

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED RULES GOVERNING PLACEMENT DOCKET NO. 060172-EU  
OF NEW ELECTRIC DISTRIBUTION  
FACILITIES UNDERGROUND, AND CONVERSION  
OF EXISTING OVERHEAD DISTRIBUTION  
FACILITIES TO UNDERGROUND FACILITIES,  
ADDRESS EFFECTS OF EXTREME WEATHER  
EVENTS.

PROPOSED AMENDMENTS TO RULES DOCKET NO. 060173-EU  
REGARDING OVERHEAD ELECTRIC  
FACILITIES TO ALLOW MORE STRINGENT  
CONSTRUCTION STANDARDS THAN REQUIRED  
BY NATIONAL ELECTRIC SAFETY CODE.

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER ISILIO ARRIAGA  
COMMISSIONER MATTHEW M. CARTER, II  
COMMISSIONER KATRINA J. TEW

DATE: Thursday, August 31, 2006

TIME: Commenced at 9:30 a.m.  
Concluded at 4:05 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

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FLORIDA PUBLIC SERVICE COMMISSION

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## P R O C E E D I N G S

CHAIRMAN EDGAR: Good morning. Before we begin our business today, I'd like to take a moment to make a comment and to recognize that approximately ten weeks ago this Commission had the honor of naming this hearing room after former Commissioner Joe Cresse who passed away earlier this week. And I'd like to turn to Commissioner Carter to lead us in a moment of silence in his honor.

COMMISSIONER CARTER: As we approach this moment, we offer words of comfort to the Cresse family. We offer words of comfort to the PSC family. For we've not lost anything with Joe Cresse; what we've done is gained a giant, a gentle giant who had a lifetime of public service. Even though he was a gentle giant and walked through the palaces with presidents, potentates, kings and governors, he still had the common man touch. And in this hallowed hall that we dedicated just ten weeks ago, we come again to recognize the legacy, the leadership and the character of this person Joe Cresse. So as we prepare for this moment of silence, on behalf of my fellow Commissioners, we wish you God speed, Joe Cresse. Let us pray.

(Moment of silence observed.)

COMMISSIONER CARTER: Amen.

CHAIRMAN EDGAR: Thank you, Commissioner Carter.

Okay. We will move into our scheduled business for the day, and I'm going to start with asking our counsel to read

1 the notice. Mr. Harris.

2 MR. HARRIS: Yes, ma'am. Pursuant to notice issued  
3 July 30th, 2006, this time and place has been set for a rule  
4 hearing in Dockets Number 060172, 060173. The purpose of the  
5 hearing is as set forth in the notice.

6 CHAIRMAN EDGAR: Thank you, Mr. Harris.

7 I'd like to go ahead and take appearances from all of  
8 those that are here, and I believe we may have some  
9 participating by phone as well, so that we know who is planning  
10 to speak today and also whom you are representing.

11 Mr. Meza.

12 MR. MEZA: Thank you, Madam Chair. My name is Jim  
13 Meza on behalf of BellSouth, and with me today is our primary  
14 witness Mr. Kirk Smith.

15 CHAIRMAN EDGAR: Thank you.

16 MR. O'ROARK: Madam Chairman, I'm De O'Roark  
17 representing Verizon Florida, Inc., and our principal witness  
18 today will be Dr. Larry Slavin.

19 CHAIRMAN EDGAR: Thank you.

20 MS. MASTERTON: Madam Chairman, Susan Masterton on  
21 behalf of Embarq Florida, Inc. And also speaking on behalf of  
22 Embarq today will be George Finn and Kent Dickerson.

23 CHAIRMAN EDGAR: Thank you.

24 MS. MASTERTON: And Mr. Dickerson will be on the  
25 phone.

1 CHAIRMAN EDGAR: Okay. Thank you.

2 MR. BUTLER: John Butler and Natalie Smith on behalf  
3 of Florida Power & Light Company.

4 CHAIRMAN EDGAR: Welcome back, Mr. Butler.

5 MR. BUTLER: Thank you. It's good to be here in  
6 person.

7 MR. GROSS: Good morning, Madam Chair. I'm Michael  
8 Gross here on behalf of the Florida Cable Telecommunications  
9 Association, and with me sitting to my left is Michael T.  
10 Harrelson, who will be our primary expert witness in this  
11 matter. Thank you.

12 CHAIRMAN EDGAR: Thank you.

13 MR. BURNETT: Good morning, Commissioners. John  
14 Burnett on behalf of Progress Energy Florida.

15 MR. WILLIS: I'm Lee Willis on behalf of Tampa  
16 Electric Company. With me today is Kris Angiulli, it's K-R-I-S  
17 A-N-G-I-U-L-L-I, who will make a presentation.

18 CHAIRMAN EDGAR: Thank you. You may have to repeat  
19 that spelling for me again later. Okay. And who else? Thank  
20 you. That's okay, Mr. Wright.

21 MR. WRIGHT: Madam Chairman, thank you,  
22 Commissioners. Robert Scheffel Wright appearing on behalf of  
23 the Town of Palm Beach, Florida, and the Town of Jupiter  
24 Island, Florida.

25 CHAIRMAN EDGAR: Thank you.

1 MR. STEWART: Greg Stewart on behalf of the City of  
2 North Miami.

3 CHAIRMAN EDGAR: City of North Miami. Thank you.  
4 Mr. Adams.

5 MR. ADAMS: Thank you, Madam Chairman. Gene Adams on  
6 behalf of Time Warner Telephone. And also we have Ms. Carolyn  
7 Marek for Time Warner Telephone here today.

8 CHAIRMAN EDGAR: Thank you.

9 MR. BADDERS: Good morning, Commissioners. Russell  
10 Badders and Eric Langley on behalf of Gulf Power Company.

11 CHAIRMAN EDGAR: Thank you. Is there anybody that  
12 I've missed that's here that would like to speak during the  
13 presentation and comment time today?

14 MS. COX: Thank you. I'm Linda Cox here representing  
15 the City of Ft. Lauderdale. Thank you.

16 CHAIRMAN EDGAR: Thank you. Is there anybody else?  
17 None at this time.

18 Is there anybody joining us by phone to speak? Not  
19 at this time. Okay. Thank you very much.

20 This hearing will be conducted according to the  
21 rulemaking provisions of Section 120.54, Florida Statutes, and  
22 Rule 28-103.004, Florida Administrative Code. The purpose of  
23 this hearing is to allow the Commission to inform itself on  
24 matters bearing upon the proposed rules and rule amendments by  
25 giving affected persons and other interested persons an

1 opportunity to present comments and proposed alternate  
2 language, and the opportunity for Commissioners to ask  
3 questions. This will be a little more informal than an  
4 evidentiary hearing would be. We will not be swearing  
5 witnesses. There is the opportunity to present documents that  
6 we will enter in as evidence. And if you have exhibits that  
7 you would like to share with the Commission and have become a  
8 part of the record of this hearing, I will ask you to give us a  
9 title so that we all know what document we are referring to as  
10 the record is put together and we will number them in  
11 chronological order.

12 I do understand that there have been discussions and  
13 that we have pretty much an agreement as to the order of  
14 presentations and some time frames. We have a lot of material  
15 to cover, so I will ask that each of you be cognizant of the  
16 time frames that have been discussed. I will, of course, give  
17 the opportunity for Commissioners to ask questions at any time  
18 during the comments. And if there are clarifying questions  
19 from any of the others who are here today that they need to  
20 pose to one of the presenters, I will give the opportunity for  
21 that. However, again, keep in mind that that question  
22 opportunity is for clarification purposes.

23 Okay. We will start in a moment with our Commission  
24 staff giving us a brief overview. But before we do that, let's  
25 go ahead and take up the exhibits that we have.



1 We have Staff Composite Exhibit 1, Mr. Harris?

2 MR. HARRIS: Yes, ma'am. Staff Composite Exhibit 1  
3 is the rulemaking record to this point. I did email out to  
4 persons we knew are going to participate an index to it, and  
5 I've today provided one copy of that exhibit to each of the  
6 principals for the people we knew were going to speak. It  
7 contains all of the materials that are relevant to this  
8 proceeding today. They all came off of the Commission's  
9 website in Dockets 060172 and 060173. So for anyone who needs  
10 to pull any document we're speaking about today, they can pull  
11 those off of our website or staff can make a copy of them. But  
12 we didn't, due to the size, make a copy for every person in the  
13 room. That would be Exhibit 1.

14 (Exhibit 1 marked for identification and admitted  
15 into the record.)

16 CHAIRMAN EDGAR: And then we have an Exhibit Number 2  
17 that we'll be entering into the hearing record, and that is the  
18 Revised Statement of Estimated Regulatory Costs.

19 Mr. Harris.

20 MR. HARRIS: Yes, ma'am. This was a revised  
21 statement. We got -- we filed it either yesterday evening late  
22 or this morning in the docket file. We do have a number of  
23 extra copies of those for persons who haven't had a chance to  
24 get one. It is revised based on the information received after  
25 the last staff workshop. And Mr. Hewitt is here to provide a

1 brief overview of that with the staff rule presentation, but we  
2 do have some extra copies.

3 (Exhibit 2 marked for identification and admitted  
4 into the record.)

5 CHAIRMAN EDGAR: Thank you. Are there any other  
6 exhibits at this time?

7 MR. HARRIS: I believe a number of the parties have  
8 exhibits that they're prepared to either list now, introduce  
9 now or as part of their presentation, depending on your  
10 preference.

11 CHAIRMAN EDGAR: Okay. Then I think my preference is  
12 to go ahead and do that in order at the time of the  
13 presentation, and we'll move through it in that manner.

14 Any other matters before we go into the overview?

15 MR. HARRIS: If I may enter an appearance for staff.  
16 Lawrence D. Harris on behalf of the Commission. With me is  
17 Christina T. Moore on behalf of the Commission.

18 CHAIRMAN EDGAR: Thank you, Mr. Harris.

19 MR. HARRIS: Thank you.

20 CHAIRMAN EDGAR: Okay. And then I will look to staff  
21 now to give us an overview of the proposed rules.

22 MR. HARRIS: Thank you. Mr. Breman is going to lead  
23 off, I believe.

24 MR. BREMAN: Commissioners, my name is Jim Breman.  
25 Due to recent hurricane activities, the level of damage to

1 electric infrastructure, customer outages, high restoration  
2 costs and an expectation that the frequency of storms may  
3 increase, this Commission initiated a multifaceted effort  
4 directed at hardening, weather hardening Florida's electric  
5 infrastructure. It began on January 23rd with an open  
6 workshop. It was open to public entities, industry experts and  
7 governmental representatives to report their experiences and  
8 suggest options.

9           The information was presented to you at an Internal  
10 Affairs of February 27th where the Commission codified its  
11 multifaceted effort into a program that had both short-term and  
12 long-term actions. The short-term actions required electric  
13 utilities to brief the Commission on storm readiness status on  
14 the June 5th Internal Affairs meeting.

15           The long-term action has two parts. One part  
16 consists of requiring the investor-owned electric utilities to  
17 provide plans to implement ten storm hardening initiatives  
18 which the Commission identified. The second long-term action  
19 was to modify the Commission rules to facilitate and encourage  
20 storm hardening activities.

21           With respect to the ten storm hardening initiatives,  
22 the Commission did not dictate how the utilities were to  
23 achieve or implement each initiative. Rather, the utilities  
24 were required to respond to the policies and goals established  
25 by the Commission.

1           The proposed rules today that are under review at  
2 this hearing similarly do not dictate to the electric utilities  
3 how they are to achieve or implement storm hardening. Rather,  
4 the electric utilities must prudently respond to the expressed  
5 Commission policy.

6           The rule requires that all actions and interactions  
7 of the electric utilities will be thoroughly reviewed and  
8 subject to safeguards such as Commission complaint process.

9           With respect to construction of electric  
10 infrastructure, there are four proposed rules expressing  
11 Commission policy. Rule 25-6.03 is titled "Construction  
12 Standards." 6.0341 is titled "Location of Utility Electric  
13 Distribution Facilities." 6.0342 is titled "Third-Party  
14 Attachment Standards and Procedures." And Rule 6.0345 is  
15 titled "Safety Standards for Construction of New Transmission  
16 and Distribution Facilities."

17           Commissioners, if you want me to briefly go into each  
18 rule, I will. It's, it's up to you.

19           CHAIRMAN EDGAR: Let's do that briefly. I think that  
20 will be helpful.

21           MR. BREMAN: Thank you. The construction standard  
22 rule clarifies that under emergency conditions and to the  
23 extent reasonably practical, feasible and cost-effective  
24 utilities are to include extreme wind loading criteria as  
25 specified by the National Electric Safety Code, and flooding

1 and storm surge level matters. The standards of construction  
2 are to include guidelines and procedures establishing the  
3 criteria governing the applicability and use of such extreme  
4 wind load standards to enhance reliability and reduce service  
5 restoration costs and outage times for three types of  
6 construction: New construction, major or planned work,  
7 rebuilding, relocation projects, that's all one group, and also  
8 for targeted or critical infrastructure.

9           Consequently, utilities shall at a minimum comply  
10 with the National Electric Safety Code. The standards of  
11 construction are to be developed with consideration of input  
12 from entities with existing shared use agreements. And the  
13 standards of construction must be completed and be available  
14 for review 180 days after the effective date of the rule. The  
15 rule specifically includes that any dispute or challenge to the  
16 construction standards will be resolved by the Commission.

17           Rule 6.0341, the location of electric utility  
18 distribution facilities, expresses a preference for electric  
19 facilities being placed in a readily accessible location and  
20 provides several examples such as use of public roadways and  
21 frontage of property, again, to the extent that it is  
22 reasonable, feasible and cost-effective.

23           The rule also requires explicitly that electric  
24 utilities seek input from and coordinate construction with the  
25 third parties that are affected by the projects on the existing

1 distribution facilities that are subject to change.

2 Rule 6.0342, third-party attachment standards and  
3 procedures, addresses a requirement for the electric utilities  
4 to have standards and procedures that prudent utilities should  
5 have with respect to assuring that their facilities are  
6 reliable and perform well. The standards and procedures are to  
7 be developed with consideration of input for the entities with  
8 existing shared use agreements. Again, any disputes are  
9 challenged and subject to the Commission's dispute resolution  
10 oversight.

11 And Rule 6.0345, safety standards for construction of  
12 new transmission and distribution rule, is a rule that's been  
13 around for a while. This rule states what the electric safety  
14 standards are for the State of Florida. The only substantive  
15 change to the safety standard rule is the inclusion of the  
16 phrase "at a minimum," and that's in (1) of the rule.

17 This new sentence reads, "Each investor-owned  
18 electric utility, rural electric cooperative and municipal  
19 electric system shall, at a minimum, comply with the standards  
20 in these provisions." The phrase "at a minimum" is included  
21 because Senate Bill 888 included the phrase, and to avoid  
22 appearance of tension between Commission policy, Commission  
23 rules and the Florida Statutes. All other proposed changes to  
24 the safety standard rule are simply cleanup and editorial in  
25 nature.

1 Thank you, Commissioners.

2 CHAIRMAN EDGAR: Thank you, Mr. Breman.

3 Go ahead.

4 MS. KUMMER: Connie Kummer, Commission staff. The  
5 last three rules address how the cost of the construction  
6 Mr. Breman talked about is recovered from the customers.

7 Rule 25-6.064 is the general catchall of  
8 contribution-in-aid-of-construction rule. A lot of the changes  
9 in there are simply cleanup and clarification. The main  
10 changes are to expand the rule to cover upgrades as well as  
11 line extensions. It also provides for a true-up of the  
12 estimates used to calculate the CIAC, and it requires a  
13 proration of the CIAC when more than one customer is going to  
14 benefit from the construction.

15 Rules 25-6.078 and 25-6.115 both deal with the  
16 construction of underground facilities. 6.078 deals only with  
17 the installation of underground facilities in new subdivisions.  
18 6.115 addresses the conversion of over -- existing overhead  
19 facilities to underground. And there are two primary changes  
20 in philosophy or approach that we made to those rules.

21 The first is that the CIAC estimates must include the  
22 net present value of life cycle costs, and that is to capture  
23 the, not only the initial installation cost difference, but  
24 also the ongoing differences in operations and maintenance  
25 costs and also storm restoration costs.

1           The other major change allows the waiver of a CIAC if  
2 the utility can demonstrate that the general body of ratepayers  
3 will benefit from the construction. Thank you.

4           MR. HARRIS: And, Chairman, if I might, one  
5 additional comment. Except for 25-6.0345, none of the rules  
6 here today are addressing the municipals and co-ops. As you  
7 recall, we broke out a separate docket for them. That will be  
8 going to hearing on October 4th currently. So I wanted to make  
9 it clear that although I think we have some cities and towns  
10 here to speak, really the rules we're dealing with today,  
11 except for .0345, are addressed at the investor-owned  
12 utilities, the IOUs.

13           And now I think Mr. Hewitt is going to give a brief  
14 presentation on the revised statement of estimated regulatory  
15 costs.

16           MR. HEWITT: Commissioners, Craig Hewitt, Commission  
17 staff. Previously we estimated -- or the companies -- IOUs --  
18 the four major IOUs estimated that their hardening costs for  
19 the capital improvements would be between \$63 million and  
20 \$193 million. The other affected parties subsequently  
21 requested a revised SERC, which we did, and they also submitted  
22 additional data. These parties, they feel that they will face  
23 with these rules some combination of higher pole rates, a cost  
24 to move the pole locations along with electrics, and the cost  
25 if they go underground, and possible increases in the cost to



1 maintain abandoned poles in case electricians moved and left them  
2 behind.

3           These pole attachers have some substantial estimates  
4 of increased costs if they had to do -- follow these changes in  
5 the rules. A major telecom estimated it could cost  
6 \$500 million if they changed out 10 percent of their  
7 facilities. And depending on which type of change occurred,  
8 they had estimates ranging across the board.

9           Another telecom estimated it would cost between  
10 \$110,000 and \$170,000 per mile to change overhead-to-overhead  
11 locations.

12           Another estimate was to go underground would be  
13 between \$90,000 and \$120,000 per mile. Another telecom  
14 estimated it would cost for a 10 percent change in the  
15 locations \$20 million.

16           Another study did a -- another company did a study on  
17 undergrounding, and it estimated it would cost \$4,000 per  
18 household to go underground, if that was the choice.

19           And, finally, the cable association estimated that it  
20 would cost approximately \$20,000 per mile for overhead  
21 movements, and \$125 to \$150 per service drop. And to go  
22 underground would cost between \$35,000 and \$40,000 per mile.

23           And, additionally, if they had to change in a  
24 built-out subdivision, they estimated it would cost between  
25 \$100,000 and \$150,000 per mile because they had to do

1 underground boring or under obstacles. That's it. Thank you.

2 CHAIRMAN EDGAR: Thank you.

3 Mr. Harris.

4 MR. HARRIS: Thank you, Chairman. That concludes the  
5 staff's presentation and summary of the rule. We're now  
6 available to answer your questions and any questions from  
7 parties, if that's your pleasure.

8 CHAIRMAN EDGAR: Okay. Commissioners, before we move  
9 into presentations, are there any questions of our staff at  
10 this time? No.

11 Okay. Then I think we will move into presentations.  
12 And, Mr. Meza, you are up.

13 MR. MEZA: Thank you, Madam Chair. We have a  
14 presentation that we would like to present and have marked as  
15 the next exhibit.

16 CHAIRMAN EDGAR: Mr. Meza, do you want to describe or  
17 title your exhibit for me?

18 MR. MEZA: Yes, ma'am. It's BellSouth's  
19 presentation.

20 (Exhibit 3 marked for identification and admitted  
21 into the record.)

22 MR. MEZA: Thank you. Good morning. My name is Jim  
23 Meza. I represent BellSouth. And with me today is Kirk Smith,  
24 our subject matter expert on this issue. I'm going to provide  
25 a few introductory comments, and Mr. Smith is going to walk

1 through the presentation with you within the time frames  
2 established by the Commission.

3 CHAIRMAN EDGAR: Thank you.

4 MR. MEZA: First, I want to thank you for the  
5 opportunity to present evidence and argument regarding the  
6 proposed electric hardening rules today. This proceeding is of  
7 great importance to BellSouth. It is important because we  
8 understand the desire and need to attempt to decrease power  
9 outages following a hurricane. But it's also important because  
10 complying with these rules could cost, pursuant to BellSouth's  
11 estimate, up to \$4 billion plus solely because it attaches to  
12 poles owned by electric companies. This cost will ultimately  
13 have to be passed on to Florida end users because no company  
14 can absorb a cost of that magnitude, and will be in addition to  
15 any costs that the electric utilities will impose upon their  
16 end users for actually replacing poles.

17 And while \$4 billion is staggering in and of itself,  
18 there could be more costs that BellSouth just cannot estimate  
19 today because of the uncertainty surrounding what exact  
20 standards we will be facing. Mr. Smith will go over a few of  
21 these costs that we know will occur but just cannot quantify in  
22 his presentation, but I'd like to talk to you about one  
23 briefly. And that is there is a chance that the electric  
24 companies will attempt to use your rules to manipulate current  
25 pre-existing language in our joint use agreements to force or

1 to claim that attaching entities have a responsibility pursuant  
2 to that agreement to pay for a percentage of the poles. This  
3 cost would be in addition to the \$4 billion that we estimate in  
4 just complying with the rule as an attacher.

5 And how would they make this argument? They will  
6 argue that you are the cost causer, that your rules are causing  
7 them to incur cost to replace their poles. And as such, we  
8 believe that they will try to attempt to use pre-existing  
9 language that was never intended to be used in such a manner to  
10 force additional costs upon BellSouth. So at the end of the  
11 day, there is a possibility that we will incur substantial  
12 costs as an attacher in the range of \$4 billion simply to  
13 comply with the rules, and then have to face a contractual  
14 claim based upon additional costs to actually pay for a  
15 percentage of the electric company's cost in replacing the  
16 pole. So they get recovered from their end users their costs,  
17 they're going to try to get recovery from our costs, from us  
18 for the pole, and then we have additional costs. Of course, we  
19 vehemently disagree with any such interpretation of the joint  
20 use agreement and deny that this claim is valid, but the risk  
21 is still there. And we raised this in our comments, and  
22 tellingly, probably unintentional, they did not refute that  
23 this is what they intend to do.

24 Given these costs, BellSouth believes that there  
25 needs to be a serious review of a cost-benefit analysis. And I

1 think that after doing such a review, you would find that maybe  
2 these rules will not have the desired effect. And our  
3 rationale for that is simple: If you look at Hurricane Wilma  
4 and the statements of the utilities that followed, the  
5 widespread lengthy power outages that resulted from that storm  
6 were not because of distribution facilities for the most part,  
7 it was because of the failures of substations and transmission  
8 lines. And these rules will not change the fact that  
9 substations failed during Wilma.

10 And if you go forward five to ten years from now  
11 after these companies have spent a considerable amount of money  
12 in complying with the rules and a storm like Wilma comes again,  
13 it is highly likely that the same type of power outages that  
14 were experienced by Florida consumers last year would occur  
15 again. And that's because the substations that failed in Wilma  
16 because of flying debris are not impacted by this rule.  
17 Mr. Smith will expound upon that in his presentation.

18 In addition to these cost concerns, this proceeding  
19 is also important because the rules result, we believe, in the  
20 Commission likely exceeding its jurisdiction over pole  
21 attachments.

22 The Florida Supreme Court in the case of  
23 Teleprompter v. Hawkins has determined that this Commission  
24 does not have the ability to certify to the Federal  
25 Communications Commission under the Pole Attachment Act that

1 you can regulate the rates, terms and conditions for pole  
2 attachments. We believe that that law is still valid today and  
3 is still binding upon you.

4 In addition, in a decision issued by the FCC in March  
5 of this year, the FCC has determined that it still has  
6 jurisdiction over pole agreements, even when the engineering  
7 standards at issue are implemented pursuant to safety and  
8 reliability concerns pursuant to state law. So we believe that  
9 these rules, to the extent they result in the regulation of  
10 rates, terms and conditions associated with pole attachments,  
11 exceed your jurisdiction. Mr. Gross will expound upon our  
12 jurisdictional arguments in his presentation, and we're trying  
13 our best today not to duplicate arguments, so I will defer to  
14 him. And with that, I'd like to turn it over to Mr. Smith.  
15 Thank you.

16 MR. SMITH: Thank you, and good morning. To begin  
17 with, we'd like to lay out the summary of how we see the impact  
18 of these proposed rules. As you see, our interpretation is  
19 very consistent from what we heard from the Commission staff in  
20 that the major points of the rules that we'll be addressing are  
21 each electric company will ultimately develop its own  
22 construction standards that meet or exceed 2002 NESC  
23 guidelines. Each electric company will develop construction  
24 standards that will incorporate, if applicable, extreme wind  
25 load conditions for new build construction, major planned work,

1 targeted critical infrastructure and major thoroughfares. Each  
2 electric company will develop construction standards that will  
3 deter damage resulting from flooding and storm surge. Each  
4 electric company shall seek input, but not be required to  
5 accept input from other entities regarding the development of  
6 these standards.

7           We start with statements of financial impact. We  
8 looked at several different likely scenarios that would from an  
9 operational standpoint occur from the revision of these  
10 standards or the, the hardening efforts of an electric company.  
11 One very likely scenario is that an electric company would  
12 abandon rear lot construction and replace facilities with new  
13 street side aerial or buried facilities.

14           As BellSouth, an attacher to an electric  
15 company-owned pole, we would have an option at that point in  
16 time. If the pole were abandoned by the electric company, we  
17 have an option via our joint use agreement to purchase that  
18 pole. The purchase cost of the pole would range between \$250  
19 to \$300 based on historical information and data that we've  
20 been able to assess.

21           There is a chance that as the electric company may  
22 abandon that particular route, depending upon the terms and  
23 conditions of the acquisition of the easement to place the  
24 poles to begin with, that easement may or may not be  
25 transferrable. We could be in a position of having to acquire

1 or negotiate for an additional easement. As we would accept  
2 the ownership of poles that would be abandoned by the power  
3 company, our pole inspection costs would obviously increase  
4 beyond what we have forecasted would be our inventory. We have  
5 not in essence forecasted the, the purchase of used poles.

6 There is also an administration of records change  
7 that we would implement based on each situation where we would  
8 assume the ownership of those poles and have those poles  
9 incorporated into our ongoing database. If we were to assume  
10 that this were to happen to 10 percent of the poles that we are  
11 attached to across the State of Florida, the low range impact  
12 financially would be \$18,900,000. If we see that happening to  
13 40 percent of the poles that we are attached to, the high end  
14 cost for that particular scenario would be \$90,720,000.

15 Given the same scenario, if an electric company  
16 decides to abandon a rear lot line construction and we choose  
17 as an option to follow that with the replacement of a new  
18 facility, our estimated cost of replacing a new aerial or  
19 buried facility on a front lot line would likely be in the \$25  
20 to \$50 a foot range.

21 We would anticipate that the financial impact to  
22 BellSouth following the power company route to the new front  
23 lot line to be between \$472,500,000 to \$3,780,000,000,  
24 anticipating, again, that this would impact on a range between  
25 10 percent to 40 percent of our current attachments.



1           To bring these numbers into somewhat of a  
2 perspective, we would like to state that we are as a company  
3 attached to 756,000 electric company-owned poles throughout the  
4 State of Florida.

5           Should the work operation from an electric company  
6 simply be to change out a pole or to replace a pole to a new  
7 stronger or taller pole, all attachers would have to transfer  
8 their facilities from the old pole to the new pole. Depending  
9 on the complexity of the transfer, and it could range anything  
10 from a simple unbolting an existing attachment to drilling a  
11 hole and bolting it to the new pole to actually severing the  
12 cable and splicing in new cable, we would have to transfer,  
13 again, our facilities from the old pole to the new pole. The  
14 range of anticipated cost, again, looking at the number of  
15 attachments we have, the 756,000 across the state, would range  
16 potentially between \$7,182,000 to \$142,128,000. The likelihood  
17 is that as network hardening progresses, you would not see one  
18 of these scenarios, you would see a blend of these scenarios.

19           In the conversion of these facilities, taking all  
20 these things into account, we would range -- we would  
21 anticipate that the range of expense to BellSouth could very  
22 well be between \$500 million to \$4 billion to follow and to  
23 accommodate the changes that we see the electric companies  
24 potentially making.

25           There are additional costs that are associated with

1 these changes. We see the potential, a real potential of  
2 increase in pole rental fees. In is most simplistic terms, the  
3 agreements between an electric company and telecom company  
4 often assume the historical pole costs and carrying costs  
5 associated with, with pole inventory. As we see a shift of  
6 older poles to newer poles, smaller poles to larger poles, we  
7 see those historical pole costs and we see the carrying costs  
8 that influence the pole rental rates changing. We simply at  
9 this point in time because of the vague nature of the  
10 definition of the standards and how often they would apply,  
11 where they would apply, we simply cannot apply a price tag to  
12 that particular item at this point.

13           There is another item that causes us great concern.  
14 As we have seen in many cases, our facilities or anybody's  
15 facilities, be they water, be they gas, be they cable, that are  
16 in a front lot type situation are exposed to damage to a great  
17 degree when a facility or when excavation occurs in the front  
18 lot line. We have data that supports that 75 percent of the  
19 buried cable damages that we incur in the State of Florida  
20 incur in just such an environment, a front lot line  
21 environment.

22           As we move to identify large excavation projects, our  
23 damage prevention costs increase. We often dispatch personnel  
24 that will actually patrol and monitor the excavation activity  
25 working as an aide to the excavators to prevent the damage. We

1 see a definite increase in this type of activity. As I'm sure  
2 most are aware, if someone is excavating, they are required by  
3 law to call and request the facilities, the various utilities  
4 to be located. We see an increase in those costs as well.

5           There is a high likelihood that by virtue of the fact  
6 that, that an electric company would be abandoning a pole line,  
7 moving to a new location, if we assume the ownership of the  
8 abandoned poles, we would be in a position of renegotiating  
9 various joint use agreements, license agreements with cable TV  
10 attachers and CLECs as well. They could feasibly be attached  
11 and likely are attached to the poles that we would be assuming  
12 the ownership for. This would not be in our current license  
13 agreements with these, with these entities. We would incur  
14 costs to try to fold in this new arrangement.

15           We see costs that are associated with updates or  
16 changes to whatever these standards may be. As these standards  
17 change, we have seen no language in the rule that in essence  
18 gets any type of time line parameters for attachers that would  
19 indicate something simply as to say if there are a change in  
20 the rules, you would have a year to comply, six months to  
21 comply. We simply don't know. But we do know that with the  
22 possibility for the standards continually changing, we would  
23 incur costs to comply.

24           There is no question in our minds that additional  
25 manpower requirements would be necessary to comply with what we

1 see as a substantial increase in our workload. Again, with not  
2 knowing the, the nature of what these upgrades may be, the  
3 extent, the time lines, we can't assess what that would be. We  
4 simply know that increased workload would bring a necessity for  
5 additional manpower.

6           Use of nonwood poles is a concern of ours.  
7 Historically, BellSouth has dealt in the wood pole environment.  
8 As we see a transition to more use of nonwood poles, be they  
9 concrete, be they fiberglass, be they steel, our attachment  
10 operations have to change. Those are an increased cost to us:  
11 We estimate at a point of some \$55 to \$60 per pole, depending  
12 on the type of material and the manner in which you have to  
13 attach to a nonwood pole.

14           From a pure business case perspective there is a  
15 great concern that we have that if we have recently placed a  
16 facility that is a good, serviceable facility, we may be given  
17 very few options to look at to, to actually say that we would  
18 be replacing a facility that has recently been placed and is  
19 very serviceable and has an extended lifetime that otherwise we  
20 would not be replacing.

21           We do have questions on our pole inspection process.  
22 Quite frankly, we are encouraged with what we're seeing from  
23 the pole inspection process that we have undertaken jointly  
24 with several major power companies over the last, last several  
25 months. We feel that there is a potential that this pole

1 inspection process could be invalidated. From a very  
2 simplistic operational standpoint, if we're inspecting poles on  
3 Highway 1 today and an electric company comes by with the  
4 implementation of these rules and changes the nature of those  
5 facilities, we've actually wasted time and resources to inspect  
6 those poles.

7 We see that there is a cost inherent to training on  
8 standards. There are 40 plus electric companies that we deal  
9 with in the State of Florida. Based on the variations of  
10 construction standards that each of these companies may imply,  
11 may implore, we have the arduous task of trying to communicate  
12 to our technicians potentially 40 different sets of standards  
13 as we perform our attachment work. That is cumbersome and it  
14 is quite a concern of us in being able to comply potentially  
15 with 40 different sets of standards.

16 We believe that the, that the rules as they stand  
17 today are premature and overreaching. We are building a high  
18 degree of confidence in our pole inspection program. We  
19 believe that that is a good tool to provide data analysis that  
20 can support this level of expense.

21 I would draw your attention to some of the issues or  
22 some of the items that we are required to comply with in terms  
23 of our reporting back to the Public Service Commission. The  
24 number of poles that fail inspection, the number of poles  
25 requiring minor follow-up, the number of poles that were

1 overloaded, the number of poles with an estimated pole life of  
2 less than ten years, this is the type of empirical data I think  
3 collectively the industry needs to make the decisions when this  
4 type of price tag is potentially associated.

5           The definition of the construction standards  
6 themselves could invalidate this inspection process, as I've  
7 previously, previously mentioned. The inspection process  
8 itself is not inexpensive, and I would hate to see that we were  
9 doing any type of inspections that, in fact, could be  
10 invalidated by a change of standards yet to be defined.

11           Again, to the point of being somewhat premature, the  
12 rulemaking uses the 2002 version of the NESC as a baseline.  
13 Only yesterday I personally saw the first version of the 2007  
14 code. We think it would be prudent to look at what the 2007  
15 code brings to the table before these rules are implemented or  
16 addressed.

17           The proposed rulemaking also indicates that the  
18 revised construction standards would be applicable to new  
19 builds, conversions, critical infrastructures and major  
20 thoroughfares. We have great concern that there is, there is  
21 no definition around these categories. These are subject to 40  
22 separate definitions, and they have a major impact on what the  
23 price tag would be.

24           Some of the information that we observed from Wilma  
25 such as poles that snapped were made of concrete as well as

1 various strengths of wood and some were new. Damage to  
2 substations contributed significantly to extended, widespread  
3 power outages, and distribution poles damaged or destroyed  
4 represented a miniscule portion of the overall network damaged  
5 by Wilma. These give us cause for concern and to ask that, and  
6 state that it leads us to our conclusion that this rulemaking  
7 is premature.

8           So in summary, these are the questions I feel we must  
9 ask: Are the right resources being directed to the right  
10 remedy, and is the price worth the potential benefit? Have we  
11 collectively analyzed the problem to address the right things,  
12 and are there alternatives that can positively impact the  
13 problem and thus drive the desired consumer benefit faster and  
14 in a less costly manner? Our position is that, yes, we do  
15 suggest that there are more efficient solutions that may result  
16 in an even more favorable outcome, and we propose a three-step  
17 collaborative approach.

18           We propose that establishing an Infrastructure  
19 Advisory Committee that is a multi-industry committee that is  
20 dedicated simply to the evaluation and application of overall  
21 network hardening is a first step and something we collectively  
22 feel very strongly we could accomplish within a 30-day period.  
23 We would establish the priority issues to address which would  
24 be the evaluation of existing and proposed construction and  
25 attachment standards; increasing the efficiency of hurricane

1 restoration efforts, which we feel is a very critical  
2 component; identification of specific geographic areas to  
3 assess all critical infrastructures and necessary hardening  
4 efforts. With a collaborative approach with every participant  
5 across the industry I think we can accomplish these things.

6 As we refine the Infrastructure Advisory Committee,  
7 as a Step 2 within a 60-day period, we feel we could provide a  
8 complete, comprehensive, industry-wide evaluation of target  
9 areas; not just electric infrastructure, but telecom and cable  
10 as well. We propose that we use the coordination of pole  
11 inspections as a first-strike data gathering process to  
12 evaluate these target areas. We feel very strongly that  
13 communication of hardening projects to provide for a  
14 consolidated industry coordination is critical, and to address  
15 how to coordinate longer term hardening efforts.

16 Within the same 180 days, as is suggested in the  
17 proposed rulemaking, we would suggest that the Infrastructure  
18 Advisory Committee could accomplish developing construction  
19 standards with all industry participants, develop attachment  
20 standards with all industry participants, develop joint trench  
21 standards for all new construction in a buried facility  
22 environment, and provide continuous monitoring of pole  
23 inspection data to determine what the next best things to do  
24 would be. And that concludes my presentation.

25 CHAIRMAN EDGAR: Mr. Meza, any further comments at



1 this point?

2 MR. MEZA: No, ma'am. Thank you.

3 CHAIRMAN EDGAR: All right. Commissioners, any  
4 questions for the BellSouth presenters at this time? No?

5 Okay. Then let's move on. You're recognized.

6 MR. O'ROARK: Again, good morning, Madam Chairman and  
7 Commissioners. I'm De O'Roark representing Verizon. First of  
8 all, Verizon agrees with BellSouth with respect to its concerns  
9 about cost. Verizon also has addressed those concerns in its  
10 comments and in the affidavit of Steve Lindsey. We agree with  
11 BellSouth concerning the jurisdictional issue, and we also  
12 fully support the infrastructure hardening proposal that was  
13 just presented.

14 In an effort to avoid simply duplicating the points  
15 that BellSouth has made, what we're going to do this morning is  
16 focus exclusively on the extreme wind loading issue. And  
17 Verizon's presentation on extreme wind loading will be made by  
18 Dr. Larry Slavin. Dr. Slavin has worked in the  
19 telecommunications field for 45 years: 28 years with Bell  
20 Labs, another 12 years with Telecordia. Dr. Slavin has been an  
21 active member of the NESC, that is the National Electrical  
22 Safety Code, subcommittee that deals with extreme wind loading.  
23 He's been involved with that subcommittee since 1998. He was  
24 involved in developing the 2002 and 2007 versions of the NESC.  
25 And he has prepared a PowerPoint presentation that we would

1 like to have admitted as an exhibit next in order. And, Madam  
2 Chairman, we would suggest that perhaps be named Verizon's  
3 Presentation.

4 CHAIRMAN EDGAR: Okay. And that will be Exhibit 4.

5 (Exhibit 4 marked for identification and admitted  
6 into the record.)

7 DR. SLAVIN: I'd like to thank the Commissioners for  
8 the opportunity to speak to you this morning. I'll try not to  
9 abuse the privilege. You have a handout with lots of slides; I  
10 think over 60. I'll only address about half of them, unless  
11 you want me to go into some of those others in detail. There's  
12 a slide number in the lower right-hand corner, so I'll try to  
13 keep you up-to-date on which slide I'm referring to at the  
14 moment.

15 I'll be talking about the National Electrical Safety  
16 Code and what it says about extreme wind loads, and in  
17 particular how it relates to distribution poles.

18 Slide 2. Your public service proposed Rule  
19 6.034(5) deals with extreme wind loading.

20 Slide 3. Right upfront I'm going to tell you that if  
21 you do adopt those rules as written, you'll probably make your  
22 situation worse. You'll delay restoration because you'll have  
23 more downed poles following typical storms. There will be  
24 errors in implementation.

25 From another safety perspective, you'll probably have

1 more automobile accidents because of the additional or more  
2 massive poles. And there's probably going to be some other  
3 unknown consequences which I haven't thought about at this  
4 point.

5 Slide 4. The most obvious effect is going to be  
6 increased costs. Typical joint usage poles will be required to  
7 be one and a half to four times your present required strength.  
8 That's three to eight pole class sizes, and I'll describe what  
9 pole class means in a few slides from now. That is very major.  
10 The alternative to stronger poles is to have more poles by just  
11 decreasing your span lengths. In that case, you'll have one  
12 and a half to four times more poles.

13 Now I want to point out -- I'm on Slide 5. I want to  
14 point out that in the last edition, the 2007 Edition just  
15 issued -- it was just issued this month as we speak, all right,  
16 so it's already essentially effective. It has to be effective  
17 by February, but it can be effective at any time. We did  
18 consider a change proposal, a very specific one, Change  
19 Proposal 2766. It was rejected. But what the purpose of this  
20 was was to extend extreme wind loading to structures less than  
21 60 feet. That means distribution poles. It was a much less  
22 radical change than what's in your proposed rule, much less  
23 radical.

24 One of the limitations in this rule was that it would  
25 limit the wind pressures or the wind speeds that had to be

1 considered to a level above which you would have flying debris  
2 basically taking down your poles anyway. All right? So it  
3 recognized there was a limit, a practical limit to the wind  
4 speeds we should be dealing with.

5 Slide 6. Nonetheless, it was rejected by a vote of  
6 17 to 7. And I'm not going to read through the formal comment.  
7 Underneath you see the formal comment of the Subcommittee 5.  
8 And just to paraphrase it briefly, what it said is distribution  
9 structures, meaning under 60 feet, they're damaged during  
10 extreme wind by trees, tree limbs, flying debris. If you  
11 design those structures for extreme wind, you'll increase the  
12 pole strengths, you'll have a large increase in cost, design  
13 complexity, and you're not going to have a commensurate  
14 increase in safety. Okay. Slide 6.

15 Now the rest of the talk -- I'm on Slide 10 now. The  
16 rest of the talk will be divided into four parts basically to  
17 support the conclusions and the comments that I just made.

18 The first talk, I'll briefly review what 2002 says.  
19 That's the edition of the NESC that's explicitly cited in your  
20 change proposal -- in your proposed rule. I'll tell you a  
21 little bit about 2007 which was just issued because there's  
22 one or two things that relate to, you know, what we're talking  
23 about today. I'll tell you how it impacts -- how it's impacted  
24 and how it relates with your proposed Rule 6.034(5), and I'll  
25 give you my own recommendations.

1           Okay. Slide 11 and 12. I'm talking about the 2002  
2 Edition now. There are two sections of the NESC that  
3 explicitly deal with this issue. There's Section 25 or Chapter  
4 25, the title of which is "Loadings for Grades B and C." Now  
5 I'm -- I highlighted the Grades B and C part, but that's, but  
6 that's a direct exact description of that chapter. In other  
7 words, those loadings which are specified in Section 25 do not  
8 apply to all grades of construction. It applies to two of the  
9 popular grades, especially Grade C, but not all grades. And  
10 there are two rules explicitly listed in Section 25, two storms  
11 that are explicitly listed: There is Rule 250B and 250C. Now  
12 just to avoid confusion, the 250B and 250C, that B and C has  
13 nothing to do with Grades B and C. That's just, you know,  
14 that's not -- you know, there's no connection there.

15           Rule 250B is basically a winter storm. It's a  
16 combined ice and wind loading that we expect the poles to  
17 withstand. That applies to all transmission and distribution  
18 structures as long as they're Grades B and C.

19           Rule 250C, which I highlighted in red, is the rule  
20 that's in question now. Rule 250C is the extreme wind loading  
21 that's been proposed to be applied to all distribution poles.  
22 Right now it is not applicable to distribution poles.

23           Section 26 of the NESC entitled "Strength  
24 Requirements" has two main rules -- actually has one main rule.  
25 Main Rule 261 is entitled "Grades B and C Construction." And

1 what it does is it tells you how to select or design poles so  
2 that they can withstand the loadings that are described in  
3 Section 25 above.

4 Now there is a Rule 263, it's a very minor rule, that  
5 refers to another grade of construction, the remaining grade,  
6 Grade N construction. You can picture "N" standing for no  
7 rule. That's not what it stands for, but you can imagine it  
8 that way. It talks about this other third -- this other grade  
9 of construction which I'll briefly describe.

10 All right. Next, next slide. I'm talking about the  
11 winter storm now. This map, this loading districts map that  
12 you see in front of you, I'm sure many of you have seen this,  
13 it's been around about 100 years, it's been modified slightly.  
14 It divides the United States for the purposes of winter storm  
15 into three regions, into three districts: Heavy in the  
16 northeast, medium and light. And you can see that Florida is  
17 in the light area.

18 The next slide is 14. This winter storm, Rule 250B,  
19 is as follows: It specifies, for example, in the heavy portion  
20 of the country, in the northeast, that the conductors shall be  
21 able to accumulate 1/2 inch radial ice. Radial means that you  
22 have 1/2 inch on top, on the bottom and on the side. So you're  
23 actually adding an inch of ice to a conductor if you imagine  
24 that. And we apply to that ice-laden conductor a transversed  
25 wind load corresponding to 40 miles an hour. Actually it's

1 specified four pounds per square foot. That corresponds to a  
2 40-mile-an-hour wind. So we apply this four pounds per square  
3 foot to the projected area, the bigger area of the conductor  
4 surrounded by ice.

