTHER INDICATE THE LACK OF CLEAR COMMISSION JURISDICTION.

In two particular ways recent legislative activities support FMEA's position that the Commission's jurisdiction to adopt the proposed rules is unclear.

First, Senate Bill 888, adopted by both houses of the Legislature and now awaiting the Governor's signature, amends section 366.05(1), Florida Statutes, to read:

In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto

Fla. CS for CS for CS for SB 888, § 17 (2006) (proposed amendment to § 366.05(1), Fla. Stat.). However, section 366.05(1) only permits the Commission to exercise jurisdiction over "public utilities," which are defined to expressly exclude municipal electric utilities. § 366.02(1), Fla. Stat. (2005); see also, § 366.11(1), Fla. Stat. (2005) (limiting the applicability of chapter 366, Florida Statutes, to municipal electric utilities to only the sections specifically enumerated and not including 366.05(1) in the enumerated provisions). Certainly the Legislature understood that section 366.05(1) is not applicable to municipal electric utilities when it acted to amend the

² Memorandum from Larry D. Harris, Associate General Counsel, Public Ser. Comm'n, to Div. of the Comm'n Clerk & Administrative Services, Public Serv. Comm'n (May 15, 2006) (Doc. No. 04225-06) (on file with Comm'n.) (including proposed amendments to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, and 25-6.115 of the Florida Administrative Code which are herein referred to as the "proposed rules").

statute. So, the Legislature's intent in amending section 366.05(1) is apparent—the Legislature intended to grant greater jurisdiction to the Commission to adopt construction standards, but only for investor owned utilities.

Second, the original version of HB 1473³ would have amended section 366.05(8), Florida Statutes, (applicable to all electric utilities) by adding language to specifically include distribution facilities to the already enumerated generation and transmission facilities that are now subject to the Commission's Grid Bill jurisdiction. However, this language was omitted from subsequent versions of this bill. The bill was ultimately rolled into Senate Bill 888 without the "distribution facilities" language. The Legislature would only want to add the "distribution facilities" language if it were substantively adding to the Commission's jurisdiction. Removing such language indicates that the Legislature decided that distribution facilities are not part of the "grid" and therefore not subject to the Commission's Grid Bill jurisdiction.

II. SUGGESTED CHANGES TO THE PROPOSED RULES.

FMEA's previous comments, underscored by recent legislative activities, show the Commission's jurisdiction to adopt the proposed rules is certainly questionable. However, FMEA's members agree with the policy goal of improving the hardness of transmission and distribution systems to withstand hurricanes and provide the millions of municipal electric customers with high quality, reliable service. Therefore, with due consideration given to the Commission's jurisdictional bounds, FMEA offers the following suggested changes to Rules 25-6.034 and 25-6.078 of the proposed rules. (FMEA's suggested changes are in *bold italics*.)

³ Fla. HB 1473, § 16 (2006) (original bill text as posted on Mar. 5, 2006).

25-6.034 Standard of Construction.

(1) Application and Scope. This rule is intended to ~~define require electric utilities to establish and maintain~~ 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 electric utilities, including municipal electric utilities and rural electric cooperative utilities, unless otherwise specified. 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 and maintain construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. No later than 90 days after the effective date of this rule, each utility shall file five copies of its construction standards with the Director of Economic Regulation. In the event a utility subsequently modifies its construction standards, the utility shall file its revised standards, labeled to indicate the effective date of the new version, together with a type-and-strike annotated copy of the previous version showing the modifications. A copy of the utility's construction standards as filed with the Commission, including Attachment Standards and Procedures pursuant to subsection 8 of this rule, shall be made available by the utility for public inspection. The utility shall, upon request, furnish a copy of its construction standards in effect at the time to any person requesting a copy. Any challenge by a customer or applicant for service to ~~the an investor owned~~ utility's filed construction standards shall be handled pursuant to Rule 25-22.032. 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 *electrical transmission and distribution* 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 to the extent reasonably practical and feasible*, continuity of service and uniformity in the quality of service furnished.

(4) Each utility shall *establish and maintain construction standards that*, at a minimum, ~~*comply with meet those of the*~~ applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(b) *Electrical transmission and distribution* facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(5) For the construction of distribution facilities, each utility shall, to the extent reasonably practical and feasible, ~~*adopt*~~ *establish and maintain construction standards that, at a minimum, meet* the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to

enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(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, *as determined by the electric utility*, taking into account political and geographical boundaries and other applicable operational considerations.

(6) For the construction of underground *electrical transmission and distribution* facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical and feasible, establish guidelines and procedures to deter damage resulting from flooding and storm surges in areas designated as Surge Zones by the Department of Community Affairs, Division of Emergency Management.

(7) Location of the utility's *electrical transmission and distribution* facilities.