5 In the medium portion of the country, in the  
6 midsection, we have the same four-pounds-per-square-foot wind  
7 pressure with only 1/4 inch radial ice.

8 Now at the bottom of this slide, of course, is the  
9 one we're interested in. I have it in red. In the light  
10 section of the country -- oh, and a conductor, I might add, is  
11 a wire, it's a cable, it's a telephone cable, it's a power  
12 cable, it's any of the cables that you see stretched, you know,  
13 spanning between the poles when you walk down the street. It  
14 could be cable TV, it could be power, it could be telephone.  
15 Okay. We use them interchangeably in the code and we're not  
16 always explicitly clear about it. Okay? Conductors, wires,  
17 cables, all the same thing.

18 All right. Now in Florida, you see it's in red and  
19 it's considered light. Okay. Well, "light" I put in quotes.  
20 That is a total misnomer. We're getting away from that  
21 terminology to some extent. We did a little bit in the 2007  
22 Edition. The reason that we say it's light is because it's  
23 light on ice. There's no ice in Florida, for example. But we  
24 apply a 60-mile-an-hour wind. That 60-mile-an-hour wind  
25 corresponds to nine-pounds-per-square-foot wind pressure, more

1 than twice as much as in the rest of the country. And even  
2 though it's on a conductor without ice, in many cases that can  
3 be a much more significant load. So the term "light" is really  
4 a misnomer.

5 And as you'll see later on, we take these wind  
6 pressures for this winter storm -- and this winter storm,  
7 remember, does apply now to all transmission and all  
8 distribution structures. In fact, it becomes the basic design  
9 rule for distribution across the country. We apply a safety  
10 factor to those numbers to make them even more severe. Okay?

11 Slide 15. So now let's get over to the, to the  
12 extreme wind load, Rule 250C. This is the one we're talking  
13 about extending the structure to distribution structures. If  
14 you -- there's a contour map that's in the National Electrical  
15 Safety Code. I'll show you a more detailed one on the next  
16 slide. But if you look at the bottom of this slide, this wind  
17 load is not required for structures less than or equal to  
18 60 feet in height, meaning it exempts distribution structures,  
19 distribution poles. That's the point of it.

20 Slide 16 shows a particular figure, it's 250-2(d),  
21 and this is explicitly referenced in your, you know, your PSC  
22 proposal, and because it, you know, highlights what's happening  
23 in Florida. And you can see that the wind speeds that are  
24 talked about are as high as 150 miles an hour and down to a  
25 little bit under 100, let's say 95 miles an hour in the



1 northern tip over there just for, you know, purposes of, of the  
2 discussion. I also assumed that in some of the calculations  
3 I'm going to show you. So we have something between 95 and  
4 150 miles an hour for Florida.

5 Now jump ahead to Slide 21, okay, flip ahead a few  
6 pages. All right. There's stuff in between you can ask me  
7 about afterwards, if you're so inclined.

8 All right. This wind from either the hurricanes  
9 under the extreme wind loading which we're talking about today  
10 or from the 60-mile-an-hour winds that we talk about in the  
11 winter, this wind puts a horizontal load on the conductors or  
12 the wires or the cables as you see in red on that figure.  
13 Okay? And it also blows on the pole, as you can see. That  
14 tends to be the dominant design criteria for poles. The weight  
15 of the ice, the weight of the pole, the weight of the  
16 conductors, minor, minor effect. This may not be intuitive to  
17 you, but it's not. It's the lateral horizontal force that's  
18 applied to the conductors or the wires on the pole which is  
19 generally the design criteria for the poles. Okay?

20 That is why, if you go ahead to Slide 22 -- or  
21 actually let's go to 22 and let's go to 23. What I'm going to  
22 do is I'm going to tell you what wood pole class means in case  
23 you're not familiar with it. Okay?

24 Slide 23. It shows -- this is right out of the  
25 ANSI-05 Wood Pole Standard. I serve on the ANSI-05 also. But

1 it's a very, you know, common standard that people in the  
2 industry are familiar with, both power industry and  
3 communications.

4 All right. We define the strength of poles, of wood  
5 poles. But let me tell you, the nonwood poles have to match up  
6 to this because everybody's familiar with the wood poles since  
7 it's the standard. So the nonwood poles we'll also talk  
8 equivalent classes. All right? There's some issues with that,  
9 but basically they'll say this is an equivalent Class 4 pole  
10 even if it's made out of something that's not wood. And the  
11 way we define the strength of these, of our poles, wood or  
12 otherwise, is you put a lateral load near the top of the pole,  
13 and you can see a load two feet from the top of the pole. And  
14 this is how the tests are done actually. Okay? It's not done  
15 on poles on the ground. You know, we do it a little  
16 differently. But basically you put a load two feet from the  
17 tip of the pole and you classify the pole by how much that load  
18 can be.

19 So if you look in this table to the right, you'll see  
20 I highlighted Class 4s. You see the four in red and the  
21 2,400 pounds next to it. That is a typical, you know,  
22 distribution pole, Class 4. That can take 2,400 pounds applied  
23 near the tip of the pole. And then we have a whole spectrum of  
24 strengths starting with Class Size 10, which is very small.  
25 The higher number classes are actually weak. It's sort of like

1 wire gauge; a higher number wire gauge is a thin wire. A  
2 smaller wire gauge is a thick wire. Spaghetti pasta is  
3 classified that way also. All right? The higher numbers are,  
4 you know, generally smaller and thinner.

5           So you start from the Class 10, which is a very small  
6 pole, can take a few hundred pounds, and you go down to a  
7 Class 1 which is really big for distribution, which is 4,500  
8 pounds, and then you can get into the H Class size, all right,  
9 you know, which are, you know, hardly ever used for  
10 distribution, and you go H1, H2, H3, H4, H5 and H6. And in  
11 this case the strength goes up with the H number. So this is  
12 how we classify the poles. All right? Remember, Class 4 is  
13 pretty typical. You might see Class 5s out there a lot, Class  
14 3s out there a lot. That's a typical distribution pole.

15           All right. Let's move ahead to Slide 25. Now how do  
16 we pick the strength of the pole to match the storm loads? We  
17 do not simply take the strength from that chart that I just  
18 showed you and say, well, that has to be at least as big as the  
19 load that's applied by the wind blowing. Now that's -- and you  
20 have to check whatever wind is appropriate, whether it's the  
21 extreme wind which is not for distribution but it is for  
22 transmission, okay, or whether it's the winter storm load. And  
23 you multiply that load, those pressures -- remember, I  
24 mentioned nine pounds per square foot, you should remember. We  
25 multiply that by a design or a safety factor. It's an

1 amplification factor, it's a safety factor. So in the case of  
2 Grade C construction which I'm going to talk about, the design  
3 factor is two. In the case of Grade B, it's four. So it's a  
4 healthy design factor, a safety factor that's applied to those  
5 winter storms. All right.

6           Next slide, 27. The magnitude of that safety factor  
7 depends on the grade of construction. Grade B is the highest  
8 grade of construction. It's the one that's supposed to be the  
9 most reliable. It will have the highest safety factor,  
10 possibly four to one. It will be four to one for the winter  
11 storm. It's very rarely required. It's required at crossings,  
12 railroad crossings, limited access highways, so it's not a very  
13 common -- it's not commonly required.

14           The one that is commonly required is Grade C. Grade  
15 C, and I highlighted it in red, is typical distribution  
16 designed for joint usage applications. It will apply when you  
17 have primary power on the pole, meaning you have thousands of  
18 volts at the top of the pole. Okay? And you might have a  
19 transformer which steps down those thousands of volts to, say,  
20 hundreds of volts which you would use in your home: 120 volts,  
21 240 volts. And then a few feet below that you would have your  
22 communications cables, telephone cable, TV or whatever. That's  
23 typical Grade C construction. That is the most common one and  
24 that's the one we should be thinking about primarily in terms  
25 of my discussion here. Although I will refer to the others

1 too, Grade C is the one to worry about.

2           Okay. But what is Grade N? Grade N is the lowest  
3 grade of construction. I'm not sure how much of it is that's  
4 out there. It's not unusual. This applies when you don't have  
5 thousands of volts at the top of the pole, which means you have  
6 secondary power. You don't have the transformers on these  
7 poles. A typical example would be when you have  
8 telecommunications-only poles. Now we're not talking about  
9 that today. I mean, there could be a lot of  
10 telecommunications-only poles in that category.

11           But in terms of the joint use poles where you have  
12 power-owned poles, it would apply, you know, to when you had  
13 secondary power on the pole. There are no detailed  
14 requirements on this in the NESC. The most we say about this  
15 in Rule 263 is it doesn't have to be as good as Grade C. Okay?  
16 I put the quotes there for the exact words. But as I say, it  
17 doesn't have to be as good as Grade C. We're not telling you  
18 what it is. But we're also saying that initially it should be  
19 able to withstand expected loads without telling you what those  
20 expected loads are. Because, remember, those storm loads come  
21 out of the chapter that refers to Grade B and Grade C. All  
22 right? So it's very vague and you have to -- you know,  
23 reasonable people can make reasonable judgments of how to, you  
24 know, apply this, and I did something like this in one of the  
25 slides I'm going to show you, but there's nothing really

1 specific in the code about this whole category of structures.

2           So let me tell you about -- go to Slide 30. I'm  
3 going to tell you a little bit about what happened in 2007.  
4 2007 was just issued this month as we speak. Okay? It's  
5 applicable any time between now and February of 2007. Okay.  
6 It's 2007 because of the February date. Okay?

7           Go to Slide 31. We had several changes in the code,  
8 but the one that's immediately relevant to this is the fact  
9 that we actually reduced the design or the safety factor for  
10 the extreme wind load where it's applicable. Where is it  
11 applicable? It's applicable for transmission for the tall  
12 structures. For those structures for Grade C, and this is Rule  
13 250C, okay, we actually reduced the safety factor by a certain  
14 amount. Okay? So we're going the other direction. All right?

15           Now go to Slide 36. We did talk a whole lot about  
16 extending this Rule 250C to distribution poles. It was  
17 rejected. This discussion comes up every code cycle. It came  
18 up last code cycle for 2002, it came up this code cycle and  
19 it's going to come up next code cycle. I can promise you that.  
20 All right?

21           Let's go to Slide 37. What is there about this  
22 change proposal? It's Change Proposal 2766. This was  
23 developed internally to Subcommittee 5. Change proposals can  
24 in theory come from outside the subcommittee, from the public,  
25 and we get many, or they can come from within the subcommittee.

1 The most important ones come from within the subcommittee. We  
2 know it's important, we have to address these things, and we're  
3 going to be doing it again next code cycle. All right?

4 But in any case, in the preprint, the preliminary  
5 version of the 2007 code where we try to announce to the public  
6 a few years early what we're considering, this change proposal  
7 was put in as recommended. Now recommended doesn't mean, hey,  
8 we're going to run in and adopt it. What it means is please  
9 take a look at this very carefully. We're very seriously  
10 considering this and we want your public comments on this. All  
11 right? It's an important item here. And what it does is it  
12 would extend this extreme wind loading, this Rule 250C, to  
13 structures less than 60 feet, the distribution structures. All  
14 right?

15 But there's a very critical mitigating factor in this  
16 change proposal. It would limit the wind pressures for Grade C  
17 structures, for example. It also limits it for Grade B, but  
18 I'm talking Grade C here is the most common. It limits the  
19 wind pressure for Grade C structures that are less than 60 feet  
20 tall to 15 pounds per square foot, because at that pressure  
21 level you're having winds that are basically going to blow  
22 around debris and branches and take it down for other reasons  
23 that you're not designing for. Okay? Now these are very rough  
24 numbers. It's hard to pick out these numbers when debris and  
25 branches start flying around. But this is the number that

1 approximately we're talking about.

2           You know what? If this rule is passed, which it  
3 wasn't, it would have no significant impact in Florida because  
4 basically we're already designing for pressures that are at  
5 least that high. Because, remember I told you, remember that  
6 nine-pounds-per-square-foot pressure for Florida for wind?  
7 There's a safety factor of two applied to that. Nine times two  
8 is 18. We're already designing for within those pressure  
9 limits. Okay? Meaning above that pressure you're going to get  
10 flying debris. Okay?

11           Now let's go to Slide 38. Okay. This change  
12 proposal, as moderate as it is, okay, nothing compared to, you  
13 know, the one that's in your change, in your proposed rule,  
14 received the most comments of all change proposals submitted by  
15 Subcommittee 5. And that's a challenge because we have a lot  
16 of controversial issues. All right. Subcommittee 5 deals with  
17 a lot of these controversial subjects. More than 10 percent of  
18 the comments that came in regarding -- were addressing this  
19 particular change proposal. An overwhelming number of those  
20 comments, 90 percent of them, had strong objections. The  
21 minority, the 10 percent, said, look, we can live with this as  
22 a lesser of evils because we have those pressure limits in  
23 there. All right? And, by the way, the next three runner-up  
24 change proposals for comments also related to this rule. And  
25 the typical response from the industry across the country --



1 and, remember, most of the industry that's commenting on this  
2 is the power industry. Okay? Telecommunications comments, you  
3 know, were involved, but really the NESC and all the comments  
4 are pretty much dominated by the power industry. When I give  
5 presentations at panel sessions, it's to the power industry.  
6 All right? So, anyway, that's Slide 38.

7 Let's go to Slide 39. It was rejected, and I showed  
8 this one before, by a vote of 17 to 7. And the reason, you  
9 know, I highlighted in red again is because, look, you're going  
10 to increase pole strengths and cost and complexity. You're not  
11 going to get any significant increase in safety.

12 All right. Now I will tell you that different  
13 circumstances -- this vote 17 to 7 was one-sided but it's not  
14 unanimous by any means. Different circumstances might have  
15 affected that vote. But if you go back a minute to two slides  
16 before that, Slide 37, remember what they were voting on. They  
17 were voting on a very moderate change proposal that would have  
18 limited the wind pressure for such structures to 15 pounds per  
19 square foot. All right? If that limitation was not in it,  
20 first of all, it would not have been recommended in the first  
21 place in the preprint. Maybe it never would have gotten in.  
22 Who am I to say not recommended? Right? The public can still  
23 look at it and make their comments. You know, sometimes we  
24 reverse things. But it would not have been recommended.

25 Going to the next slide, 38. Instead of 90 percent

1 strong objections, you can figure it would be 99 percent strong  
2 objections, maybe 100. All right? And if you go to Slide 39,  
3 it would not have been rejected by a vote of 17 to 7. It would  
4 have been a much more one-sided vote. Okay? So there was no  
5 way that there was any possibility that the proposal such as  
6 you're proposing in, you know, in your Rule 6.034 would have  
7 been, you know, consistent with anything we would do in the  
8 NESC.

9           Okay. Now a general comment that I want to make, and  
10 this is true in general for the NESC but in particular for  
11 this, we believe the NESC, we ourselves, you know, believe the  
12 NESC is a well-respected document. We believe it's served the  
13 industry well. I base this on the comments that we, that we  
14 get from the industry, the interest when we give presentations  
15 and, you know, any other input that we've gotten. We,  
16 therefore, are very reluctant to make significant, dramatic  
17 changes because we don't want to disturb it too much, so we'll  
18 introduce gradual changes. And these gradual changes will  
19 minimize the potential impact and unintended consequences that  
20 may happen with a dramatic change. You have a dramatic change  
21 and I'm going to go into that a little bit.

22           Okay. Slide 41 is the proposed, proposed rule.

23           Slide 42. You're going to have three different  
24 effects or three different categories as I listed here. There  
25 will be a delay in restoration after a storm, there will be

1 other consequences and, of course, you have the direct effect.

2 Let me quantify this. Go to Slide 44. Okay? All  
3 right. This is a chart here, but I think it's understandable.  
4 What I've shown here is what the relative strengths would be  
5 based on the present rules, the present rules which are  
6 basically the winter storm that's applied to, you know, all  
7 structures, both distribution and transmission. And what would  
8 happen if we actually adopted this rule the way it's written  
9 now? On the left side of the dotted line, this vertical dotted  
10 line, it shows the present rules. On the right side it shows  
11 proposed rules by PSC, by Florida PSC. All right? Now let's  
12 look at the left side. I've got these three colored bars. The  
13 red one is the main one we should be thinking of. That's the  
14 typical Grade C construction. I show that at 100 percent, you  
15 know, just for relative magnitude. That has a two-to-one  
16 safety factor built into that nine-pounds-per-square-foot  
17 pressure I mentioned. The blue bar, which is Grade B, is twice  
18 as strong because it has a four-to-one safety factor  
19 approximately. Okay? The green bar, which is, I said,  
20 Grade N, well, there is no rule for Grade N. But what I said  
21 is, look, let's assume a safety factor of one-to-one for Grade  
22 N. That's a reasonable assumption, reasonable people might  
23 assume that, but there's no requirement in any way, as I  
24 indicated, for Grade N.

25 But let's look at the Grade C. That's at a

1 100 percent level. Now let's look to the right of the dotted  
2 line. For 95 miles an hour, which is at least what you're  
3 going to have in Florida at the very tip there, down to  
4 150 miles an hour, that shows the magnitude of what's going to  
5 be required for the pole strength. That means that Grade C  
6 pole will now be at least one and a half times to possibly as  
7 much as four times the present required strength. Okay?  
8 That's Slide 44.

9 Slide 45 shows what it means in terms of pole  
10 classes, which I introduced to you before. People in the power  
11 and, you know, the distribution industry, the utilities and in  
12 telecommunications are familiar with class sizes, possibly more  
13 than you are. But what it would show is that this class -- a  
14 typical Class 4 pole for Grade C which is shown in red, okay,  
15 you've got this four next to the red bar there, that's a  
16 typical size for distribution poles. Now you'd be jumping up a  
17 minimum of three class sizes to as much as eight class sizes up  
18 to H5 poles. This is really horrendous. Okay? So you're  
19 going to have an enormous increase in pole classes, okay, which  
20 corresponds to the required increase in strength. Okay?

21 Go to Slide 46. This is going to put in words in  
22 front of you what I just described informally. What's going to  
23 happen is this. You can have whatever increased costs are  
24 associated with the following: The Grade C applications will  
25 be one and a half to four times the present required strength,

1 three to eight pole classes, or the alternative is to just  
2 shorten your spans. Okay? You can accomplish it that way.  
3 All you'll need is one and a half to four times more poles.  
4 Now Grade B is affected less but still significantly affected.  
5 The Grade N applications, if it's applied to that too, and I  
6 saw nothing in the code that excluded anything like this, you  
7 will have three to eight times present required strength or  
8 six to 11 class, pole class sizes. Enormous. And there will  
9 also be more extensive use of nonwood poles.

10 Now I'm not personally against nonwood poles. I  
11 wrote the change proposals for some of these. All right. I've  
12 been involved in trying to -- I think they're good ideas in  
13 general, they have their place in the utility industry, and I  
14 think they should have access to it. But the combination of  
15 extensive use of nonconventional poles with more poles,  
16 stronger poles is going to have, going to have some other  
17 unintended consequences, other consequences. For one thing,  
18 when the typical storm comes along and knocks them down anyway  
19 because of the flying debris, you're going to have more poles  
20 to replace, more massive poles to replace, more nonconventional  
21 poles to replace. That is going to slow down your restoration.  
22 All right?

23 In addition, there's going to be a lot of confusion  
24 in areas in implementation. This rule, this extreme wind  
25 loading rule is complicated to use. The transmission engineers

1 complain when you put this into the code. The transmission  
2 engineers are very experienced. I mean, they're dealing with  
3 these tall structures, they deal with these type of issues.  
4 But they complain when we start putting this in. It's getting  
5 too complicated. Not that they're not doing it, but it's  
6 getting too close to what they're doing and they're getting a  
7 little nervous. Some of them are not so comfortable with this  
8 to the extent that they suggested change proposals to make  
9 these rules a little bit easier for them to use. Distribution  
10 people don't even come close to this. All right? They're  
11 going to make errors, there's going to be delays. And what the  
12 errors will do, I have no idea. We can only guess. All right.  
13 That's going to happen.

14 All right. And in the bottom there, the last one is  
15 there's going to be a significant increase in fatalities and  
16 injuries that are vehicular accidents. We're going the wrong  
17 direction of what the U.S. Department of Transportation wants  
18 and I believe the Florida Department of Transportation based on  
19 what I've seen recently. The U.S. Department of Transportation  
20 wants less poles. They don't want car accidents to the same  
21 extent. They're encouraging, you know, less poles. Here we  
22 are giving them more poles or more massive poles. All right?  
23 So there's going to be this other factor here which also  
24 relates to safety.

25 So what are my recommendations? Jump ahead to 55.

1 There are a whole lot of other slides in between. Some of them  
2 are complicated. The intention was to give you a headache if  
3 you want to get into it because I wanted to show you how  
4 complicated these rules would be. All right?

5 Let's go to Slide 56. Okay. And I'll step down this  
6 slide. These are my recommendations. I have basically -- my  
7 primary recommendation means if I had my druthers, you know, I  
8 mean, if I really had that, I would say, look, enforce your  
9 present rules. The present rules do give you a certain basic  
10 robustness, okay, as I've described during the talk. All  
11 right? I don't know to what extent this may have been, you  
12 know, a factor in the problems that you've had, but they should  
13 be enforced. And what does that mean? Make sure your  
14 design -- that your poles are within the capacity as defined by  
15 those winter storms, you know, with those safety factors. Pole  
16 inspection, I understand, you know, you're actively  
17 introducing. That's good. That's consistent with the NESC.  
18 It says you have to maintain strengths of your poles, and for  
19 Grades B and C it even tells you how strong they have to be.  
20 So those are good. That, to me, is the primary thing that you  
21 should do. All right.

22 I would not, therefore, adopt this other rule for  
23 extreme wind for all the reasons I've given you, not in its  
24 present form certainly. And I would encourage you to get  
25 active in the next issue.

1           Now we just had a 2007 issue, and it sounds like the  
2 2012 issue is six years off. It is not. It is not. Outsiders  
3 and guests comment all the time, our meetings are open, and  
4 they give presentations and they express their concerns. And  
5 we also have people who are active members of our subcommittee  
6 from Florida, from the utilities. All right? They're very  
7 outspoken and they're very vocal. And this 2012 Edition, work  
8 will start on that next year because the stuff that we do in  
9 Subcommittee 5, unlike the other subcommittees, we can't wait  
10 until 2010 which is when the code has to be finalized. We  
11 start right away. All right.

12           So 2007 we're going to start putting change proposals  
13 together. You're going to be sure there's going to be  
14 something addressing this issue. There's no doubt about it.  
15 It comes up every time. It's important. You know, we  
16 understand what you're going through. We wrestle with it all  
17 the time. It has to be finalized by 2010. So in this period  
18 between next year and a few years after that you're going to  
19 know what's happening and you can have a lot of input into  
20 that. In fact, your input could be very direct. NARUC, the  
21 National Association of Regulatory Utility Commissioners, has a  
22 representative on Subcommittee 5. All right. That can be  
23 very -- that -- they're voting members, all right, they're  
24 voting members. They have been since I gave a presentation in  
25 San Francisco to the commissioners there following ice storms



1 and other problems that were in the northeast in '98. Okay?

2 So you have a direct input, okay, to Subcommittee 5.

3 Now what's my alternative recommendation? I told you  
4 what I would do, you know, if I had my druthers. What would  
5 the alternative be? 57. Please limit the scope of this. At  
6 least exclude -- if you're going to go through with it, okay,  
7 exclude explicitly -- okay, be explicit about some of these  
8 things. Explicitly exclude Grade N applications. All right?  
9 They're not even covered in some of the -- in most of the rules  
10 that we're reciting here.

11 All right. Two, explicitly cite the 2007 Edition.  
12 The 2007 Edition, as I indicated, reduced the overload factors  
13 for Grade C when it applies, which is transmission only, of  
14 course. But if you're going to extend it down to distribution,  
15 at least use what's in 2007. It reduces the overload factors  
16 by -- it says 13 to 25 percent for Florida. It will be  
17 basically 25 percent for most of the state. That helps. It  
18 helps. You know, not as much as it should, but it helps. All  
19 right?

20 And, finally, I would really encourage you to do this  
21 as a pilot study because of all the problems that I described.  
22 Limit it to a specific area, a defined period. It would be  
23 very useful to have that information, you know, and I think it  
24 would prevent you from having widespread problems as I  
25 described. And that is it.

1 CHAIRMAN EDGAR: Thank you.

2 Commissioners, any questions for Dr. Slavin at this  
3 time?

4 Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: It's a question for staff.  
6 Staff, thank you. Mr. Breman, let's go to Slide 57, please.

7 MR. BREMAN: Excuse me. Which slide?

8 COMMISSIONER ARRIAGA: 57.

9 MR. BREMAN: Yes, sir.

10 COMMISSIONER ARRIAGA: Explicitly exclude, and there  
11 are two proposals there. How does that affect the proposed  
12 rule?

13 MR. BREMAN: I think what you're talking about in  
14 this slide is implementation of your policy, Commissioners. We  
15 haven't seen what the utilities propose in response to your  
16 policy to harden facilities and assets. So what you're seeing  
17 here is simply an implementation.

18 COMMISSIONER ARRIAGA: I don't understand. I'm  
19 sorry. I just want to know how does this recommendation affect  
20 the proposed rule; does it change, does it vary? Because I  
21 understood the Legislature explicitly said at a minimum NESC  
22 standards. So I'm wondering if by excluding these things, we  
23 are under the "at a minimum" suggestion or mandate from the  
24 Legislature. I may be confused. I don't know.

25 MR. BREMAN: Well, there's two ways to read the word

1 "exclude" here, and perhaps we need some clarification from the  
2 witness. Does exclude mean not to address at all or to require  
3 utilities to use it or --

4 DR. SLAVIN: No. No. What I mean is you should  
5 discourage the utilities from applying this rule to Grade N  
6 applications.

7 MR. BREMAN: Okay. We'll just go bullet by bullet  
8 then.

9 COMMISSIONER ARRIAGA: Excuse me?

10 MR. BREMAN: I'll go bullet by bullet.

11 Grade N applications, Commissioners, as you may or  
12 may not recall -- and we can clarify this with the FPL when  
13 they come forward during the Hurricane Wilma review that we  
14 did. A Grade N pole is not really used for distribution  
15 facilities for Grade C and B construction. They're light  
16 poles. One of the other slides showed that they don't really  
17 hold a lot of weight. Sometimes you see them as being meter  
18 poles and service drops and that kind of infrastructure for  
19 electric utilities.

20 With respect to the NESC 2007 Edition, that just came  
21 out. And those documents, when they come out, and they're  
22 published every five years, the Commission staff reviews them  
23 and then makes a recommendation to you whether or not it should  
24 be accepted in total or what other things should or shouldn't  
25 be accepted with respect to safety. So -- and I'm working off

1 of memory right now, but I do recall one recommendation where  
2 something in the NESC was not recommended for your acceptance  
3 and you did deviate from an NESC requirement when you, when you  
4 set the rule change.

5 The pilot study that is being recommended here, this  
6 really is implementation or a variance of that, of the rule  
7 where we say targeted infrastructure, identifying critical  
8 infrastructure and hardening those assets. That's the policy  
9 guidance in the rule. You're not telling the utility or  
10 anybody how to achieve that hardening. The utility simply  
11 needs to be prudent in the process. So I don't think these  
12 points on this slide really affect the rules. But it might be  
13 something that the utility considers in its review, in its  
14 decisions in implementation.

15 COMMISSIONER ARRIAGA: Thank you.

16 CHAIRMAN EDGAR: I've got some glare. Let's see,  
17 11:00. Let's take a short recess. We will come back at 11:15  
18 by the clock on the wall.

19 MR. WRIGHT: Madam Chairman.

20 CHAIRMAN EDGAR: Mr. Wright.

21 MR. WRIGHT: I would like to ask two kind of factual  
22 clarifying questions about Dr. Slavin's slides, if I might.

23 CHAIRMAN EDGAR: Can they be brief?

24 MR. WRIGHT: They are brief.

25 CHAIRMAN EDGAR: Okay.

1 MR. WRIGHT: Dr. Slavin, I'm just trying to  
2 understand some of the meaning of what you've presented. If  
3 you would look at your Slide 44, there are references in some  
4 of your slides to the points at which poles would be knocked  
5 down anyway. And my question -- the question about this is at  
6 what wind speed does the flying debris, as you've discussed in  
7 your presentation, knock down poles anyway?

8 DR. SLAVIN: It's approximately the -- it would be in  
9 the mid 80s, mid 70s, the mid 80s.

10 MR. WRIGHT: That's three-second gusts or sustained?

11 DR. SLAVIN: Okay. That's the, that's the  
12 uncertainty. When I said before it's hard to pick out the  
13 exact number -- because it could be as much as a 20 percent  
14 difference between one minute sustained speeds and three-second  
15 gusts. That is why when they picked this rule, they realized  
16 there was, look, there's a range here, and also it's kind of  
17 calibrated to the Saffir-Simpson hurricane definition of, you  
18 know, of category storms and is very vague. But they picked  
19 the 15 as being a round number that's about right. You can  
20 argue with that number. It might be 20 pounds per square foot,  
21 it might be 15, but it's in the range of, say, 75 miles an hour  
22 to maybe 85 miles an hour, that kind of range for three-second  
23 gusts.

24 MR. WRIGHT: Okay. And then the other question is in  
25 several of your slides you referred to a typical case in which

1 poles will be down regardless of extreme wind.

2 DR. SLAVIN: Right. What I mean by that is --

3 MR. WRIGHT: Did that correspond to what you just  
4 said, that basically something in a low Cat 1, 75 to 85 miles  
5 an hour, is what you would consider a typical case?

6 DR. SLAVIN: No. That's not what I was referring to  
7 actually, although that might be correct.

8 MR. WRIGHT: Okay.

9 DR. SLAVIN: What I was referring to is the fact that  
10 we get an overwhelming number of comments from the industry,  
11 okay, saying, look, the poles are coming down because of debris  
12 and you're not going to do anything about it. And that to me  
13 is what the typical hurricanes are where that's happening. If  
14 you have a situation where something else happened and that was  
15 not the source of the problem, then to me that was an atypical  
16 situation. So I did not mean in terms of wind speeds. What I  
17 meant was in terms of the response and the experiences of the  
18 industry.

19 MR. WRIGHT: Thank you. Thank you.

20 CHAIRMAN EDGAR: Thank you, Mr. Wright. Thank you,  
21 Dr. Slavin.

22 Okay. We'll go ahead and maybe be a little more  
23 realistic and I'll say 11:20 we will start again. We are on a  
24 short break.

25 (Recess taken.)

1 CHAIRMAN EDGAR: Okay. Thank you all. We will begin  
2 again. And before we do, I want to make sure that we do have a  
3 phone connection made. So, Mr. Dickerson, are you with us?

4 MR. DICKERSON: Yes, I am.

5 CHAIRMAN EDGAR: Okay. We are going to begin now  
6 with some questions on the previous presentation, and then we  
7 will move to the Embarq presentation after that. And so I do  
8 believe that we've got some questions from staff for Dr.  
9 Slavin.

10 MR. BREMAN: Before we begin that, there is a point  
11 of clarification with Commissioner Arriaga that I would like to  
12 follow up on, if that's okay.

13 CHAIRMAN EDGAR: Uh-huh.

14 MR. BREMAN: Commissioner, you asked with respect to  
15 the alternative recommendation being provided to exclude  
16 Grade N poles to explicitly cite NESC 2007 overloading factors  
17 and to apply a pilot study initially limited to geographic  
18 areas and defined periods; for example, one to two years.

19 The proposed rule, and if you turn to 25-6.0345, it  
20 states, "For the construction of distribution facilities, each  
21 utility shall, to the extent reasonably practical, feasible and  
22 cost-effective, be guided by the extreme wind loading standards  
23 specified by Figures 250-2(d) of the 2002 Edition of the NESC.  
24 As part of its construction standards, each utility shall  
25 establish guidelines and procedures governing the applicability

1 and use of the extreme wind loading standards to enhance  
2 reliability and reduce restoration costs and outage times for  
3 each of the following types of construction." Then it  
4 enumerates the types of constructions. So that's the rule. To  
5 me that's very clear. You're setting a policy and setting the  
6 guidance.

7 COMMISSIONER ARRIAGA: I want to thank you so much  
8 for the clarification because that's exactly what I was getting  
9 at. Being that we're not imposing any specific thing to  
10 anybody, it is moot to explicitly exclude it because it's not  
11 being imposed. That's what I was trying to get at.

12 MR. BREMAN: Yes, sir.

13 COMMISSIONER ARRIAGA: All right. Thank you.

14 MR. HARRIS: Thank you, Chairman.

15 Dr. Slavin, my name is Larry Harris. I'm staff  
16 counsel at the Commission here.

17 On Slide 39 of your presentation you had spoke about  
18 the NESC subcommittee's decision to reject a change. I want to  
19 clarify in my mind if I'm understanding what you're saying.  
20 The National Electric Safety Code is a safety code; is that  
21 correct?

22 DR. SLAVIN: Yes.

23 MR. HARRIS: Okay. And so the last sentence of that  
24 slide says, "The safety of employees and the public is provided  
25 using the current NESC loading requirements." Is it the intent



1 of your presentation today to stress that the NESC is for the  
2 safety of the public and workers?

3 DR. SLAVIN: I believe that's in the scope of the  
4 NESC as stated in the front of the document.

5 MR. HARRIS: So would your presentation today be  
6 directly applicable to the reliability of the electrical  
7 infrastructure in the State of Florida?

8 DR. SLAVIN: We tend to use -- we tend to think that  
9 they're related. I'm not sure they're synonymous. I can  
10 picture probably cases where you have something that's reliable  
11 -- or not reliability but not safety related because it depends  
12 what the consequences are if something comes down. Okay? So  
13 the -- you know, so I don't think they're synonymous, but I  
14 think they are related.

15 MR. HARRIS: So would it be fair to say that when the  
16 committee was voting on whether to accept these changes, they  
17 were looking from a safety perspective and not necessarily a  
18 reliability perspective?

19 DR. SLAVIN: Well, no, I think that's too strict an  
20 interpretation. I think we do tend to -- they are related. I  
21 said they're not synonymous, but they are related. That's why  
22 we have grades of construction which do deal with reliability,  
23 and we put safety factors in accordingly. So I think the  
24 answer you want is, yes, they are related. Okay. I don't want  
25 to use the word synonymous though because I can picture where

1 they may not be exactly identical.

2 MR. HARRIS: Thank you, Doctor. On your Slide 37 you  
3 used -- the last bullet point, "No significant impact in  
4 Florida versus present Rule 250B."

5 DR. SLAVIN: Uh-huh.

6 MR. HARRIS: Could you define for me what you mean by  
7 "significant impact"?

8 DR. SLAVIN: What I mean is that if you're going to  
9 limit the wind pressures to 15 pounds per square foot or  
10 thereabouts, because it is an approximation and I think I was  
11 trying to make that, and you're already designing -- say it was  
12 15 to 20, I think that's merely a range that I could figure  
13 out. I didn't want to get the slide too confusing. I didn't  
14 want to, you know, get into that kind of detail. But if you  
15 picture the range being 15 to 20 pounds per square foot as  
16 being the range above which you start to get the flying debris,  
17 and Florida is already designing to 18, all right, you're  
18 not going to -- you're already designing to the level at which  
19 the wind pressure -- you're already designing to the level  
20 below which the flying debris is not an issue. If you design  
21 to higher than the 18, the flying debris is going to take over  
22 and be the dominant effect. Okay? So there may -- so it  
23 may -- I'm not saying there's a zero impact, but it's not going  
24 to be much of an impact. Okay?

25 MR. HARRIS: Thank you. And the last question that I

1 have is is the National Electric Safety Code designed for sort  
2 of the day-to-day safety of the public and employees or  
3 designed for emergency situations or both?

4 DR. SLAVIN: I would say it's more the first. But  
5 there are some statements about emergency conditions, okay,  
6 where some of the rules might be able to be bent a little bit,  
7 so to speak. I forget the exact wording. If you look in some  
8 of the, in some of the sections there, they say on an emergency  
9 basis you might be able to, you know -- like in clearance  
10 issues, for example, you might be able to -- I don't want to  
11 use -- effectively bend the rules a little bit temporarily, and  
12 that might be open to interpretation where you can do it. I  
13 would say it's more in day-to-day -- it's for operation, it's  
14 for maintenance and it's for storms. It is for storms.

15 MR. HARRIS: All right. Thank you. Thank you,  
16 Chairman.

17 DR. SLAVIN: My pleasure.

18 CHAIRMAN EDGAR: Okay. Any additional questions for  
19 Dr. Slavin or for Verizon? Anybody else? No? No.

20 Okay. All right. Then thank you very much, and we  
21 will move on to the next presenter. Ms. Masterton.

22 MS. MASTERTON: Yes, Madam Chairman. And Embarq does  
23 have a PowerPoint presentation that we would also like to move  
24 as an exhibit into the record. And for consistency's sake,  
25 label it Embarq's Presentation, and I think the number would be

1 Exhibit 5.

2 CHAIRMAN EDGAR: Yes. Thank you.

3 (Exhibit 5 marked for identification and admitted  
4 into the record.)

5 MS. MASTERTON: And the way we've structured our  
6 presentation, George Finn is going to discuss some operational  
7 concerns that we have with the rules as proposed; Kent  
8 Dickerson, who's on the phone, will discuss some cost concerns;  
9 and then I'm going to conclude with some concerns regarding the  
10 validity of the proposed rules. So with that, I'll turn it  
11 over to Mr. Finn.

12 MR. FINN: Good morning, and thank you for the  
13 opportunity to address you today.

14 As Susan mentioned, my name is George Finn, and I'm  
15 currently the Director of National Policy for Embarq's Network  
16 Services Organization. Among other things, my team is  
17 responsible for the policies, methods and procedures related to  
18 outside plant construction, engineering, including pole  
19 attachments.

20 Prior to assuming this role in October 2005, I served  
21 as the Director of Customer Service Operations here in Florida  
22 where I was responsible for service operations in Central  
23 Florida from Yeehaw Junction up through Ocala, and have direct  
24 experience with the power and devastation of these storms as  
25 well as the lengthy recovery processes.

1           As you know, Embarq is both a pole owner and a pole  
2   attacher here in Florida and in the 17 other states in which we  
3   operate. As such, our policies, methods and procedures for the  
4   engineering and construction of outside plant facilities and  
5   pole attachments adhere to NESC, ANSI and Telcordia and  
6   Bellcore standards. These industry standards have been widely  
7   adopted and recognized as safe and appropriate. And based on  
8   our experience in 2004 and 2005 with our distribution plant,  
9   these standards proved to be sufficient.

10           While we certainly had poles damaged during the  
11   storms, we did not experience any massive pole failures. We  
12   found that the damage to our distribution facilities was caused  
13   by many factors: Airborne debris, falling trees, falling tree  
14   limbs, flooding, storm surge, sand, as well as wind.

15           I am unaware of any data from Florida or any of the  
16   other states in which we operate that suggests that the  
17   existing standards are inadequate, nor am I aware of any  
18   documented evidence that suggests that exceeding the current  
19   standards would provide any additional protection from these  
20   violent storms. As I mentioned, much of the damage came from  
21   falling trees, falling tree limbs, flying debris, storm surge.  
22   Just making stronger poles doesn't necessarily ensure that  
23   outages will not be had.

24           It is our opinion that any construction or pole  
25   attachment requirements that extend beyond the industry

1 standards should reflect the collective and agreed upon impact  
2 from all impacted parties. The electric, telecommunication and  
3 cable industries have historically worked cooperatively to set  
4 the standards for the joint use of poles, joint placement of  
5 facilities underground. We rely on each other to provide  
6 service to our customers and have proven the ability to work  
7 together successfully over time. We believe that adopting a  
8 model that gives one industry full discretion over these  
9 standards is undesirable.

10 In the area of underground construction, accepted  
11 industry standards have long been used to guide electric  
12 utilities and ILECS in the construction and use of common  
13 trenches. We work together on these standards every day, and  
14 Embargo remains supportive of joint trust use and new  
15 construction.

16 On Slide 3, just a few comments on cost-benefit  
17 analysis. Given the ambiguity surrounding what any new  
18 construction and attachment standard might be makes it  
19 extremely difficult to perform any meaningful cost-benefit  
20 analysis. Until the standards are clearly articulated, the  
21 size and scope of the changes laid out, no one can predict with  
22 any absolute certainty what those costs may be. And the  
23 ultimate cost of these rules will be both route and cite  
24 specific depending on the variables in each project: Whether  
25 we're talking about rock and sand, whether we're boring under

1 roads, driveways and streets, whether we're moving aerial  
2 cable, whether we're burying cable, whether we're in a  
3 greenfield environment or relocating existing plant. Until  
4 these unknowns are decided, it is difficult to make cost  
5 assumptions due to the inherent variability of this type of  
6 work.

7           And lastly on Slide 4, I just want to take a  
8 pragmatic approach to make sure we don't underestimate the  
9 level of disruption that could occur as existing rear lot line  
10 facilities are moved to front lot line facilities. It's not a  
11 simple matter of moving the cable from the rear of the lot to  
12 the front of the lot. It will require the placement of new  
13 poles, new cables, new terminals, require the removal of such  
14 from the rear facilities.

15           If the front line facilities are built underground,  
16 it will require new trenches, easements, rights-of-way, as well  
17 as dealing with the existing facilities, water, power -- or  
18 water, sewer, gas that are currently built underground.

19           In addition, it will also likely require  
20 premise-mounted equipment such as NIDs and drops to be  
21 relocated on the consumer's home to now be served from the new  
22 poling (phonetic). All of this activity results in torn up  
23 lawns, sidewalks and fences and makes for an inconvenience for  
24 Florida customers, and we think that that shouldn't be  
25 overlooked.

1           That concludes my portion of the remarks, and I'll  
2 turn it over to Kent Dickerson, our Director of Cost Support.

3           MR. DICKERSON: Thank you, George.

4           I'd like to thank the Commission for the efficiency  
5 of allowing me to make some very brief remarks via the  
6 telephone.

7           The first point would be that the electric companies  
8 have proposed a plan for cost recovery, and they've proposed a  
9 possible combination of funding from the local municipalities  
10 or cities that have requested a change in their plant, perhaps  
11 aerial going underground, and that they also would be able to  
12 make up portions of those costs that would not be potentially  
13 funded by that local entity through their normal ability to  
14 request rate increases from the Commission.

15          And so a point from a telephone industry perspective  
16 that would fall from that is that as attachers to poles that  
17 potentially have either had an increased cost from one loading  
18 or have been moved from back lot to front lot and/or were on a  
19 pole before and have moved underground potentially, that the  
20 costs that are incurred to do that construction to the extent  
21 the electric companies have already recovered those costs or  
22 have the ability to recover those costs through entity funding  
23 and rate increases, that they not, you know, be able to mix and  
24 include those costs in their attachment rates to, to cable and  
25 telephone companies.



1           And then second following that would be that the  
2 telephony attachers have no similar rate increase mechanism to  
3 recover their costs, and, therefore, it would be all the more  
4 important that any actions or activities be justified with  
5 sound cost-benefit analyses. And that was all the remarks I  
6 had. I'll turn it back to Susan Masterton at this point if  
7 there's no questions.

8           MS. MASTERTON: Thank you. And my remarks are really  
9 just another facet of the same theme that you've heard from  
10 Mr. Finn and Mr. Dickerson, and that is Embarq's belief that  
11 the rules just leave an unacceptable amount of discretion with  
12 the electric companies. The rules require that electric  
13 companies unilaterally adopt construction and attachment  
14 standards that may exceed the National Electric Safety Code and  
15 that appear to us to be without limitation. These new  
16 standards will substantially affect parties who attach to the  
17 electric utility poles.

18           Florida law prohibits an administrative agency from  
19 delegating its rulemaking authority to private entities, and  
20 I've included some cases that I think are relevant to that  
21 point of law. The first case, the Amara case, essentially  
22 stands for the proposition that a governmental entity cannot  
23 delegate its governmental powers to a private entity.

24           Then the second case or the second legal authority is  
25 an Attorney General opinion that this Commission requested, and

1 it was in relation to its regulation of motor carriers. It had  
2 set up private ratemaking entities to develop rates for the  
3 motor carriers, and then those entities were going to recommend  
4 those rates to the Commission. And the Commission was asking  
5 the Attorney General to say is that an improper delegation of  
6 our authority to a private entity? In that case, the Attorney  
7 General, after researching the relevant case law, determined  
8 that that situation was not an unlawful delegation, and this is  
9 what the opinion says about that. "The crucial factor in  
10 reaching this conclusion is the administrative agency's  
11 retention and exercise of ultimate authority to determine  
12 rates." And these rules don't do that. I mean, these are  
13 alleged to be guidelines but to us appear to be too ambiguous  
14 to, to adequately guide the electric companies in determining  
15 what standards might exceed the National Electrical Safety  
16 Code. And there's no approval authority for the Commission.  
17 In fact, the guidelines are never -- the standards are not  
18 required to be filed with the Commission or even required to be  
19 reviewed by the Commission.

20 Now some have argued that the provision that says  
21 that disputes can be brought to the Commission cures that  
22 invalidity. But the third case that I've cited, the Florida  
23 Nutrition Counselors Association case, refutes that decision,  
24 and it says that an enforcement action cannot validate an  
25 invalid delegation of rulemaking authority.

1           One of the primary reasons for requiring that  
2 administrative agencies adopt rules that will substantially  
3 affect other parties rather than private entities is that it  
4 ensures that the procedural protections of the Administrative  
5 Procedures Act as well as the provisions of the open records  
6 and open meetings laws are followed in adopting the standards.

7           In the case I've cited here, the News and  
8 Sun-Sentinel case, addresses an issue of public records that I  
9 think is relevant here because, as I understand it, one of the  
10 primary reasons that the electric companies do not want to file  
11 their standards with the Commission for approval is that  
12 they're proprietary and they don't want them to become public  
13 records. So I think that's a relevant case. But in addition,  
14 this delegation, Embarq believes, prevents the Commission from  
15 adequately fulfilling the SERC requirements of the  
16 Administrative Procedures Act. Because the rules, because the  
17 rules would result in standards that are unknowable at this  
18 time and at the time of adoption, the Commission is unable to  
19 ensure that it adopts the lesser cost alternatives that would  
20 achieve its regulatory objective. And the staff's revised  
21 SERC, I think, just points that out in a couple of places.

22           On Page 3 in the provisions about electric utility  
23 costs, the staff states, "Other rule changes would have  
24 additional cost, but estimates are not available at this time."  
25 And then on Page 4, the staff acknowledges Embarq's comments

1 that the Commission cannot know what the standards will  
2 ultimately be and, therefore, cannot know the added value of  
3 the additional cost any new standards exceeding the NESC may  
4 engender.

5 In addition, the staff -- although they discussed  
6 generally benefits from the rules, those are not quantified.  
7 They're just stated in generic terms that the entities and  
8 their customers would also substantially, benefit substantially  
9 from fewer and shorter outages from downed poles and lines.  
10 But there's no dollar value placed to that benefit to enable  
11 the companies to do some kind of -- or the Commission and the  
12 parties to adequately weigh the benefits versus the costs, the  
13 substantial costs that the other parties here today have  
14 indicated would be borne by the attachers, but also costs that  
15 the electric companies would incur.

16 So basically what Embarq is saying is that we support  
17 the proposal that BellSouth has put forth of the industry  
18 getting together to work out standards that would apply. And  
19 in the alternative of that, we're saying that the NESC is  
20 sufficient. Mr. Finn addressed that. We have no evidence --  
21 we don't believe the evidence contained -- the record contains  
22 any evidence that it was the inadequacy of the NESC standards  
23 that caused the damages in the storms. But if there are going  
24 to be any standards imposed in excess of the NESC, we're saying  
25 that to be valid they must be imposed by the Commission, not

1 unilaterally by the electric companies. And we've also  
2 suggested that the rules relating to the location of facilities  
3 should apply only to new construction because we believe that  
4 the cost and the disruption of moving existing facilities  
5 exceeds the benefits that doing that would impart. And that  
6 concludes my remarks. Thank you.

7 CHAIRMAN EDGAR: Thank you.

8 Commissioner Arriaga.

9 COMMISSIONER ARRIAGA: Ms. Masterton, you raise a  
10 very important point, which is the issue of delegation. And I  
11 confess to you that during the briefings that I've had with  
12 staff that issue has come to my mind also, and I've been trying  
13 to read and understand the pros and the cons and the different  
14 arguments that were placed forward.

15 If the PSC, the Commission changed the proposed rule  
16 as it is right now to require that any standards developed  
17 under these rules prior to all the negotiations and  
18 conversations you wish to have be brought back to us for our  
19 approval, does that remove any subdelegation concerns that you  
20 have?

21 MS. MASTERTON: I think that that would go a long way  
22 just from the way you've described it, yes, of addressing the  
23 subdelegation concerns. Because when you do that, that would,  
24 at the time that you approved them, that would give, ensure  
25 that the protections of the Administrative Procedures Act and

1 the ability for parties to have input would be assured.

2 COMMISSIONER ARRIAGA: Thank you.

3 May I follow up with staff? Mr. Harris, if that were  
4 the case, does staff have any specific issue with bringing  
5 those standards for approval to the Commission so they don't  
6 become a specific utility dictating mandates to anybody else  
7 and our authority or delegation of authority is no question?  
8 Does that raise any concerns to you?

9 MR. HARRIS: None whatsoever.

10 COMMISSIONER ARRIAGA: So you would be okay with a  
11 proposal like this?

12 MR. HARRIS: Yes, sir. And, in fact, I believe the  
13 original draft of the rule that we proposed for the first  
14 workshop did include some language that the standards would be  
15 approved by the Commission.

16 COMMISSIONER ARRIAGA: But it isn't like that right  
17 now.

18 MR. HARRIS: It was removed due to the workshopping  
19 process. There was a number of concerns brought up by some of  
20 the participants in the workshops that led us to believe that  
21 could be removed. We still believe there's no subdelegation.  
22 However, in order to strengthen the rule, we are not opposed to  
23 including language requiring them, the standards to be approved  
24 by you.

25 COMMISSIONER ARRIAGA: Okay. Thank you.

1 MS. MASTERTON: Commissioner, I -- Madam Chairman, if  
2 I may. I just wanted to note that some of the other parties  
3 have addressed some concerns about the jurisdiction of the  
4 Commission which I did not readdress here, and I'm not sure  
5 that this was -- in fact, I would say those parties would say  
6 that that mechanism would not address those concerns but it  
7 would address the concerns related to subdelegation.

8 COMMISSIONER ARRIAGA: And I do have some comments  
9 over jurisdiction, but I'll leave that for a little later. I  
10 want to hear the cable companies, et cetera, before I do that.  
11 Okay. Thank you.

12 CHAIRMAN EDGAR: Commissioner Tew.

13 COMMISSIONER TEW: I have a follow-up question for  
14 Mr. Harris. You said that you believe there would be no  
15 subdelegation issue. Can you elaborate on how you came to that  
16 conclusion?

17 MR. HARRIS: Yes, ma'am. My, my interpretation of  
18 the case law regarding delegation requires that the Commission  
19 make the ultimate decision, and you cannot delegate the  
20 ultimate decision to someone else, a private entity.

21 I believe in this case the rules were very carefully  
22 drafted to, A, establish your policy, which is one of the  
23 things that are allowed under the case law, that you can set a  
24 policy and then say here's our policy, here's what we want  
25 done, now you go do it. And then on the back end there needs

1 to be some ultimate review authority on your part. You can't  
2 just say go do it and you all enforce it, we wash our hands of  
3 it. You have to retain responsibility, for lack of a better  
4 word. I think the rules were drafted to allow you to retain  
5 that through staff audits, through your ability to ask  
6 questions, through the staff's ability to bring it back before  
7 you, and, most importantly, to the ability of any person, not  
8 just an attacher, but any person out there to bring back a  
9 complaint and say we have a problem with this standard or that  
10 standard or all of the standards. And it doesn't have to be  
11 when they're developed; it can be at any time. So a year from  
12 now, two years from now, five years from now you will be the  
13 ultimate decision-maker as to whether that standard is  
14 appropriate or not, and I think that removes the subdelegation  
15 argument.

16 COMMISSIONER TEW: I guess one follow-up to that.  
17 The case that Ms. Masterton mentioned about Florida Nutrition  
18 Counselors Association v. DBPR, and I know you may not have had  
19 a chance to look at it, but I think she was saying that an  
20 enforcement action cannot validate the delegation of authority.  
21 So, I mean, it sounds like to me that your answer is saying  
22 that because we have the enforcement action on the back end,  
23 that it does in a sense cure any sense of a delegation of  
24 authority.

25 MR. HARRIS: I have not read the case and I certainly



1 will. However, I'm not sure what the term "enforcement action"  
2 means. If that means that the delegated entity has the  
3 enforcement mechanism, that's a problem. If that means that  
4 the PSC would go to enforce that standard without having  
5 reviewed it, that would be a delegation problem. If, however,  
6 once the PSC reviews the standard and approves it and then  
7 seeks to enforce it, I think you remove subdelegation because  
8 you have been the ultimate decision-maker. So I would want to  
9 read it carefully for the distinction between what an  
10 enforcement action is: Are you telling the IOUS to go do it  
11 without you having any review or, if there's a problem, would  
12 you then make the ultimate decision and then you would enforce  
13 it? But I haven't read the case.

14 CHAIRMAN EDGAR: Commissioner Deason.

15 COMMISSIONER DEASON: Ms. Masterton, I believe you  
16 said that you -- that Embarq endorses the concept of a  
17 voluntary infrastructure advisory committee; is that correct?

18 MS. MASTERTON: That's correct.

19 COMMISSIONER DEASON: Okay. Now how does -- if such  
20 a committee were to be created, according to your  
21 understanding, how would that committee not violate your  
22 concerns about unlawful delegation?

23 MS. MASTERTON: I mean, this hasn't been entirely  
24 fleshed out with the industry, but in my -- the way I  
25 understand that proposal, the rule would not address the

1 standards in excess of the National Electrical Safety Code. It  
2 would require compliance with the National Electrical Safety  
3 Code as a minimum compliance to meet the rule. And I think  
4 that leaves then the industry to agree to additional standards  
5 that there's no rulemaking involved. It becomes just an  
6 agreement of the industry.

7 But to the extent that the Commission would feel that  
8 it, that it had a role or wanted to, you know, embrace that  
9 through the rule, then I think having approval authority for  
10 the Commission as the final determination would cure any  
11 delegation problems, just as the questions that Commissioner  
12 Arriaga asked about the current rule.

13 CHAIRMAN EDGAR: Were there any additional questions  
14 from staff?

15 MR. HARRIS: No, ma'am. Thank you.

16 CHAIRMAN EDGAR: None at this time. Any questions  
17 from anybody else regarding the Embarq presentation? No?

18 Okay. Then we will move on to the next presenter,  
19 and, Mr. Gross, that is you.

20 MR. GROSS: Just checked to see if I could still say  
21 good morning. I think I can.

22 Madam Chair, Commissioners, Michael Gross for the  
23 FCTA. And I thank you very much for giving us an opportunity  
24 to make a presentation today. And we also want to express our  
25 appreciation of previous opportunities we've had to make

1 presentations at expanded workshop opportunities and to make  
2 filings and to have our viewpoint heard and become part of the  
3 record. Thank you very much for that.

4 I have some handouts, and I would like to kind of  
5 take care of that first. I think that's being taken care of.  
6 Thank you. But what we propose to do today is I myself will  
7 make a brief presentation addressing some legal issues that  
8 seem to have come to the forefront in this matter, and then  
9 Michael T. Harrelson, our expert witness, will talk about some  
10 of the technical issues in the case. And we're going to try  
11 not to duplicate what's already been said, but we may  
12 supplement or complement some of the things that have been  
13 previously stated.

14 CHAIRMAN EDGAR: Mr. Gross, before we move right into  
15 that, let's go ahead and take up the documents that you've  
16 passed out. We'll have them be exhibits as part of the record  
17 of this hearing, and so go ahead and label them and we'll  
18 number them.

19 MR. GROSS: Yes. Okay. One document is Memorandum  
20 of Law in Support of the FCTA's Suggested Rule Changes.

21 CHAIRMAN EDGAR: Okay. And that will be Exhibit 6.

22 (Exhibit 6 marked for identification and admitted  
23 into the record.)

24 MR. GROSS: The next will be Comments by  
25 Michael T. Harrelson on behalf of the FCTA.

1 CHAIRMAN EDGAR: Okay. And we will number that as 7.  
2 Thank you.

3 (Exhibit 7 marked for identification and admitted  
4 into the record.)

5 MR. GROSS: Thank you. And a third exhibit, the  
6 final exhibit is a Description of Photos by Michael T.  
7 Harrelson on behalf of the FCTA.

8 CHAIRMAN EDGAR: Okay. That will be Number 8. And I  
9 think we're ready to jump into it.

10 (Exhibit 8 marked for identification and admitted  
11 into the record.)

12 MR. GROSS: Okay. Thank you. The FCTA does not  
13 dispute that Florida Statutes confer jurisdiction on the  
14 Florida Public Service Commission to prescribe and enforce fair  
15 and reasonable construction standards for electric transmission  
16 and distribution facilities, even those that exceed the NESC  
17 when doing so is necessary to ensure the reliable provision of  
18 electric service. And that comes right out of the authority  
19 set forth in Section 366.04(6) and Section 366.05(1).

20 In fact, as the FCTA has stated throughout this  
21 proceeding, the FCTA applauds the Commission and the Florida  
22 Legislature for taking these positive steps to address the  
23 storm damage and protracted power outages that were experienced  
24 during the recent storms. Cable operators, which are now  
25 providing telephone and broadband services in addition to

1 video, and, more importantly, their customers which number more  
2 than 5 million in the State of Florida have a genuine interest  
3 in assuring the integrity of the electric pole plant.

4 Furthermore, the FCC has acknowledged that utilities  
5 can rely on the NESC in prescribing standards as well as other  
6 industry codes that are widely accepted objective guides for  
7 the installation and maintenance of electrical and  
8 communications facilities.

9 The FCC also has said that a state requirement that  
10 is more restrictive than the corresponding NESC standard may  
11 still apply. However, in that same order which is cited in our  
12 memorandum of law, and I'm going to -- the reason we handed  
13 that out was to conserve time, and I'm not going to go into  
14 great depth as far as what's in that memorandum of law other  
15 than to highlight some of the main points of it.

16 But in the order cited in that memo, the FCC has said  
17 that a state requirement can be preempted if it is inconsistent  
18 with FCC rules and policies, and significantly that a utility  
19 may not be the final arbiter of denials based on capacity,  
20 safety, reliability or engineering, nor should the pole owner's  
21 determinations be presumed reasonable. Indeed, the law is  
22 clear that both the pole owner and a would-be attacher must  
23 agree that a pole lacks capacity before a utility may deny  
24 access on such grounds.

25 Specifically, the FCC's rule on access was challenged

1 by a group of electric utilities in Southern Company v. FCC.  
2 And in that case, the 11th Circuit Court of Appeals held that  
3 the FCC's regulations requiring utilities to expand capacity  
4 were overbroad in light of the statutory language in Section  
5 224(f) of the act and vacated the rule, just for some  
6 background. But the key point that we're citing that case for  
7 is the court also found that utilities may not make a  
8 unilateral determination that capacity is insufficient for  
9 third-party attachers. Specifically, the court explained that  
10 electric utilities do not have unfettered discretion to  
11 determine insufficient capacity because that could only be  
12 found as to a particular pole when it is agreed that capacity  
13 is insufficient. Thus, only where a third-party attacher  
14 agrees that a taller pole, rearrangement or make-ready is not  
15 feasible could capacity be deemed insufficient to justify a  
16 denial of access.

17           The reason I cite these pronouncements by the FCC and  
18 by the federal courts is because we have suggested language in  
19 our suggested rule changes that we think would address the  
20 problem by requiring standards to be jointly developed with all  
21 attaching entities and approved by the Commission. And I'll  
22 get to that subdelegation issue momentarily. So we didn't just  
23 make this up out of a vacuum that agreement among the parties  
24 would be more in line with the FCC decisions, you know, in this  
25 area. We're combining the holding on the capacity issue by the

1 11th Circuit that the parties must agree on whether there's  
2 sufficient capacity or not before access can be denied. And  
3 certainly if there's a dispute, that would be brought to the  
4 FCC if the parties can't agree on that. But also the  
5 Commission has made it clear that with respect to safety,  
6 reliability and engineering standards as grounds for denial of  
7 access, that the utilities don't have unfettered discretion or  
8 presumption of correctness and they cannot act unilaterally.  
9 So we feel that there is some legal support for the suggested  
10 rule change that we've put forth there.

11 Now as we've stated, the Commission may prescribe  
12 fair and reasonable construction standards including NESC or  
13 standards that exceed the NESC for the prescribed purposes of  
14 ensuring reliable provision of service. That's right out of  
15 your statutory authority. But in our view, the rules as  
16 presently crafted fall short of this fair and reasonable  
17 standard to the extent that they give an inappropriate amount  
18 of discretion to the utilities, which are in this case private  
19 entities which have an interest in the stake -- with a stake in  
20 the interest of the outcome of this proceeding; in fact, a  
21 pecuniary interest. And the rule doesn't provide adequate  
22 representation to other entities attached to the poles. The  
23 FCTA's proposed amendments address this problem by requiring  
24 that the rules be jointly developed.

25 Now the next point regarding the subdelegation issue,

1 and I agree and join and concur with the law and the statements  
2 that Ms. Masterton on behalf of Embarq made, so I won't rehash  
3 what she has said, but I would like to make a couple of  
4 additional comments on that issue.

5           There are cases where the Legislature has delegated  
6 authority to a state agency or government entity and there's a  
7 question about whether there's been an unlawful delegation of  
8 authority. And that originates in Article 3 of the Florida  
9 Constitution, which basically says that no branch of government  
10 shall exercise powers belonging to another branch of  
11 government. And that is a slightly different issue from the  
12 issue that we're facing right here. There the question is  
13 whether the Legislature gave the government agency sufficient  
14 guidelines or standards. We're talking about a situation which  
15 is an unlawful exercise of delegated authority where the issue  
16 is whether the agency has properly subdelegated its authority  
17 or improperly subdelegated its authority in this case to a  
18 private entity which has a pecuniary interest or conflict of  
19 interest in the outcome of this proceeding. And so I think  
20 when we look at the cases and we look for the reasoning and the  
21 principles that are applicable, we really need to look at cases  
22 that are more on point factually. And that's a situation where  
23 a government agency is delegating, delegating authority to a  
24 private entity.

25           And there's one case I'd like -- you know, throughout



1 this proceeding the FCC, the -- we're not the FCC yet -- the  
2 FCTA has expressed concerns over the fact that we have a  
3 history of over 20 years of litigation with the power  
4 companies. This is nothing personal. This is business. And I  
5 attached as an exhibit a representative sample of those cases,  
6 including cases that have gone to the United States Supreme  
7 Court: One case reversing an attempt by the power companies to  
8 increase our pole rental rates 500 percent on the basis that  
9 since we were now providing Internet service over the same  
10 plant without, without adding any additional plant to the  
11 poles, using the same plant that we used to provide video but  
12 now we added Internet service over that plant, the power  
13 companies claim that the FCC pole rental formula for  
14 calculating those pole rates no longer applied, and also took  
15 the position just incidentally that the FCC pole formula did  
16 not apply to the wireless entities who were attached. The 11th  
17 Circuit ruled in favor of the power companies and the United  
18 States Supreme Court reversed on that, just to give you an  
19 example.

20           So while we can only speculate as to what might  
21 happen as a result of these construction standards, history is  
22 very compelling, and it's the only thing we have to look at  
23 right now. I would hope that that history would not continue,  
24 but it might be an example of naivety to expect that things  
25 would change.

1           And there is a federal case which was out of the  
2 5th Circuit Court of Appeals in 1983 where the court observed  
3 the role of the private firm in this case in the preparation of  
4 the draft and final version of the environmental impact  
5 statement is particularly troubling in this case because the  
6 consulting firm also had a stake in the project which it was  
7 evaluating.

8           Now this was a case where the Army Corps of Engineers  
9 was supposed to prepare an environmental impact statement and  
10 they kind of subcontracted that out to a private entity that  
11 had a pecuniary interest in the outcome of the proceeding. The  
12 court went on to say an agency may not delegate its public  
13 duties to a private entity, particularly private entities whose  
14 objectivity may be questioned on the grounds of conflict of  
15 interest. So I just wanted to add those points to what  
16 Ms. Masterton had already said.

17           We think that our proposed amendments to the rules or  
18 suggested rule changes address the problem by including a  
19 requirement that the standards would be jointly developed. And  
20 even if not jointly developed, even if after an evidentiary  
21 hearing or some type of adversarial proceeding, they would in  
22 either case have to be submitted to the Commission for  
23 approval.

24           Now there's just one more case I want to cite and  
25 I'll move on from this point. But there was a case cited in

1 the joint reply comments of the IOUs that actually, I think,  
2 supports the, an unlawful exercise of delegated authority more  
3 than it does the opposite. But once again, this is a case  
4 where it was a question of whether the Legislature -- well, let  
5 me find the case and be sure if I'm -- actually this was a  
6 case, Brown v. Apalachee Regional Planning Council, where there  
7 was a delegation of a technical matter, and it was a case that  
8 held that as long as the Commission, the agency made the  
9 fundamental policy decisions, that implementation of technical  
10 matters to another entity would not by itself render the  
11 delegation an unlawful delegation. But in this particular case  
12 there were sufficient constraints, including considerable  
13 detail and specific criteria about a mandatory review process  
14 that the council had to follow. I mean, they had delegated  
15 their authority, but they were mandated to review the process.  
16 There was specific criteria for that review and there was a  
17 specific time when that review had to take place and ultimately  
18 approval by the planning council. And we don't feel that that  
19 has been provided for here. But we think that it could easily  
20 be corrected by the Commission, and we feel that the  
21 Commission's statutory authority actually requires it to assure  
22 that these rules are fair and reasonable and are for the  
23 purposes of ensuring reliable provision of service. The  
24 Commission needs to take a look at these standards and make  
25 that determination.

1           Now as far as the Florida Public Service Commission's  
2 jurisdiction over pole attachment, third-party attachment  
3 issues, the FCTA agrees that this Commission does, as we've  
4 said, has safety and reliability jurisdiction, and the FCC has  
5 said that it will show deference for safety and reliability  
6 standards developed by states, but reserving a right to preempt  
7 them when they feel that there's a conflict with federal  
8 policy, but at least, all other things being equal, will show  
9 deference to those state standards in connection with a pole  
10 attachment dispute that's been brought to the FCC. But that's  
11 how it works.

12           Now on the other hand, as far as the development of  
13 the standards, it would be our position that that falls  
14 squarely within the power and the jurisdiction of the state.  
15 And I won't say just the Commission, but the Commission happens  
16 to be the arm of the state that's been given this  
17 responsibility. But we can speak in terms of what the state's  
18 jurisdiction is, you know, even in terms of legislative acts by  
19 the state.

20           Now I'd like to just respond briefly to some comments  
21 that the -- the joint reply comments of the IOUs made arguing  
22 that a, a state that has not certified -- and I hope, I  
23 shouldn't presume, that all of the Commissioners understand  
24 that process, so I apologize if I'm going over something that  
25 you already are fully aware of. But states can certify with

1 the FCC following a process that's set forth in Section 224 of  
2 the Communications Act, the one that -- and that's the same act  
3 that addresses the nondiscriminatory mandatory pole access  
4 rights of telecommunications companies and cable companies.  
5 But in there they say a state, by meeting certain requirements  
6 and making a certain, certifying as to certain facts, can begin  
7 to regulate pole access issues. And that just hasn't been done  
8 yet by this Commission. And we haven't really relied on the  
9 Teleprompter case. Before my time -- I noticed that that case  
10 was before my time with the FCTA, but the FCTA just  
11 incidentally was an intervenor in that case. And that case has  
12 been very often cited for the proposition, not just in the  
13 context of pole attachment jurisdiction, but that in the State  
14 of Florida even where there's a federal grant of authority to  
15 the states, that in Florida the state legislature still has to  
16 enact some enabling legislation allowing a state agency to, to  
17 implement that grant of authority given by the federal  
18 government. And I think that's what that case was saying  
19 there. But I don't even think we have to look to that case.  
20 We can just look to the more recent FCC pronouncements on this  
21 issue.

22           Now contrary to the statements made by the joint  
23 reply comments, a noncertified state such as the State of  
24 Florida does not, cannot have jurisdiction over pole access  
25 disputes. And I just want to point out that attached to our

1 memorandum are excerpts from the order on reconsideration of  
2 the FCC's local competition order. And the power companies  
3 quote and cite to Paragraphs 114 and Paragraphs 116 where  
4 there's a lot of extensive discussion about the states that if  
5 a dispute, for example, is brought to the FCC by a cable  
6 company over a denial of access under the pretext of safety  
7 reliability issues, that the party asserting that the state has  
8 jurisdiction and has, you know -- and that the FCC does not  
9 have the jurisdiction, that the FCC will stand down and not  
10 take that case if it's persuaded that the state has  
11 jurisdiction. And the power companies are arguing that even --  
12 that that applies to noncertified states, not just certified  
13 states. But they have omitted the paragraph in the middle,  
14 Paragraph 115. They've cited to Paragraph 114 and Paragraph  
15 116. We have attached, it's in black and white, you can read  
16 it for yourself, it speaks for itself, we've attached the  
17 relevant pages. We quoted from Paragraph 114 which makes it  
18 clear that those other two paragraphs are talking about states  
19 that have been certified. So I just wanted to point that out.

20 Now if Florida chooses to regulate pole access  
21 issues, it must satisfy the certification requirements. If the  
22 state has not previously certified -- I can't turn this page  
23 here -- its authority over rates, terms and conditions of pole  
24 attachments and wishes to begin to assert that jurisdiction,  
25 including jurisdiction over access to poles, pursuant to

1 Section 224 the state must certify its jurisdiction over  
2 access. The FCTA's proposed amendments, we believe, rectify  
3 problems with the proposed rules because we have inserted what  
4 we call a savings clause for the Section 224 rights.

5 Unless there are any questions now, I would defer to  
6 Mr. Harrelson at this time.

7 MR. HARRELSON: Thank you. I have previously stated  
8 that the relative effectiveness of storm preparedness  
9 initiatives should be a major consideration in allocating  
10 limited resources to mitigate the outages from hurricanes. I  
11 placed top priority on the initiative to inspect transmission  
12 structures and substations and to fund remediation of the  
13 defects that might be found.

14 In joint comments on August 26th by the IOUs, they  
15 state, "The FCTA contends that it would be more effective to  
16 devote additional resources to inspecting and maintaining  
17 transmission poles and substations. However, the IOUs'  
18 experience has been that a relatively small portion of the  
19 overall storm damage is to transmission lines and substations.  
20 The IOUs believe that one of the principal reasons why the  
21 transmission system has fared well in recent storm seasons is  
22 that it is already built to extreme wind standards."

23 However, in the record as it's stated in FPSC Order  
24 060351 in the case background, it was issued April 25 of '06,  
25 it quotes, "Failures of various FPL transmission lines

1 during Hurricane Wilma caused at least 94 percent of  
2 Florida Power & Light's Hurricane Wilma substation outages."  
3 So if the power companies are correct, that it was a small  
4 portion of the overall storm damage, then I still contend that  
5 I'm correct that putting priority on inspecting and remediating  
6 transmission lines can do the most good in reducing widespread  
7 and frequently long-lasting power outages such as occurred in  
8 Wilma during -- due to transmission line failures.

9           In other joint comments filed August 18th, the IOUs  
10 criticized the definition of a pole, a distribution pole at  
11 full capacity as a pole which can be rearranged -- I'm sorry --  
12 as a pole that cannot be rearranged, strengthened or changed  
13 out as necessary to accommodate a request for access. But this  
14 is exactly the definition which has been used as standard  
15 industry practice for a make-ready on poles to allow cable TV  
16 attachments. The cable operators pay for those make-ready  
17 changes typically.

18           The power companies use the exact same definition to  
19 decide if a pole needs modifications or replacement to  
20 accommodate power facilities.

21           There are limitations to where a taller pole can be  
22 placed: Sometimes under other lines, over other lines, in  
23 dense trees, airport glide slopes. There's a number of field  
24 conditions that limit where poles can actually be replaced with  
25 taller poles.



1           Now getting to the proposed rules, electric power  
2 companies must have construction standards which specify  
3 generally what materials and what configurations of materials  
4 they would use on poles called construction units which they  
5 will normally use to achieve the performance standards that's  
6 contained in the National Electric Safety Code. The National  
7 Electric Safety Code is not a construction standard. It's a  
8 performance standard. This is the 2007 code. It was published  
9 August 1st of '07.

10           The NESC clearly and completely states what is to be  
11 accomplished for safety, but it doesn't tell how to accomplish  
12 it. The NESC covers both electric and communications lines and  
13 work rules for electric and communications workers. So  
14 construction standards, though they're necessary, do not and  
15 cannot contain all of the combinations of construction units  
16 which are placed on and which are added to poles in practice.  
17 Actual field conditions such as terrain, highways to cross,  
18 other lines to cross over or under require customizing company  
19 construction standards. And construction standards must be  
20 used in conjunction with the National Electric Safety Code to  
21 assure that the initial construction and later on added  
22 facilities still comply with the applicable version of the  
23 National Electric Safety Code.

24           Florida Cable TV members do need access to power  
25 company standards during their conducting of business. The

1 Florida Cable Association tends to review power company --  
2 intends to review power company construction standards which  
3 might adversely affect use of poles for joint use, and we  
4 intend to offer input accordingly whenever we have the  
5 opportunity. We do, by the way, endorse the collaborative  
6 approach that has been proposed. And I also agree with the  
7 comments by Dr. Slavin which suggest not incorporating the  
8 extreme wind standards for distribution poles.

9 I'm going to skip over the part recommending adoption  
10 of the 2007 code. It is in print and will be in effect  
11 mandatory by next year.

12 In Paragraph 25-6.034(4)(b), the portion of the rule  
13 states that electric facilities are grandfathered to previous  
14 editions of the code, and the language there actually misstates  
15 the code. So we suggest that that be rewritten to accurately  
16 state the code provision, but that it just plainly say that  
17 facilities are subject to prior editions of the code as the  
18 language in the code states, not just electric facility.  
19 Because the code applies equally to electric and communications  
20 lines.

21 Under Rule 25-6.0342, it requires each electric  
22 utility to establish third-party attachment standards and  
23 procedures. We feel that attachment standards should have  
24 flexibility for IOUs to require standards and clearances that  
25 are greater than the NESC requirements, but on poles that have

1 adequate height and strength. If a pole is tall enough and  
2 large enough and the electric company desires greater  
3 standards, it's good practice to require a greater standard on  
4 that pole. However, Part 2, we would urge that they accept  
5 compliance with the NESC as a final criteria before requiring  
6 that poles be changed out to taller or stronger poles. Such  
7 flexible attachment standards would allow for the efficient use  
8 of available pole space for future attachments by the electric  
9 company and communications companies. If the pole space and  
10 strength -- as the pole space and strength capacity is used up,  
11 the pole would have to be replaced only when the safety  
12 requirements of the NESC can no longer be met by that  
13 particular pole. This is a win-win approach to developing  
14 attachment standards. The attachment procedures associated  
15 with those attachment standards must be reasonable and  
16 nondiscriminatory.

17 I'd like to quickly just show some photographs that  
18 perhaps show at least another view of some cable attachments to  
19 some power poles.

20 The first pole is a photograph I took. In fact, I  
21 took all of these photographs in some previous work I was doing  
22 in Florida. This first photograph Number 1 shows a pole where  
23 I actually saw the process of adding the electric facilities to  
24 an existing pole. The spacing requirements were violated of  
25 the NESC, but it did not affect or overload the pole by any

1 means. The guy wires going across the road make the pole  
2 stronger, and the added equipment doesn't adversely affect the  
3 strength rating.

4           Number 2, please. This next pole is leaning, it's  
5 unstable. But the guying, if you can see the yellow guy marker  
6 to the right of the pole, that's a very short guy. But it's  
7 the guy that goes to the top of the pole guying the power  
8 attachments. That guy wire and anchor is just simply not  
9 holding that pole. Once you correct those guy wire problems,  
10 that pole could be straightened. And it's a stable pole  
11 because it has a support in four directions. It would not blow  
12 over by the wind if properly guyed.

13           Next. This is a very tall pole. It's a 50- or  
14 55-foot pole, so it would have something greater than 45 feet  
15 out of the ground if it's a 55. It has two electric circuits  
16 up top; one cable TV attachment and I think maybe a telephone  
17 drop as well. But it's a tall pole. It has a lot of stuff on  
18 it. It's not overloaded.

19           This other pole shows another frequent violation of  
20 the safety code. The power line, the triplexed secondary  
21 voltage line is not sagged anywhere close to the other power  
22 lines and it's hanging down. And as you might can see on the  
23 left side of the photograph, the power cable sags down and  
24 touches the cable TV. It has nothing to do with the strength.  
25 The line is surrounded by trees, and there's no strength

1 concerns about this pole.

2           Next. This is a Class N grade of construction type  
3 pole. It has no high voltage line on it. Dr. Slavin explained  
4 very well that these are not covered by the strength  
5 requirements of the code, and certainly they should not be  
6 confused with any effort to build lines to greater than NESC  
7 requirement strength.

8           Next. This one is a relatively tall pole. It has an  
9 electric circuit on the top. Then it has a different electric  
10 circuit below that for service to the homes coming from another  
11 power line on the other side of the street. Next comes cable  
12 TV and then some telephone drop wires. This pole is a good  
13 example of what I suggest: Leave plenty of extra space on tall  
14 poles. If it's an existing pole and very tall, don't crowd the  
15 power facilities with cable and telephone attachments. Keep  
16 them in their relative, useful height on the pole.

17           Next. This one is another one that has two cables on  
18 it, one telephone, one cable TV, one power circuit with a  
19 transformer. It's just a typical pole. I don't see any  
20 concern for extra strength and design on these type poles.  
21 There are some issues about attachment regulations, and that's  
22 something we really need to work together on. Next.

23           This one fell through the cracks, so to speak. It  
24 had been there for a year or two when I took the photograph,  
25 and I made two different visits five months apart. It's a

1 replacement pole that I believe was set after Hurricane Ivan.  
2 The other pole is yet to be transferred from the electric  
3 facilities, and one or more of the communications cables has  
4 been transferred. But the tree, I believe, based on what it  
5 looked like, part of that tree fell and broke the old pole. It  
6 didn't break it completely down.

7           Next. This pole has had two different attachments  
8 added in violation. The first was the electric attachments  
9 going to the right to serve a new customer violated some of the  
10 separation requirements. The next was an additional  
11 communications cable, fiber optic cable was added in violation  
12 of the separation rules, but there are no strength issues. The  
13 pole has lines going in four directions. Unless a tree takes  
14 down one of those lines going in one of those four directions,  
15 the pole has no strength issues.

16           Next. This one is even more impressive to me. It  
17 has two vertical electric circuits on it. Disguised somewhat  
18 in the trees below is two cables. One was added new and in  
19 violation of the application permitting and NESC requirements.

20           Next. This one is a pole with two electric circuits  
21 up top. It had a cable TV.

22           Next, based on information I was given, the light was  
23 added as a violation of the separation requirements of the NESC  
24 code. The next was a fiber optic cable added in further  
25 violation of the separation requirements. But I do not believe

1 this pole would have any strength problems.

2           Next. This one is a relatively lightly loaded pole  
3 up top with a single high voltage line, one transformer, some  
4 service wires going in two different lateral directions, one  
5 streetlight, and then it has several cable attachments below  
6 that, but they actually strengthen this pole. They go in four  
7 separate directions, making the pole more stable.

8           Next. This one is another Class N grade construction  
9 pole in the foreground. It has a common problem. It's not  
10 guyed to make it stable in the soft soil. The electric line is  
11 shown sagging dramatically and actually sagging below either  
12 telephone or cable TV drop wire. It needs some maintenance on  
13 it. There's no strength issues involved. There are NESC  
14 safety code violations with respect to the separation of  
15 facilities in the span.

16           Next. Another example of a common field problem, the  
17 secondary voltage triplex cable from the transformer in the  
18 foreground going to the pole in the background is not sagged up  
19 with the other power cables and it's hanging down but not quite  
20 touching the cable. There should be 30 inches of separation  
21 out in the span there to satisfy requirements of the code. As  
22 I have stated earlier, the work requirements of the electric  
23 and communications workers are covered in the National Electric  
24 Safety Code. They're also covered in OSHA regulations. But  
25 workers can safely work around these type conditions, workers

1 who are properly trained and equipped and use safe work  
2 practices.

3 And the final slide is a pole that I thought I'd put  
4 in because based on my experience I'd do a wind loading  
5 analysis on this one. It has one electric circuit up top, a  
6 secondary circuit with a floodlight on it, and then it has five  
7 communications cables. It's a relatively tall pole, so I would  
8 not render an opinion as to whether this one meets the  
9 requirements of the code until I saw some calculations on it.  
10 Thank you.

11 CHAIRMAN EDGAR: Thank you. Questions for FCTA?  
12 Commissioner Arriaga.

13 COMMISSIONER ARRIAGA: Mr. Gross, I think I heard you  
14 say, and please correct me if I'm wrong, that if we brought the  
15 standards back for approval by the Commission, your concerns,  
16 as Ms. Masterton just said before, your concerns regarding  
17 potential subdelegation of authority would be taken care of?  
18 Would you still have any concerns about that?

19 MR. GROSS: We would not have concerns about it. We  
20 would like some greater degree of -- the input that's provided,  
21 we'd put some language in there that would require notice and  
22 an opportunity to participate to take into account our own  
23 construction needs. That would be ideal. But something  
24 perhaps in between that language that we've suggested and the  
25 mere input; there might be some middle ground there.



1 But to answer your question directly, I think the  
2 most important thing is whether we -- even if we agree on  
3 something jointly with the power companies, I would still have  
4 a concern about the Commission's delegation of authority if it  
5 didn't review even an agreed upon set of standards and give  
6 final approval of it.

7 COMMISSIONER ARRIAGA: And I think I tend to agree  
8 with you, and I have made these comments before to staff. I  
9 really want to make sure that this Commission preserves the  
10 jurisdiction, the final authority, and it's not delegating  
11 anything. Because I want to remember something that  
12 Commissioner Deason said, I think it was yesterday: Whatever  
13 we do here has to be done in such a way that neither the FCC  
14 nor the courts will ridicule us, will turn us down. So I'm  
15 really, really concerned about that. And I want to make sure  
16 that we all, and the staff is listening, so that we all take  
17 care of those issues of delegation that concern me.

18 But now -- may I continue, Madam Chair?

19 CHAIRMAN EDGAR: Yes.

20 COMMISSIONER ARRIAGA: The process of getting to  
21 those standards, there is a proposal by the telephone companies  
22 here that we need to probably discuss a little down the line.  
23 I have to hear first from the IOUs and all that. But I think I  
24 heard you say that you have a long-standing, 20-year long  
25 history of litigation with the power companies. I'm just

1 wondering if we don't give you some kind of guideline, rule to  
2 work by in order to get to some definition of the standards,  
3 I'm wondering how you're going to be able to get to some kind  
4 of agreement in an infrastructure, infrastructure advisory  
5 committee, if that were ever to be approved.

6 MR. GROSS: I am hopeful that we -- and we support  
7 that. We join with the ILECs in moving forward with that  
8 proposal. It certainly would avoid a lot of potential  
9 litigation that might be very expensive and have a big  
10 delaying, consequence of great delay if the parties could sit  
11 down and work this out. But I agree, we have to be realistic  
12 about it. But I think talking is always good.

13 COMMISSIONER ARRIAGA: And we encourage that.

14 MR. GROSS: Whether it's in a personal relationship  
15 or between corporations.

16 COMMISSIONER ARRIAGA: And we encourage that, and you  
17 know that this Commission encourages that.

18 MR. GROSS: Yes.

19 COMMISSIONER ARRIAGA: What concerns me is that these  
20 conversations are going to go on forever because of the  
21 long-standing history of litigation and disagreement between  
22 you, FCTA, and the power companies.

23 MR. SMITH: Yes.

24 MR. GROSS: I think, and correct me if I'm wrong down  
25 the table here, that we've agreed on a 30-day limit. Am I

1 correct in that? Okay. That we would only -- we would try for  
2 30 days and that would be it. And everything -- failing some  
3 real substantial progress, then this proceeding would resume in  
4 the natural course.

5 COMMISSIONER ARRIAGA: And that brings me to the  
6 question that Commissioner Deason asked before. How is it that  
7 this supposed committee is not a potential delegation of  
8 authority by the Commission?

9 MR. GROSS: Well, I would say that that's a good  
10 question.

11 COMMISSIONER ARRIAGA: That's Commissioner Deason's  
12 question.

13 MR. GROSS: Yes. Commissioner Deason, very good  
14 question.

15 COMMISSIONER ARRIAGA: He's the one that makes the  
16 good questions here.

17 MR. GROSS: But I think that it would have to be  
18 brought back to the Commission and there would have to be some  
19 process by which the Commission assured itself that its  
20 statutory mandate was, was carried out by that. But whatever  
21 the work product was.

22 COMMISSIONER ARRIAGA: One last question. Would you  
23 agree then that if you were -- whether you meet in a committee  
24 or meet because you agreed to talk and come to an  
25 understanding, would you agree then that you need some guidance

1 from this Commission to work you through the process of  
2 negotiation with your peers?

3 MR. GROSS: I think that would be very helpful.

4 COMMISSIONER ARRIAGA: Would you agree that the rules  
5 we're proposing today, which are not final, would be a guidance  
6 for you to negotiate?

7 MR. GROSS: Well, I'm just going to speak for, for  
8 my, for the FCTA right now. I don't want to purport to speak  
9 for the ILECs because I'm not sure if they would agree on this  
10 or not. They may very well agree with us. But I think we  
11 could work, the FCTA could work within the structure of these  
12 existing rules, that we wouldn't have to just totally scrap the  
13 rules. Probably minor changes to the rules.

14 COMMISSIONER ARRIAGA: And we're open to the changes,  
15 open to discussion.

16 MR. GROSS: Yes. Could solve a lot of the problems  
17 in our view, in the FCTA's view.

18 COMMISSIONER ARRIAGA: Thanks.

19 MR. GROSS: But we're -- I think what this proposal  
20 is suggesting is not to promulgate the rules today necessarily,  
21 but to allow some time for the parties to try to work through  
22 this and bring something back. And perhaps -- you know,  
23 there's been some suggestion that rules might not even be  
24 necessary. But I think, speaking for the FCTA, that we would  
25 be willing to work within the, the structure of these rules,

1 and I think we could solve at least our concerns using these  
2 rules as the template.

3 COMMISSIONER ARRIAGA: I'm really sorry. He just  
4 brought something up that really caught me off guard. I didn't  
5 hear anything said in this infrastructure hardening proposal  
6 that you're not expecting us to do anything regarding with  
7 these rules. Besides my understanding of Regulatory Procedure  
8 101 that I got yesterday from the Office of Public Counsel is  
9 that we're going to do something today which is going to be  
10 actually approved in a future Agenda Conference. But I think  
11 that we should be able to provide you with some kind of  
12 guidance as to what is it you're going to negotiate. Because  
13 if not, we're going to find us 60 days from now or 30 days from  
14 now, given the long-standing history of litigation, we're going  
15 to find ourselves doing nothing 30 days, 60 days from now.  
16 That's my concern. I'm just wondering what kind of guidance  
17 can we give you so that your negotiations are in good faith and  
18 not a delegation of authority from us which you're questioning?  
19 So what I'm suggesting is don't you need the rules as a  
20 document by which you need to negotiate under? Proposed rules,  
21 not final approved rules.

22 MR. GROSS: I think so.

23 COMMISSIONER ARRIAGA: Thank you, sir.

24 MR. GROSS: I think so, yes.

25 COMMISSIONER ARRIAGA: Thank you.

1 CHAIRMAN EDGAR: Mr. Meza.

2 MR. MEZA: If I may respond briefly --

3 COMMISSIONER ARRIAGA: Okay.

4 MR. MEZA: -- to you, sir.

5 COMMISSIONER ARRIAGA: Okay.

6 CHAIRMAN EDGAR: Is there a clarification in there,  
7 Mr. Meza, that you would like to make an effort at?

8 MR. MEZA: Yes. I'd like to clarify for Mr. Gross if  
9 his concern -- or if he has any concern about the DOAH  
10 proceedings and the time periods associated with asking for a  
11 DOAH hearing as it relates to the IAC in the process.