(a) For initial installation, expansion, rebuild, or relocation of overhead *electrical transmission and distribution* 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. To the extent *reasonably* practical and feasible, *electrical transmission and distribution* facilities shall be placed in easements in front of the customer's premises adjacent to a public road for all new facilities and major upgrades or rebuilds affecting a *customer or* contiguous group of customers served by the same distribution line.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities,

~~the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.~~

Comment: The placement of easements for utilities is not always within the control of the providing utility. This may well be a land use issue that is controlled by local ordinances or other property restrictions (i.e., restrictive covenants). The Commission certainly lacks the jurisdiction to preempt any contrary local government land use or other restrictions and require utilities to do the same.

(eb) For conversions of existing overhead facilities to underground facilities, the utility may, 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.

(8) As part of its construction standards, each utility shall establish and maintain written standards and procedures for attachments by others to the utility's electric transmission or distribution poles (Attachment Standards and Procedures). Such Attachment Standards and Procedures shall meet or exceed the NESC and other applicable standards imposed by 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 system 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. No attachment to an electric utility's transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures as filed with the Commission.

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

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

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

* * * *

25-6.078 Schedule of Charges.

(1) Each ***investor owned*** utility shall file with the Commission a written policy that shall become a part of the ***investor owned*** 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 ***investor owned*** 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 purposes of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.034, Standards of Construction.

(3)(2) On or before October 15th of each year each ***investor owned*** 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 ***investor owned*** utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (43) and (54) 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.

~~(4)~~(3) Differences in operating and maintenance costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, shall ~~may~~ be taken into consideration in determining the overall Estimated Average Cost Differential. Each *investor owned* utility shall establish sufficient record keeping and accounting measures to separately identify storm related operating and maintenance costs for underground and overhead facilities.

~~(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 *investor owned* 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.

~~(6)~~(5) Service for a new multiple-occupancy building shall be constructed underground within the property to be served to the point of delivery at or near the building by the *investor owned* utility at no charge to the applicant, provided the utility is free to construct its service extension or extensions in the most economical manner.

~~(7)~~(6) The recovery of the cost differential as filed by the *investor owned* utility and approved by the Commission may not be waived or refunded unless it is mutually agreed by the applicant and the *investor owned* utility that the applicant will perform certain work as defined in the *investor owned* utility's tariff, in which case the applicant shall receive a credit. Provision for the credit shall be set forth in the *investor owned* utility's tariff rules and regulations, and shall

be no more in amount than the total charges applicable.

~~(8)(7)~~ The difference in cost as determined by the utility in accordance with its tariff shall be based on full use of the subdivision for building lots or multiple-occupancy buildings. If any given subdivision is designed to include large open areas, the investor owned utility or the applicant may refer the matter to the Commission for a special ruling as provided under Rule 25-6.083, F.A.C.

~~(9)(8)~~ The investor owned utility shall not be obligated to install any facilities within a subdivision until satisfactory arrangements for the construction of facilities and payment of applicable charges, if any, have been completed between the applicant and the investor owned utility by written agreement. A standard agreement form shall be filed with the company's tariff.

~~(10)(9)~~ Nothing herein contained shall be construed to prevent any investor owned utility from absorbing assuming all or any portion of the costs differential of providing underground distribution systems, provided, however, that such assumed costs in excess of a comparable overhead system differential shall not be chargeable to the general body of ratepayers, and any such policy adopted by a utility shall have uniform application throughout its service area.

Specific Authority 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,

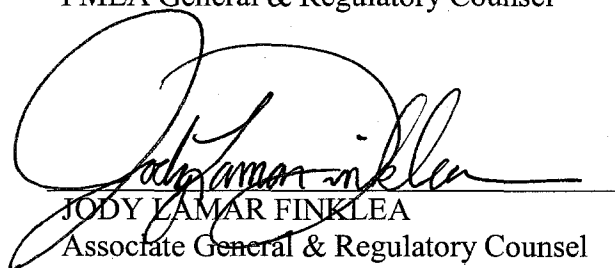
Comment: These suggested changes are to clarify that Rule 25-6.078 is only applicable to investor owned utilities.

III. CONCLUSION.

As the beginning of another hurricane season is only days away, FMEA's thirty-four municipal electric utility members are serious about hardening their systems against storm damage and preparing for timely and efficient storm recoveries. Accountable to the local communities they serve, municipal electric utilities are keenly aware of the concerns of their customers, who are the friends and neighbors of the utilities' own employees. Keeping the proposed rules within the jurisdictional limitations of the Commission, Florida's municipal electric utilities look forward to continuing to work with the Commission and Staff on these important issues.

RESPECTFULLY submitted this 26th day of May 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. mail this 26th day of May 2006, to the following:

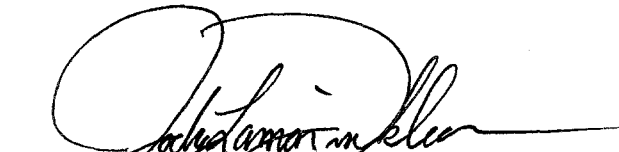
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