12 MR. GROSS: We filed our DOAH proceeding merely to --  
13 as a responsible legal act not to commit legal malpractice. In  
14 our judgment, we had a couple of time frames within which we  
15 had some options as to when we could file that; ten days after  
16 the close of the last public hearing or within 21 days of the  
17 notice of publication. And at that point in time -- and  
18 there's more than one way to skin a cat, and this was just the  
19 way we decided to go. So we went ahead and filed that. And  
20 then the DOAH proceedings provide that if the agency, in this  
21 case the Public Service Commission and the FCTA could agree, we  
22 could hold that case in abeyance. And the hearing -- the ALJ  
23 granted us an abeyance, but requests a -- because we said we  
24 wanted to conclude these public hearings first and see if we  
25 either resolved the issues or at least narrowed them, and that

1 would be very productive and might even avoid the necessity of  
2 a DOAH hearing completely. So we got an order of abeyance, but  
3 on September 19th we need to file jointly, the Commission and  
4 the FCTA, the status of where we are on September 18th and when  
5 we will be ready for a DOAH hearing. We have to report that to  
6 the ALJ. I don't know. Did that answer your question, Jim?

7 MR. MEZA: Yes. Thank you for the clarification.

8 MR. GROSS: Okay.

9 CHAIRMAN EDGAR: Okay. Thank you, gentlemen.

10 Are there any questions from staff for FCTA?

11 MR. HARRIS: We just have one question.

12 Mr. Harrelson, the photographs you provided, would it be  
13 possible for you to provide the street locations where those  
14 photographs were taken? I believe our Division of Regulatory  
15 Compliance might be interested in following up on some of  
16 those. So if you could get the addresses to me, I'll forward  
17 that on.

18 MR. HARRELSON: I do have that in my records.

19 MR. HARRIS: Great. If you could provide that to me  
20 and I'll forward it. I think our auditors might be very  
21 interested. Thank you. I'm sorry, our safety engineers.

22 CHAIRMAN EDGAR: Okay. We have run over time a  
23 little bit. Mr. Adams, just as I'm trying to look at our  
24 agenda for the rest of the day, you are the next presenter.  
25 And can you give me just an estimate maybe of about how much

1 time?

2 MR. ADAMS: No more than ten minutes.

3 CHAIRMAN EDGAR: Okay. Then why don't we go ahead  
4 and have you come up, if that's all right with you. And then  
5 after the Time Warner presentation, we'll take a break for  
6 lunch.

7 MR. ADAMS: Thank you, Madam Chairman. We appreciate  
8 the opportunity to appear here today. I am Gene Adams  
9 representing Time Warner Telecom. And with me today is also  
10 Ms. Carolyn Marek, Vice-President of Governmental Affairs for  
11 Time Warner Telecom.

12 We have participated in the rule development  
13 workshops and appreciate the opportunity to appear here today  
14 and also give some further comments and testimony.

15 Primarily, our costs, first and foremost, or our  
16 concern is the cost of these rules. We had previously provided  
17 in the rule development workshops some of the estimates of  
18 costs to Time Warner, and we had filed those under the  
19 confidentiality protections that the Commission provides. But  
20 we would like to state today that if the rule is implemented,  
21 and if all of the movement from back lot to front lot  
22 implications were fully implemented, and if all of the  
23 undergrounding contemplated by the rule were to take place,  
24 Time Warner could, it could cost Time Warner up to \$100 million  
25 to move its facilities that are currently in place in Florida.



1           For a competitive telecommunications carrier that  
2 would be an incredible burden, and one which we are not able to  
3 recoup as the IOUs and others could recoup through either the  
4 rate mechanisms, the storm recovery costs or some of the other  
5 cost recovery mechanisms that the Commission has provided,  
6 including the cost-in-aid-of-construction rule that you're also  
7 reviewing here today.

8           Secondly, along with that cost concern, we believe  
9 that the IOUs and others who are also competitors of ours in  
10 the telecommunications business could set these standards. And  
11 this is part of the discussion you were just having with  
12 Mr. Gross is the setting of the standard beyond the minimum  
13 standard so as to exceed the standard could effectively  
14 engineer us off the pole. I believe, as Embarq has also  
15 stated, there doesn't appear to be a limitation on what is, you  
16 know, at a minimum or beyond a minimum could be and where that  
17 could be. And, accordingly, in our rule that we filed as  
18 attached to our comments, we've also asked that you adopt the  
19 2002 rule or the 2007 rule now as may be appropriate and not  
20 use the words "at a minimum." And while I know the Legislature  
21 has granted you that authority, we believe that you should set  
22 the standard as the rule. Because to do otherwise, again,  
23 invites every utility to set a different standard of X or X  
24 plus 1 or X plus 2 or X plus 3, and having to comply with that  
25 could be so financially burdensome that we're simply unable to

1 be competitive anymore.

2 Further, as those companies, again, get further into  
3 the competitive process, whether it may be broadband by wire or  
4 whatever, you know, they may be tempted to use it as a means  
5 to, to ensure that there is no competition or that that  
6 competition is literally driven out of business. And I know no  
7 one would set out to do that intentionally and I know everyone  
8 starts out with the best of intentions, but you may just find  
9 yourself in a position that you do that nonetheless.

10 Finally, you know, we believe that the Commission  
11 should direct staff to work with all the parties. This may be  
12 the first time I'm ever going to say this, it may be the last  
13 time I ever say this, but we certainly agree with what the  
14 other telephone companies have said here today with regard to  
15 participating in some further review processes through an  
16 advisory committee. We feel that might be productive in  
17 allowing us to develop some standards, certainly develop some  
18 underground processes or process rather for us to work together  
19 on undergrounding trenching standards and other things that  
20 might let us all share the burdens of this and yet at the same  
21 time let us all contribute effectively to protecting the  
22 public's telecommunications from storm damage.

23 So, again, we would urge you to adopt the rule  
24 amendments that we have suggested which would strike the words  
25 "at a minimum." And also the PSC should and we believe must

1 review all of the plants for consistency and adopt a standard  
2 so that in fact there is a consistency among all of the  
3 utilities in implementing these safety construction standards.  
4 And with that, I would have -- Ms. Marek could make any  
5 comments, if she has any, to follow up on that.

6 MS. MAREK: I actually don't have any additional  
7 comments to add to that. Thank you.

8 CHAIRMAN EDGAR: Okay. Thank you very much.  
9 Commissioners, any questions for Time Warner? No. Any from  
10 our staff?

11 MR. HARRIS: No, ma'am.

12 CHAIRMAN EDGAR: No. Any from anybody else? Seeing  
13 none, thank you very much.

14 MR. ADAMS: Thank you.

15 CHAIRMAN EDGAR: Okay. It is almost 1:00. In just a  
16 moment I think we will go on break for lunch. I intend to  
17 start back up at 2:00 by the clock on the wall. We will begin  
18 with hearing from the presentations from the representatives of  
19 local government that are here with us today, and, Mr. Wright,  
20 that will put you up as first.

21 Okay. We are on a break until 2:00.

22 (Lunch recess.)

23 CHAIRMAN EDGAR: When we left off, Mr. Wright, I  
24 believe that it was your turn next, so we will begin with you.

25 MR. WRIGHT: Thank you, Madam Chairman and

1 Commissioners.

2           It's my pleasure and privilege to be here today on  
3 behalf of the Town of Palm Beach, Florida, and the Town of  
4 Jupiter Island, Florida. The Towns and I thank you very much  
5 for the opportunity to address you.

6           The Towns have been active participants in these  
7 proceedings since before they were docketed. Both of us  
8 participated in the Commission's first workshop on this subject  
9 on January 23rd, and we have submitted written comments and  
10 participated actively, as you know, at the workshops and agenda  
11 conferences as the proceedings have gone along.

12           We, the Towns, are also participating in a  
13 comprehensive study of the life-cycle cost-effectiveness of  
14 underground and overhead electric distribution facilities  
15 through a group of Florida municipalities who have formed the  
16 Municipal Underground Utilities Consortium.

17           As an initial and overall comment, I want to say  
18 that the Towns commend the Commission and the staff for their  
19 efforts and for the substance of the proposed rules which can  
20 be expected to provide significant and meaningful improvements  
21 in electric service reliability and provide concomitant  
22 increases in total economic value to Floridians, as well as and  
23 part of which are, reductions in electric utility operation and  
24 maintenance costs.

25           Specifically, the towns support the provisions in

1 proposed Rule 25-6.034 that require utilities to establish  
2 construction standards guided by the extreme wind criteria of  
3 the National Electrical Safety Code. The Towns support the  
4 provisions in several of the proposed rule sections that  
5 require that the cost of hardened overhead facilities,  
6 facilities built to whatever new standards are adopted pursuant  
7 to amended Rule 25-6.034 to be used in computing contributions  
8 in aid of construction for underground service and for  
9 overhead-to-underground conversion.

10           The Towns support the provisions that require  
11 utilities to locate distribution facilities in rights-of-way  
12 where local government applicants, such as the Towns, satisfy  
13 the utility's legal, financial, and operational requirements.  
14 The Towns support the provisions in proposed amended Rules  
15 25-6.115 and 25-6.078 that require the inclusion in the CIAC  
16 calculation of avoided utility operating and maintenance costs,  
17 including vegetation management costs that are avoided by the  
18 use of underground facilities, and more significantly, by  
19 including the life-cycle expected value of avoided storm  
20 restoration costs that are saved through the use of underground  
21 facilities as opposed to overhead.

22           The Towns specifically support the proposed treatment  
23 of corporate overhead costs in accordance with proposed Rule  
24 25-6.115(11)(b). These provisions are important to prevent  
25 utilities from charging municipalities or other applicants,

1 potentially, for what I call corporate accounting overheads on  
2 work that the utility does not do.

3           These corporate overheads can be significant. In the  
4 estimates that I have seen provided to the Town of Jupiter  
5 Island and the Town of Palm Beach they are on the order of 20  
6 percent of the total project costs. We certainly agree that if  
7 the utility does the work, then they are entitled to include  
8 their corporate overheads in the costs. However, where the  
9 utility does not perform the underground installation work, and  
10 I'm sure you know that pursuant to other provisions of  
11 25-6.115, and pursuant to the utility tariffs, we are allowed  
12 to do the work ourselves. Where we do the work ourselves, we  
13 should receive full credit for all costs that the utility would  
14 otherwise charge. Your proposed rules implement this, we are  
15 grateful for that, we support it.

16           We support the proposed provisions in .064, .078, and  
17 .115 that allow for consideration and inclusion in CIAC  
18 calculations of additional benefits provided by underground  
19 facilities beyond just those that can be directly captured in  
20 utility accounting. This is real important in light of what  
21 appears to be widely accepted and, even to a more extreme  
22 degree than I had thought before this morning, that it is  
23 probably not possible to construct even hardened overhead  
24 facilities to withstand the impact of stronger wind storms. I  
25 had been thinking that it was Cat 4 and Cat 5 storms that were

1 largely vulnerable to flying debris, but according to what  
2 Dr. Slavin told us this morning, it seems like the wind speeds  
3 at which flying debris becomes problematic for overhead  
4 facilities are quite a bit less than that.

5           By comparison, except for the most extreme flooding  
6 or storm surge conditions, underground facilities will  
7 withstand Category 1, 2, 3, 4, 5 conditions, whatever it is,  
8 even where super-hardened overhead facilities would not. I can  
9 state this really concisely, and this is what the rule  
10 amendment goes to and it is very, very important. If you can't  
11 build an overhead system that is as reliable as an underground  
12 system, then the Commission, we strongly believe, needs to give  
13 appropriate recognition to the additional safety and  
14 reliability benefits provided by the underground facilities and  
15 the underground CIAC calculations. And your proposed rule  
16 amendments will at least enable the utilities and enable other  
17 affected parties, like the Towns, to come before you and argue  
18 for inclusion of those benefits.

19           The Towns do not want these rulemaking dockets slowed  
20 down. We don't want the Commission's adoption of these rules  
21 delayed. We want the rules implemented as soon as possible,  
22 within normal rulemaking procedures, and we are looking forward  
23 to filing our post-hearing comments, too. We want the  
24 implementing tariffs processed and put into effect as soon as  
25 practical. We want to get on with our desired

1 overhead-to-underground conversion projects with the CIACs  
2 computed fairly and consistently with the principles  
3 articulated in the Commission's proposed rules.

4 I do have a few more brief comments in response to  
5 some of the comments and arguments advanced by the  
6 telecommunications companies and the cable television  
7 association earlier today. I think there was a misstatement of  
8 what causes prolonged outages probably due, as best I can  
9 decipher it, to a misinterpretation of a statement in a related  
10 Commission order. It was suggested to you that it is, in fact,  
11 substation outages that caused the prolonged outages associated  
12 with Hurricane Wilma.

13 Now, I didn't have a chance since this morning to go  
14 back and check the record from FPL's 2005 storm cost-recovery  
15 docket that we processed earlier this year and in which, you  
16 know, I represented the Florida Retail Federation. But I did  
17 verify my recollection in a side conversation with an FPL  
18 employee earlier today, and I believe the following is  
19 accurate: That all of FPL's substations were back in service  
20 no later than four days after Wilma passed through FPL's  
21 territory. And that as of five days after Wilma passed through  
22 FPL's territory, there were still in excess of 2 million  
23 customers' meters not in service, and that the last FPL  
24 customers were not restored to service until 18 days  
25 afterwards.



1           So I don't think the suggestion that it is substation  
2 outages due to flying debris are responsible for prolonged  
3 outages was accurate, and I wanted to correct that. By all  
4 means ask FPL when they come up if they have a different view  
5 of things.

6           Regarding the jurisdictional and standards issues, I  
7 think it's clear, and I agree with Mr. Gross on this, that the  
8 PSC does have the jurisdiction to set safety standards.  
9 Personally, I think it is equally clear that the Public Service  
10 Commission has the authority to set standards for construction  
11 related to reliability. It appears to me, based on, you know,  
12 the research I have done today, that the Federal Communications  
13 Commission does, indeed, have the jurisdiction ultimately to  
14 override a state's standards adopted for safety and reliability  
15 purposes if its effect was to actually prevent attachments or  
16 if it were facially unreasonable and unjust, or if it were  
17 unjust -- and if the standards were unjust and unreasonable as  
18 applied.

19           But the FCC said real clearly both in their initial  
20 order on -- which one was it -- on local competition and in  
21 their order on reconsideration, and I'm reading to you now from  
22 the order on reconsideration the following: "The Commission,"  
23 the Federal Communications Commission in this instance, "will  
24 presume state and local requirements affecting pole attachments  
25 to be reasonable and are entitled to deference even if the

1 state has not sought to preempt federal regulations under  
2 Section 224C."

3 Now, in the simplest terms, it seem to me that what  
4 we are here about today is you all adopting standards for  
5 construction for safety and reliability purposes. It seems to  
6 me an obvious and fairly easy way to look at it is that  
7 everybody, whether it's the electric company, or the cable  
8 company, or the other cable company, or the telephone company,  
9 or whoever puts their facilities on the poles has to meet the  
10 standards and the utility's facilities have to meet the safety  
11 and reliability standards.

12 Back to the FCC for a second. I will say, you know,  
13 this would all be subject to litigation on a case-by-case,  
14 state-by-state basis, hypothetically, but I'll tell you, I  
15 cannot conceive, after the experience of the southeastern  
16 United States in 2004 and 2005, that the Federal Communications  
17 Commission would override standards adopted by Florida,  
18 Louisiana, Mississippi, Alabama, Georgia, South Carolina,  
19 Texas, or North Carolina, in response to the state commission's  
20 legitimate concerns over reliability and safety following the  
21 hurricanes that our region has experienced in these years.

22 Finally -- well, almost finally, with regard to the  
23 question posed by Commissioner Arriaga regarding including in  
24 the rule a specific provision providing for Commission review  
25 and approval, I will offer you my thoughts. I will say this.

1 I am inclined to agree with Mr. Harris' analysis that having a  
2 point of entry, which I think is inherent in the APA and  
3 inherent in the Commission's organic Chapter 366, satisfies and  
4 obviates the nondelegation issue that has been raised.

5           However, I will offer you this. If you look at  
6 366.03, it says that each utility shall provide service upon  
7 terms as required by the Commission. A good argument can be  
8 made that the pole attachment standards that the Commission is  
9 ultimately requiring through the exercise of its jurisdiction  
10 under Chapter 366 as amended this year, and through the rules  
11 that we are here about today, are actually getting at  
12 prescribing terms required by the condition, terms required by  
13 the Commission. And if you look at it that way, it argues, I  
14 think, very strongly for what I understood Commissioner Arriaga  
15 to be suggesting, and that is to go ahead and provide  
16 explicitly in the rules for a point of entry.

17           Regardless how the legal nuances might play out, I  
18 think -- personally, I would offer to you that I think the  
19 safest course is simply to do that, provide specifically for a  
20 filing of the utility's proposed standards, pursuant to your  
21 rules, for Commission review and approval. That way there is a  
22 very clear point of entry. There will be docket, it might --  
23 hopefully in a lot of cases it will be a PAA, but it should be  
24 a fairly easy process.

25           Also, I would say that the Towns do not object to the

1 Cable Television Association's suggested inclusion of an  
2 explicit statement that the rules are not intended to conflict  
3 with or impinge upon the FCC's jurisdiction. Again, frankly I  
4 think that goes without saying. Jurisdiction is what it is,  
5 and you couldn't by rule impinge on the FCC's jurisdiction  
6 anyway, but saying it in black and white might make things a  
7 little bit easier.

8 Again, we really appreciate the opportunity to have  
9 participated to date in these proceedings and the opportunity  
10 to present these comments to you today, and we look forward to  
11 continuing to participate as we get this done, as we go through  
12 the rulemaking process and the tariff implementation processes.  
13 Thank you very much.

14 CHAIRMAN EDGAR: Thank you, Mr. Wright.

15 Commissioners, any questions?

16 Commissioner Tew.

17 COMMISSIONER TEW: Thank you, Mr. Wright.

18 I do have one question with respect to the IAC  
19 proposal that I assume you have had a chance to look at now.

20 MR. WRIGHT: I'm sorry, excuse me? The which  
21 proposal?

22 COMMISSIONER TEW: The IAC proposal that was put  
23 forth by BellSouth and some of the other ILECs and the cable  
24 companies. The proposal that BellSouth outlined in their  
25 presentation.

1 CHAIRMAN EDGAR: I think it's IAC that may be  
2 throwing Mr. Wright.

3 MR. WRIGHT: The proposal to have the joint  
4 collaborative process on the front end?

5 COMMISSIONER TEW: Yes.

6 MR. WRIGHT: Okay, yes. Conceptually, yes. I mean,  
7 I heard it this morning.

8 COMMISSIONER TEW: Do you think that that may help us  
9 achieve the intended results any sooner than if we end up in  
10 litigation over the proposed rules as they are drafted now?

11 MR. WRIGHT: Yes. You know, it's always better if  
12 the parties sit down and try to resolve their differences on  
13 the front end. And, you know, the way I would look at it is  
14 given the 30-day time limit on the prefiling effort, my own  
15 view is that the 30 days will be well spent. In some cases it  
16 might indeed obviate the need for contentious litigation. And  
17 on the other end of the spectrum worst-case you have lost 30  
18 days and we can probably live with that.

19 COMMISSIONER TEW: Thank you.

20 CHAIRMAN EDGAR: Commissioner Carter.

21 COMMISSIONER CARTER: Where is the front end?

22 MR. WRIGHT: That's a good question. The rule as  
23 drafted would require the utility to make its filing in  
24 compliance with -- excuse me, that's not quite true. The rule  
25 as drafted would require the utility to establish its own

1 standards within 180 days of the rules effective date. I think  
2 perhaps you could define the front end as a period of time that  
3 ends 180 days after -- if you are going to adopt what I might  
4 call the prefiling mediation/collaborative approach, you could  
5 define the front end, I think, as that period of time ending  
6 180 days after the effective date of the rule and back it up  
7 from that. The folks would have to get together sometime, I  
8 would guess, in the window between 120 and 180 days after the  
9 rule is adopted.

10 COMMISSIONER CARTER: You wouldn't say the front end  
11 is when this process begun, then?

12 MR. WRIGHT: Well --

13 COMMISSIONER CARTER: Because you said 30 days from  
14 the front end. The front end keeps moving, doesn't it?

15 MR. WRIGHT: I think perhaps we are talking about  
16 different front ends. That is all I can really say. I thought  
17 we were talking about the front end being before the utility  
18 actually adopted standards and not really the overall  
19 rulemaking process. I thought we were discussing and my answer  
20 was addressed to the utility's adoption of standards as  
21 required by whatever rules you all promulgate coming out of  
22 these proceedings that we are already in. I understood it to  
23 mean the front end of the filing and review process for  
24 approval of the utility standards.

25 COMMISSIONER CARTER: Not front end as the beginning

1 of the process, which is really the front end, wouldn't you  
2 agree?

3 MR. WRIGHT: Yes, sir. And that would -- it would  
4 have been nice if this had been done before, but our front end  
5 has been going on for literally years.

6 COMMISSIONER CARTER: Thank you, Madam Chair.

7 CHAIRMAN EDGAR: Thank you, Commissioner Carter. And  
8 just if I may for just a moment to follow up on, I think, that  
9 line, to note as I'm sure we are all aware that this Commission  
10 met and decided to proceed with this rulemaking docket in  
11 February. And since that time three staff level workshops have  
12 been held that I certainly hope proceeded in a way that was  
13 collaborative and allowed for discussion and an exchange of  
14 ideas and for alternate language to be proposed.

15 Commissioner Deason.

16 COMMISSIONER DEASON: Mr. Wright, I have to ask you  
17 this question. You are here on behalf of the Municipal  
18 Underground Utility Consortium?

19 MR. WRIGHT: No, sir, I am here on behalf of the Town  
20 of Palm Beach and the Town of Jupiter Island, who are members  
21 of the Municipal Underground Utilities Consortium. I mentioned  
22 that as background because the Municipal Underground Utilities  
23 Consortium is funding a six-figure study, a comprehensive life  
24 cycle cost study of overhead versus undergrounding. I  
25 mentioned that as background as to the Town of Palm Beach and

1 the Town of Jupiter Island. I don't have a specific  
2 representational relationship with the consortium, although I  
3 do confer with them in our conference calls.

4 COMMISSIONER DEASON: Does that consortium have an  
5 acronym?

6 MR. WRIGHT: We pronounce it MUUC, Commissioner  
7 Deason.

8 COMMISSIONER DEASON: Oh, okay. I was just curious.  
9 It seems like particularly in the campaign air that we are in  
10 right now, every association or entity has a really nice, neat  
11 acronym that the letters fit together. Your letters don't do a  
12 whole lot, do they? I say yours, I know it is not yours.  
13 MUUC, right?

14 CHAIRMAN EDGAR: It's not M-U-D, so --

15 MR. WRIGHT: Yes, sir.

16 CHAIRMAN EDGAR: Commissioners, any further questions  
17 for Mr. Wright? And none from staff. Anybody else? I'm  
18 seeing no sign. Okay.

19 Mr. Wright, are you done?

20 MR. WRIGHT: Yes, Madam Chairman. Thank you.

21 CHAIRMAN EDGAR: Okay. Just checking. Then next on  
22 our list of presenters, Ms. Cox.

23 MS. COX: Thank you, Madam Chair and members of the  
24 Commission. I'm here for the city of Fort Lauderdale, and I'm  
25 here really just to ask a question, try to get a clarification



1 on a section of the Rule 25-6.115.

2 In reviewing the rule, the staff interpreted that  
3 part of the rule to -- or they felt that it could be  
4 interpreted that even though a group of residents of the city,  
5 or the city of Fort Lauderdale were to pay for all of the costs  
6 for undergrounding, that it would still be owned by the  
7 investor-owned utility. So, they are just trying to get a  
8 clarification on whether or not this rule would preclude the  
9 people who actually pay for the undergrounding from then owning  
10 it. And I don't know if this is an appropriate forum to get  
11 that clarification or not.

12 CHAIRMAN EDGAR: Mr. Harris.

13 MR. HARRIS: I think Ms. Kummer can answer that  
14 question.

15 CHAIRMAN EDGAR: Ms. Kummer.

16 MR. HARRIS: I could try, but she knows a lot more  
17 than I do.

18 MS. KUMMER: The tariffs typically say that even if a  
19 customer pays for a distribution facility it does belong to the  
20 utility. And I believe, although I haven't done any research  
21 on this, I believe the reason for this is because of grid  
22 integrity. The utility would be hesitant to be responsible for  
23 maintaining something they did not own and that could have an  
24 impact on the overhead grid. It is language in all of the  
25 tariffs, I believe, for all the IOUs.

1 CHAIRMAN EDGAR: Mr. Breman.

2 MR. BREMAN: I have some history with this rule.

3 There is also concerns with liability, owner becomes liable for  
4 the assets. And so the other part of the question is what  
5 constitutes a utility. So all of those factors are boiled into  
6 the fact that you have one utility serving the area. The rule  
7 does not prohibit Fort Lauderdale from municipalizing and  
8 becoming its own utility.

9 CHAIRMAN EDGAR: Thank you.

10 Mr. Stewart.

11 MR. STEWART: Thank you, Madam Chairman. My name is  
12 Greg Stewart, and I'm pleased to be here on behalf of the city  
13 of North Miami. I have some very brief comments that they have  
14 asked me to make.

15 First of all, having heard Mr. Wright's presentation,  
16 the city concurs with those comments that he has made and would  
17 adopt those. I think that generally speaking the city strongly  
18 believes that we should move towards undergrounding, both  
19 distribution and transmission lines. We think that that is the  
20 ultimate solution for reliability issues. The city residents  
21 have strongly stated their preference that they wish to kind of  
22 move towards undergrounding of utility lines, and the city  
23 government itself is attempting to move in that direction and  
24 assist them as they can.

25 As to the specific rule itself, the city supports the

1 inclusion in CIAC of operation and maintenance and storm  
2 restoration costs. We believe that that makes installation of  
3 underground lines and facilities less costly and therefore more  
4 accessible. We also support the requirement that the utilities  
5 track both overhead maintenance costs and underground  
6 maintenance costs. We think that is a valuable tool for  
7 planning purposes in the future.

8 We also support the language in 6.078 and 6.115 which  
9 would allow utilities to waive undergrounding cost  
10 differentials and to keep facilities in rate base where this  
11 Commission finds that there are quantifiable benefits from  
12 that. We believe that that is a first and a positive step  
13 towards eventually allocating reliability benefits and costs as  
14 necessary.

15 Overall, we are supportive of the proposed rule  
16 amendment, and we would ask you to adopt the same. Thank you.

17 CHAIRMAN EDGAR: Thank you, Mr. Stewart. Any  
18 questions? No. All right. Thank you very much. I appreciate  
19 your participation.

20 We have tried to put our presentations and presenters  
21 in an order by context, basically. Are there any other  
22 representatives from local governments who are here that I  
23 didn't recognize earlier that would like to speak or make  
24 comment? Seeing none. Okay.

25 Any other persons, other than the investor-owned

1 utilities, who would like to address the Commission on any of  
2 these issues? Okay. Then we will move into our next industry  
3 grouping.

4 Okay. I think we are ready, and, Mr. Willis, you are  
5 first on my list.

6 MR. WILLIS: Thank you very much. I'm Lee Willis, I  
7 represent Tampa Electric, but we have coordinated a joint  
8 presentation of the large investor-owned utilities in support  
9 of the rules.

10 The rules that are before you today are the product  
11 of extensive dialogue at three workshops where the language was  
12 thoroughly reviewed and considered over time. We want to  
13 commend both your staff and the Commission for the way that  
14 this proceeding has proceeded as rapidly as possible while  
15 providing numerous opportunities for input from all parties.

16 We believe that this has resulted in a fair and  
17 balanced group of proposed rules which should be adopted  
18 without delay. As we will discuss more thoroughly in our  
19 presentation, we believe that you should reject further changes  
20 in these rules and reject suggestions of additional delay.

21 This proceeding and the other proceedings that have  
22 come about before the Commission are a result of the increased  
23 hurricane activity in the 2004 and 2005 time frame. As a  
24 consequence, this Commission and the electric utilities have  
25 undertaken a comprehensive review of ways that the critical

1 infrastructure of the statewide coordinated grid could be  
2 improved to withstand severe weather conditions.

3           You have adopted a multi-pronged approach. In  
4 January you had an extensive workshop. It was followed pretty  
5 quickly thereafter with your pole inspection docket and order  
6 that was issued on February the 27th. You followed up again  
7 with your storm plan order and with this rulemaking. So you  
8 have a multiple approach to the issues that are before you.

9           I would say that in each of the venues you have  
10 considered various factors which could cause a pole to fail and  
11 considered ways to avoid those failures. And pole attachments  
12 have emerged as a very significant concern expressed by this  
13 Commission at every phase of your review of critical  
14 infrastructure. For example, in your February 27th pole  
15 inspection order, you found that nonelectric attachments impose  
16 additional strength requirements and that many attachments  
17 occur well after the date of installation. You observed that  
18 the National Electric Safety Code requires a pole must be  
19 strong enough to support the facilities attached to the pole at  
20 all times, and that third parties have completed pole  
21 attachments to electric investor-owned utility wood poles that  
22 were done without full consideration of the requirement of the  
23 National Electric Safety Code.

24           Wood pole strength inspections require remaining  
25 strength assessments as well as pole loading assessments. That

1 was in your order, as well. In your storm plan order you came  
2 up with ten initiatives for the companies to review. Among  
3 those was an audit of joint use attachment agreements. You  
4 required that we look at the location of each pole and the type  
5 of ownership and the facilities attached to it and the age of  
6 the pole and the attachments to verify that the attachments  
7 were made pursuant to a current joint use agreement, and that  
8 stress calculations shall be made to ensure that each joint use  
9 pole is not overloaded or approaching overloading for instances  
10 not already addressed in the pole attachment order.

11 Now, your basic theme in all of this is that nothing  
12 should be attached to the pole that is not engineered to be  
13 there in advance. And we will have additional presentation in  
14 a few minutes which underlines your finding and concerns that  
15 pole attachments can have significant wind loading and stress  
16 effects on a pole and can cause overloading, and that some  
17 attachments are being made without prior notice or prior  
18 engineering, and that steps should be taken to assess pole  
19 attachment effects on individual poles to prevent overloading.

20 The proposed Rule 25-6.0342, was in recognition of  
21 this theme and the very serious situation that the Commission  
22 finds exists with respect to pole attachments. You have come  
23 up with a rule which we believe is fairly balanced and is the  
24 product, as we have indicated, of extensive discussions and  
25 workshops and post-hearing comments, and we feel that it's fair

1 and balanced.

2 We now have a presentation by Eric Langley and  
3 Natalie Smith with respect to the various legal issues which  
4 have been discussed.

5 MR. LANGLEY: Good afternoon. I'm Eric Langley.

6 I appreciate the opportunity to talk to you today  
7 about two main issues. The first is the jurisdiction issue and  
8 the interplay between this Commission and the Federal  
9 Communications Commission.

10 The second issue is more of a responsive issue, and  
11 that is addressing a point that BellSouth raised earlier today  
12 suggesting that these rules would unlawfully impair their  
13 existing contracts with utilities.

14 On this first point, the jurisdictional point, it's  
15 important to keep the issues in the proper boxes. Because for  
16 the attachers to come in and say you can't do this because the  
17 FCC regulates pole attachments is nowhere near the full story.  
18 You have issues of rates, terms, and conditions in one box, and  
19 then you have issues of access, safety, reliability, and  
20 engineering in another box.

21 The issues of access, safety, reliability, and  
22 engineering have always been presumed to be regulated by the  
23 states and have never required certification from the Public  
24 Service Commission or from any other agency of the state. That  
25 is because a state knows best what standards should apply. But

1 looking at this on a more practical level, the arguments that  
2 the attachers are making saying, well, the FCC really has  
3 jurisdiction over this, it would completely, completely  
4 eviscerate this Commission's safety and reliability  
5 jurisdiction. All you have to do is look at a pole and see the  
6 percentage of usable space actually occupied by third-party  
7 attachers on that pole to know that you have to have  
8 jurisdiction over that.

9           Because, otherwise, you would be trying to exercise  
10 safety and reliability jurisdiction, which everyone in the room  
11 concedes you have, but then there is this portion of the pole  
12 that you can't touch and that just can't be the case from a  
13 practical point of view and the law supports that.

14           A point that Mr. Wright made just a minute ago and  
15 that I think some of the ILECs touched on this morning is that  
16 the FCC has rendered decisions and rulemakings where they are  
17 taking up engineering issues. Well, don't be confused with  
18 that somehow pushing the state commission out of this field,  
19 because that is a completely different issue.

20           The FCC looking at an engineering standard, whether  
21 it is one of the utility-specific standards or whether it is a  
22 standard from a state or local regulator is different than the  
23 issue of whether the Commission has the authority to enact  
24 those in the first instance, and so those issues have got to be  
25 separated.



1           A few times today we have heard references to the  
2 Teleprompter versus Hawkins case, it's a Florida Supreme Court  
3 case from, I believe, 1980, and it is true that in that case  
4 the Florida Supreme Court said that the Commission had  
5 unlawfully certified its jurisdiction over rates, terms, and  
6 conditions of pole attachment. But this is where we go back to  
7 those boxes that I was mentioning just a couple of minutes ago.  
8 You have these issues of rates, terms, and conditions, but then  
9 you have these other issues of access, safety, reliability, and  
10 engineering. And I'm not the one placing them in those boxes.  
11 Congress, the U.S. Congress put them in those boxes.

12           When the statute -- when the Pole Attachment Act, as  
13 it's called, originally was enacted back in 1978, there was  
14 nothing in there that required a utility to grant access. And  
15 so the provisions in Subsection F that except out the mandatory  
16 access where there is insufficient capacity or for reasons of  
17 safety, reliability, or generally applicable engineering  
18 purposes, just it wasn't there. Because you didn't have to  
19 have that exception when the mandatory access rule was not  
20 there. So that's what the statute looked like in 1978, and  
21 that was the context in which the Florida Supreme Court said  
22 that the Commission had gone beyond its authority in certifying  
23 jurisdiction over rates, terms, and conditions.

24           The bottom line there is that Hawkins, the  
25 Teleprompter v. Hawkins case in no way requires that this issue

1 be certified before the state can regulate safety and  
2 reliability, because safety and reliability were simply not  
3 issues in Teleprompter v. Hawkins. But more importantly, the  
4 statute, the federal Pole Attachment Act does not require  
5 certification of the access, safety, reliability, and  
6 engineering issues.

7 The next issue that I wanted to address was the point  
8 raised by BellSouth this morning. But before I move to that  
9 issue, did you all want to ask questions about the  
10 jurisdictional issues?

11 CHAIRMAN EDGAR: I think we're ready to move along.

12 MR. LANGLEY: Okay. BellSouth had suggested that  
13 these third-party attachment rules, and in particular some of  
14 the cost allocation rules, would unlawfully interfere with  
15 their contracts. Well, everybody in here knows that utilities,  
16 particularly investor-owned utilities, are highly regulated  
17 entities. And one of the things that the courts look to when  
18 addressing questions of impairment of contracts, i.e., whether  
19 a state legislative action somehow affects those contracts and  
20 whether that is an unlawful affect on those contracts, they  
21 look to whether the entity is regulated. And here utilities  
22 are heavily regulated. And the cases are replete with  
23 references to this line of analysis.

24 And so for BellSouth to suggest, or for anyone to  
25 suggest that these rules somehow are unlawful because they

1 impair contracts neglects the threshold question which is are  
2 we dealing with a heavily regulated industry. The answer to  
3 which is undoubtedly, yes.

4 And that concludes my portion, unless you all have  
5 questions, which I will be very happy to answer.

6 CHAIRMAN EDGAR: Thank you, Mr. Langley.

7 MS. SMITH: Good afternoon, Madam Chairman and  
8 Commissioners. My name is Natalie Smith of the Florida Power  
9 and Light Company Law Department in Juno Beach, and I thank you  
10 for this opportunity to comment on the proposed rules.

11 I will respond to three points raised by the  
12 third-party attachers. First, contrary to their assertions,  
13 the Commission's proposed rules do not unlawfully delegate the  
14 Commission's regulatory authority to electric utilities.  
15 Second, regulation is not a reason to shift costs to electric  
16 utilities and their customers. Third, the Commission has ample  
17 evidentiary support for its proposed rules related to  
18 third-party attachments.

19 On the first point, contrary to the assertions of the  
20 third-party attachers, the proposed rules do not affect an  
21 unlawful delegation of Commission regulatory authority to the  
22 utilities. Instead, the proposed amendments to Rule 25-6.034  
23 and proposed new Rule 25-6.0342, simply direct utilities to  
24 adopt construction and attachment standards that meet clearly  
25 articulated safety and reliability criteria. The Commission

1 retains authority to resolve disputes as to whether the  
2 criteria are met.

3 As discussed in detail in our written comments,  
4 Florida case law is clear that no unlawful subdelegation occurs  
5 where the fundamental policy decisions are made by the  
6 regulatory authority, and that is the case here. I know  
7 Mr. Breman earlier outlined the standards in the rules.

8 The Commission retains power to decide whether the  
9 construction and attachment standards established by electric  
10 utilities satisfy the rule and statutory-based parameters for  
11 construction and attachment standards. The Commission makes,  
12 one, the fundamental policy decision as to the guidelines that  
13 the standards must meet; two, retains discretion to determine  
14 whether the utility's construction and attachment standards  
15 comply with the proposed rules; and, three, the Commission will  
16 resolve complaints regarding the rules' implementation.

17 Because the proposed rules would not delegate  
18 regulatory authority to electric utilities, there is no merit  
19 to an argument that the proposed amendments and proposed rules  
20 are an unlawful delegation of authority. It is consistent with  
21 Commission practice for the Commission to rely upon the  
22 principle of management by exception whereby the Commission  
23 resolves complaints of any interested party who believes that a  
24 particular utility has acted unreasonably in defining and  
25 adopting a particular construction or attachment standard.

1 Indeed, the IOUs are not aware of another instance where the  
2 Commission has preapproved any type of construction standards  
3 as opposed to providing guidelines and enforcement mechanisms.

4           The Commission has often stated that its rule is to  
5 regulate utilities through continuing oversight as opposed to  
6 micromanaging day-to-day utility operations and  
7 decision-making. Here, in charging the utilities with the  
8 development of construction and attachment standards, the  
9 Commission has recognized that the development of those  
10 standards requires expertise and flexibility of the utility to  
11 deal with complex and fluid conditions.

12           The utilities are the entities that must design,  
13 construct, and maintain their systems, not the Commission or  
14 the third-party attachers. Consequently, the Commission's  
15 rules of necessity must be a general statement of Commission  
16 policy with the specific implementation left to each utility  
17 based on the particular facts and circumstances that each  
18 utility faces.

19           I have heard the discussion today about the  
20 submission of standards for Commission approval. While we  
21 believe that the proposed rules, as drafted, satisfy the  
22 Administrative Procedure Act and do not unlawfully subdelegate  
23 authority, we will agree to the concept of submitting standards  
24 for approval to the Commission and we will address the  
25 specifics of this in our post-hearing comments.

1           Turning to my second point, regulation is not a  
2 reason to shift costs to electric utilities and their  
3 customers. By ensuring that all attachments meet the required  
4 standards, the proposed rules will help ensure the pole owners,  
5 third-party attachers, and their customers will experience  
6 improved reliability. The appreciable benefits of the proposed  
7 rules, benefits to all electric customers as well as the  
8 attaching entities and their customers, do not come without a  
9 cost.

10           The attaching entities have presented no valid reason  
11 why they should enjoy the benefits of the proposed rules  
12 without sharing in the costs that are necessary to achieve  
13 those benefits, and there is no reason. Nonetheless, the  
14 third-party attachers assert that the cost of implementing the  
15 proposed rules should be shifted to the electric utilities and  
16 their customers because the electric utilities are rate of  
17 return regulated. This argument must be rejected.

18           Price cap regulation is not a reason to shift costs.  
19 The rules and standards will apply to all attachers in a fair  
20 and nondiscriminatory manner. Increased costs to attaching  
21 entities will not be any greater than to any other user of the  
22 poles.

23           Finally, turning to the third point that I will  
24 address, the Commission has ample evidentiary support for its  
25 proposed rules. The third-party attachers argue that there is

1 no factual basis for the proposed rules. This is incorrect.  
2 The Commission has reasonably determined that nothing should be  
3 attached to a pole that is not engineered to be there in  
4 advance. It reached this conclusion after finding that pole  
5 attachments can have significant wind-loading and stress affect  
6 on a pole and can cause overloading, and that some attachments  
7 are made without notice or prior engineering. The Commission  
8 consequently concluded that steps should be taken to assess the  
9 pole attachment effect on poles and to prevent overloading.

10 The IOUs agree that the wind-loading effect of  
11 third-party pole attachments creates stress on utility poles,  
12 contributing as much as 40 percent of the overall wind-loading  
13 of a typical pole line. The addition of attachments may force  
14 a design to use larger and more expensive poles or to use  
15 shorter spans, increasing the total number of poles on a line,  
16 therefore affecting the overall cost. The stress effect of  
17 third-party attachments is addressed in greater detail in our  
18 written comments filed August 18th, and the IOUs filed  
19 affidavits in support of this effect.

20 Thank you.

21 MR. WILLIS: We will next have a presentation by  
22 Kris Angiulli. Kris is the Manager for Construction Services  
23 for Tampa Electric, and her duties include the management of  
24 third-party attachments.

25 MS. ANGIULLI: Good afternoon. I appreciate the

1 opportunity to be able to speak before you this afternoon. I  
2 believe I've got a presentation that's coming up on PowerPoint,  
3 and I do not have handouts for you today.

4 I'd like to discuss some of the photos of cable  
5 attachments to Tampa Electric poles which we filed with our  
6 comments. These photos demonstrate the various sizes of cable  
7 attachments and their effects on our poles. In this first  
8 picture, the problem with this pole is that the midsection of  
9 the pole -- I don't think my pointer is working. I'll do  
10 without it. The midsection of the pole is literally being  
11 pulled apart by the cable attachments that you see right around  
12 the midsection there.

13 Next slide, please. In this photo you can see the  
14 solution to the problem. Our engineering staff determined that  
15 a spun concrete pole was required to replace the previous pole.  
16 Had we been given proper notice, we could have replaced the  
17 pole before it began to fail.

18 Next slide, please. Document 6, up on the screen,  
19 addresses an array of five different cables which are  
20 significantly larger in size than our service cable. This is  
21 the array here of the five cable attachments. And although you  
22 can't really see it up there, this is the service cable, the  
23 electric service cable.

24 Next slide, please. This picture here is indicative  
25 of the significant sagging that the communications cables can



1 have on our poles. I had the privilege of going out and  
2 viewing this particular installation. And in the midsection of  
3 the pole, which you can't very easily see in here, the bottom  
4 cable attachment was about the size of my leg.

5 Next slide, please. This is another example of a  
6 long span. Again, I had the opportunity to go out and view  
7 this installation, and right around the midsection here of this  
8 span, the bottom cable I was almost able to reach with my hand.

9 MR. HARRIS: Excuse me for a second. I don't want to  
10 interrupt. These are the pictures that were prefiled by TECO,  
11 correct?

12 MR. WILLIS: They are, yes.

13 MR. HARRIS: Commissioners, these are in your binder  
14 under Tab 13. I noticed some of you are looking at your  
15 screens. There are hard copies in your binders.

16 CHAIRMAN EDGAR: Thank you, Mr. Harris.

17 MS. ANGIULLI: Thank you. I'll proceed. Next slide,  
18 please.

19 This is an example of at least six or seven  
20 overlashed cables. I would like you to notice the size of the  
21 bundle of cables relative to the side of the electric service  
22 cable up at the top.

23 Next slide, please. In this photo, I'd like to draw  
24 your attention to, again, another long span where the cable  
25 attachment is sagging rather low, and you'll notice the

1 proximity of the cable relative to the vehicles and also  
2 relative to the entrance of the building.

3           Next slide, please. In this photo, I'd like to draw  
4 your attention to the size of this electric cable as it  
5 compares to the streetlight bracket. The streetlight bracket  
6 is approximately two inches in diameter, and then I'd like you  
7 to consider that streetlight bracket and its size compared to  
8 the cable attachments here which are anywhere from four to six  
9 inches in diameter.

10           Next slide, please. And this brings me back to our  
11 example of overlashing. And at this time I'd like to present  
12 you with a physical example which will be handed to you  
13 momentarily. And as you are passing that around, I would like  
14 to just continue with my discussion on overlashing.

15           Overlashing is the bundling of cables together with  
16 wire around other cable. Usually this begins with lashing just  
17 two cables together, but typically third-party pole attachers  
18 continue to add cables as their systems grow in an area. Tampa  
19 Electric has seen as many as seven cable attachments lashed  
20 together in a bundle. What starts out as a single cable may  
21 end up to be a bundle of cables about the size of a human leg.

22           Each overlashing adds additional wind-loading and  
23 stress effects on the pole. Cable companies typically don't  
24 give notice because they contend that notice is not necessary  
25 and not required, because the pole attachment rental rate is

1 the same for a single pole attachment as it is for a  
2 seven-cable bundle attachment. This practice ignores the  
3 considerable additional wind-load and stress effects that the  
4 larger poles can have on our poles -- excuse me, the larger  
5 cable can have on our poles.

6           During the initial installation of third-party  
7 cables, supporting guys and anchors are required to hold the  
8 weight of the cable and structural stress. As additional  
9 cables are overlashed without notice, guys and anchors are not  
10 changed out to ones that are strong enough to hold that  
11 additional weight. As discussed in my first photo, Tampa  
12 Electric has experienced instances where an unnoticed  
13 overlashed attachment has pulled the midsection out of the pole  
14 causing that pole to fail.

15           Now, with respect to unnoticed attachments, I'd like  
16 to mention that notification of attachments by third-parties  
17 is, at best, inconsistent, sporadic, and incomplete. Tampa  
18 Electric has also experienced attachments by third parties who  
19 don't even have pole attachment agreements with our company.

20           Overlashings are not typically noticed at all.  
21 During Tampa Electric's last pole attachment count in the  
22 field, over 21,000 unreported phone attachments were discovered  
23 and over 26,000 unreported cable television attachments were  
24 discovered.

25           Despite contractual and other written agreements with

1 third-party attachers which require advanced authorization of  
2 new pole attachments prior to installation, unauthorized and  
3 unreported attachments continue to be a problem. These  
4 incidences are not isolated and occur all over Tampa Electric's  
5 service territory.

6 And so, in conclusion, I'd like to just ask you, as  
7 you begin to become more aware of what we are discussing here  
8 in these proceedings, that perhaps as you leave to go home  
9 today that you start to look at the poles around here in your  
10 territory. And I believe that you will find that they are very  
11 familiar to the pictures that I have shown you here today.

12 And this concludes my presentation. Thank you.

13 MR. WILLIS: I would like to now discuss some of the  
14 proposed revisions of two of the rules, and then I'll be  
15 followed by some comments by John Butler with respect to the  
16 balance of the rules.

17 The attachers propose revisions to Rules 25-6.0341,  
18 which deals with the location of facilities, should be  
19 rejected. You have found and we believe that it is the case  
20 that this rule is needed to facilitate the location of  
21 distribution facilities in readily accessible locations, but  
22 you put very important language in this rule which says to the  
23 extent reasonably practical and cost-effective in order to  
24 reduce outage times and restoration costs resulting from  
25 extreme weather.

1           Now, the various entities have suggested that we must  
2 provide a mandatory notice of this activity, and I think one  
3 company suggested that that notice should be as much as twelve  
4 months. We feel that that is unworkable and ineffective and  
5 that your rule reasonably provides that the utility will seek  
6 input, and to the extent practical, coordinate with the others.  
7 We believe that this strikes a balance and that mandating, for  
8 example, a 12-month advanced notice would just induce gridlock  
9 and inaction. The utilities need flexibility to respond to  
10 customer's needs, and we will, of course, continue to seek  
11 input and coordinate with the others to the extent practicable.

12           There have been cost calculations that were presented  
13 to you which we feel are very much overstated and unreliable.  
14 We discussed that in more detail in our filed comments. And  
15 limiting this rule to new construction should also be rejected.  
16 We feel that this would undermine one of the primary objectives  
17 of the rule, which is enhancing the reliability of existing  
18 infrastructure.

19           The attachers have also proposed revisions to the  
20 Rule 25-6.0342. And we believe that those should be rejected,  
21 as well. One of the things that they have asked you to do is  
22 to not allow any standard which exceeds the National Electric  
23 Safety Code. We feel that the rule, as written, is appropriate  
24 and is consistent with Chapter 366 and the amendments to 366.05  
25 that were enacted by the Legislature in 2006, and that it is

1 appropriate and consistent to exceed the NESC in certain  
2 instances. In fact, you will find that utilities exceed those  
3 standards in many instances now, and that such a proposal would  
4 be a step backward and would degradate the system, which is  
5 exactly the opposite of what you are trying to do here.

6 We also believe that the suggestions that the  
7 standards be adopted by mutual agreement or by a collaborative  
8 process is unnecessary and unworkable and inappropriate. Such  
9 a change in the rule would allow third parties to effectively  
10 stall the process of finalization of the standards. And we  
11 believe that the rules as written now provide a fair balance  
12 and full due process, and we urge that the rule as written be  
13 adopted.

14 We will follow now with John Butler's comments on the  
15 balance of the rules.

16 MR. BUTLER: Good afternoon, Commissioners. I'm John  
17 Butler with FPL.

18 On August 21, FPL, Gulf Power, and TECO filed joint  
19 reply comments supporting the Commission's proposed Rules  
20 25-6.034, .064, .078, and .115. Now, I will note that these  
21 comments are found at Tab 15 of Exhibit 1 that staff handed out  
22 at the beginning of the hearing.

23 Let me summarize the comments, hopefully somewhat  
24 briefly, and then I'll be happy to respond to questions that  
25 the Commissioners may have. Let me start with some

1 perspective. We want to emphasize the importance of prompt and  
2 decisive action to harden Florida's electric distribution  
3 system. I'm sure there are details in the proposed rules that  
4 could be debated, but only at a considerable cost of lost time  
5 and opportunity. The old adage that the perfect is the enemy  
6 of the good certainly applies here. The proposed rules are a  
7 good example of the Commission's prompt action to address the  
8 need for storm hardening, and we hope that they can now be  
9 finalized without further delay.

10           Turning to the proposed rules themselves, I would  
11 like to address Rule 25-6.034 first. We believe that it  
12 properly promotes hardening electric distribution systems while  
13 preserving to individual utilities the flexibility to implement  
14 hardening in the most cost-effective and appropriate form for  
15 their individual systems.

16           Several of the attachers have criticized the  
17 requirement in proposed Rule 25-6.0345 for hardening  
18 distribution facilities to NESC extreme wind-loading standards.  
19 In our view, the attachers have overlooked the fact that  
20 proposed Rule 6.0345 only applies to the extent reasonably  
21 practicable, feasible, and cost-effective. In essence, the  
22 attachers question whether applying NESC extreme wind standards  
23 is realistic and cost-justified, but the proposed rule already  
24 says that the NESC extreme wind standards don't have to applied  
25 if it's not reasonably practical, feasible, and cost-effective

1 to do so. In other words, the proposed rule has already  
2 anticipated and addressed most of the attachers' criticisms.

3 In any event, the attachers' complaints about using  
4 extreme wind-loading standards aren't valid. The FCTA asserts  
5 that hardening distribution facilities to extreme wind  
6 standards isn't the most active means of reducing storm impacts  
7 and that utilities should, instead, concentrate on inspecting  
8 and maintaining transmission poles and substations.

9 This doesn't square with our experience. Only a  
10 relatively small portion of overall storm damage has been to  
11 transmission lines and substations. This is probably due, in  
12 large part, to the fact that transmission systems are already  
13 built to extreme wind standards. In turn, this suggests that  
14 hardening distribution facilities to extreme winds standards on  
15 a targeted basis would also be beneficial.

16 Let me comment a moment on some remarks that were  
17 made by Mr. Harrelson earlier, and I can speak at this point  
18 specifically with respect to FPL's experience in Hurricane  
19 Wilma, but I think some of that is what he was referring to, as  
20 well. FPL had 240 substations that were without power  
21 following Hurricane Wilma. Only eight of those were due to any  
22 actual hurricane damage to the substations. The remaining 232  
23 were because the transmission lines had become depowered or  
24 deenergized. For the most part, the overwhelming majority of  
25 those instances was simply matters of trips on the transmission



1 lines such that once the lines were inspected and it was  
2 determined that there was no physical damage to the facilities,  
3 the lines were reenergized without further repair or delay.

4 The only real significant portion of structures that  
5 had a failure problem were the Conservation Corbett Line, and I  
6 imagine you all remember what happened with that. If you  
7 don't, I'll be happy to remind you.

8 The other point that I want to make is that  
9 transmission lines and substations as a group were restored  
10 very promptly to service. In almost all cases, that was before  
11 the distribution system that they serve was itself restored to  
12 the point that power could be reenergized to those distribution  
13 facilities. So the notion that the great majority, at least  
14 for FPL, at least in Hurricane Wilma, that the great majority  
15 of damage has this connection to transmission facilities and  
16 substations just doesn't work.

17 In fact, you know, the reason that customers were out  
18 of service for extended periods of time was the damage to and  
19 the need for, maybe you'll remember Geisha Williams'  
20 expression, hand-to-hand combat of going in and actually  
21 repairing neighborhood-by-neighborhood the distribution systems  
22 in the neighborhoods that they served.

23 The FCTA also recommends that utilities focus on  
24 increased pole inspection and vegetation management rather than  
25 on hardening distribution facilities to extreme wind standards.

1 But this is a false dichotomy. In reality, both can be  
2 important. The Commission has already directed utilities to  
3 adopt aggressive pole inspection and vegetation management  
4 programs. These programs are likely to result in fewer poles  
5 failing due to deterioration and falling trees, but that  
6 doesn't address the issue of wind-only pole failures where  
7 applying extreme wind standards on a targeted basis should be  
8 helpful.

9 I would also like to point out that even with respect  
10 to the falling trees, the debris, that sort of thing that  
11 Dr. Slavin had referred to earlier, it is both counterintuitive  
12 and, I am assured by people who know the engineering better  
13 than I, incorrect to assume that once you start having some  
14 debris flying around or some tree limbs flying around, it  
15 doesn't matter how strong the poles are. It does. A stronger  
16 pole not only will withstand wind better, but it also has  
17 considerable opportunity to withstand at least moderate levels  
18 of impact from debris or trees without failing.

19 Dr. Slavin suggests that the Commission should defer  
20 rulemaking on extreme wind standards because the NESC committee  
21 decided not to apply those standards to distribution poles in  
22 the 2007 addition of the NESC. Dr. Slavin's proposal is  
23 tantamount to abandoning the concept of hardening Florida's  
24 distribution facilities to extreme wind standards because the  
25 next revision to the NESC won't occur until 2012. Waiting

1 until then would be a mistake because it would deprive Florida  
2 electric consumers of the potential benefits of hardening for  
3 at least five years without any showing that hardening is  
4 inappropriate for Florida.

5 On the other hand, I think you heard from several of  
6 the attacher comments that the 2007 NESC standards are now,  
7 they have now been published and will shortly be effective, I  
8 believe in February of 2007, with a suggestion that those  
9 standards rather than the 2002 edition should be incorporated  
10 into the Commission's rules. We would have no objection to  
11 doing so if that's the Commission's wish, and would agree that  
12 doing so would make the rules reflect current standards,  
13 current NESC standards more appropriately on a going-forward  
14 basis.

15 Let me turn to proposed Rules 25-6.064, .078, and  
16 .115, which all deal with the CIAC calculations, and I'll refer  
17 to them as the CIAC rules. The basic purpose of the  
18 Commission's revisions to those rules is to reflect potential  
19 differences in maintenance and storm restoration costs between  
20 overhead and underground distribution service in the  
21 calculation of CIAC. This should help encourage undergrounding  
22 of distribution facilities where it is appropriate and  
23 beneficial to do so.

24 The FCTA, BellSouth, and Verizon all make essentially  
25 the same comment on these proposed rules. They point to the

1 cross-references in the rules to construction standards in  
2 proposed Rule 25-6.034, and argue that if those construction  
3 standards aren't adopted, aren't valid, then the  
4 cross-references wouldn't be valid either.

5           In our opinion, this misunderstands the purpose and  
6 effect of the cross-references. None of the cross-references  
7 says what the construction standards are going to be. Rule  
8 25-6.034 already deals with construction standards. Even if  
9 the Commission ultimately decided not to amend Rule 25-6.034 as  
10 proposed, it would still contain construction standards that  
11 the CIAC rules could properly cross-reference.

12           We think that it is unfortunate that the attachers  
13 have chosen to protest the CIAC rules. Independent of the  
14 debate over how to harden Florida's overhead electric  
15 distribution system, there is an important role for  
16 undergrounding in appropriate settings. The CIAC rules are the  
17 Commission's mechanism for addressing undergrounding, but the  
18 attachers have unnecessarily thrown their status into doubt by  
19 their challenge. We urge the attachers to withdraw their  
20 objections to the CIAC rules so that they can be put into  
21 effect as quickly as possible.

22           Finally, BellSouth asserts that proposed Rule  
23 25-6.064 should reduce the historical average pole cost used in  
24 calculating joint use pole rental charges in order to reflect  
25 CIAC contributions and payments by other attachers. Joint use

1 agreements are negotiated contracts between electric and  
2 telephone companies which the Commission does not regulate.  
3 Proposed Rule 25-6.064 is not a proper vehicle for debating  
4 possible modifications to those joint use agreements.

5 And I thank you for this opportunity to present  
6 comments, and I would be happy to address any questions that  
7 you or staff might have.

8 MR. WILLIS: That concludes our presentation.

9 CHAIRMAN EDGAR: Thank you, Mr. Willis.

10 MR. BURNETT: May I, Madam Chairman?

11 CHAIRMAN EDGAR: You may.

12 MR. BURNETT: Thank you. John Burnett on behalf of  
13 Progress Energy Florida. Thank you very much.

14 I wanted to make some specific comments to one issue  
15 very briefly on behalf of my company. It goes to the Rule  
16 25-6.034, the standard of construction rule, and I wanted to  
17 speak about some concerns that my company had over the  
18 suggestion that the standard of a -- construction standards be  
19 filed with the Commission and the Commission vote and approve  
20 those affirmatively. And this goes to the unlawful delegation  
21 and the regulation by exception argument that Ms. Smith made  
22 earlier.

23 We wanted to note that under the old standard of  
24 construction rule, this Commission has identified that  
25 standards of construction should be done to generally accepted

1 engineering practices, the Commission defined what that meant,  
2 we have implemented that. All of the utilities have. And we  
3 have never filed the implementation of those standards with the  
4 Commission to be voted on, and the Commission has stood to hear  
5 any challenges to those standards, the Commission has audited,  
6 has monitored, taken reports on those. The Commission has done  
7 exactly what the principles of regulation by exception call for  
8 on these.

9           We contend, Progress Energy Florida contends that  
10 under the current rule that staff has put forward that  
11 recognizes the regulation by exception, the exact same thing is  
12 present. That the Commission has stated what your intention  
13 is, just like the old rule. The utilities have been charged to  
14 implement that, which we can. And others have a point of entry  
15 when and if they have a problem with those standards just like  
16 they had under the old rule. The rule makes clear, the  
17 proposed rule makes clear that any challenges to the standards  
18 can be brought forth to the Commission and that we are to  
19 interact with those that would be involved in developing those  
20 standards.

21           Our concern would be that the regulation by exception  
22 is not just convenient, it is somewhat of a necessity. And to  
23 think about the burden that would be placed on not only the  
24 utilities but the Commission, the Commission staff, that if you  
25 have to affirmatively vote up all five of our standards and

1 standards can be defined as reams of books this big, and then  
2 all the other plans or procedures that we may have filed with  
3 the Commission, that you five do not affirmatively vote up on  
4 but, instead, stand ready to hear challenges on, to our company  
5 it seems like a slippery slope. That if you question your  
6 ability to govern by exception in this instance, then it may  
7 permeate or be ammunition for others to argue that you don't  
8 have the ability to do that as a general matter to other  
9 similar things.

10           Some questions that come to mind with us is that if  
11 the Commission does vote to take our standards of construction  
12 and vote up or down on them, if we change those, if we change  
13 them once in a month, twice in a month, three times in a month,  
14 do we bring those back to the Commission every time for a vote.  
15 Under the current rule the answer to that question would be  
16 clearly no. There is a point of entry, I believe as Mr.  
17 Harris, as Ms. Smith, and Mr. Wright have acknowledged that  
18 under the current rule there is a point of entry, that that  
19 allows someone to come forward and say, if I have a problem  
20 with this, I'll bring it to the Commission.

21           Our fear is that if the Commission sets a standard to  
22 where this has to brought, these standards have to be brought  
23 and affirmatively voted up, if we change them do we have to  
24 bring them up every time. Where is the line of when the  
25 Commission does and does not want to vote, and what level of

1 detail. So that is our only concern.

2 We feel like the law is crystal clear and agree with  
3 Mr. Harris and Ms. Smith that the Commission has the authority  
4 to implement the rule as staff has presented. And that's --  
5 and the law is right. It's right not only on its face, but on  
6 its principle that the Commission, the utilities, and everyone  
7 else involved shouldn't be burdened to have to prove up such  
8 extensive plans and prove up every aspect of extensive  
9 standards. Rather, the regulation by exception provides that  
10 if someone who has a challenge has it, then you bring it  
11 forward. Bring forward a specific small challenge, if you have  
12 it at all, rather than putting the burden on your staff and on  
13 our company to offer those up every time. And, again,  
14 questioning where does it stop and what level of detail must  
15 the Commission see if you feel that that is what you have to  
16 do. Thank you.

17 CHAIRMAN EDGAR: Thank you, Mr. Burnett.

18 Commissioners, questions for any of the presenters  
19 that we have heard from here from the IOUs?

20 Commissioner Deason.

21 COMMISSIONER DEASON: Yes, I have a question for  
22 Mr. Butler.

23 MR. BUTLER: Yes.

24 COMMISSIONER DEASON: Mr. Butler, you heard the  
25 presentation today by Dr. Slavin or Slavin, is that correct?



1 MR. BUTLER: Yes, I did.

2 COMMISSIONER DEASON: I understood that a significant  
3 portion of the doctor's testimony dealt with the phenomenon of  
4 flying debris, downed tree limbs, or downed trees having  
5 significant impact on distribution facilities, and that would  
6 happen regardless of the standard to which the distribution  
7 facilities were built. Do you recall that general theme that  
8 was there in that testimony?

9 MR. BUTLER: I do, yes.

10 COMMISSIONER DEASON: And I think it was also his  
11 testimony that that phenomenon of falling trees and flying  
12 debris and that sort of thing was going to manifest itself even  
13 at wind speeds of 70 to 80 miles per hour, generally speaking.

14 MR. BUTLER: I heard the same testimony, yes.

15 COMMISSIONER DEASON: Now, given that testimony, it's  
16 still your position that the distribution facilities should be  
17 hardened, and I think in your presentation you indicated that  
18 the hardened facilities would be more likely to withstand  
19 moderate trees falling and flying debris. That's your  
20 position, correct?

21 MR. BUTLER: That's part of it. The other part of it  
22 that I didn't mention, but speaking from FPL's experience,  
23 particularly in Hurricane Wilma, there were a very substantial  
24 number and a quite high percentage, I believe it was on the  
25 order of 50 percent, of the poles that failed that were

1 attributed to wind-only failure, meaning there was no obvious  
2 debris impacts, no tree sitting on top of it, no obvious  
3 evidence of deterioration that would have caused the pole to be  
4 weakened. They just got flat blown over, basically, as far as  
5 everybody could tell. And so, frankly, our experience in Wilma  
6 does not, you know, corroborate Dr. Slavin's testimony.

7 I don't know, and I'm only speaking for FPL in that  
8 regard, but it was a serious concern to FPL, and I think  
9 probably that experience led us to a lot of the interest that  
10 we have had and a lot of our promotion of moving the utility  
11 poles, distribution poles toward a higher degree of  
12 strengthening or hardening.

13 And it is also true, as I mentioned a few moments  
14 ago, and you just mentioned, that the main reason for hardening  
15 the poles is to avoid wind-only damage to them. But in the  
16 course of doing so there are bigger stronger poles and moderate  
17 degrees of debris impacts, or tree limbs, that sort of thing,  
18 they are probably going to be in a better position to withstand  
19 that sort of impact. But the main thing driving FPL's, you  
20 know, interest in hardening the poles is the experience with  
21 wind-only damage to poles that was primarily a phenomenon that  
22 we saw after Hurricane Wilma.

23 COMMISSIONER DEASON: Thank you.

24 CHAIRMAN EDGAR: Commissioner Arriaga.

25 COMMISSIONER ARRIAGA: Mr. Harris, a question for

1 you.

2 MR. HARRIS: Yes, sir.

3 COMMISSIONER ARRIAGA: I think you have heard me  
4 express two or three times today that I have serious concerns  
5 with the issue of delegation of authority.

6 MR. HARRIS: Yes, sir.

7 COMMISSIONER ARRIAGA: And I heard just now as good  
8 arguments as I heard this morning for and against the  
9 delegation of authority. Mr. Burnett just came up with a very  
10 important point that had not crossed my mind, and I would like  
11 you to comment on that or somebody from staff. The approval of  
12 the construction standards by the part of the Commission, is  
13 that such a tedious process as Mr. Burnett was indicating?

14 MR. HARRIS: Let's let technical staff answer that  
15 one.

16 MR. TRAPP: It can be. It can be a very tedious  
17 process. One of the things that we discussed in the workshops  
18 earlier was the administrative burden on both the utilities and  
19 the Commission staff and the Commission to approve every piece  
20 of paper on every nut and bolt and every cross-arm that is  
21 involved in Florida. And we very quickly decided that that  
22 probably was not the way we wanted to, administratively want to  
23 go.

24 I have to tell you, it potentially could put strain  
25 on staff. You may have to ask for additional staff. The

1 process as I understand it, much of this information, it was  
2 testified, would probably be classified confidential in terms  
3 of just the staff perspective. That would require certain  
4 procedures here to determine whether or not those  
5 clarifications should be granted. That's a process that we  
6 would have to go through.

7           If granted, those papers would have to be maintained  
8 in a locked down room in our Commission Clerk's Office. There  
9 are procedures by which the staff has to go through to get on  
10 the list to even check out those documents. Once we have  
11 access to those documents and do check them out, we have to  
12 have absolute control over those documents. The individual  
13 staff person that reviews those documents has to return those  
14 documents. If they don't return those documents, I can't tell  
15 you the amount of paperwork, bureaucracy we have to go through  
16 to account for anything that may come up missing from the  
17 confidentiality rule.

18           So, quite frankly, I don't mean to overexaggerate it,  
19 but it is quite an involved process. I have been in this area  
20 of standards review and enforcement for sometime now, and,  
21 quite frankly, the norm is one of staff audit, review, look  
22 over the shoulder type of -- I think it was classified as  
23 government by exception, is that what I heard? I'm not sure of  
24 the exact terminology, but that has been the practice as long  
25 as I have been here. And to me it has been a very effective

1 process because it focuses your quite limited staff to doing --  
2 you know, it concentrates our efforts to where the problem  
3 areas are that need to be addressed. And I think that is the  
4 most effective use of us.

5 In addition, you know, we're not just leaving it up  
6 to them to come up with standards. We have already put,  
7 through that discussion and that workshop process, came to  
8 agreement by which a process -- we will have access to that  
9 information. Our field people will have it in their field  
10 offices. Our local Tallahassee regulatory staff will have it  
11 upon request to any company within two days. We have audit  
12 teams that will be combing through this material.

13 My staff -- at least the initial filings will, I'm  
14 sure, need a lot of initial scrutiny. So it's not like we are  
15 delegating anything. What we are trying to do is make our jobs  
16 more effect and efficient to get to the problem. And I'm sorry  
17 to talk so long.

18 COMMISSIONER ARRIAGA: Thank you, sir.

19 Mr. Willis, did I understand correctly that you are  
20 speaking on behalf of all the IOUs, or only three of them?

21 MR. WILLIS: Well, most of our presentation was with  
22 respect to all the utilities. Mr. Burnett had wanted to  
23 amplify a position that he had with respect to that particular  
24 issue.

25 COMMISSIONER ARRIAGA: Okay. So I'm going to assume

1 that you are, in a way, representing the opinion of most of the  
2 electric utilities, correct, the investor-owned utilities?

3 MR. WILLIS: Well, with respect to what we presented.

4 COMMISSIONER ARRIAGA: Here today.

5 MR. WILLIS: Right.

6 COMMISSIONER ARRIAGA: Let me go to the specific  
7 question. I think I heard you say that there was a proposal  
8 this morning to form some kind of committee to negotiate, and I  
9 have also stated that I welcome negotiations. I encourage you  
10 to negotiate. I will hope you will come to some kind of  
11 agreement.

12 Are you telling me, or did I understand you correctly  
13 that negotiations are broken, that you can no longer negotiate  
14 anything?

15 MR. WILLIS: No, I didn't say that at all. What we  
16 would encourage you to do is to proceed with your rulemaking,  
17 to do exactly what you have been doing, that is, to proceed  
18 with all deliberate speed without any delay. And we would, of  
19 course, continue a dialogue that really actually just started  
20 in the last couple of days with respect to other matters. And  
21 if we come to something that is worthy of presentation to you  
22 or it bears fruit, we would bring it back. But that would be a  
23 separate process. I think it always is an important process  
24 for the various parties to continue to talk to each other and  
25 to try to work out solutions that avoids unnecessary litigation

1 and unnecessary concern.

2 I think many of the things that they have suggested  
3 that we look at are matters of implementation of your rules,  
4 but I think that you should proceed on the track that you have  
5 been on, that is to continue to stay on your same schedule. Of  
6 course, I would guess have post-hearing comments, and I  
7 understand that this is coming back to the agenda sometime like  
8 October the 24th as time within that period for us to continue  
9 to talk. But in the meantime, you stick with your rulemaking  
10 and continue to proceed. That rulemaking, as you indicated  
11 this morning, provides a framework for us to talk, to continue  
12 to talk. So I think they are two separate processes.

13 COMMISSIONER ARRIAGA: Okay. Thank you.

14 CHAIRMAN EDGAR: Commissioner Tew.

15 COMMISSIONER TEW: Thank you.

16 Commissioner Arriaga asked questions along the same  
17 line that I have, but I will try to clarify some points in my  
18 head from some things that were said by several of you. First,  
19 Mr. Willis, I realize that you said that the infrastructure  
20 hardening proposal, and I've got the right terminology now,  
21 that was spoken about earlier by several the attachers, you  
22 said it was unnecessary. And I just want to clarify that. And  
23 let's assume that there is no delegation issue. And I have  
24 heard different arguments on all sides of that. But isn't that  
25 infrastructure hardening proposal a way to avoid the issue of

1 the PSC approving the standards? I mean, can't that get us to  
2 where we want to be sooner, if it works?

3 MR. WILLIS: Not necessarily. I think it's incumbent  
4 upon us to talk and to try to reach that result. But at the  
5 same time, I think it would be a mistake for you to do anything  
6 other than to stay on your track with respect to the adoption  
7 of these rules. Otherwise, I think that the delay will  
8 increase.

9 COMMISSIONER TEW: Just to follow up on that, do you  
10 think it will necessarily add delay if we look into that kind  
11 of a proposal? Because it looks like to me the time line  
12 follows a time line similar to the rule process we have now.  
13 And maybe I don't understand it exactly, but it looked like the  
14 180 days sort of tracked the rule process, as well. I mean, if  
15 it's true that you all know that you are not going to get  
16 anywhere through that process, then that is probably what we  
17 should be talking about.

18 But since we have that proposal before us, I wanted  
19 to ask these questions now. You had mentioned all due  
20 deliberate speed, and to me all due deliberate speed might  
21 include a lot of time for litigation of these rules.

22 MR. WILLIS: Well, I think that if you proceed on the  
23 track that you have been on and use the same CASR that you have  
24 and proceed, there is time between now and the time when you  
25 actually come back here for agenda conference to adopt a rule,



1 and if through these discussions it does bear fruit, it could  
2 be presented to you in the post-hearing comments, if it comes  
3 that fast, or all the way up till the time that you are at  
4 agenda conference.

5 COMMISSIONER TEW: Earlier someone had mentioned the  
6 proprietary nature of the standards, and I think Mr. Trapp  
7 discussed that quite a bit, too. And I don't know who this is  
8 exactly directed to, I guess it is any of you. Can you help me  
9 understand whether the current standards now are proprietary  
10 and how we deal with those? I know they have said that we, as  
11 a Commission, that we still audit them and have the ability to  
12 review them. But how does it work now and how do you see it  
13 working if we go forward with these rules?

14 MR. BURNETT: Commissioner, speaking only on behalf  
15 of my company, that's the only company I, of course, have  
16 knowledge of, we do have portions of our standards that are  
17 confidential. They are not the majority, however. And if  
18 staff was inclined to take a look at any of those, I think we  
19 do have an effective process to, on an ad hoc basis, ask for  
20 confidential protection in which staff could review those. So  
21 I don't think under the current procedure or under the rule as  
22 proposed, Commissioner, that it would add any different burden  
23 at all.

24 CHAIRMAN EDGAR: Commissioner Carter.

25 COMMISSIONER CARTER: Madam Chairman, have we taken

1 all the parties, because I have a couple of questions for  
2 staff, but I wanted to wait to make sure that everyone was  
3 finished.

4 CHAIRMAN EDGAR: Thank you very much. I actually was  
5 going to kind of wrap that up there, and Commissioner Arriaga  
6 jumped ahead of me. So we have had all the presentations from  
7 people that had let us know they wanted to speak, and I have  
8 given an opportunity for any others, so, yes, I would like to  
9 more formally concluding the presentation portion of our agenda  
10 today.

11 We do have some things to discuss. We need to give  
12 some direction to our staff. We have the opportunity to ask  
13 further questions, and then we do need to talk about  
14 post-hearing time schedules from this point forward.

15 So, with that, we will move into that portion of our  
16 discussion. Commissioner Carter.

17 MR. HARRIS: Excuse me, Chairman, just one  
18 housekeeping matter. The exhibits. Mr. Willis, the PowerPoint  
19 presentation you had, did you intend for that to be marked as a  
20 separate exhibit or to refer back to the tab in the composite?

21 MR. WILLIS: Refer back to the tab in the composite.

22 MR. HARRIS: And then the cable that was handed out  
23 as a tangible, is that supposed to be marked as an exhibit?

24 MR. WILLIS: We think it should be an exhibit, but --

25 MR. HARRIS: Chairman, I am hearing a request that it

1 be marked --

2 CHAIRMAN EDGAR: I have never had a cable as an  
3 exhibit before at a hearing, but I guess there is always a  
4 first time. So, if that what is our counsel is advising --

5 MR. HARRIS: I think that would be a demonstrative  
6 either exhibit or demonstrative aid. For the sake of the  
7 record, I would suggest we mark it as Number 9, and just list  
8 is was --

9 COMMISSIONER DEASON: Can the Chairman keep that  
10 exhibit in her office?

11 MR. HARRIS: I do believe that is the appropriate  
12 place for it, yes.

13 CHAIRMAN EDGAR: As long as it's not a gift.

14 (Laughter.)

15 CHAIRMAN EDGAR: Per the recommendation of our  
16 counsel, we will have a demonstrative exhibit as Number 9. And  
17 how do we want to describe it?

18 MR. WILLIS: Example of overlashing.

19 CHAIRMAN EDGAR: Thank you. And we have chuckled  
20 about it, but actually to have an example that we can look at  
21 of things that we are talking about is very helpful, so thank  
22 you for that.

23 (Exhibit 9 marked for identification and admitted  
24 into the record.)

25 CHAIRMAN EDGAR: Commissioner Carter.

1           COMMISSIONER CARTER: Thank you, Madam Chairman, for  
2 maybe a couple of questions for staff. In light of the filings  
3 that you have received subsequent to the front end and what you  
4 have heard today and where we are, do you have recommendations  
5 for us on proceeding further? I mean, I just kind of want to  
6 explore that with you.

7           CHAIRMAN EDGAR: If I may, Mr. Harris, and certainly  
8 then you can go back to him, but I think that is one of the  
9 things that we need to discuss a little bit amongst ourselves,  
10 and then we will look to staff to see if they can give us some  
11 recommendations as to how and what time frame to move forward,  
12 if that's all right.

13           COMMISSIONER CARTER: That's fine with me, Madam  
14 Chair.

15           CHAIRMAN EDGAR: So before we talk about time frames  
16 and next steps, which I think is where you are going,  
17 Commissioner Carter, let me see if I can kick it off, and then  
18 please everybody jump right in.

19           First of all, let me say thank you to everybody who  
20 has participated today, and thank you for the coordination that  
21 went on helping us get an orderly agenda and kind of  
22 apportioning the way to address the various issues. It is  
23 helpful for our thought processes. It's helpful for the next  
24 steps. You know, it is not always -- or it is not often, I  
25 guess, is a better way to put it -- it's not often that we have

1 a Commission workshop as part of a rule hearing. In fact, I  
2 think it's the first since I have been here, and it shows the  
3 importance that each of us, I know, have put on this, and the  
4 recognition of the importance of what our decisions will be  
5 today and as we move forward with this proceeding.

6           Trying to kind of capsulize or encapsulize some of  
7 the comments that we have heard, I have heard concerns about  
8 the subdelegation issue, I have heard some concerns about the  
9 collaboration language, and we have heard concerns about the  
10 FCC potential jurisdiction. We have also heard concerns about  
11 potential costs, and a number of numbers have been put out  
12 there. And I recognize that it is difficult to pin them down  
13 at this point. It's kind of a chicken and an egg. If you  
14 don't have the standard, it is difficult to come up with an  
15 accurate cost estimate. If you have the -- it's hard to come  
16 up with a standard if you don't have an accurate cost estimate.  
17 So I know that we all kind of recognize the dilemma that we are  
18 in.

19           And so with all of that, and I would kind of put out  
20 there that I would look to staff, once we have developed a time  
21 schedule to take comments, post-hearing comments, and all the  
22 comments that we have heard today, and all the comments, of  
23 course, that were received at the workshops prior to this on  
24 these four issues, subdelegation, looking to perhaps stronger  
25 collaboration language, looking at the issue of FCC

1 jurisdiction, or recognizing that and seeing if additional  
2 language would be appropriate to help tighten up on that issue,  
3 and also addressing both the cost estimates and the  
4 cost/benefit discussion and analysis that we have had.

5 I know I would like our staff to look at those issues  
6 in particular, and then as we move forward, can maybe bring us  
7 back at the future agenda conference recommendations that  
8 address all of those and some potential language changes for  
9 our rules. And I'm going to open it up to further discussion  
10 and comment.

11 COMMISSIONER CARTER: If I may, Madam Chairman.

12 CHAIRMAN EDGAR: Yes, Commissioner Carter.

13 COMMISSIONER CARTER: I hate to think that you have  
14 done a Vulcan mind meld on me, but the issues that you have  
15 delineated are kind of where I think we need to be, kind of  
16 getting our arms around that and give them to staff so we can  
17 move forward. Those issues were pretty much what I was going  
18 to ask about in the context of procedurally what do we do and  
19 how do we get there. And I would like to get my fellow  
20 Commissioners' thoughts on those, as well.

21 CHAIRMAN EDGAR: Commissioner Arriaga.

22 COMMISSIONER ARRIAGA: Thank you.

23 Just a comment to staff. You have heard me two or  
24 three times, and I'm going to repeat it again, because it is a  
25 real concern. The reason I'm repeating that is because I take

1 very seriously what Commissioner Deason said, I think it was  
2 yesterday. Whatever we do, please, please, whatever we do  
3 don't allow us to be ridiculed in the courts or in the FCC.  
4 And if the issue of delegated authority is an issue, think  
5 about it. If it's going to be more work for the Commission,  
6 that is what they pay us for. And I think that we need to look  
7 at that very, very seriously.

8 I'm not giving you any instructions, I'm just saying  
9 this is a concern that I have, a very serious concern. There  
10 were very serious arguments, legal arguments here that we need  
11 to take into consideration about the delegation of authority  
12 issue. And I don't think we lose anything by bringing those  
13 standards here for our review.

14 I know it is a very tedious process, Mr. Trapp. It  
15 is very difficult. It is going to put a burden on your staff.  
16 It may be something that you would wish to consider. That's  
17 only a thought. Thank you.

18 CHAIRMAN EDGAR: If the degree of tedium was going to  
19 be a determining factor in decisions that we made, I'm not sure  
20 that we would ever make one. However, we do, and I do take  
21 very seriously, also, both the administrative burden on  
22 government resources and the regulatory burden on the private  
23 sector and NGO, so we will take that into account.

24 Commissioner Deason, did you have any additional  
25 comments?

1 COMMISSIONER DEASON: Well, actually a question for,  
2 I guess it would be a question for Mr. Harris and Mr. Trapp.  
3 There has been a suggestion of an infrastructure advisory  
4 committee, and there has been a time frame set out, a short  
5 time frame and a longer term time frame. Do you have any  
6 thoughts on whether such an initiative could obviate the need,  
7 in some parties' minds, the need for a rule challenge at DOAH?

8 MR. HARRIS: We do have thoughts on that. I will  
9 take a stab at it, and then Mr. Trapp can correct me when I'm  
10 wrong. I do believe that the infrastructure advisory  
11 committee, the IAC proposal has some merit. However, I don't  
12 see it as a substitute for the rulemaking, and I'll tell you  
13 how I see it really being productive and useful.

14 In my mind, staff would like the opportunity to bring  
15 a written recommendation to you for your consideration at an  
16 agenda conference. The dates we had sort of tentatively  
17 proposed were the post-hearing comments would be due in about  
18 two weeks, around September 15th; that we would prepare a  
19 written recommendation, that would be filed around October 14th  
20 for an October 24th agenda conference.

21 In my mind that gives more than the 30 days that the  
22 IAC is asking for. Because the comments would be due in two  
23 weeks, but the recommendation, the staff recommendation is  
24 essentially about 45 days out. So what I would suggest in my  
25 mind is that you perhaps direct the parties here today, the



1 interested persons here today, the IOUs, the electric, the  
2 telecoms, the cable companies, the cities, to the extent they  
3 can get involved, to engage in this, to start this IAC project,  
4 and really sit down and try to negotiate. And then keep the  
5 staff informed. And come back to us at the end of the 30 days  
6 and say, hey, this has really worked, we're collaborating,  
7 we're making progress. Maybe we could go to the Commission.  
8 And I would also ask that you make staff a part of that. Let  
9 us be a part of this process.

10 If it looks like it is really being useful, we can  
11 come back to you at an agenda conference on October 3rd, or the  
12 October 24th and say this is working, this is great, and they  
13 are solving problems. They are moving forward. They are  
14 resolving things right and left. And we think a little bit  
15 more time would make sense, so we would ask for a further  
16 postponement of your rulemaking to get this stuff in there  
17 where we can all bring it to you.

18 On the other hand, if in the 30 days they don't get  
19 to a point where we feel confident, we have a staff  
20 recommendation to be filed. That gives them another two weeks  
21 until October 14th to keep working. The staff recommendation  
22 comes out, everyone can read that. That might provide an  
23 incentive to sharpen their pencils and negotiate a little bit  
24 more. They can still -- we can pull a recommendation up until,  
25 you know, two minutes before it goes up to agenda conference.

1 And so if someone comes to us the day before the agenda  
2 conference and says we need a deferral, we have got 95 percent  
3 of it worked out, we don't want the Commission to vote on your  
4 staff recommendation, give us some time and bring a new one in  
5 two weeks, a revised staff rec that includes the things we have  
6 worked out through this IAC process. Staff is more than  
7 interested in doing that.

8           So, in my mind, what I am saying is I think I would  
9 encourage you to move forward on a schedule today, a rulemaking  
10 schedule, with strong direction to the interested persons to  
11 engage in this IAC process, make it work, and the understanding  
12 is if they can you will take consideration of that and make the  
13 appropriate adjustments to the schedule.

14           Now, Bob, you can tell me why I'm wrong and why you  
15 hate me.

16           MR. TRAPP: I was thinking I was getting one of those  
17 Vulcan mind meld things, too, because I concur with Mr. Harris'  
18 comments. And I would say that, I mean, this type of  
19 collaborative process, this working together and everything  
20 sounds like the input that we were seeking in the rule to begin  
21 with, and it looks like a process by which we could avoid some  
22 of the complaints that we feared we might get as a result of  
23 the rule. So if they could come to an agreement -- but at the  
24 same time I share the comments that staff very much looks  
25 forward to an opportunity to providing you a written

1 recommendation at an upcoming agenda.

2 CHAIRMAN EDGAR: You know, on every issue -- it was  
3 one of our presenters who said talking is good, I think.  
4 Personally, and I don't mean to speak for each of you, but I  
5 might in this limited instance, which is to say I think we  
6 always try to encourage, cajole, beg, direct, and sometimes  
7 even require discussion, collaboration, and I think we have on  
8 this issue from the beginning of our discussions earlier this  
9 year and at every step of the way.

10 And I'm looking at the schedule again, and I note  
11 that our Internal Affairs meeting where we voted to open a  
12 docket was on February 27th. The first draft rules by the  
13 staff were distributed on April 3rd. There was a workshop  
14 that, again, I hope was collaborative, and that all interested  
15 parties participated openly and fully in at the end of April,  
16 there was a second in the middle of May, and there was a third  
17 in the middle of July which helped get us to the point that we  
18 are today.

19 So this is the fourth workshop, although the first  
20 that we have had full Commission participation in as we have  
21 moved through this process again from the beginning of the  
22 year. I've been looking at the calendar, and I know that  
23 Commissioner Deason is also looking at the calendar, and, you  
24 know, thinking about the dates that Mr. Harris has given us,  
25 and the fact that we have been told by some of the parties that

1 they think they can make additional real progress in 30 days.

2           One option might be to slide back some the date for  
3 post-hearing comments, perhaps October 2nd. I haven't  
4 discussed that date with staff yet. We will want to make sure  
5 that are we do allow ample opportunity for them to review  
6 thoroughly and analyze those post-hearing comments. But if we  
7 build into the time period to submit written comments, and I  
8 adamantly would encourage and request any proposed language  
9 changes into those post-hearing comments to be filed, looking  
10 at maybe October 2nd, that gives approximately 32 days from  
11 today for those comments to be filed. And I think that that  
12 would still give -- I will look to staff, though, for  
13 confirmation -- time for our staff to review all of those  
14 comments and put together a written recommendation that would  
15 come before us at the October 24th conference. It's a little  
16 tight on that back end, I recognize. Think about that for a  
17 moment, if you would. And, Commissioners, again, any thoughts?

18           Commissioner Deason, again, I know you are looking at  
19 the calendar. Do you --

20           MR. HARRIS: I'm sorry, Chairman, may I interrupt? I  
21 don't want to interrupt you, but I need to correct something I  
22 said earlier.

23           CHAIRMAN EDGAR: Okay.

24           MR. HARRIS: This is an evidentiary hearing, in a  
25 way, and so we need to have some type of end to the record.

1 And, therefore, I was going to suggest that my initial comment  
2 of the 15 days for post-hearing comments with some type of  
3 follow-up at the end of the 30 days wouldn't make a very clear  
4 record. So I was going to suggest exactly, Chairman, what you  
5 suggested, that the post-hearing comments of some type be due  
6 30 days from now, which would be around October 2nd, and that  
7 those would include the results of this IAC meeting or  
8 whatever, as written filed comments that would then become part  
9 of this evidentiary record that would be considered.

10 And that would make our record a lot cleaner and  
11 prevent any kind of concern over what the record is containing  
12 and any type of concern over some verbal communications being  
13 made. If it's in writing, it's government in the sunshine,  
14 it's an open record, everybody knows what it is. So you were  
15 getting into some comments among the Commissioners, I didn't  
16 mean to interrupt you, but to say that I needed to correct  
17 myself, that the 15 days wasn't going to work, basically.

18 CHAIRMAN EDGAR: An important point that I would like  
19 to make is that, as I said earlier, we recognize the importance  
20 of the discussions that we have had and the decisions that we  
21 will make. And I want all of our best minds working on this.  
22 You know, sometimes a deadline can contribute to creative and  
23 productive dialogue. Perhaps it has in this instance. But the  
24 point is we want to move forward, but we want to do it  
25 thoughtfully and professionally with the best information and

1 come out with the best product.

2 So we want the best minds of our staff, we want the  
3 best minds of all the industry, we want the best minds from  
4 local government, from NGOs, from academia, and anybody else  
5 that I may have left out of that to help us get the absolute  
6 best product. It's not a race to the finish line, but we do  
7 need to move forward within the dynamics of the processes that  
8 are allowed to us.

9 Commissioner Arriaga, did you have a comment?

10 COMMISSIONER ARRIAGA: A clarification for the  
11 record. The IAC has been mentioned several times. Are you  
12 suggesting that we are now constituting an ad hoc IAC or  
13 something like that? Because I think the question of  
14 delegation was also raised on the issue of the IAC, or is this  
15 an informal industry thing?

16 MR. HARRIS: It's my understanding that a  
17 presentation has been made to you that the parties would like  
18 to get together through something they have called an  
19 infrastructure advisory committee. And it is my recommendation  
20 to you that you allow them to do that. And they can include  
21 the results of that in their written comments 30 days from now.

22 Mr. Cooke.

23 MR. COOKE: Mike Cooke, Commission Counsel. The one  
24 thing we are concerned about is we are in a hearing, a  
25 rulemaking hearing, and for purposes of the record, today would

1 be the final day, with the exception that our rules do allow  
2 for written comments to be received. Our order currently says  
3 that they would be received by September 15th. You can change  
4 that date at this hearing and make it October 2nd, for  
5 example. I think all we are saying is, and what I have heard  
6 the Commission suggest, and everyone I think who has spoken  
7 today, encourages voluntary cooperation and collaboration.

8 We are not creating a committee or suggesting  
9 creating a committee, but we think it would be valuable to the  
10 extent that the interested parties get together and have those  
11 discussions and can achieve some of the results they have  
12 talked about and submit them to us in writing by that time  
13 frame, it can be incorporated into our review for purposes of  
14 the recommendation we would submit at the agenda conference.

15 CHAIRMAN EDGAR: Commissioner Carter.

16 COMMISSIONER CARTER: Madam Chairman, I applaud your  
17 wisdom in the context of where we are. Because where I was  
18 going was going to ask staff a lot of those questions, and you  
19 have kind of got your calendar there, as well as the calendar,  
20 and kind of laid things out. And I do think that this gives us  
21 an opportunity to move forward, it allows the interested  
22 parties to have their dialogue and discussion without us saying  
23 that we support a committee or anything like that. So if they  
24 want to talk confidentially until they arrive at a conclusion,  
25 they can do that, but this gets us to the 30 days.

1 I think from listening Mr. Harris and Mr. Cooke, I  
2 don't think it gives us heartburn to do that and still keep it  
3 on time for being at an agenda conference. I mean, that works  
4 for me. I don't know what we need to do, but if we need a  
5 motion to that effect, Madam Chairman, I would be more than  
6 happy to make it.

7 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

8 Any further questions, comments? Okay.

9 COMMISSIONER DEASON: The only concern that I have is  
10 for the staff, and I guess they can speak for themselves. I  
11 mean, we are looking at post-hearing filings being filed on  
12 October 2nd, and they have to file a written recommendation  
13 ten days later. And if staff thinks that is sufficient --

14 MR. HARRIS: I think a comment was made that the  
15 staff is here to do a job, and we will get it done in ten days.  
16 So we can do that, yes.

17 CHAIRMAN EDGAR: Okay. Then we have had discussion,  
18 I think we are all on the same page, it sounds like. As  
19 always, I would like to make sure that staff are clear as to  
20 what it is we have requested and directed.

21 Mr. Harris, do we need a motion and a vote, or can we  
22 do it as direction to our staff and, of course, to the  
23 participants?

24 MR. HARRIS: I don't believe a motion and vote are  
25 required. I think you have given us sufficient direction, and



1 we do have a transcript that is recording this.

2 CHAIRMAN EDGAR: Okay. My understanding is that the  
3 transcript will be ready around about September 8th. We would  
4 ask that post-hearing comments be filed by October 2nd. We  
5 will have our staff review all of those, and working on the  
6 time lines that they always do, then prepare a written  
7 recommendation that will come before us at the agenda  
8 conference presently scheduled for October 24th.

9 Are there any other matters, Mr. Harris, that we need  
10 to address while we are all gathered together?

11 MR. HARRIS: I'm sorry, I think Mr. Meza might have a  
12 comment or a question.

13 CHAIRMAN EDGAR: I'm sorry, Mr. Meza, I didn't see  
14 you. Go right ahead.

15 MR. MEZA: Thank you, Madam Chairman.

16 I would just ask for clarification for the LECs,  
17 mainly the LECs, that under the Administrative Procedure Act  
18 the right to file a DOAH challenge for rules that are  
19 promulgated is triggered by the conclusion of a public hearing,  
20 which is ten days from that date. And I want to make sure that  
21 from our perspective that the Commission believes and staff  
22 believes that that date will be at the agenda, such that we  
23 don't have to run and file a DOAH challenge, if we choose to,  
24 within ten days of today.

25 CHAIRMAN EDGAR: Okay. I was --

1 MR. HARRIS: Yes.

2 CHAIRMAN EDGAR: I was going to say I think I know  
3 the answer to that, but let me look to my staff counsel. That  
4 certainly was my intention.

5 MR. HARRIS: The answer is yes.

6 CHAIRMAN EDGAR: And with verification from our  
7 counsel regarding the Chapter 120 implications, does that give  
8 you the clarification that you need?

9 MR. MEZA: Yes, ma'am, that is all I need to hear.  
10 Thank you.

11 CHAIRMAN EDGAR: Thank you for the question. Any  
12 other matters for clarification? Closing comments.

13 Mr. Harris.

14 MR. HARRIS: We don't have anything further, thank  
15 you.

16 CHAIRMAN EDGAR: Okay. Then this hearing is  
17 concluded. Thank you all again for your participation.

18 (The hearing concluded at 4:05 p.m.)  
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25

1 STATE OF FLORIDA       )  
2 COUNTY OF LEON        )

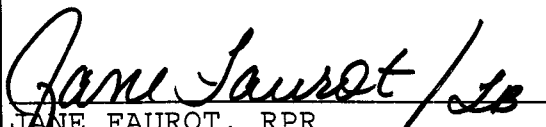
## CERTIFICATE OF REPORTERS

3  
4 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR,  
5 Official Commission Reporters, do hereby certify that the  
6 foregoing proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that we stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under our direct supervision; and that this  
11 transcript constitutes a true transcription of our notes of  
12 said proceedings.

13 WE FURTHER CERTIFY that we are not a relative,  
14 employee, attorney or counsel of any of the parties, nor are we  
15 a relative or employee of any of the parties' attorneys or  
16 counsel connected with the action, nor are we financially  
17 interested in the action.

18 DATED THIS 9th day of September, 2006.

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24  
25  
  
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EXHIBIT 1  
STAFF COMPOSITE EXHIBIT  
DOCKET NOS. 060172-EI & 060173-EI

| ITEM DESCRIPTION  | TAB NUMBER |
|---|------------|
| Notice of Rulemaking, Order No.<br>PSC-06-0556-NOR-EU, June 28, 2006  | 1          |
| Florida Administrative Weekly Notice of<br>Proposed Rule dated July 7, 2006   | 2          |
| Materials Provided to the Joint Administrative<br>Procedures Committee  | 3          |
| Statement of Estimated Regulatory Costs   | 4          |
| Request for Hearing and Comments of<br>Trevor G. Underwood  | 5          |
| City of Fort Lauderdale, Florida Request<br>For Hearing and Comments  | 6          |
| Comments of the Towns of Palm Beach and<br>Jupiter Island, Florida  | 7          |
| Comments of Time Warner Telecom of Florida  | 8          |
| Florida Cable Telecommunications Association (FCTA)<br>Corrected Post Workshop Comments<br>Request for Public Hearing<br>Comments on Rules 25-6.0341 and 25-6.0342<br>Comments on Rules 25-6.034, 25-6.0345, 25-6.064<br>25-6.078 and 25-6.115<br>Responsive Comments | 9          |
| Verizon Florida, Inc.<br>Request For Hearing<br>Initial Comments on Rules 25-6.0341 and 25-6.0342   | 10         |

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EU  
NO. 060173-EU Exhibit No. 1  
Company/FPSC Staff  
Witness: Staff Composite Exhibit  
Date: 08/31/06

Initial Comments on Rules 25-6.034, 25-6.064,  
25-6.078 and 25-6.115

|   |    |
|---|----|
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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, to address effects of extreme weather events.

DOCKET NO. 060172-EU

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.

DOCKET NO. 060173-EU  
ORDER NO. PSC-06-0556-NOR-EU  
ISSUED: June 28, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to adopt Rules 25-6.0341, 25-6.0342, 25-6.0343 and amend Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115, Florida Administrative Code, relating to electric infrastructure standards of construction; location of facilities; third party attachments; application to municipally owned systems and rural electric cooperatives; safety standards of construction; contributions-in-aid-of-construction; charges for underground construction; and charges for conversion of existing overhead to underground facilities.

The attached Notice of Rulemaking will appear in the July 7, 2006, edition of the Florida Administrative Weekly. If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission  
9:30 a.m., Tuesday, August 22, 2006  
Betty Easley Conference Center  
Room 148, 4075 Esplanade Way  
Tallahassee, Florida

DOCUMENT NUMBER-DATE

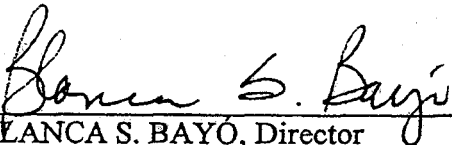
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FPSC-COMMISSION CLERK

ORDER NO. PSC-06-0556-NOR-EU  
DOCKET NOS. 060172-EU, 060173-EU  
PAGE 2

Written requests for hearing and written comments or suggestions on the rules must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than July 28, 2006.

By ORDER of the Florida Public Service Commission this 28th day of June, 2006.

  
\_\_\_\_\_  
BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

(SEAL)

LDH

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE TITLE:

RULE NO.:

Standard of Construction

25-6.034

Location of the Utility's Electric Distribution Facilities

25-6.0341

Third-Party Attachment Standards and Procedures

25-6.0342

Municipal Electric Utilities and Rural Electric Cooperatives

25-6.0343

Safety Standards for Construction of New Transmission and  
Distribution Facilities

25-6.0345

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

25-6.064

Schedule of Charges.

25-6.078

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

25-6.115

PURPOSE AND EFFECT: To increase the reliability of Florida's electric transmission and  
distribution infrastructure, as well as clarify costs and standards regarding overhead line  
extensions and underground electric infrastructure.

SUMMARY: The rules will require electric utilities to develop construction standards which, at  
a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front  
of customer's premises in certain circumstances; develop standards for third-party attachments to  
electric facilities; extend applicability of the standards to municipally operated systems and



electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Florida's five Investor Owned Utilities, 18 electric cooperatives, and 35 municipally operated companies will be affected by these rules. Additionally, telecommunications and cable companies that own or lease space on electric facilities may be indirectly affected. Preliminary data provided by the IOUs indicates estimated costs for increased electric infrastructure reliability will range from \$63 Million to \$193 Million. No data is available from municipally operated systems, electric cooperatives, telecommunications and cable companies.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.04, 366.04(2)(f), 366.05(1) FS

LAW IMPLEMENTED: 366.03, 366.04, 366.04(1), 366.04(2)(c), 366.04(2)(f), ~~366.04(4)~~, 366.04(5), 366.04(6), 366.05, 366.05(1), 366.05(7), 366.05(8), 366.06, 366.06(1) F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD ON RULES 25-6.0341, 25-6.0342, AND 25-6.0343 AT THE TIME, DATE, AND PLACE SHOWN BELOW. FOR RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115, A HEARING WILL BE HELD THE TIME, DATE, AND PLACE SHOWN BELOW ONLY IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS

NOTICE (IF NOT REQUESTED, A HEARING WILL NOT BE HELD ON RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115).

TIME AND DATE: 9:30 a.m., Tuesday, August 22, 2006.

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE PROPOSED RULES ARE: Larry Harris, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6076.

THE FULL TEXT OF THESE PROPOSED RULES ARE:

### PART III

#### GENERAL MANAGEMENT REQUIREMENTS

##### 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. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent

updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. 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, comply with 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 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, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(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.

(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. 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.

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 \_\_\_\_\_.

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, 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, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

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

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

History-- New.

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 attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(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.

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

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

History New \_\_\_\_\_.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

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

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

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the

applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

1. new construction;

2. major planned work, including expansion, rebuild, or relocation of existing facilities,

assigned on or after the effective date of this rule; and

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

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.



(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party

attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

History New.

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 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, 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, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(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

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           |
| <del>5. Kv</del>                   | <del>Numeric</del> | <del>5</del> |
| <del>6. Contiguous Character</del> |                    | <del>1</del> |

(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 | <del>KV Rating</del> | <del>Contiguous (y/n)</del> |
|------------|-------------|----------------|----------|----------------------|-----------------------------|
|            |             |                |          |                      |                             |

(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,\_\_\_\_\_.

#### PART IV

#### GENERAL SERVICE PROVISIONS

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<sub>OH</sub>) shall be calculated as follows:

|                          |          |   |          |  |          |   |
|--------------------------|----------|---|----------|--|----------|---|
| <u>CIAC<sub>OH</sub></u> | <u>=</u> | <u>Total estimated work order job cost of installing the facilities</u> | <u>=</u> | <u>Four years expected incremental base energy revenue</u> | <u>=</u> | <u>Four years expected incremental base demand revenue, if applicable</u> |
|--------------------------|----------|---|----------|--|----------|---|

(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<sub>OH</sub> be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities (CIAC<sub>UG</sub>) shall be calculated as follows:

|                          |          |                          |          |  |
|--------------------------|----------|--------------------------|----------|--|
| <u>CIAC<sub>UG</sub></u> | <u>=</u> | <u>CIAC<sub>OH</sub></u> | <u>±</u> | <u>Estimated difference between cost of providing the service underground and overhead</u> |
|--------------------------|----------|--------------------------|----------|--|

(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:

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

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

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

(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:~~

$$CIAC_{ug} = \text{(Estimated difference between the cost of providing the distribution line extension including not only the distribution line extension itself but also the transformer, the service drop, and other necessary fixtures, with underground facilities vs. the cost of providing service using overhead facilities)}$$

~~(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.

~~(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.~~

(6)(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.

(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.

(7)(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~~However, 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.~~

~~(8)(13)~~ A detailed statement of its standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform application and shall be nondiscriminatory.

~~(9)(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.

## PART V

### RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

#### 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.

(3)(2) On or before October 15<sup>th</sup> 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), (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 Net Present Value of operational ~~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 utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(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.

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

~~(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, \_\_\_\_.

## PART VII

### UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

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~~ conversion 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) ~~s~~Such work meets the investor-owned ~~public~~ utility's construction standards;

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

(c) ~~s~~Such 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~~The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, Standards of Construction, 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.

(10) An applicant requesting to a public utility for construction of underground 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) 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 \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULES: Robert Trapp

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULES:

Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: June 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32,

Number 18, May 5, 2006.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

CF-FSP Form 5306 may be obtained on the Department of Children and Family Services' website at [www.myflorida.com/childcare](http://www.myflorida.com/childcare).

b. A Director Credential renewal, as documented on CF-FSP Form 5252, is active for five (5) years from the date of issuance. The completed renewal application, including all required documentation, must be submitted to the Department of Children and Family Services for review and issuance of a Director Credential Renewal Certificate no earlier than one (1) year prior to the end of the active period of the Director Credential. The Director Credential renewal date is determined by the end date of the active period.

c. If a renewal application is received after the end of the active period for the Director Credential, the Director Credential Renewal Application will be reviewed and, if approved, a certificate will be issued with a renewal date of five (5) years from the date the completed renewal application was processed.

#### 4. Director Credential Training Providers.

a. The Department of Children and Family Services is responsible for reviewing and approving "Overview of Child Care Management" courses offered through vocational-technical schools, community colleges and universities to determine if the requirements for the Director Credential coursework are met. Coursework will be reviewed and approved according to the guidelines found in "Florida Child Care and Education Program Director Credential Curriculum Areas;" copies of which may be obtained from the Department of Children and Family Services.

(I) Vocational-technical schools, community colleges and universities seeking to offer the Director Credential training shall submit CF-FSP Form 5247, Florida Child Care and Education Program Director Credential Course Approval Application to the department for course review and approval. CF-FSP Form 5247 may be obtained on the Department of Children and Family Services' website at [www.myflorida.com/childcare](http://www.myflorida.com/childcare).

(II) A list of approved "Overview of Child Care Management" courses may be obtained on the Department of Children and Family Services' website at [www.myflorida.com/childcare](http://www.myflorida.com/childcare).

b. All college level coursework pertaining to the following content areas will be accepted as approved coursework towards the Advanced Level Director Credential requirements:

(I) Child Care and Education Organizational Leadership and Management

(II) Child Care and Education Financial and Legal Issues

(III) Child Care and Education Programming.

(g) All provisions as applicable under subsection 65C-22.003(8), F.A.C., must be met. A director holding a foundational or advanced Director Credential may supervise multiple sites as specified in paragraph 65C-22.003(8)(j), F.A.C.

Specific Authority 402.302, 402.305 FS. Law Implemented 402.302, 402.305 FS. History—New 9-12-04, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Carrie Pafford, Government Operations Consultant II

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Don Winstead, Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: June 26, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 13, 2006

## Section III Notices of Changes, Corrections and Withdrawals

### BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

### PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE NOS.:

RULE TITLES:

25-6.034

Standard of Construction

25-6.0341

Location of the Utility's Electric  
Distribution Facilities

25-6.0342

Third-Party Attachment Standards  
and Procedures

25-6.0343

Municipal Electric Utilities and  
Rural Electric Cooperatives

25-6.0345

Safety Standards for Construction of  
New Transmission and Distribution  
Facilities

25-6.064

Contribution-in-Aid-of-Construction  
for Installation of New or Upgraded  
Facilities

25-6.078

Schedule of Charges

25-6.115

Facility Charges for Conversion of  
Existing Overhead Investor-owned  
Distribution Facilities

### NOTICE OF CHANGE OF HEARING DATE

The Public Service Commission notifies all interested persons that the date of the hearing in the above dockets has been changed from August 22, 2006 to August 31, 2006, in order to accommodate the Commission's schedule. The notice of rulemaking was published in the July 7, 2006, Florida Administrative Weekly, Vol. 32, No. 27.



DATE PROPOSED RULE APPROVED BY AGENCY  
EAD: May 1, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: June 2, 2006

# BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

## PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

| RULE NOS.: | RULE TITLES:  |
|------------|---|
| 25-6.034   | Standard of Construction  |
| 25-6.0341  | Location of the Utility's Electric Distribution Facilities                                  |
| 25-6.0342  | Third-Party Attachment Standards and Procedures   |
| 25-6.0343  | Municipal Electric Utilities and Rural Electric Cooperatives                                |
| 25-6.0345  | Safety Standards for Construction of New Transmission and Distribution Facilities           |
| 25-6.064   | Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities          |
| 25-6.078   | Schedule of Charges   |
| 25-6.115   | Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities |

**PURPOSE AND EFFECT:** To increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and underground electric infrastructure.

**SUMMARY:** The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** Florida's five Investor Owned Utilities, 18 electric cooperatives, and 35 municipally operated companies will be affected by these rules. Additionally, telecommunications and cable companies that own or lease space on electric facilities may be indirectly affected.

Preliminary data provided by the IOUs indicates estimated costs for increased electric infrastructure reliability will range from \$63 Million to \$193 Million. No data is available from municipally operated systems, electric cooperatives, telecommunications and cable companies.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 350.127(2), 366.04, 366.04(2)(f), 366.05(1) FS.

**LAW IMPLEMENTED:** 366.03, 366.04, 366.04(1), 366.04(2)(c), 366.04(2)(f), 366.04(5), 366.04(6), 366.05, 366.05(1), 366.05(7), 366.05(8), 366.06, 366.06(1) FS.

**WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.**

A HEARING WILL BE HELD ON RULES 25-6.0341, 25-6.0342, AND 25-6.0343 AT THE DATE, TIME AND PLACE SHOWN BELOW. FOR RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115, A HEARING WILL BE HELD THE DATE, TIME AND PLACE SHOWN BELOW ONLY IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE (IF NOT REQUESTED, A HEARING WILL NOT BE HELD ON RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115).

**DATE AND TIME:** Tuesday, August 22, 2006, 9:30 a.m.

**PLACE:** Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Larry Harris, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6076

THE FULL TEXT OF THE PROPOSED RULES IS:

## PART III GENERAL MANAGEMENT REQUIREMENTS

### 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. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. 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, comply with 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 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, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(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.

(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. 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.

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 \_\_\_\_\_.

#### 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, 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, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(c), (5), (6), 366.05(1),(8) FS. History-New \_\_\_\_\_.

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), F.A.C., 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 attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(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.

Specific Authority 350.127(2), 366.05(1) FS, Law Implemented 366.04(2)(c), (5), (6), 366.05(1), (8) FS, History—New

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

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

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

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

1. New construction;

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

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

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to paragraph (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority 350.127, 366.05(1) FS. Law Implemented 366.04(2)(c), (f), (5), (6), 366.05(8) FS. History--New

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 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, 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, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(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 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          | Numerie    | 5      |
| 6. Contiguous  | Character  | 1      |

(b) DOS ASCII Text.

- 1. through 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) through (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) through (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.

#### PART IV GENERAL SERVICE PROVISIONS

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) Contributions-in-aid-of-construction for new or upgraded overhead facilities (CIAC<sub>OH</sub>) shall be calculated as follows: Applicability. This rule applies to all investor-owned electric utilities in Florida as defined in Section 366.02, F.S.

$$\text{CIAC}_{OH} = \frac{\text{Total estimated work order job cost of installing the facilities}}{\text{Four years expected incremental base energy revenue}} = \frac{\text{Four years expected incremental base demand revenue, if applicable}}$$

(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<sub>OH</sub> be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities (CIAC<sub>UG</sub>) shall be calculated as follows:

$$\text{CIAC}_{UG} = \text{CIAC}_{OH} \pm \frac{\text{Estimated difference between cost of providing the service underground and overhead}}$$

(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:

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

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

$$\text{CIAC}_{oh} = (\text{Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters}) \times \frac{(4 \times \text{nonfuel energy charge per KWH} \times \text{expected annual KWH sales over the new line})}{(4 \times \text{nonfuel energy charge per KWH} \times \text{expected annual KWH sales over the new line}) + (4 \times \text{expected annual demand charge revenues from sales over the new line})}$$

(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:

$$\text{CIAC}_{ug} = (\text{Estimated difference between the cost of providing the distribution line extension including not only the distribution line extension itself but also the transformer, the service drop, and other necessary fixtures, with underground facilities vs. the cost of providing service using overhead facilities}) + \text{CIAC}_{oh} \text{ (as above)}$$

(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.

(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.

(6)(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.

(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.

(7)(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 hHowever, 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.

(8)(13) A detailed statement of its standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs This policy shall have uniform application and shall be nondiscriminatory.

(9)(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 \_\_\_\_\_.

## PART V RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

### 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, F.A.C., Standards of Construction.

(3)(2) On or before October 15th 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 years.

~~(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 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.

~~(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) through (8) renumbered (6) through (9) No change.

~~(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 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.

## PART VII UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

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 conversions 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) Such work meets the investor-owned public utility's construction standards;

(b) The investor-owned public utility will own and maintain the completed distribution facilities; and

(c) Such 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) through (8) No change.

(a) The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, F.A.C., Standards of Construction, 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, F.A.C., Standards of Construction.

(10) An applicant ~~requesting to a public utility for~~ construction of underground distribution facilities under this rule may challenge the utility's cost estimates ~~petition 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)(14) 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 \_\_\_\_\_

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Robert Trapp

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 32, No. 18, May 5, 2006

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850)413-6770 at least 48 hours prior to the hearing. Any

person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

## DEPARTMENT OF CORRECTIONS

RULE NO.:

RULE TITLE:

33-601.723

Visiting Check-In Procedures

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify means of obtaining approval for a minor's visit where the legal guardian is incarcerated, yet someone else is taking care of the minor.

SUMMARY: Amends the rule to allow an incarcerated parent or guardian retaining legal custody of a minor to provided a notarized statement authorizing the child of the incarcerated parent to visit. Provides that such authorization remains subject to relevant court orders or relevant departmental rules regarding the inmate's contact with the minor in question.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.23, 944.8031 FS.  
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dorothy M. Ridgway, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

## THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.723 Visiting Check-In Procedures.

(1) through (4) No change.

(5) A visitor seventeen years old or younger who cannot furnish proof of emancipation must be accompanied during a visit by an approved parent, legal guardian, or authorized adult and must remain under the supervision of that adult at all times. An authorized non-parental adult accompanying a visiting minor must provide a notarized document of guardianship from the minor's parent or legal guardian (neither of which may be an inmate except as provided below not an inmate) granting permission for the minor to visit a specifically identified inmate. The document shall be notarized by someone other than the non-parental adult accompanying the minor and shall be updated every six months from the date of issue. In cases where it can be determined that legal custody remains with the incarcerated parent or legal guardian and has not been given to another adult by the court, a notarized statement from



COMMISSIONERS:  
LISA POLAK EDGAR  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL  
MICHAEL G. COOKE  
GENERAL COUNSEL  
(850) 413-6199

## Public Service Commission

July 28, 2006

Mr. Scott Boyd, Executive Director  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

RE: Docket Nos. 060172-EU and 060173-EU - Rule Nos. 25-6.034, 25-6.0341,  
25-6.0342, 25-6.0343, 25-6.0345, 25-6.064, 25-6.078, 25-6.115, F.A.C.

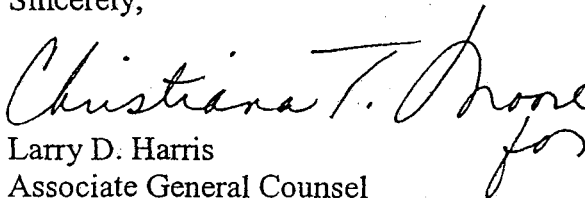
Dear Mr. Boyd:

Enclosed are the following materials concerning the above referenced proposed rules:

1. A copy of the rules and materials incorporated by reference into the rules.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rules.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

Please return the copy of the National Electrical Safety Code once your review of the rules is concluded. If there are any questions with respect to these rules, please do not hesitate to call me.

Sincerely,

  
Larry D. Harris  
Associate General Counsel

Electric infrastructure JAPC.lth.doc

Enclosures

cc: Division of the Commission Clerk and Administrative Services

1 PART III

2 GENERAL MANAGEMENT REQUIREMENTS

3 25-6.034 Standard of Construction.

4 (1) Application and Scope. This rule is intended to define construction standards for  
5 all overhead and underground electrical transmission and distribution facilities to ensure the  
6 provision of adequate and reliable electric service for operational as well as emergency  
7 purposes. This rule applies to all investor-owned electric utilities. The facilities of the utility  
8 shall be constructed, installed, maintained and operated in accordance with generally accepted  
9 engineering practices to assure, as far as is reasonably possible, continuity of service and  
10 uniformity in the quality of service furnished.

11 (2) Each utility shall establish, no later than 180 days after the effective date of this  
12 rule, construction standards for overhead and underground electrical transmission and  
13 distribution facilities that conform to the provisions of this rule. Each utility shall maintain a  
14 copy of its construction standards at its main corporate headquarters and at each district office.  
15 Subsequent updates, changes, and modifications to the utility's construction standards shall be  
16 labeled to indicate the effective date of the new version and all revisions from the prior  
17 version shall be identified. Upon request, the utility shall provide access, within 2 working  
18 days, to a copy of its construction standards for review by Commission staff at the utility's  
19 offices in Tallahassee. ~~The Commission has reviewed the American National Standard Code~~  
20 ~~for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard~~  
21 ~~Requirements, Terminology and Test Code for Instrument Transformers, ANSI 57.13, and has~~  
22 ~~found them to contain reasonable standards of good practice. A utility that is in compliance~~  
23 ~~with the applicable provisions of these publications, and any variations approved by the~~  
24 ~~Commission, shall be deemed by the Commission to have facilities constructed and installed~~  
25 ~~in accordance with generally accepted engineering practices.~~

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1       (3) The facilities of each utility shall be constructed, installed, maintained and  
2 operated in accordance with generally accepted engineering practices to assure, as far as is  
3 reasonably possible, continuity of service and uniformity in the quality of service furnished.

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

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

9       (b) Electrical facilities constructed prior to the effective date of the 2002 edition of the  
10 NESC shall be governed by the applicable edition of the NESC in effect at the time of the  
11 initial construction.

12       (5) For the construction of distribution facilities, each utility shall, to the extent  
13 reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading  
14 standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its  
15 construction standards, each utility shall establish guidelines and procedures governing the  
16 applicability and use of the extreme wind loading standards to enhance reliability and reduce  
17 restoration costs and outage times for each of the following types of construction:

18       (a) new construction;

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

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

23       (6) For the construction of underground distribution facilities and their supporting  
24 overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-  
25 effective, establish guidelines and procedures to deter damage resulting from flooding and

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 storm surges.

2 (7) In establishing the construction standards, the utility shall seek input from other  
3 entities with existing agreements to share the use of its electric facilities. Any dispute or  
4 challenge to a utility's construction standards by a customer, applicant for service, or attaching  
5 entity shall be resolved by the Commission.

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

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

8 History--Amended 7-29-69, 12-20-82, Formerly 25-6.34, Amended \_\_\_\_\_.

9  
10 **25-6.0341 Location of the Utility's Electric Distribution Facilities.** In order to  
11 facilitate safe and efficient access for installation and maintenance, to the extent practical,  
12 feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public  
13 road, normally in front of the customer's premises.

14 (1) For initial installation, expansion, rebuild, or relocation of overhead facilities,  
15 utilities shall use easements, public streets, roads and highways along which the utility has the  
16 legal right to occupy, and public lands and private property across which rights-of-way and  
17 easements have been provided by the applicant for service.

18 (2) For initial installation, expansion, rebuild, or relocation of underground facilities,  
19 the utility shall require the applicant for service to provide easements along the front edge of  
20 the property, unless the utility determines there is an operational, economic, or reliability  
21 benefit to use another location.

22 (3) For conversions of existing overhead facilities to underground facilities, the utility  
23 shall, if the applicant for service is a local government that provides all necessary permits and  
24 meets the utility's legal, financial, and operational requirements, place facilities in road rights-  
25 of-way in lieu of requiring easements.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1       (4) Where the expansion, rebuild, or relocation of electric distribution facilities affects  
2 existing third-party attachments, the electric utility shall seek input from and, to the extent  
3 practical, coordinate the construction of its facilities with the third-party attacher.

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

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

6 History-- New.

7  
8       **25-6.0342 Third-Party Attachment Standards and Procedures.**

9       (1) As part of its construction standards adopted pursuant to Rule 25-6.034, F.A.C.,  
10 each utility shall establish and maintain written safety, reliability, pole loading capacity, and  
11 engineering standards and procedures for attachments by others to the utility's electric  
12 transmission and distribution poles (Attachment Standards and Procedures). The Attachment  
13 Standards and Procedures shall meet or exceed the applicable edition of the National Electrical  
14 Safety Code (ANSI C-2) pursuant to subsection 25-6.034(4) and other applicable standards  
15 imposed by state and federal law so as to assure, as far as is reasonably possible, that third-  
16 party facilities attached to electric transmission and distribution poles do not impair electric  
17 safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed,  
18 installed, maintained, and operated in accordance with generally accepted engineering  
19 practices for the utility's service territory.

20       (2) No attachment to a utility's electric transmission or distribution poles shall be  
21 made except in compliance with such utility's Attachment Standards and Procedures.

22       (3) In establishing the Attachment Standards and Procedures, the utility shall seek  
23 input from other entities with existing agreements to share the use of its electric facilities.

24 Any dispute arising from the implementation of this rule shall be resolved by the Commission.

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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

2 History New

4 **25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.**

5 **(1) Standards of Construction.**

6 **(a) Application and Scope. This rule is intended to define construction standards for**  
7 **all overhead and underground electrical transmission and distribution facilities to ensure the**  
8 **provision of adequate and reliable electric service for operational as well as emergency**  
9 **purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.**

10 **(b) Each utility shall establish, no later than 180 days after the effective date of this**  
11 **rule, construction standards for overhead and underground electrical transmission and**  
12 **distribution facilities that conform to the provisions of this rule. Each utility shall maintain a**  
13 **copy of its construction standards at its main corporate headquarters and at each district office.**  
14 **Subsequent updates, changes, and modifications to the utility's construction standards shall be**  
15 **labeled to indicate the effective date of the new version and all revisions from the prior**  
16 **version shall be identified. Upon request, the utility shall provide access, within 2 working**  
17 **days, to a copy of its construction standards for review by Commission staff in Tallahassee.**

18 **(c) The facilities of each utility shall be constructed, installed, maintained and**  
19 **operated in accordance with generally accepted engineering practices to assure, as far as is**  
20 **reasonably possible, continuity of service and uniformity in the quality of service furnished.**

21 **(d) Each utility shall, at a minimum, comply with the applicable edition of the**  
22 **National Electrical Safety Code (ANSI C-2) [NESC].**

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

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1        2. Electrical facilities constructed prior to the effective date of the 2002 edition of the  
2 NESC shall be governed by the applicable edition of the NESC in effect at the time of the  
3 initial construction.

4        (e) For the construction of distribution facilities, each utility shall, to the extent  
5 reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading  
6 standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its  
7 construction standards, each utility shall establish guidelines and procedures governing the  
8 applicability and use of the extreme wind loading standards to enhance reliability and reduce  
9 restoration costs and outage times for each of the following types of construction:

- 10        1. new construction;  
11        2. major planned work, including expansion, rebuild, or relocation of existing  
12 facilities, assigned on or after the effective date of this rule; and  
13        3. targeted critical infrastructure facilities and major thoroughfares taking into account  
14 political and geographical boundaries and other applicable operational considerations.

15        (f) For the construction of underground distribution facilities and their supporting  
16 overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-  
17 effective, establish guidelines and procedures to deter damage resulting from flooding and  
18 storm surges.

19        (2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe  
20 and efficient access for installation and maintenance, to the extent practical, feasible, and cost-  
21 effective, electric distribution facilities shall be placed adjacent to a public road, normally in  
22 front of the customer's premises.

23        (a) For initial installation, expansion, rebuild, or relocation of overhead facilities,  
24 utilities shall use easements, public streets, roads and highways along which the utility has the  
25 legal right to occupy, and public lands and private property across which rights-of-way and

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1 easements have been provided by the applicant for service.

2 (b) For initial installation, expansion, rebuild, or relocation of underground facilities,  
3 the utility shall require the applicant for service to provide easements along the front edge of  
4 the property, unless the utility determines there is an operational, economic, or reliability  
5 benefit to use another location.

6 (c) For conversions of existing overhead facilities to underground facilities, the utility  
7 shall, if the applicant for service is a local government that provides all necessary permits and  
8 meets the utility's legal, financial, and operational requirements, place facilities in road rights-  
9 of-way in lieu of requiring easements.

10 (3) Third-Party Attachment Standards and Procedures.

11 (a) As part of its construction standards adopted pursuant to subsection (1), each  
12 utility shall establish and maintain written safety, reliability, pole loading capacity, and  
13 engineering standards and procedures for attachments by others to the utility's electric  
14 transmission and distribution poles (Attachment Standards and Procedures). The Attachment  
15 Standards and Procedures shall meet or exceed the applicable edition of the National Electrical  
16 Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable  
17 standards imposed by state and federal law so as to assure, as far as is reasonably possible, that  
18 third-party facilities attached to electric transmission and distribution poles do not impair  
19 electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are  
20 constructed, installed, maintained, and operated in accordance with generally accepted  
21 engineering practices for the utility's service territory.

22 (b) No attachment to a utility's electric transmission or distribution poles shall be  
23 made except in compliance with such utility's Attachment Standards and Procedures.

24 (4) In establishing the construction standards and the attachment standards and  
25 procedures, the utility shall seek input from other entities with existing agreements to share the

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1 use of its electric facilities. Any dispute or challenge to a utility's construction standards by a  
2 customer, applicant for service, or attaching entity shall be resolved by the Commission.

3 Where the expansion, rebuild, or relocation of electric distribution facilities affects existing  
4 third-party attachments, the electric utility shall seek input from and, to the extent practical,  
5 coordinate the construction of its facilities with the third-party attacher.

6 (5) If the Commission finds that a municipal electric utility or rural electric  
7 cooperative utility has demonstrated that its standards of construction will not result in service  
8 to the utility's general body of ratepayers that is less reliable, the Commission shall exempt  
9 the utility from compliance with the rule.

10 Specific Authority: 350.127, 366.05(1) F.S.

11 Law Implemented: 366.04(2)(c)(f), (5), (6), (8), 366.05(8)F.S.

12 History New.  
13

14 **25-6.0345 Safety Standards for Construction of New Transmission and**  
15 **Distribution Facilities.**

16 (1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and  
17 incorporates by reference the 2002 edition of the National Electrical Safety Code (ANSI C-2),  
18 published August 1, 2001, as the applicable safety standards for transmission and distribution  
19 facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric  
20 utility, rural electric cooperative, and municipal electric system shall, at a minimum, comply  
21 with the standards in these provisions. Standards contained in the 2002 edition shall be  
22 applicable to new construction for which a work order number is assigned on or after the  
23 effective date of this rule.

24 (2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and  
25 municipal electric utility shall report all completed electric work orders, whether completed by

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1 the utility or one of its ~~contractors~~, at the end of each quarter of the year. The report shall be  
2 filed with the Director of the Commission's Division of Regulatory Compliance and  
3 Consumer Assistance Auditing and Safety no later than the 30th working day after the last day  
4 of the reporting quarter, and shall contain, at a minimum, the following information for each  
5 work order:

- 6 (a) Work order number/project/job;
- 7 (b) Brief title outlining the general nature of the work; and
- 8 (c) Estimated cost in dollars, rounded to nearest thousand and;
- 9 (d) Location of project.

10 (3) The quarterly report shall be filed in standard DBase or compatible format, DOS  
11 ASCII text, or hard copy, as follows:

12 (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. <del>Kv</del>         | <del>Numeric</del>   | <del>5</del> |
| 6. <del>Contiguous</del> | <del>Character</del> | <del>1</del> |

20 (b) DOS ASCII Text.

- 21 1. Columns shall be the same type and in the same order as listed under Field Names
- 22 above.
- 23 2. A comma (,) shall be placed between data fields.
- 24 3. Character data fields shall be placed between quotation marks (" . . ").
- 25 4. Numeric data fields shall be right justified.

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1 5. Blank spaces shall be used to fill the data fields to the indicated number of digits.

2 (c) Hard Copy.

3 The following format is preferred, but not required:

4 Completed Electrical Work Orders For PSC Inspection

5

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

6

7

8 (4) In its quarterly report, each utility shall identify all transmission and distribution  
9 facilities subject to the Commission's safety jurisdiction, and shall certify to the Commission  
10 that they meet or exceed the applicable standards. Compliance inspections by the  
11 Commission shall be made on a random basis or as appropriate.

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

- 17 (a) Involves death or injury requiring hospitalization of nonutility persons; or  
18 (b) Is significant from a safety standpoint in the judgment of the utility even though it  
19 is not required by paragraph (a).

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

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from existing law.

- 1 (a) Involves damage to the property of others in an amount in excess of \$5000; or
- 2 (b) Causes significant damage in the judgment of the utility to the utility's facilities.
- 3 (7) Unless requested by the Commission, reports are not required with respect to
- 4 personal injury, death, or property damage resulting from vehicles striking poles or other
- 5 utility property.

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

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

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

9 **PART IV**

10 **GENERAL SERVICE PROVISIONS**

11 **25-6.064 ~~Extension of Facilities; Contribution-in-Aid-of-Construction for~~**  
 12 **Installation of New or Upgraded Facilities.**

13 (1) Application and scope Purpose. The purpose of this rule is to establish a uniform

14 procedure by which investor-owned electric utilities ~~subject to this rule will~~ calculate amounts

15 due as ~~contributions-in-aid-of-construction (CIAC)~~ from customers who request new facilities

16 or upgraded facilities ~~require extensions of distribution facilities~~ in order to receive electric

17 service, except as provided in Rule 25-6.078, F.A.C..

18 (2) Applicability. ~~This rule applies to all investor-owned electric utilities in Florida as~~

19 ~~defined in Section 366.02, F.S.~~ Contributions-in-aid-of-construction for new or upgraded

20 overhead facilities (CIAC<sub>OH</sub>) shall be calculated as follows:

|    |                          |   |                           |   |                         |   |                            |
|----|--------------------------|---|---------------------------|---|-------------------------|---|----------------------------|
| 21 | <u>CIAC<sub>OH</sub></u> | = | <u>Total estimated</u>    |   | <u>Four years</u>       |   | <u>Four years expected</u> |
| 22 |                          |   | <u>work order job</u>     | = | <u>expected</u>         | = | <u>incremental base</u>    |
| 23 |                          |   | <u>cost of installing</u> |   | <u>incremental base</u> |   | <u>demand revenue, if</u>  |
| 24 |                          |   | <u>the facilities</u>     |   | <u>energy revenue</u>   |   | <u>applicable</u>          |
| 25 |                          |   |                           |   |                         |   |                            |

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

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

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

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

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

|                               |          |                               |          |  |
|-------------------------------|----------|-------------------------------|----------|--|
| <u><math>CIAC_{UG}</math></u> | <u>=</u> | <u><math>CIAC_{OH}</math></u> | <u>±</u> | <u>Estimated difference between cost of</u>  |
|                               |          |                               |          | <u>providing the service underground and</u> |
|                               |          |                               |          | <u>overhead</u>                              |

15  
16       ~~(3) Definitions. Actual or estimated job cost means the actual cost of providing the~~  
17 ~~specified line extension facilities, calculated after the extension is completed, or the estimated~~  
18 ~~cost of providing the specified facilities before the extension is completed.~~

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

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

24  ~~$CIAC_{eh} = (\text{Actual or estimated job cost} - (4 \times \text{nonfuel energy}$~~   
25 ~~for new poles and conductors — charge per KWH~~

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1                   and appropriate fixtures ~~\_\_\_\_\_~~ × expected annual KWH  
2                   required to provide service, ~~\_\_\_\_\_~~ sales over the new line)  
3                   excluding transformers,  
4                   service drops, and meters)

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

7                    $CIAC_{eh} =$  (Actual or estimated ~~\_\_\_\_\_~~ (4 × nonfuel energy ~~\_\_\_\_\_~~ (4 × expected annual  
8                   job cost for new ~~\_\_\_\_\_~~ charge per KWH × ~~\_\_\_\_\_~~ demand charge  
9                   poles and conductors ~~\_\_\_\_\_~~ expected annual KWH ~~\_\_\_\_\_~~ revenues from sales  
10                  and appropriate ~~\_\_\_\_\_~~ sales over the new line) ~~\_\_\_\_\_~~ over the new line)  
11                  fixtures required to  
12                  provide service,  
13                  excluding transformers,  
14                  service drops, and meters)

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

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

20                   $CIAC_{ug} =$  (Estimated difference between ~~\_\_\_\_\_~~ + ~~\_\_\_\_\_~~  $CIAC_{eh}$  (as above)  
21                  the cost of providing the  
22                  distribution line extension  
23                  including not only the distribution  
24                  line extension itself but also  
25                  the transformer, the service drop,

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1 and other necessary fixtures, with  
2 underground facilities vs. the cost  
3 of providing service using overhead  
4 facilities)

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

8 ~~(7) In the event that amounts are collected for certain distribution facilities via the~~  
9 ~~URD differential tariff as permitted by Rule 25-6.078, F.A.C., that would also be collected~~  
10 ~~pursuant to this rule, the utility shall give an appropriate credit for such amounts collected via~~  
11 ~~the URD differential tariff when calculating the line extension CIAC due pursuant to this rule.~~

12 ~~(4)(8) Each utility shall apply the above formulas in subsections (2) and (3) of this~~  
13 ~~rule uniformly to residential, commercial and industrial customers requesting new or upgraded~~  
14 ~~facilities at any voltage level. requiring line extensions.~~

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

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

21 ~~(6)(10) All CIAC calculations under this rule shall be based on estimated work order~~  
22 ~~job costs. In addition, each~~ The utility shall use its best judgment in estimating the total  
23 amount of annual revenues and sales which the new or upgraded facilities are each line  
24 extension is expected to produce in the near future.

25 (a) A customer may request a review of any CIAC charge within 12 months following

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1 the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the  
2 CIAC to reflect the actual costs of construction and actual base revenues received at the time  
3 the request is made.

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

13 (7)(11) The utility may elect to waive all or any portion of the line-extension CIAC for  
14 customers, even when a CIAC is found to be applicable owing. If hHowever, if the utility  
15 waives a the CIAC, the utility shall reduce net plant in service as though the CIAC had been  
16 collected, unless the Commission determines that there is a quantifiable benefit to the general  
17 body of ratepayers commensurate with the waived CIAC. Commission will reduce the  
18 utility's net plant in service by an equal amount for ratemaking purposes, as though the CIAC  
19 had been collected, except when the company's annual revenues from a customer are  
20 sufficient to offset the unpaid line extension CIAC under subsection (4) or (5). Each utility  
21 shall maintain records of amounts waived and any subsequent changes that served to offset the  
22 CIAC.

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

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1       ~~(8)(13)~~ A detailed statement of its standard facilities extension and upgrade policies  
2 shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform  
3 application and shall be nondiscriminatory.

4       ~~(9)(14)~~ If a utility and applicant are unable to agree on the CIAC amount, ~~in regard to~~  
5 ~~an extension~~, either party may appeal to the Commission for a review.

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

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

8 History—New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended \_\_\_\_.

9  
10 **PART V**

11 **RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS**

12       **25-6.078 Schedule of Charges.**

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

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

23       ~~(3)(2)~~ On or before October 15<sup>th</sup> of each year each utility shall file with the  
24 Commission's Division of Economic Regulation Form PSC/ECR 13-E, Schedule 1, using  
25 current material and labor costs. If the cost differential as calculated in Schedule 1 varies from

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1 the Commission-approved differential by plus or minus 10 percent or more, the utility shall  
2 file a written policy and supporting data and analyses as prescribed in subsections (1), ~~(43)~~  
3 and ~~(54)~~ of this rule on or before April 1 of the following year; however, each utility shall file  
4 a written policy and supporting data and analyses at least once every 3 ~~three~~ years.

5 ~~(4)(3)~~ Differences in Net Present Value of operational ~~operating and maintenance~~  
6 costs, including average historical storm restoration costs over the life of the facilities,  
7 between underground and overhead systems, if any, shall ~~may~~ be taken into consideration in  
8 determining the overall Estimated Average Cost Differential. Each utility shall establish  
9 sufficient record keeping and accounting measures to separately identify operational costs for  
10 underground and overhead facilities, including storm related costs.

11 ~~(5)(4)~~ Detailed supporting data and analyses used to determine the Estimated Average  
12 Cost Differential for underground and overhead distribution systems shall be concurrently  
13 filed by the utility with the Commission and shall be updated using cost data developed from  
14 the most recent 12-month period. The utility shall record these data and analyses on Form  
15 PSC/ECR 13-E (10/97). Form PSC/ECR 13-E, entitled "Overhead/Underground Residential  
16 Differential Cost Data" is incorporated by reference into this rule and may be obtained from  
17 the Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
18 32399-0850, (850) 413-6900.

19 ~~(6)(5)~~ Service for a new multiple-occupancy building shall be constructed  
20 underground within the property to be served to the point of delivery at or near the building by  
21 the utility at no charge to the applicant, provided the utility is free to construct its service  
22 extension or extensions in the most economical manner.

23 ~~(7)(6)~~ The recovery of the cost differential as filed by the utility and approved by the  
24 Commission may not be waived or refunded unless it is mutually agreed by the applicant and  
25 the utility that the applicant will perform certain work as defined in the utility's tariff, in which

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1 case the applicant shall receive a credit. Provision for the credit shall be set forth in the  
2 utility's tariff rules and regulations, and shall be no more in amount than the total charges  
3 applicable.

4 (8)(7) The difference in cost as determined by the utility in accordance with its tariff  
5 shall be based on full use of the subdivision for building lots or multiple-occupancy buildings.  
6 If any given subdivision is designed to include large open areas, the utility or the applicant  
7 may refer the matter to the Commission for a special ruling as provided under Rule 25-6.083,  
8 F.A.C.

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

13 (10)(9) Nothing in this rule ~~herein contained~~ shall be construed to prevent any utility  
14 from waiving assuming all or any portion of a cost differential for ~~of~~ providing underground  
15 facilities, distribution systems, provided, however, that such assumed cost differential shall not  
16 be chargeable to the general body of rate payers, and any such policy adopted by a utility shall  
17 have uniform application throughout its service area. If, however, the utility waives the  
18 differential, the utility shall reduce net plant in service as though the differential had been  
19 collected unless the Commission determines that there is a quantifiable benefit to the general  
20 body of ratepayers commensurate with the waived differential.

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

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

23 History—New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97, \_\_\_\_.

1 PART VII

2 UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

3 25-6.115 Facility Charges for Conversion of Existing Overhead Providing  
4 ~~Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New~~  
5 ~~Residential Subdivisions.~~

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

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

22 (3) Nothing in the tariff shall prevent the applicant from constructing and installing all  
23 or a portion of the underground distribution facilities provided:

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

25 (b) ~~t~~The investor-owned public utility will own and maintain the completed

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1 distribution facilities; and

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

4 (4) Nothing in the tariff shall prevent the applicant from requesting a non-binding cost  
5 estimate which shall be provided to the applicant free of any charge or fee.

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

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

15 (7) The charge paid by the applicant shall be the charge for the proposed underground  
16 facilities as indicated in subsection (8) minus the charge for overhead facilities as indicated in  
17 subsection (9) minus the non-refundable deposit amount. The applicant shall not be required  
18 to pay an additional amount which exceeds 10 percent of the binding cost estimate.

19 (8) For the purpose of this rule, the charge for the proposed underground facilities  
20 shall include:

21 (a) ~~t~~The estimated cost of construction of the underground distribution facilities based  
22 on the requirements of Rule 25-6.034, Standards of Construction, including the construction  
23 cost of the underground service lateral(s) to the meter(s) of the customer(s); and

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

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from existing law.

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

5 (10) An applicant ~~requesting to a public utility for~~ construction of underground  
6 distribution facilities under this rule may petition challenge the utility's cost estimates the  
7 ~~Commission~~ pursuant to Rule 25-22.032, F.A.C.

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

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

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

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

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

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

25 Law Implemented 366.03, 366.04, 366.05 FS.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions  
from existing law.

1 History-New 9-21-92, Amended.

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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE TITLE:

RULE NO.:

Standard of Construction

25-6.034

Location of the Utility's Electric Distribution Facilities

25-6.0341

Third-Party Attachment Standards and Procedures

25-6.0342

Municipal Electric Utilities and Rural Electric Cooperatives

25-6.0343

Safety Standards for Construction of New Transmission and  
Distribution Facilities

25-6.0345

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

25-6.064

Schedule of Charges.

25-6.078

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

25-6.115

PURPOSE AND EFFECT: To increase the reliability of Florida's electric transmission and  
distribution infrastructure, as well as clarify costs and standards regarding overhead line  
extensions and underground electric infrastructure.

SUMMARY: The rules will require electric utilities to develop construction standards which, at  
a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front  
of customer's premises in certain circumstances; develop standards for third-party attachments to  
electric facilities; extend applicability of the standards to municipally operated systems and  
electric cooperatives; and clarify and revise the charges for overhead line extensions,  
underground construction, and conversion of overhead facilities to underground facilities.



SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Florida's five Investor Owned Utilities, 18 electric cooperatives, and 35 municipally operated companies will be affected by these rules. Additionally, telecommunications and cable companies that own or lease space on electric facilities may be indirectly affected. Preliminary data provided by the IOUs indicates estimated costs for increased electric infrastructure reliability will range from \$63 Million to \$193 Million. No data is available from municipally operated systems, electric cooperatives, telecommunications and cable companies.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.04, 366.04(2)(f), 366.05(1) FS

LAW IMPLEMENTED: 366.03, 366.04, 366.04(1), 366.04(2)(c), 366.04(2)(f), 366.04(4), 366.04(5), 366.04(6), 366.05, 366.05(1), 366.05(7), 366.05(8), 366.06, 366.06(1) F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD ON RULES 25-6.0341, 25-6.0342, AND 25-6.0343 AT THE TIME, DATE, AND PLACE SHOWN BELOW. FOR RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115, A HEARING WILL BE HELD THE TIME, DATE, AND PLACE SHOWN BELOW ONLY IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE (IF NOT REQUESTED, A HEARING WILL NOT BE HELD ON RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115).

TIME AND DATE: 9:30 a.m., Tuesday, August 22, 2006.

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE PROPOSED RULES ARE: Larry Harris, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6076.

THE FULL TEXT OF THESE PROPOSED RULES ARE:

### PART III

#### GENERAL MANAGEMENT REQUIREMENTS

##### 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. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be

identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. 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, comply with 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 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, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the

applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(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.

(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. 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.

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 \_\_\_\_\_.

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, 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, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

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

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

History— New.

#### 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 attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(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.

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

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

History New \_\_\_\_\_.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be

identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

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

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

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

1. new construction;

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

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

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and



distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

History New \_\_\_\_\_.

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 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, 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, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(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; ~~and~~
- (d) Location of project.

(3) The quarterly report shall be filed in standard DBase or compatible format, DOS 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<br>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, \_\_\_\_\_.

#### PART IV

#### GENERAL SERVICE PROVISIONS

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<sub>OH</sub>) shall be calculated as follows:

|                          |          |   |          |  |          |   |
|--------------------------|----------|---|----------|--|----------|---|
| <u>CIAC<sub>OH</sub></u> | <u>=</u> | <u>Total estimated work order job cost of installing the facilities</u> | <u>=</u> | <u>Four years expected incremental base energy revenue</u> | <u>=</u> | <u>Four years expected incremental base demand revenue, if applicable</u> |
|--------------------------|----------|---|----------|--|----------|---|

(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:

|             |   |             |   |  |
|-------------|---|-------------|---|--|
| $CIAC_{UG}$ | = | $CIAC_{OH}$ | + | <u>Estimated difference between cost of providing the service underground and overhead</u> |
|-------------|---|-------------|---|--|

~~(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:~~

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

service drops, and meters)

(b) For customers in rate classes that pay both energy charges and demand charges, the

CIAC shall be calculated as follows:

$$\text{CIAC}_{\text{oh}} = (\text{Actual or estimated} \text{---} (4 \times \text{nonfuel energy} \text{---} (4 \times \text{expected annual} \\ \text{job cost for new} \text{---} \text{charge per KWH} \times \text{---} \text{demand charge} \\ \text{poles and conductors} \text{---} \text{expected annual KWH} \text{---} \text{revenues from sales} \\ \text{and appropriate} \text{---} \text{sales over the new line}) \text{---} \text{over the new line}) \\ \text{fixtures required to} \\ \text{provide service,} \\ \text{excluding transformers,} \\ \text{service drops, and meters})$$

(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:

$$\text{CIAC}_{\text{ug}} = (\text{Estimated difference between} \text{---} + \text{---} \text{CIAC}_{\text{oh}} \text{ (as above)}) \\ \text{the cost of providing the} \\ \text{distribution line extension} \\ \text{including not only the distribution} \\ \text{line extension itself but also} \\ \text{the transformer, the service drop,} \\ \text{and other necessary fixtures, with} \\ \text{underground facilities vs. the cost}$$

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.~~

~~(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.~~

~~(6)(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.

(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.

~~(7)(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~~However, ~~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.~~

~~(8)(13)~~ A detailed statement of its standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform



application and shall be nondiscriminatory.

~~(9)~~(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.

## PART V

### RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

#### 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.

~~(3)~~(2) On or before October 15<sup>th</sup> 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), ~~(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 Net Present Value of operational ~~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 utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

~~(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.

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

~~(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, \_\_\_\_.

## PART VII

### UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

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 conversion~~ 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) ~~s~~Such work meets the investor-owned public utility's construction standards;

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

(c) ~~s~~Such 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~~The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, Standards of Construction, 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.

(10) An applicant requesting to a public utility for construction of underground 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) 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 \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULES: Robert Trapp

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULES:

Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: June 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32,  
Number 18, May 5, 2006.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** June 7, 2006

**TO:** Office of General Counsel (Moore)

**FROM:** Division of Economic Regulation (Hewitt) *[Handwritten initials]*

**RE:** Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.034, F.A.C., Standard of Construction; Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities, Rule 25-6.064, F.A.C., Extension of Facilities; Contributions-in-Aid-of-Construction, Rule 25-6.078, F.A.C., Schedule of Charges, and proposed new Rule 25-6.0341, F.A.C., Location of Utility Facilities, Rule 25-6.0342, F.A.C., Third-Party Attachments Standards and Procedures, and Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060172-EU and 060173-EU

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### SUMMARY OF THE RULE

The above rules contain the requirements for all electric utilities to construct their electrical systems to a minimum standard which is installed, maintained, and operated in accordance with generally accepted engineering practices. The rules require that utilities must comply with applicable safety standards for transmission and distribution facilities of the National Electrical Safety Code (NESC). The rules also contain the procedures for the calculation of contributions-in-aid-of-construction (CIAC) by customers requesting extension of distribution facilities. The rules contain the schedule for charging a differential cost for providing underground service. Finally, the rules contain the requirement that investor-owned utilities (IOUs) file a tariff for deposit amounts for the conversion of overhead electric to underground facilities.

The proposed rule amendments would add specificity to the broad policy of construction standards and require each IOU to establish its own construction standard for overhead and underground electrical transmission and distribution facilities. Each IOU would also have to establish guidelines and procedures for the application of the extreme wind loading standards to (1) new construction, (2) major planned upgrades and relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the proposed changes would adopt the NESC as the minimum applicable safety standards for transmission and distribution facilities. Rule changes would establish a uniform procedure to calculate amounts due as CIAC. IOUs would also have to establish a written policy as part of their tariff on the installation of underground electrical distribution facilities in new residential subdivisions and file a tariff for converting overhead to underground facilities.

A new proposed rule would facilitate and encourage the placement of electric distribution facilities in readily accessible locations such as adjacent to public roads and along front edges of properties. Another proposed rule would require IOUs to establish written procedures for attachments by others to the utility's poles. An additional new proposed rule would require municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities to ensure adequate, reliable, and safe electric service.

Other minor changes are also proposed to clarify CIAC calculations, expand the costs included in determining overhead/underground cost differences, and allow waiver of CIAC in certain circumstances.

#### ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs), 18 electric cooperatives, and 35 municipally operated companies, would be affected by the proposed rule changes. The electric companies sell electricity to industrial, commercial, and residential customers throughout the state. In addition, cable television companies, incumbent local exchange telephone companies (LECs), as well as any other telecom carriers owning electric utility pole attached equipment, could be indirectly affected by some of the proposed rule changes. As of 2005 there were 10 ILECs, 415 competitive LECs, and 681 Interexchange Telephone Companies (IXCs), and an unknown number of non-PSC regulated telecommunications companies, many of which may have pole attachments.

#### RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some implementation and enforcement costs for the Commission as it monitors compliance with the proposed rule changes. The Commission would benefit by the proposed rule amendments from fewer petitions for storm damage relief. There should be no impact on agency revenues and the costs of administering the rules would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from the improved electrical transmission and distribution system.

#### ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

The IOUs would have significant transactional costs from the proposed rule changes. The four major IOUs reported estimated costs to implement storm hardening programs for their systems to be at least \$63 million. The cost estimates are based on capital additions to pre-2006 capital budget levels and do not include ongoing operation and maintenance costs. However, the additional costs are minor compared to the hundreds of million dollars in damage caused by storms. Other rule changes would have additional costs but estimates are not available at this time.



Municipal and cooperative electrical utilities could also have significant costs but they have not submitted any estimates to the Commission.

Requiring the placement of IOU electric distribution facilities in readily accessible locations would impact non-electric companies that attach their equipment on utility poles. There have been no estimates submitted that would indicate the magnitude of the impact.

The IOUs and others would benefit from strengthening of their facilities if less damage is incurred and service interruptions are decreased thus lessening lost revenues.

Electric company customers would benefit significantly from the proposed rule changes because the electrical service system should better withstand storms and hurricanes, although the ratepayers may eventually pay for all or some of the additional costs for the upgrades.

#### IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties with improved storm hardened electrical system facilities. The cost of the improvements may be born by ratepayers, stockholders, or some combination, depending on the funding means chosen but should be more than offset by the positive economic impact from fewer and less widespread outages.

CH:kb

cc: Mary Andrews Bane  
Chuck Hill  
Bob Trapp  
Jim Bremen  
Hurd Reeves

Rules 25-6.034, 25-6.0341,  
25-6.0342, 25-6.0343, 25-6.0345,  
25-6.064, 25-6.078, 25-6.115  
Docket Nos. 060172-EU and 060173-EU

STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE

As a result of the past two storm seasons, and the severe damage done to the State by hurricanes, the Commission determined that increased electrical infrastructure reliability is needed.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.



# National ELECTRICAL

C2-2002



Published by the Institute of Electrical and Electronics Engineers, Inc.

# National Electrical Safety Code®

Secretariat

Institute of Electrical and Electronics Engineers, Inc.

Approved 5 February 2001

Institute of Electrical and Electronics Engineers, Inc.

Approved 14 June 2001

American National Standards Institute

## 2002 Edition

2nd Printing

*Corrected Edition*

5 August 2002

**Abstract:** This standard covers basic provisions for safeguarding of persons from hazards arising from the installation, operation, or maintenance of 1) conductors and equipment in electric supply stations, and 2) overhead and underground electric supply and communication lines. It also includes work rules for the construction, maintenance, and operation of electric supply and communication lines and equipment.

The standard is applicable to the systems and equipment operated by utilities, or similar systems and equipment, of an industrial establishment or complex under the control of qualified persons.

This standard consists of the introduction, definitions, grounding rules, list of referenced and bibliographic documents, and Parts 1, 2, 3, and 4 of the 2002 Edition of the National Electrical Safety Code.

**Keywords:** communications industry safety; construction of communication lines; construction of electric supply lines; electrical safety; electric supply stations; electric utility stations; high-voltage safety; operation of communications systems; operation of electric supply systems; power station equipment; power station safety; public utility safety; safety work rules; underground communication line safety; underground electric line safety

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## Foreword

(This foreword is not a part of Accredited Standards Committee C2-2002, National Electrical Safety Code®.)

This publication consists of the parts of the National Electrical Safety Code® (NESC®) currently in effect. The former practice of designating parts by editions has not been practical for some time. In the 1977 Edition, Parts 1 and 4 were 6th Editions; Part 2 was a 7th Edition; Part 3 was a revision of the 6th Edition; Part 2, Section 29, did not cover the same subject matter as the 5th Edition; and Part 3 was withdrawn in 1970. In the 1987 Edition, revisions were made in all parts, and revisions to all parts have been made in subsequent editions. It is therefore recommended that reference to the NESC be made solely by the year of the published volume and desired part number. Separate copies of the individual parts are not available.

Work on the NESC started in 1913 at the National Bureau of Standards (NBS), resulting in the publication of NBS Circular 49. The last complete edition of the Code (the 5th Edition, NBS Handbook H30) was issued in 1948, although separate portions had been available at various times starting in 1938. Part 2—Definitions, and the Grounding Rules, 6th Edition, was issued as NBS Handbook H81, ANSI C2.2-1960, in November 1961, but work on other parts was not actively in process again until 1970.

In 1970 the C2 Committee decided to delete the Rules for the Installation and Maintenance of Electric Utilization Equipment (Part 3 of the 5th Edition), now largely covered by the National Electrical Code (ANSI/NFPA 70), and the Rules for Radio Installations (Part 5 of the 5th Edition) from future editions. The Discussion of the NESC, issued as NBS Handbook H4 (1928 Edition) for the 4th Edition of the NESC and as NBS Handbook H39 for Part 2 of the Grounding Rules of the 5th Edition, was not published for the 6th Edition.

The 1981 Edition included major changes in Parts 1, 2, and 3, minor changes in Part 4, and the incorporation of the rules common to all parts into Section 1. The 1984 Edition was revised to update all references and to list those references in a new Section 3. Rounded metric values, for information only, were added. Gender-related terminology was deleted. Section 1—Introduction, Section 2—Definitions, Section 3—References, and Section 9—Grounding Methods, were made applicable to each of the Parts 1, 2, 3, and 4.

The 1987 Edition was revised extensively. Definitions were changed or added. Requirements affecting grounding methods, electric supply stations, overhead line clearances and loading, underground lines, and work rules were revised.

The 1990 Edition included several major changes. General rules were revised. A significant change to the method for specifying overhead line clearances was made and the rationale added as Appendix A. Requirements for clearances of overhead lines from grain bins and an alternate method for determining the strength requirements for wood structures was added. Rules covering grounding methods, electric supply stations, underground lines, and work rules were changed.

In the 1993 Edition, changes were made in the rules applicable to emergency and temporary installations. In Section 9 and Parts 1, 2, and 3, rules were extended or clarified to include HVDC systems. The requirements for random separation of direct-buried supply and communication systems were modified for consistency and clarity, as was the rule in Part 4 on tagging electric supply circuits.

In the 1997 edition, the most notable general change that took place is that numerical values in the metric (SI) system are shown in the preferred position, with customary inch-foot-pound values (inside parentheses) following. A bibliography, Appendix B, which consists of a list of resources identified in notes or recommendations, was added. Changes were made to rules affecting grounding, electric supply stations, and overhead lines, particularly with regard to clearance rules applicable to emergency and temporary installations. Strength requirements contained in Sections 24, 25, and 26 were revised completely. Underground line requirements for random separation for underground lines of direct-buried cables were modified. The requirement for cable identification marking by means of sequentially placed logos was introduced. Work rules added a requirement that warning signs and tags comply with applicable ANSI standards, tagging requirements were clarified with regard to SCADA, and extensive requirements for fall protection were added.

In the 2002 Edition, several changes were made that affected all or several parts of the Code. Particularly, this edition clarifies interfaces between the NEC and NESC with regard to Code jurisdiction in the area of street lights and area lights. Also included is clarification for situations between utility workers and their

## Standards Committee Membership

At the time this Code was approved, Accredited Standards Committee C2 had the following membership:

O. Chuck Amrhyn, *Chair*      Frank A. Denbrock, *Vice Chair*  
Susan L. Vogel, *Secretary*

| <i>Organization Represented</i>                                  | <i>Name</i>                        |
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| Alliance for Telephone Industry Solutions .....                  | Lawrence M. Slavin                 |
| American Insurance Services Group, Inc. ....                     | Vacant                             |
| American Public Power Association .....                          | Michael J. Hyland                  |
|  | Ron Lunt ( <i>Alt.</i> )           |
| American Public Transit Association .....                        | George S. Pristach                 |
| Association of American Railroads .....                          | Vacant                             |
| Association of Edison Illuminating Companies .....               | John J. Schlee, Jr.                |
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| Electronic Industries Association .....                          | Percy E. Pool                      |
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| International Association of Government Labor Officials .....    | Bernard O'Neill                    |
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| National Electrical Contractors Association .....                | O. L. Davis                        |
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| National Electrical Manufacturers Association .....              | Chris K. Durland                   |
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| National Safety Council .....                                    | P. Schmidt                         |
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| Rural Utilities Service, US Department of Agriculture .....      | G. J. Bagnall                      |
| Tennessee Valley Authority .....                                 | Clayton L. Clem                    |
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# Public Service Commission

BY FACSIMILE

July 31, 2006

Mr. Scott Boyd, Executive Director  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

RE: Docket Nos. 060172-EU and 060173-EU - Rule Nos. 25-6.034, 25-6.0341,  
25-6.0342, 25-6.0343, 25-6.0345, 25-6.064, 25-6.078, 25-6.115, F.A.C.

Dear Mr. Boyd:

Enclosed is a supplement to the statement of facts and circumstances justifying the above proposed rules.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore  
Associate General Counsel

Electric infrastructure JAPC2.ctm.doc

Enclosure

cc: Division of the Commission Clerk and Administrative Services

SUPPLEMENT TO STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE

On January 23, 2006, the Commission held a staff workshop to discuss the damage to electric utility facilities incurred as a result of recent hurricanes and to explore ways of minimizing future storm damage to electric infrastructure and resulting outages to customers. State and local government officials, independent technical experts, and Florida's electric utilities participated in the workshop. On January 30, 2006, post-workshop comments were received from the participants. Based on the comments received at the January 23, 2006 workshop, at the February 27, 2006 Internal Affairs, the Commission approved a number of specific short-term and long-term actions to prepare Florida's electric infrastructure to better withstand severe storms in the future.

The Commission directed staff to begin rulemaking proceedings to:

- (1) Address requiring distribution facility construction standards higher than the National Electrical Safety Code (NESC); and
- (2) Look at the cost and reliability of installing underground electric facilities, with specific emphasis on identifying areas and circumstances where underground facilities may be appropriate.

Docket Nos. 060173-EU and 060172-EU, respectively, were opened to initiate rulemaking in these two areas.

A draft of proposed rule changes was discussed at a rule development workshop held on April 17, 2006. Post-workshop comments were received on May 3, 2006 from Florida Power & Light (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (GULF), the Florida Electric Cooperatives Association, Inc. (FECA), the Florida Municipal Electric Association, Inc. (FMEA), the Town of Palm Beach and the Town of Jupiter Island (the Towns), Time Warner Telecom of Florida, L.P. (Time Warner), and H.M. Rollins Company, Inc. (Rollins). On May 15, 2006, a revised draft of proposed rule changes was circulated and a second rule development workshop was held on May 19, 2006. Post-workshop comments were received on May 26, 2006, from FPL, PEF, TECO, GULF, FECA, FMEA, Lee County Electric Cooperative, Inc. (LCEC), the Towns, Florida Cable Telecommunications Association (FCTA), Time Warner, BellSouth Telecommunications, Inc. (BellSouth), Verizon Florida Inc. (Verizon), Embarq Corporation (Embarq), and TDS Telecom/Quincy (TDC). Electric utility cost data for the Statement of Estimated Regulatory Cost (SERC) was also provided on May 26, 2006.

**Rule 25-6.034, F.A.C., pertaining to standards of construction:** The current rule broadly requires investor-owned utilities to construct, install, maintain, and operate their facilities in accordance with generally accepted engineering practices. The proposed rule changes seek to add specificity to this broad policy statement, particularly with regard to impacts associated with extreme weather. The changes are needed to ensure the provision of adequate



and reliable electric service for operational and emergency purposes in Florida. The requirement for utilities to adopt construction standards that take into consideration the cost-effective targeting of essential overhead and underground distribution facilities for hardening will enhance the ability of utilities to reduce restoration costs and outage times resulting from extreme weather conditions.

**Rule 25-6.0341, Florida Administrative Code, Location of the Utility's Electric Distribution Facilities:** This rule is needed to encourage electric utilities to economically locate distribution facilities in accordance with the provision of adequate and reliable electric service for operational and emergency purposes in Florida. Utilities will be encouraged to place their facilities in readily accessible locations that take into consideration the cost-effective targeting of essential overhead and underground distribution facilities for hardening to enhance the ability of utilities to reduce restoration costs and outage times resulting from extreme weather conditions.

**Rule 25-6.0342, Florida Administrative Code, Third-Party Attachment Standards and Procedures:** This new rule is needed to encourage electric utilities to avoid premature pole failures due to pole attachments in accordance with the provision of adequate and reliable electric service for operational and emergency purposes in Florida. Utilities will be encouraged to pursue pole attachment agreements that enhance the ability of utilities to reduce restoration costs and outage times resulting from extreme weather conditions.

**Rule 25-6.0343, Florida Administrative Code, Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives:** This rule requiring municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities is needed to increase the reliability of the electrical grid to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. The rule is also written to allow utilities to make a showing that, in their particular situation, good reasons exist why higher construction standards should not be required. This would allow Municipals and Cooperatives to show, for example, that their current construction practices under the Rural Electric Standards are reasonable and adequate, or that for a given Municipal or Cooperative, the costs of complying with the standards would outweigh the safety and reliability impacts of failure during a severe weather event. As an example, the Municipals and Cooperatives have stated that their restoration times after previous years' storms were days, not weeks. Upon petition by a Cooperative or Municipal, the Commission could find this evidence satisfies the requirements of the Rule.

Due to the interconnection of Florida's electrical grid, establishing one set of standards for investor owned electric utilities but not for Municipals and Cooperatives may not achieve the goals of increased statewide reliability. For some areas of the state, it may be possible to isolate a Municipal or Cooperative system, and allow the surrounding areas to be energized without any adverse impacts. For other areas of the state, however, there may be interconnections where such isolation is not possible.

**Rule 25-6.0345, Florida Administrative Code, Safety Standards for Construction of New Transmission and Distribution Facilities.**

Rule 25-6.0345 sets the electric utility reporting requirements pursuant to the Commission's safety jurisdiction and adopts the 2002 edition of the National Electrical Safety Code as the minimum applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. A change to the rule is needed to incorporate the

words "at a minimum" consistent with 2006 legislative modification of Section 366.06, Florida Statutes. (Chapter 2006-230, Laws of Florida) Editorial changes to other subsections are made for clarity and subsection (3), which establishes the content and format of the utility's quarterly reports that list completed work orders, eliminates the requirement for utilities to provide the Kv rating and contiguous characteristics associated with each work order because these data are not needed to select and perform safety inspections.

**Rule 25-6.064, Florida Administrative Code, Extension of Facilities:**

Most of the recommended changes to the rule are for clarification and ease of application and do not represent changes in current policy. Rule 25-6.064 addresses the calculation of contributions-in-aid-of-construction (CIAC) for line extensions, excluding new subdivisions, which are covered in Rule 25-6.078, and conversions of existing overhead to underground facilities, which are covered in Rule 25-6.115. Changes to the rule are needed to include: (a) adding upgrades to existing facilities, (b) including transformer costs, (c) including system hardening costs, (d) requiring a true-up of the CIAC, and (e) requiring that the CIAC be prorated to future customers in certain cases.

**Rule 25-6.078, Florida Administrative Code, Schedule of Charges:** Changes are made to clarify existing language and make the rule consistent with the changes proposed in Rules 25-6.034, 25-6.064, and 25-6.115. Current cost differentials are based on initial installation costs and generally indicate that underground construction is more expensive than comparable overhead facilities. However, utilities have indicated that, while underground installation may be more expensive initially, there may be savings in maintenance or storm restoration activities over time, compared to overhead installations. Changes in the rule are intended to capture those longer term costs and benefits.

Today, utilities allege separate overhead and underground operational costs cannot be considered because they are not readily available. The proposed language would require utilities to establish and maintain adequate record keeping and accounting measures so these costs can be tracked.

**Rule 25-6.115, Florida Administrative Code, Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities:**

Rule 25-6.115 addresses conversion of existing overhead distribution facilities to underground facilities. This rule was originally adopted to codify what would be included in estimates for requested conversions. The changes to the rule are needed to clarify existing language and to make the rule consistent with the changes proposed in Rules 25-6.034, 25-6.064, and 25-6.078.

The 180-day deadline to accept an original estimate in subsection (6) was included in the rule because costs change over time, and the utility and its ratepayers should not be held to an estimate seriously out of date with current costs. However, the parties and the utilities agree that in some circumstances delays are unavoidable and should not require a new estimate or contract. Therefore, a provision has been included allowing the 180 days to be extended upon mutual agreement. Clarifications and additions are also included to make this rule consistent with 25-6.064 and 25-6.078. Life cycle costs and benefits for operational costs including storm restoration for conversions are added to subsection (11)(a) of this rule for consistency of treatment. This will better reflect the total costs of installing or converting overhead facilities to

underground facilities. Subsection (11)(b) recognizes that if a customer chooses to construct or install a portion of the requested facilities, the utility does not incur certain costs.

The proposed language in subsection (12) is identical to the language in subsection (7) of Rule 25-6.064 and subsection (10) of Rule 25-6.078, and allows the waiver of all or a portion of the CIAC if the Commission determines that commensurate benefits accrue to the general body of ratepayers. Investment in facilities that are not paid for through a customer-specific CIAC become part of rate base. A higher rate base can result in higher rates to all customers. Unless it can be shown that all customers benefit from the construction, these costs should be recovered from the customer requesting the construction. This change allows the Commission to consider a discount or credit mechanism such as the change proposed by FPL in Docket No. 060150-EI, if it deems it appropriate.



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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**DATE:** June 7, 2006  
**TO:** Office of General Counsel (Moore)  
**FROM:** Division of Economic Regulation (Hewitt) *[Handwritten initials]*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.034, F.A.C., Standard of Construction; Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities, Rule 25-6.064, F.A.C., Extension of Facilities; Contributions-in-Aid-of-Construction, Rule 25-6.078, F.A.C., Schedule of Charges, and proposed new Rule 25-6.0341, F.A.C., Location of Utility Facilities, Rule 25-6.0342, F.A.C., Third-Party Attachments Standards and Procedures, and Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060172-EU and 060173-EU

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### SUMMARY OF THE RULE

The above rules contain the requirements for all electric utilities to construct their electrical systems to a minimum standard which is installed, maintained, and operated in accordance with generally accepted engineering practices. The rules require that utilities must comply with applicable safety standards for transmission and distribution facilities of the National Electrical Safety Code (NESC). The rules also contain the procedures for the calculation of contributions-in-aid-of-construction (CIAC) by customers requesting extension of distribution facilities. The rules contain the schedule for charging a differential cost for providing underground service. Finally, the rules contain the requirement that investor-owned utilities (IOUs) file a tariff for deposit amounts for the conversion of overhead electric to underground facilities.

The proposed rule amendments would add specificity to the broad policy of construction standards and require each IOU to establish its own construction standard for overhead and underground electrical transmission and distribution facilities. Each IOU would also have to establish guidelines and procedures for the application of the extreme wind loading standards to (1) new construction, (2) major planned upgrades and relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the proposed changes would adopt the NESC as the minimum applicable safety standards for transmission and distribution facilities. Rule changes would establish a uniform procedure to calculate amounts due as CIAC. IOUs would also have to establish a written policy as part of their tariff on the installation of underground electrical distribution facilities in new residential subdivisions and file a tariff for converting overhead to underground facilities.

A new proposed rule would facilitate and encourage the placement of electric distribution facilities in readily accessible locations such as adjacent to public roads and along front edges of properties. Another proposed rule would require IOUs to establish written procedures for attachments by others to the utility's poles. An additional new proposed rule would require municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities to ensure adequate, reliable, and safe electric service.

Other minor changes are also proposed to clarify CIAC calculations, expand the costs included in determining overhead/underground cost differences, and allow waiver of CIAC in certain circumstances.

#### ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs), 18 electric cooperatives, and 35 municipally operated companies, would be affected by the proposed rule changes. The electric companies sell electricity to industrial, commercial, and residential customers throughout the state. In addition, cable television companies, incumbent local exchange telephone companies (LECs), as well as any other telecom carriers owning electric utility pole attached equipment, could be indirectly affected by some of the proposed rule changes. As of 2005 there were 10 ILECs, 415 competitive LECs, and 681 Interexchange Telephone Companies (EXCs), and an unknown number of non-PSC regulated telecommunications companies, many of which may have pole attachments.

#### RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some implementation and enforcement costs for the Commission as it monitors compliance with the proposed rule changes. The Commission would benefit by the proposed rule amendments from fewer petitions for storm damage relief. There should be no impact on agency revenues and the costs of administering the rules would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from the improved electrical transmission and distribution system.

#### ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

The IOUs would have significant transactional costs from the proposed rule changes. The four major IOUs reported estimated costs to implement storm hardening programs for their systems to range between \$63 million and \$193 million. The cost estimates are based on capital additions to pre-2006 capital budget levels and do not include ongoing operation and maintenance costs. However, the additional costs are minor compared to the hundreds of million dollars in damage caused by storms. Other rule changes would have additional costs but estimates are not available at this time.

Municipal and cooperative electrical utilities could also have significant costs but they have not submitted any estimates to the Commission.

Requiring the placement of IOU electric distribution facilities in readily accessible locations would impact non-electric companies that attach their equipment on utility poles. There have been no estimates submitted that would indicate the magnitude of the impact.

The IOUs and others would benefit from strengthening of their facilities if less damage is incurred and service interruptions are decreased thus lessening lost revenues.

Electric company customers would benefit significantly from the proposed rule changes because the electrical service system should better withstand storms and hurricanes, although the ratepayers may eventually pay for all or some of the additional costs for the upgrades.

#### IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties with improved storm hardened electrical system facilities. The cost of the improvements may be born by ratepayers, stockholders, or some combination, depending on the funding means chosen but should be more than offset by the positive economic impact from fewer and less widespread outages.

CH:kb

cc: Mary Andrews Bane  
Chuck Hill  
Bob Trapp  
Jim Bremen  
Hurd Reeves

ORIGINAL

DISTRIBUTION CENTER  
2425 Sunrise Key Blvd.  
Fort Lauderdale, FL 33304-3827  
Tel: (954) 463-2128  
JUL 24 AM 7:25

Ms. Blanca S. Bayo  
Director  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0862

060172-EU

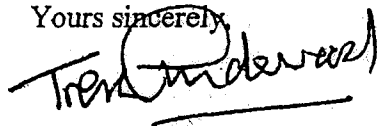
July 20, 2006

Dear Ms. Bayo,

Rule 25-6.115

As provided for in the Florida Public Service Commission Notice of Rulemaking relating to Docket No. 060172-EU, I am attaching my comments on the proposed amendments to Rule 25-6.115 and requesting a hearing of the proposed changes to this rule at the Hearing set for August 31, 2006.

Yours sincerely,



Trevor G. Underwood

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
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SEC 1  
OTH Ken P. added 7/25/06

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06466 JUL 24 8

FPSC-COMMISSION CLERK

July 20, 2006

**Florida Public Service Commission Docket 060172-EU**

**Comment of Trevor Underwood, resident of the City of Fort Lauderdale, regarding the proposed amendments to Rule 25-6.115 relating to Facility Charges for Providing Underground Facilities of Public Distribution Facilities Excluding New Residential Subdivisions.**

As discussed in the Florida Public Service Commission (FPSC) Staff Memorandum dated June 8, 2006, and reflected in the subsequent Notice of Rulemaking issued by the FPSC on June 28, 2006, some of the proposed changes to Rule 25-6.115 involved clarifying that this rule only applied to investor-owned electric distribution facilities (though the Memorandum stated that "Subsection (1) clarifies that the rule applies to investor-owned electric utilities and to distribution facilities" which is not necessarily the same thing as investor-owned electric distribution facilities. As neither this nor any other Rule appears to cover a proposal that I am presenting next week to the City of Fort Lauderdale to Municipalize and Underground the Local Utilities Distribution Systems for Electricity, Telephone, Internet Access and Cable Services it would be helpful to obtain clarification on how the creation of a new municipally-owned underground local utilities distribution system to replace the existing investor-owned distribution systems at the termination of the current municipal franchises might be addressed.

The primary objectives of my proposal are (a) to underground the local utility distribution system for electricity, telephone, Internet access and cable services throughout the City to ensure greater reliability in the future; (b) to facilitate open access to multiple suppliers in a fully competitive environment for electricity, telephone, Internet access and cable services to reduce costs and improve the quality of service; (c) to remove the dependency on restricted access and price regulation for these services; and (d) to achieve these objectives at no cost to residents of the City of Fort Lauderdale either in the form of non-refundable deposits, CIACs, rate increases, surcharges or taxes. The latter would be achieved through a municipally owned authority funding the construction with a bond issue and servicing the interest and capital repayments on the bond from rental income charged to the providers of the various services. The cost reduction, increased income and other benefits achieved through a more competitive environment, a more robust local distribution system and the avoidance of duplication of local distribution costs should easily outweigh the amortized cost of constructing a uniform local utilities distribution system. At the same time it would achieve locally the objectives of recent bills before the Florida House of Representatives and Senate aimed at opening up the market for cable services to more competition whilst providing protections against 'build-out' and 'cherry-picking' that those bills failed to address.

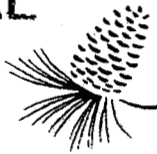
Whilst Rule 25-6.115 can properly be restricted to investor-owned electric distribution facilities or to investor-owned electric utilities and to other owners of existing distribution facilities it would be helpful to clarify whether there is any requirement for rules governing the construction of a new underground municipally owned or municipally



controlled local utilities distribution system to replace existing investor-owned local distribution facilities at the termination of existing municipal franchises.

I would like to formally request these comments be considered under the proposed rule change for Rule 25-6.115 and that Rule 25-6.115 be included in the Hearing scheduled for August 31, 2006, so that this situation can properly be addressed.

ORIGINAL



LEWIS, LONGMAN & WALKER, P.A.  
ATTORNEYS AT LAW

SCANNED

Reply To: Tallahassee

July 27, 2006

Mr. Larry Harris  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399

RECEIVED-FPSC  
06 JUL 28 PM 4:45  
COMMISSION  
CLERK

RE: Docket Nos. 060172-EU and 060173-EU  
Rule Nos. 25-6.034, 25-6.0345, 25-6.064, 25-6.078, 25-6.115

Dear Mr. Harris,

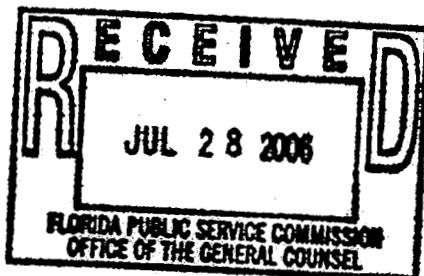
On behalf of my client, City of Fort Lauderdale, I am hereby requesting a hearing on the above sited rules dealing with standards and safety of construction of new transmission facilities, installation of new or upgraded facilities, schedule of charges, and facility charges for conversion of existing overhead distribution facilities.

Several representatives from the City of Fort Lauderdale will be presenting testimony, as well as Bunney Brennenman and Trevor Underwood.

Thank you for your consideration in this matter.

Sincerely,

Linda C. Cox



CMP \_\_\_\_\_  
COM 5  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SGA \_\_\_\_\_  
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OTH \_\_\_\_\_

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FPSC-COMMISSION CLERK

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West Palm Beach, Florida 33401  
p1 561-640-0820 • f1 561-640-8202

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|                                 |   |                           |
|---------------------------------|---|---------------------------|
| In re: Rule No. 25-6.115        | ) | Docket Nos. 060172-EU and |
| Facility Charges for Conversion | ) | 060173-EU                 |
| Of Existing Overhead Investor-  | ) |                           |
| Owned Distribution Facilities   | ) |                           |
|                                 | ) |                           |

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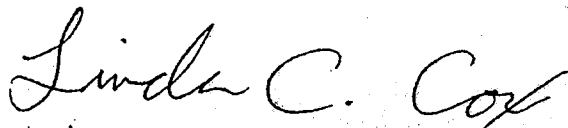
INITIAL COMMENTS OF THE CITY OF FORT LAUDERDALE CONCERNING  
RULE NO. 25-6.115

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The City of Fort Lauderdale submits the following Initial Comments concerning Rule 25-6.115, Facility Charges for Conversion of Existing Overhead Investor-Owned Distribution Facilities:

A. Staff of the City of Fort Lauderdale is concerned that the proposed wording of the rule is open to the interpretation that undergrounded facilities paid for by parties other than an investor owned utility [IOU], [eg a municipality or its residents] would automatically be owned by the IOU. City staff is seeking clarification of this issue and confirmation as to whether the above interpretation is correct. However, nothing in this comment should be construed as meaning that any decision has been taken by the City Commission that future undergrounded facilities should be in the ownership of organizations other than the IOU. City's staff concern at this point is to ensure that ownership options for underground facilities are left open.

Respectfully submitted this 11<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Linda C. Cox

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rules Governing )  
Placement of New Electric )  
Distribution Facilities Underground, ) DOCKET NO. 060172-EU  
and Conversion of Existing Overhead )  
Distribution Facilities to )  
Underground Facilities, to Address )  
Effects of Extreme Weather Events. )

In re: Proposed Amendments to Rules )  
Regarding Overhead Electric ) DOCKET NO. 060173-EU  
Facilities to Allow More Stringent )  
Construction Standards Than Required ) FILED: AUGUST 11, 2006  
by National Electric Safety Code. )

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### POST-WORKSHOP COMMENTS OF THE TOWN OF PALM BEACH, FLORIDA AND THE TOWN OF JUPITER ISLAND, FLORIDA

The Town of Palm Beach, Florida, and the Town of Jupiter Island, Florida, collectively referred to herein as "the Towns," pursuant to Commission Order No. PSC-06-0646-PCO-EU, the Second Order Establishing Procedures in the above-styled rulemaking dockets, hereby submit these Post-Workshop Comments. In summary, the Towns support the Commission's proposed rules and offer these comments in support of specific proposed rule provisions and to provide commentary regarding certain implementation aspects of the rules.

### BACKGROUND AND GENERAL COMMENTS

The Towns have been active participants in these proceedings since before they were docketed. Both Palm Beach and Jupiter Island participated in the Commission's undocketed workshop in January, and have submitted written comments and participated actively at the

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

workshops and agenda conferences in these proceedings. The Towns are also participating in a substantial study of the life-cycle cost-effectiveness of underground ("UG") vs. overhead ("OH") distribution facilities, through a group of approximately 30 Florida municipalities that have come together to form, and to fund this cost-effectiveness study, through the Municipal Underground Utilities Consortium.

First, as an overall comment, the Towns commend the Commission and the Commission Staff for their efforts and for the substance of the proposed rules, which can be expected to provide significant and meaningful improvements in electric service reliability, with concomitant increases in total economic value to Floridians, as well as corresponding reductions in electric utility operating and maintenance costs, including vegetation management and storm restoration costs.

#### COMMENTS ON SPECIFIC PROPOSED RULES

The Towns support the following specific provisions of the proposed rules.

1. The Towns support the provisions in proposed Rule 25-6.034, F.A.C., that require utilities to establish construction standards "guided by" the "extreme wind criteria" of the National Electrical Safety Code ("NESC").

2. The Towns support the provisions in proposed Rules 25-6.064(5), 25-7.078(2), and 25-6.115(9), F.A.C., that require that the cost of "hardened" OH facilities, i.e., facilities built to the new standards adopted pursuant to amended Rule 25-6.034, F.A.C., be used in computing any Contributions in Aid of Construction ("CIACs")

for OH-to-UG conversions and for new UG installations. These provisions will provide for fairer CIACs, and should be expected to produce more UG conversions and new installations, with their attendant reliability and cost-savings benefits that accrue to all customers.

3. The Towns support the provisions in proposed Rule 25-6.0341(3), F.A.C., that require utilities to locate distribution facilities in rights of way ("ROWs") where local government applicants satisfy the utilities' legal, financial, and operational requirements. This provision can be expected to significantly reduce both the complexity and the cost of OH-to-UG conversions, thereby promoting more UG conversions and new installations with their attendant reliability and cost-savings benefits.

4. The Towns support the provisions in proposed Rule 25-6.115(11)(a), F.A.C., and also in proposed Rule 25-6.078(4), F.A.C., that require the value of O&M cost savings and storm restoration cost savings to be included in computing any CIACs for OH-to-UG conversions. These provisions will provide substantial value to all utility customers in that they can be expected to produce additional UG conversions, with the attendant cost savings. This is because general O&M costs (including, significantly, vegetation management costs) and storm restoration costs are borne by all customers, either through base rates or through storm restoration surcharges.

Additional Comments. As noted above, the Towns are participating, through the Municipal Underground Utilities Consortium, in a substantial study of the life-cycle cost-

effectiveness of UG as compared to OH distribution facilities..

Preliminary information obtained from Brunswick Electric Membership Corporation ("Brunswick" or "Brunswick EMC") in the course of this study is relevant here. Brunswick EMC recently converted approximately 88 miles of its OH distribution facilities on barrier islands within its southeastern North Carolina service area to UG facilities, completing the project in 2004. While this area has not experienced a major hurricane strike since 2004, it has been exposed to many less-severe storms that are similar to those that frequently occur in Florida. Preliminary results indicate that, in qualitative terms, the new UG facilities have produced the following results:

- a. reduced the number and duration of outages due to lightning, animal contacts, and other contacts with distribution facilities;
- b. eliminated problems associated with salt spray;
- c. significantly reduced restoration times and costs on the barrier islands;
- d. improved restoration times following storms experienced elsewhere on Brunswick's system, because the utility has been able to reallocate resources to inland overhead-served areas since it does not need as many restoration resources in its barrier island service areas;
- e. nearly eliminated right-of-way trimming and clearing costs; and
- f. eliminated all clearance and maintenance problems that had been associated with OH rear-lot-line construction.

In summary, it thus appears that Brunswick EMC is realizing additional savings that were not even accounted for in its original projects that justified the OH-to-UG conversion in this barrier island environment.

It follows, obviously and directly, from these observations that, as an implementation issue, savings in the form of avoided storm restoration costs will also include such cost-savings benefits realized in storms that are not named tropical storms, e.g., the thunderstorms and severe thunderstorms that frequently strike Florida, especially in the summer months, and also microbursts and tornadoes that are not associated with named tropical storms.

5. The Towns support the proposed treatment of "corporate overhead" costs per proposed Rule 25-6.115(11)(b), F.A.C. These provisions are important to prevent the utility from charging for "corporate accounting overheads" on work that the utility does not do. These "corporate overheads" can be significant, on the order of 20 percent of total project cost, and the Towns agree that, if the utility does the work, then they are appropriately included in the CIAC computations. However, where the utility does not perform the underground installation work, the applicants - such as the Towns here - should receive full credit for all costs that the utility would otherwise charge. The proposed rules accomplish this, and the Commission and Staff are wise to incorporate these provisions into the rules. Otherwise, utilities could impose baseless charges that will dis-incentivize undergrounding projects.

6. The Towns support the proposed provisions in Rules 25-6.064(7), 25-6.078(10), and 25-6.115(12), F.A.C., allowing for



consideration and inclusion in CIAC calculations of additional benefits provided by UG facilities beyond just those that can be directly captured in utility accounting.

In the implementation stages of this long-term process, the Towns believe that all parties need to focus more on how to accomplish underground installations and conversions more cost-effectively and to achieve optimum reliability. This should include evaluations comparing OH facilities at different degrees of "hardening" with UG facilities, also at different degrees of hardening. For example, submersible, effectively "waterproof" UG switchgear and fuse-gear are available that can operate even if the UG facilities are inundated; this equipment should be evaluated against other facilities configurations in a range of conditions.

This is also particularly important in light of what appears to be the widely accepted fact that it is probably not possible to construct even hardened OH facilities to withstand the impacts of stronger windstorms, e.g., Category 4 or 5 storms, because of the damage done to OH facilities by wind-blown debris. By comparison, except for the most extreme flooding or storm surge conditions, UG facilities will withstand Category 4 and 5 conditions where even super-hardened OH facilities will not.

The decisions facing the Commission, Florida's utilities, Florida's local government officials, and other potential applicants for underground electric service are critical and of great importance. It is important for all involved to recognize that there are two distinct types of mistakes or errors that can be made

in these decision processes. One mistake would be to spend money for UG installations and conversions (and indeed for hardening OH infrastructure facilities, the same analysis applies) when in fact, Florida doesn't experience another significant storm event for the next 50 years. Correspondingly, it would also be a mistake to not spend money for UG conversions and new installations (or for hardening OH facilities) and it turns out that Florida experiences numerous severe storm events over the next 10-20 years.<sup>1</sup> This necessarily involves informed judgments by all involved. The Towns believe that, at a minimum, it is generally wiser and better public policy to err on the side of more protection of the public, which the Towns believe will lead to decisions to harden OH facilities, to install new OH facilities, and to convert existing OH facilities to UG facilities.

Additionally, these decisions need to be informed by consideration of all benefits provided by the enhanced reliability provided by UG (and hardened OH) facilities. As previously described in the Towns' comments in these rulemaking proceedings, it is well known that customers actually value electricity - i.e., not being interrupted or blacked out - at values much greater than the retail price of electricity. Values attached by residential customers to not being blacked out range from \$1 to \$10 per kWh not interrupted to as much as \$30 per kWh not interrupted for commercial

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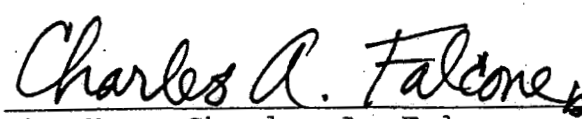
<sup>1</sup> These two types of errors can be analogized to concepts of statistics, in which two types of errors are recognized: Type I errors, in which a hypothesis is accepted as true when that hypothesis is, in fact, false, and Type II errors, in which a hypothesis is rejected as false when it is, in fact, true.

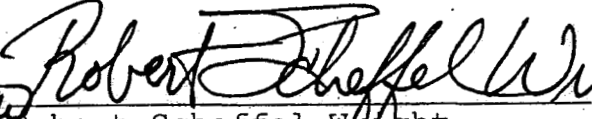
and industrial customers. Other sources support this range. While there may be some argument about the magnitude of the overall economic benefits of increased reliability and reduced electric service interruptions, there can be no doubt that the total value to Florida and Floridians of avoiding blackouts, or of reducing their scope, duration, and severity is tremendous.

And thus, consistent with these considerations, the Towns support the Rules' inclusion in proposed Rules 25-6.064(7), 25-6.078(10), and 25-6.115(12), F.A.C., of the opportunity to demonstrate additional benefits in the public interest beyond just those that can be directly captured in utility accounting.

The Town of Palm Beach and the Town of Jupiter Island sincerely appreciate the opportunity to submit these comments and the Commission's consideration of them, and the Towns look forward to continuing active participation in these important rulemaking proceedings.

Respectfully submitted this 11th day of August, 2006.

  
The Hon. Charles A. Falcone  
Mayor, Town of Jupiter Island  
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For the Town of Jupiter Island

Attorneys for the Towns of Palm  
Beach and Jupiter Island

CERTIFICATE OF SERVICE  
DOCKET NOS. 060172-EU & 060173-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail and U.S. Mail this 11th day of August, 2006, to the following:

(\* indicates service by U.S. Mail only)

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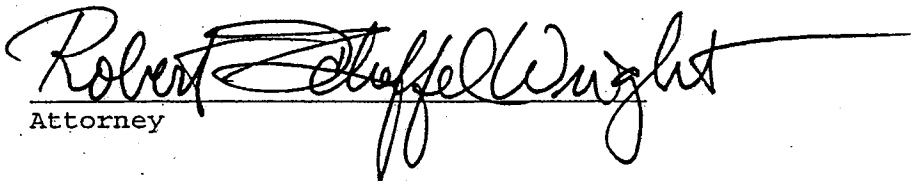
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Attorney

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  
FILED: August 4, 2006

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  
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**RULE COMMENTS AND TESTIMONY**

COMES NOW Time Warner Telecom of Florida, L.P., as an affected party and files  
this its comments and testimony in the above styled dockets:

**GENERAL COMMENTS**

1. Time Warner Telecom of Florida, L.P. is a competitive local exchange carrier providing telecommunications service in the State of Florida.
2. The name, address and telephone number of Time Warner Telecom of Florida, L.P., and the provider of these comments and testimony is:

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3. Time Warner Telecom has previously furnished written and oral comments regarding these proposed rules at the staff workshops held on April 17, May 19, and July 13, 2006.

4. Time Warner Telecom asserts that the Public Service Commission currently does not have jurisdiction over pole attachments, pole attachment rates or charges for pole attachments by third party pole attachers. While Time Warner Telecom does not object to the Florida Public Service Commission exercising jurisdiction over pole attachments, the Florida Public Service Commission has currently chosen not to exercise its jurisdiction as may be delegated to the State through the Federal Communications Commission. Other commenters also assert the Public Service Commission may lack legislative authority to exercise pole attachment jurisdiction. Time Warner Telecom asserts that the proposed rules, to the extent they may allow additional charges or costs to be assessed to third-party pole attachers, are in violation of Federal Communications Commission rules and regulations which set pole attachment rates in the absence of State jurisdiction over these issues.

5. Time Warner Telecom suggests additional language be inserted in the rule as is shown in the annotated rule attached hereto as Exhibit 1, which provides that utilities and its customers shall bear any increased costs in the relocation, expansion, rebuilding or relocation of electric distribution facilities.

6. Time Warner Telecom also states that the Florida Public Service Commission is in essence delegating what the rules and regulations regarding third-party attachment and safety standards shall be to the electric utilities of Florida. Such a delegation is impermissible under Florida administrative law but also has the potential to threaten third-party attachers with engineering or safety standards which in essence will "regulate off the poles" any third-party attachments. Time Warner Telecom suggests language in the portions of the rules which would provide that the adoption of the National Electric Safety Code safety standards shall become the standard for compliance. The Florida Public Service Commission shall review

each plan of each utility for consistency with that standard. By not allowing each utility to develop its own standards which exceed the standard or develop implementation methods regarding these standards, the Florida Public Service Commission can maintain a uniform standard to be applied to all third-party attachers. Such a standard would ensure that each utility in its implementation would not exceed the minimum requirements to such an extent that local implementation standards, engineering practices or local safety standards would prevent an attacher from being allowed to attach to the pole.

7. Time Warner Telecom is currently attached to thousands of poles in Florida. As a competitive carrier, Time Warner Telecom is uncertain as to whether or not the rule will provide that costs may be shifted from electric utilities. Potentially any undergrounding, rebuilding or relocation of facilities in order to provide storm hardening may disadvantage Time Warner Telecom as a competitive carrier if such costs are allowed to be shifted to the attacher as a result of "safety" standards. Further, the standards developed by the electric utility may be calculated to provide as a competitive disadvantage to Time Warner Telecom where such poles are owned by another competitive incumbent telecommunications company or utility seeking a competitive advantage. Time Warner Telecom would be at a distinct disadvantage if the utilities or incumbent telecommunication companies utilized these standards to either transfer costs or used these standards to "regulate" attachers on the poles so that no further attachments would be allowed because of wind loading concerns. Time Warner Telecom as a competitive carrier would be economically and competitively unable to compete if these costs were imposed on Time Warner Telecom.

#### **COMMENTS ON PROPOSED RULES**

8. Rule 25-6.034 – Time Warner Telecom would propose that in Paragraph 4, the words



“at a minimum” would be stricken. The standard that should be adopted is the 2002 version of the code and not a standard developed by a utility.

9. Rule 25-6.034 - Time Warner Telecom proposes in Paragraph 4(c) new language should be inserted in the rule to provide as follows “Each plan submitted by the utility pursuant to this rule shall be reviewed by the Florida Public Service Commission for consistency in implementing the standards of the National Electric Safety Code as specified in this rule.”

10. Rule 25-6.034 - Paragraph (7) should also have inserted the following language. “Any plan adopted by the utility pursuant to this rule shall be reviewed for consistency of implementation and consistency in implementing the standards of the National Electric Safety Code.”

11. Rule 25-6.0341 (5) – The following language should be inserted as a new Paragraph (5): “Any additional costs resulting from the implementation of this rule shall be born by the utility or the customer as contemplated by the contribution in aid of construction rules and may be recovered by the utility as provided by other applicable rules of the Commission.”

12. Rule 25-6.0342 – Changes to Paragraph (1) relating to third-party attachment standards and procedures. The words “or exceed” regarding the applicable addition of the National Electric Safety Code shall be stricken. In addition, a new sentence shall be added at the end of (1) to provide: “The provisions of this rule shall not act to impair, restrict, impede, or discriminate against third-party pole attachers or in any way act to prevent legitimate attachment to any pole where such attachment meets the applicable National Electric Safety Code standards.”

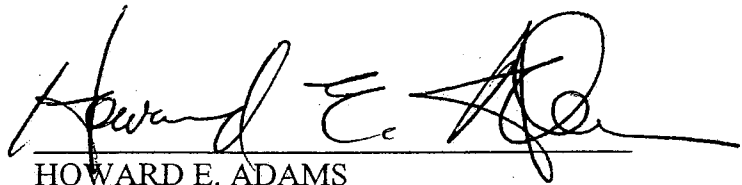
13. Rule 25-6.0343 – The following changes are suggested: A new sentence is added to paragraph (1)(b) to provide: “The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code.” In Paragraph (1)(d) the words “at a minimum” shall be stricken. Paragraph (3) shall be amended to strike the words “or exceed”. Paragraph (4) shall be amended to provide: “The Commission shall review for consistency the construction standards and attachment standards and procedures developed by the utility pursuant to this rule. These standards shall be consistent with the National Electric Safety Code as adopted pursuant to this rule.” Paragraph (4) is further amended to provide: “Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction rules and may be recovered as provided by other appropriate rules of the Commission to recover these costs.”

14. Rule 25-6.0345 Construction Standards - In Paragraph (1), the words “at a minimum,” shall be stricken from the rule.

### CONCLUSION

Time Warner Telecom respectfully requests that the Florida Public Service Commission make the amendments to the rule as proposed in these pleadings and as provided in the attached copy of the rule showing the changes to be made and with additions noted. Time Warner Telecom asks that it be allowed to present these comments and testimony and that it be allowed to participate fully in the hearing as an affected party and to present further argument and oral statements on the proposed rules as may be necessary.

Respectfully submitted this 4<sup>th</sup> day of August, 2006.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by

U.S. Mail this 4th day of August 2006 to the following:

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**EXHIBIT "A" TO TIME WARNER TELECOM'S RULE COMMENTS AND  
TESTIMONY WITH CHANGES AND DELETIONS SHOWN TO PROPOSED RULE**

THE FULL TEXT OF THESE PROPOSED RULES AS AMENDED ARE:

PART III

GENERAL MANAGEMENT REQUIREMENTS

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. Each utility shall maintain a copy of its  
construction standards at its main corporate headquarters and at each district office. Subsequent  
updates, changes, and modifications to the utility's construction standards shall be labeled to  
indicate the effective date of the new version and all revisions from the prior version shall be  
identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its  
construction standards for review by Commission staff at the utility's offices in Tallahassee.~~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 <sup>1</sup>comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

Deleted: , at a minimum.

(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 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.

(c) Each plan submitted by the utility pursuant to this rule shall be reviewed by the Florida Public Service Commission for consistency in implementing the standards of the National Electric Safety Code as specified in this rule.

(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 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the

<sup>1</sup> "at a minimum" was deleted. Set standard does not allow utility to vary or define rule. See Comments ¶ 6, 7, 8.

<sup>2</sup> See Comments/Testimony ¶ 6, 7, 8, 9.

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 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.

(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. 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. Any plan adopted by the utility pursuant to this rule shall be reviewed for consistency of implementation and consistency in implementing the standards of the National Electric Safety Code.

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 \_\_\_\_\_.

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, electric distribution facilities shall be placed adjacent to a public road, normally in

<sup>3</sup> See Comments/Testimony ¶ 6, 7, 10.

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, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) Any additional costs resulting from the implementation of this rule shall be born by the utility or the customer as contemplated by the contribution in aid of construction rules and may be recovered by the utility as provided by other applicable rules of the Commission.

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

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

History-New

25-6.0342 Third-Party Attachment Standards and Procedures.

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<sup>4</sup> See Comments/Testimony ¶ 7, 11, regarding cost shifting.



(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 <sup>5</sup>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. The provisions of this rule shall not act nor be utilized to impair, restrict, impede, or discriminate against third-party pole attachers or in any way act to prevent legitimate attachment to any pole where such attachment meets the applicable National Electrical Safety Code standards.

Deleted: ~~exceed~~

(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.

(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.

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

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

History New \_\_\_\_\_.

<sup>5</sup> The words "or exceed" have been deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 12.

<sup>6</sup> See ¶ 6, 12, Comments/Testimony regarding delegation of standards.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee. The construction standards provided in this rule shall not be utilized to impair, restrict, impede, or discriminate against third-party attachments or in any way prevent legitimate attachment to any pole where such attachments meet the standards of the applicable National Electrical Safety Code.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall <sup>8</sup>comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

Deleted: |

Deleted: at a minimum

<sup>7</sup> See Comments/Testimony ¶ 6 regarding delegation of standards.

<sup>8</sup> The text “, at a minimum” was deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 13.

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

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

1. new construction;

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

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

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in

front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet <sup>9</sup>the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability;

Deleted: ~~or exceed~~

<sup>9</sup> The text "or exceed" has been deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 13.

do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher. If the Commission shall review for

consistency the construction standards and attachment standards and procedures developed by the utility pursuant to this rule. These standards shall be consistent with the National Electric Safety Code as adopted pursuant to this rule. Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be borne by the utility or the customer as provided by the contribution in aid of construction rules and may be recovered by the utility as provided by other appropriate rules of the Commission.<sup>10</sup>

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8) F.S.

<sup>10</sup> Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 13.

History New

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 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, 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<sup>11</sup> comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

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Deleted: ~~at a minimum~~

(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 ASCII text, or hard copy, as follows:

<sup>11</sup> The text " , at a minimum" was deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 14.

(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, \_\_\_\_\_.

#### PART IV

#### GENERAL SERVICE PROVISIONS

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<sub>OH</sub>) shall be calculated as follows:

|                          |          |   |          |  |          |   |
|--------------------------|----------|---|----------|--|----------|---|
| <u>CIAC<sub>OH</sub></u> | <u>=</u> | <u>Total estimated</u><br><u>work order job</u><br><u>cost of installing</u><br><u>the facilities</u> | <u>=</u> | <u>Four years</u><br><u>expected</u><br><u>incremental base</u><br><u>energy revenue</u> | <u>=</u> | <u>Four years expected</u><br><u>incremental base</u><br><u>demand revenue, if</u><br><u>applicable</u> |
|--------------------------|----------|---|----------|--|----------|---|

(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:~~

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

service drops, and meters)

(b) For customers in rate classes that pay both energy charges and demand charges, the

CIAC shall be calculated as follows:

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

(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:

$$CIAC_{ug} = (\text{Estimated difference between} \quad + \quad CIAC_{oh} \text{ (as above)} \\ \text{the cost of providing the} \\ \text{distribution line extension} \\ \text{including not only the distribution} \\ \text{line extension itself but also} \\ \text{the transformer, the service drop,} \\ \text{and other necessary fixtures, with} \\ \text{underground facilities vs. the cost}$$

~~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.~~

~~(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.~~

~~(6)(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.

(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.

(7)(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 hHowever, 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.

(8)(13) A detailed statement of its standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs This policy shall have uniform

application and shall be nondiscriminatory.

~~(9)(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.

## PART V

### RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

#### 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.

(3)(2) On or before October 15th 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), ~~(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 Net Present Value of operational ~~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 utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(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.

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

(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, \_\_\_\_.

## PART VII

### UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

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~~ conversion 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) ~~s~~Such work meets the investor-owned public utility's construction standards;

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

(c) ~~s~~Such 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~~The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, Standards of Construction, 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.

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

## THE FLORIDA PUBLIC SERVICE COMMISSION

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

Re: Proposed rules governing placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.

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Docket No. 060172-EU

Filed: July 27, 2006

### CORRECTED

**POST JULY 13, 2006 WORKSHOP COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION (FCTA) ON THE COST IMPACT OF PROPOSED RULES 25-6.034 STANDARD OF CONSTRUCTION, 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**

The FCTA has substantial concerns arising from the fact that, pursuant to these proposed rules, the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards unilaterally established by the utilities. Although the proposed rules require the utilities to seek input from third-party attachers in establishing the construction and attachment standards, there is no assurance that the utilities will not summarily disregard such input. Further, although the rules give the Commission authority to review any disputes over the construction and attachment standards, there is no provision for an evidentiary hearing, and any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, non-discriminatory access rights granted under 47 U.S.C.A. section 224.

If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of 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 ("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. Moreover, utilities also have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overlashing of fiber optic cable to existing strand – a practice the Federal Communications Commission (“FCC”) has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. 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.

This memo lists some of the improper billing practices and operational practices engaged in by utilities that have resulted in excessive and unnecessary costs to attaching entities. In addition, because the cost impact cannot be determined until the construction and attachment standards are established, this memo includes some of the cost information related to specific construction activities as reported in FCC decisions.

#### 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 Southwest, 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 "GPSS 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 Southwest, 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 overloading 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 overloading 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 overloading 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. The \$2,146 amount was the average amount that had been charged by Georgia Power where Knology was found not to be the cause of the pole replacement.)
- \$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 primary issue in the case was

Kansas Cit Power & Light's failure to perform make-ready work in timely fashion. The amount per pole was provided by KCPL in response to a request from Time Warner for estimated cost of pole replacements.)<sup>1</sup>

**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).<sup>2</sup>

**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 Cable Association was contesting Georgia Power's \$150 up-front fee for make-ready work. The Enforcement Bureau found the fee unreasonable and concluded that "Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs." It is not clear from the decision the specific tasks that this fee was designed to cover.)

As previously stated in the FCTA's presentation at the Staff Workshop on July 13, 2006, regarding location of the utilities' electric distribution facilities, it is very difficult to respond to the request for cost impact on cable attachers of the proposed Rule 25-6.0341. For new overhead or underground lines, the FCTA prefers that they be constructed in accessible locations. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. The FCTA would appreciate input into electric construction projects. However, the FCTA requests that the opportunity for input be timely with respect to the evaluation of construction alternatives and the FCTA's budgeting time deadlines. Funding of line relocation and conversion to underground projects remains a major concern.

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<sup>1</sup> The per pole cost data cited is provided for illustrative purposes only. It should be noted that pole costs and associated labor costs have gone up substantially in general, and particular poles may be extremely expensive depending on characteristics of individual poles. The price of a single pole may vary by as much as tenfold depending on the characteristics of the poles.

<sup>2</sup> The audit fees cited involved the total cost for a pole count. Audits currently are much broader in scope, and the costs have increased substantially.

Respectfully submitted,

s/ Michael A. Gross

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On behalf of the FCTA

**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that a true and correct copy of the foregoing Post July 13, 2007 Workshop Comments of Florida Cable Telecommunications Association has been served upon the following parties electronically and by U.S. Mail this 27<sup>th</sup> day of July 2006.

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*s/Michael A. Gross*

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Michael A. Gross

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Re: Proposed rules governing placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.

Docket No. 060172-EU

Filed: July 28, 2006

**REQUEST FOR PUBLIC HEARING BY THE FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION, INC., PURSUANT TO SECTION  
120.54(3)(c)1, FLORIDA STATUTES, AND RULE 28-103.004, FLORIDA  
ADMINISTRATIVE CODE, AS TO RULES 25-6.034 STANDARD OF  
CONSTRUCTION, 25-6.0341 LOCATION OF THE UTILITY'S ELECTRIC  
DISTRIBUTION FACILITIES, 25-6.0342 THIRD-PARTY ATTACHMENT  
STANDARDS AND PROCEDURES, 25-6.0343 MUNICIPAL ELECTRIC UTILITIES  
AND RURAL ELECTRIC COOPERATIVES, 25-6.064 ~~EXTENSION OF FACILITIES;~~  
CONTRIBUTION-IN-AID-OF-CONSTRUCTION FOR INSTALLATION OF NEW OR  
UPDATED 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**

The Florida Cable Telecommunications Association, Inc., (FCTA), pursuant to Section 120.54(3)(c)1, Florida Statutes, and Rule 28-103.004, Florida Administrative Code, hereby requests a public hearing on Rules 25-6.034 Standard of Construction, 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, 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~~, and states:

1. The FCTA is a non-profit trade association representing the cable telecommunications industry in the State of Florida, cable companies providing cable services and information services in the State of Florida, as well as certificated competitive local exchange carriers (CLECs) providing voice communications services in the State of Florida (FCTA Members). The FCTA's business address is 246 E. 6<sup>th</sup> Avenue, Tallahassee, FL 32303.

2. The name and address of the person authorized to receive all notices, pleadings and other communications in this docket is:

Michael A. Gross  
Vice President, Regulatory Affairs and Regulatory Counsel  
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3. The Florida Public Service Commission (Commission) issued a Notice of Rulemaking on June 28, 2006, initiating rulemaking to adopt Rules 25-6.034 Standard of Construction, 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, 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~~.

4. The purpose and effect of the rules as stated in the Notice of Proposed Rulemaking is: "to increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and

underground electric infrastructure.”

5. The summary of the rules as stated in the Notice of Proposed Rulemaking states: “The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.”

6. The Commission approved the proposed rules by vote at its Agenda Conference on June 20, 2006.

7. The Notice of Proposed Rulemaking was published in the FAW in Volume 32, Number 27, July 7, 2006.

8. The Commission voted to set the proposed rules 25-6.0341, 25-6.0342, and 25-6.0343 directly for hearing.

9. An Order Establishing Procedure to be followed at the rulemaking hearing was issued on July 18, 2006.

10. The Notice of Rulemaking issued on June 28, 2006, and published on July 7, 2006, initially set the three aforementioned rules for hearing on August 22, 2006. The Notice of Rulemaking also provided that, “[w]ritten requests for hearing and written comments or suggestions on the rules must be received by the Director Division of the Commission Clerk, and Administrative Services, Florida Public Service Commission...no later than July 28, 2006.” The Notice of Proposed Rulemaking further provided that a hearing will be held on Rules 25-6.0341, 25-6.0342, and 25-6.0343, on August 22, 2006. The Notice of Proposed Rulemaking also provided that a hearing will be held on Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, and 25-

6.115, also on August 22, 2006, but only if requested within 21 days of the date of the Notice, i.e., July 28, 2006.

11. A Notice of Change of Hearing Date was issued by the Commission on July 17, 2006, rescheduling the hearing from August 22, 2006 to August 31, 2006.

12. An Order Establishing Procedure To Be Followed At Rulemaking Hearing was issued on July 18, 2006, confirming that a rulemaking hearing on Rules 25-6.0341, 25-6.0342, and 25-6.0343, F.A.C., is scheduled before the Commission on August 31, 2006. The Order Establishing Procedure additionally provided that, if timely requested by any affected person, the hearing may be held on the remaining proposed rules, and that such "hearing may be held on August 31, 2006 or such other date as may be set by the Commission. The Commission will publish notice of the date, time and location of the hearing, if one is requested." This provision deviates from the implication in the Notice of Proposed Rulemaking that requests for hearing on any or all of the remaining rules would be held on the same day as the hearing on the rules directly set for hearing by the Commission.

13. The Order Establishing Procedure provided that "[a]ffected persons who are or will be requesting the Commission adopt changes to Rules 25-6.0341 and 25-6.0342, F.A.C. as proposed in the July 7, 2006, Florida Administrative Weekly shall file comments or testimony enumerating the comments and changes no later than August 4, 2006, apparently extending the time initially set in the Notice of Proposed Rulemaking for July 28, 2006." The Order Establishing Procedure did not provide that comments or testimony enumerating comments or changes to Rule 25-6.0343, F.A.C., shall be filed by August 4, 2006. Nor did the Order Establishing Procedure reaffirm that comments or testimony enumerating the comments or changes shall be filed on July 28, 2006. Contact with Staff indicated that the filing deadline, although omitted from the Order Establishing Procedure, for Rule 25-6.0343, F.A.C. shall still be

July 28, 2006.<sup>1</sup>

14. Although the Commission has set Rules 25-6.0341, 25-6.0342 and 25-6.0343, F.A.C., for hearing on its own initiative, the FCTA, choosing to err on the side caution, is requesting a hearing on Rules 25-6.034, 25-6.0341, 25-6.0342 and 25-6.0343, F.A.C.

15. The FCTA praises and applauds the Commission and the Florida Legislature in taking positive steps to address the storm damage and protracted power outages that there were experienced during the recent storm seasons. Cable operators are no longer purely providers of cable TV, but are now offering voice service and data service both nationally and, more importantly, in Florida. Accordingly, the cable industry has an equal interest in assuring against downed poles and outages. The electric distribution system is vital to the cable industry's plant and feed to its customers. The cable industry is in a very competitive environment. Last hurricane season, satellite trucks were following the downed poles to market residences for satellite TV services. Safe, strong poles are in the cable industry's best interest. However, the FCTA believes that the power companies are waiving the "safety" flag inappropriately in the direction of attaching entities. FCC has recognized that the public welfare depends upon safe and reliable provision of utility services, yet the FCC also recognized that the 1996 Act reinforces the vital role of telecommunications and cable services.

16. Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through conduits and trenches. Proposed Rule 25-6.034 requires investor-owned utilities (IOUs) to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0342 requires IOUs to establish, as part of their construction

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<sup>1</sup> The confusion about the prehearing filing deadline for Rule 25-6.0343 has been rendered moot by the Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing New Docket, issued on July 27, 2006.

standards adopted pursuant to Rule 25-6.034, F.A.C., third-party attachment standards and procedures for attachments by others to the utility's electric transmission and distribution poles. FCTA members attach their facilities to distribution poles owned by IOUs. These electric IOUs own a substantial majority of the pole plant in Florida and will have enormous incentives to use their bottleneck control of distribution infrastructure to leverage their position in their ongoing disputes with the cable industry over third-party attachments. The electric and cable industries have been litigating for 20 years over pole attachment rates and access rights, including issues involving safety, reliability, capacity, and engineering standards.

17. Section 366.05(1), Florida Statutes, was amended by SB 888 recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service.

18. Although the statutory authority delegated to the Commission is clear that **the Commission has the power to adopt construction standards**, these rules sub-delegate the Commission's authority to the IOUs to establish construction standards and attachment standards as part of their construction standards.<sup>2</sup> The same sub-delegation has been made in Rule 25-6.0343, which sub-delegates the Commission's authority to establish construction and attachment standards to the municipal electric utilities (Munis) and rural electric cooperatives (Coops). The applicable rules require the IOUs as well as the municipal electric utilities and rural electric cooperatives to solicit input from third-party attachers. However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. This

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<sup>2</sup> The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

19. One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules, the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the utilities.

20. The construction standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. Another example of the inextricable ties between the construction standards in general and the attachment standards that are a part of the construction standards is that the extreme wind loading standards of the NESC that would be required in the utility's construction standards would have to be considered in connection with the wind load of third-party attachments. This example is equally applicable to the Muni and Coop rules for standards of construction which are to be guided by extreme wind loading standards specified by the NESC, which would have to be considered in connection with third-party attachment standards.

21. Although the rules give the Commission authority to resolve any disputes over the construction and attachment standards, any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, nondiscriminatory access rights granted under section 224 of the Commissions Act of 1934, 47 U.S.C.A. § 224. The FCC jurisdiction may be triggered by construction and attachment standards that are facially unreasonable and unjust or by an unreasonable and unjust application of such standards.



22. The FCC has stated that “it would not invalidate summarily all local requirements,” while in the same paragraph, the FCC made equally clear that state and local safety requirements apply *only* if there is no “direct conflict with federal policy.... Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail.” *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Dkt. Nos. 96-98, 95-1 85, 11 FCC Rcd. 16073 § 1154 (1996) (“*Local Competition Order*”).

The FCC went on to say that it would consider the merits of “any individual case” alleging safety, reliability or engineering as a basis for denial.<sup>3</sup> The FCC also specifically rejected “the contention of some utilities that *they* are the primary arbiters of such concerns, or that their determinations should be presumed reasonable,” while noting that § 224(f)(1) “reflects Congress’ intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators.”<sup>4</sup> On reconsideration of that Order, the FCC refused to categorically restrict the type of pole attachments that must be allowed, reiterating that “when evaluating any attachment request, including a wireless attachment, access determinations are to be based on the statutory factors of safety, reliability, and engineering principles.”<sup>5</sup> Those

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<sup>3</sup> Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, *Public Notice* (December 23, 2004) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 172 (1999)).

<sup>4</sup> *Id.* at 16074 § 1158; see also *In the Matter of Kansas City Cable Partners v. Kansas City Power & Light Company*, 14 FCC Rcd 11599, T 11 (1 999) (stating that “the utility is not the final arbiter of [standards for safety, reliability, and generally applicable engineering standards] and its conclusions are *not* presumed reasonable”) (emphasis added).

<sup>5</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 772 (1999).

statutory factors are subject to a reasonableness determination by the FCC (or a *certified* state, which Florida is not) on a case by case basis, where, as here, a prospective attaching entity protests the denial of access on one of those, or other, grounds.

Indeed, as stated by the FCC only a few months ago in response to similar 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,” the FCC ruled:

Pursuant to the provisions of section 224, the Commission, through its Bureaus, has exercised its jurisdiction in prior pole attachment complaint proceedings to determine whether a pole owner’s adoption or application of specific engineering standards was unjust and unreasonable. Making such a determination does not require the Commission to establish a set of engineering standards that utilities must use across-the-board. Indeed, in adopting rules governing pole attachments, the Commission expressly declined to establish a comprehensive set of engineering standards that would govern when a utility could deny access to its poles based on capacity, safety, reliability, or engineering concerns. The Commission concluded, instead, that “the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis.”<sup>6</sup>

There is abundant precedent for the FCC’s jurisdiction over safety issues. The FCC routinely considers allegations that attachments will pose safety problems. *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 owner’s 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

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party seeking to attach to its poles must adhere); *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 has also affirmatively considered specific safety requirements in rulemaking proceedings, such as the impact of overloading by attaching entities and third parties, including the impact on wind and weight load burdens. *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). Accordingly, the FCC has, and does exercise, jurisdiction over pole safety issues. Consequently, the proposed rules violate federal legal precedent in giving unilateral and unfettered discretion to utilities to set construction and attachment standards and deny access. Further, the assignment of authority under the rules to the Commission to resolve such disputes is clearly a violation of FCC rules and policy in cases where safety conditions are used unreasonably to deny access.

23. If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of 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 ("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. Moreover, utilities also

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<sup>6</sup> *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, lv 8-10 (rel March 2, 2006) (internal citations omitted).

have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overlashing of fiber optic cable to existing strand – a practice the Federal Communications Commission (“FCC”) has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. 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 1 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.

24. Rule 25-6.0343, requiring Munis and Coops to establish construction standards and third-party attachment standards creates the same unlawful sub-delegation of the Commission’s statutory authority as in the case of the same provisions in the rules applicable to IOUs.

25. Moreover, to a substantial degree, there is the potential for the same types of abuses on the part of Munis and Coops as described in Exhibit 1 in relation to IOUs. Although the Munis and Coops do not operate for a profit, too much discretion given by the rules to Munis and Coops provides financial incentives to raise Muni’s revenues for municipal coffers, and for Coops to raise revenues for their consumer/shareholders.

26. Rule 25-6.0341(1), (2) and (3) all allow for relocating existing facilities by IOUs from the rear edge of a lot to the front edge of the lot. Rule 25-6.0343(2)(a), (b), and (c) also have the same potential for relocation of existing facilities by Munis and Coops from the rear lot to the front lot.

27. Rear lot facilities are able to serve twice as many residences, and relocation to the front lot would require a duplication of facilities to serve the same number of residences that rear lot facilities can serve.

28. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. Consequently, relocation from rear lot to front lot is less efficient and more costly. In a substantial number of cases, good maintenance will be more cost-efficient than relocation of facilities.

29. Therefore, Rules 25-6.0341(1), (2), and (3) and 25-6.0343(2)(a), (b), and (c), should be limited to initial installations, and inapplicable to expansions, rebuilds or relocations. The FCTA appreciates the provision in Rules 25-6.0341(4) and 25-6.0343(4) requiring the electric utility to seek input from and, to the extent practical, to coordinate the construction of its facilities with the third-party attacher. However, in the event that expansions, rebuilds, and relocations remain part of the rules, the FCTA requests that the opportunity for input be timely with respect to the evaluation of construction alternatives and the FCTA members' budgeting time deadlines. Specifically, the FCTA requests language providing that an electric utility provide third-party attachers with at least twelve months notice of its construction plans to permit

third-party attachers sufficient advance notice to evaluate construction alternatives and make budgeting plans. Additionally, since the utilities may disregard input from third-party attachers in cases of expansion, rebuild, or relocation of electric distribution facilities affecting existing third-party attachments, the FCTA suggests that additional language be inserted into Rules 25-6.0341(4) and 25-6.0343(4), to the effect that any disputes involving the expansion, rebuild, or relocation of electric distribution facilities which affect existing third-party attachments, shall be resolved by the Commission.

30. Rule 25-6.064(5) requires 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 cost formula for CIAC for new or upgraded underground facilities shall be based on the requirements of Rule 25-6.034, Standards of Construction. Consequently, the entire rule as amended is invalid, since all references to CIAC throughout the amended rule are rendered invalid as a result of being based on invalid Rule 25-6.034.

Rule 25-6.078(2) which is based on Rule 25-6.034 renders all amendments to the existing rule invalid. Rule 25-6.115(8)(a) and (9) is based on invalid Rule 25-6.034 which renders the entire amendment to the existing rule invalid.

30. There has been no competent, substantial 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 to take remedial or corrective actions to repair or restore transmissions lines and substations to design strengths and performance criteria. 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.

31. The FCTA has a substantial interest in this proceeding in that its substantial interests are subject to determination and will be affected by this proceeding.

32. The rules as proposed, if adopted, will inflict immediate and/or imminent injury in fact upon the FCTA's members, in terms of violation of their rights under state and federal law, imposition of increased costs which are unnecessary and unjustified, and precipitation of increased litigation between the power industry and the Florida cable industry.

33. The FCTA's substantial injury is of a type or nature which this proceeding is designed to protect.

34. A substantial number of the FCTA's members are substantially affected by the proposed rules.

35. The subject matter of the proposed actions is within the FCTA's general scope of interest and activity, and the relief requested by the FCTA, i.e., incorporation by the Commission of the FCTA's suggested changes to the proposed rules, is the type of relief appropriate for the FCTA to receive on behalf of its members.

36. The rights and interests of FCTA's members cannot be adequately represented by any other party in this docket. The FCTA's participation in this docket will not unduly delay or prejudice the rights of other parties.

37. The FCTA's representation of its members in this docket will advance judicial efficiency by consolidating the participation of multiple FCTA members.

WHEREFORE, for the foregoing reasons, the FCTA requests that the Commission grant the FCTA's Request for Hearing on Rules 25-6.034, 25-6.0341, 25-6.0342, 25-6.0343, 25-6.064, 25-6.078, and 25-6.0115, and grant such further relief as this Commission deems appropriate.

Respectfully submitted this 28<sup>th</sup> day of July 2006.



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### CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing Request for Hearing of Florida Cable Telecommunications Association has been served upon the following parties electronically and by U.S. Mail this 28th day of July 2006.

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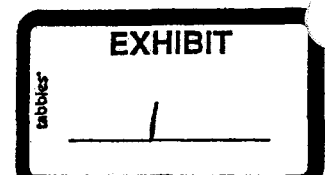


Michael A. Gross

## 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 Southwest, 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 "GPSS 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 Southwest, 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 overlanding 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 overlanding because the Commission's policy was that "neither the host attaching entity nor the third party overlaser must obtain additional approval from or consent of the utility for overlanding 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. The \$2,146 amount was the average amount that had been charged by Georgia Power where Knology was found not to be the cause of the pole replacement.)
- \$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 primary issue in the case was Kansas Cit Power & Light's failure to perform make-ready work in timely fashion. The amount per pole was provided by KCPL in response to a request from Time Warner for estimated cost of pole replacements.)<sup>1</sup>

#### 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).

<sup>1</sup> The per pole cost data cited is provided for illustrative purposes only. It should be noted that pole costs and associated labor costs have gone up substantially in general, and particular poles may be extremely expensive depending on characteristics of individual poles. The price of a single pole may vary by as much as tenfold depending on the characteristics of the poles.

- "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).<sup>2</sup>

**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 Cable Association was contesting Georgia Power's \$150 up-front fee for make-ready work. The Enforcement Bureau found the fee unreasonable and concluded that "Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs." It is not clear from the decision the specific tasks that this fee was designed to cover.)

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<sup>2</sup> The audit fees cited involved the total cost for a pole count. Audits currently are much broader in scope, and the costs have increased substantially.

BEFORE THE PUBLIC SERVICE COMMISSION

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: August 4, 2006

**COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. AND REQUESTED CHANGES TO RULES 25-6.0341 AND 25-6.0342, FLORIDA ADMINISTRATIVE 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, submits its comments and suggested rule changes for Rules 25-6.-0341 and 25-6.0342, to be considered at the public hearing scheduled for August 31, 2006.

**INTRODUCTION.**

The Florida Public Service Commission (Commission) issued a Notice of Rulemaking on June 28, 2006, initiating rulemaking to adopt Rules 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, and 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~~.

The purpose and effect of the rules as stated in the Notice of Proposed Rulemaking is: "to increase the reliability of Florida's electric transmission and distribution infrastructure, as well as

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clarify costs and standards regarding overhead line extensions and underground electric infrastructure.” The summary of the rules as stated in the Notice of Proposed Rulemaking states: “The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.”

The Commission approved the proposed rules by vote at its Agenda Conference on June 20, 2006. The Commission voted to set the proposed rules 25-6.0341, 25-6.0342, and 25-6.0343 directly for hearing. An Order Establishing Procedure to be Followed at Rulemaking Hearing was issued on July 18, 2006, confirming that a rulemaking hearing on Rules 25-6.0341, 25-6.0342, and 25-6.0343, F.A.C., is scheduled before the Commission on August 31, 2006. The Order Establishing Procedure provided that “[a]ffected persons who are or will be requesting the Commission adopt changes to Rules 25-6.0341 and 25-6.0342, F.A.C. as proposed in the July 7, 2006, Florida Administrative Weekly shall file comments or testimony enumerating the comments and changes no later than August 4, 2006.” An Order Granting Motion to Bifurcate Proceeding and Establish Controlling Dates and Establishing New Docket, Order No. PSC-06-0632-PCO-EU, was issued on July 27, 2006, establishing Docket No. 060512, setting a separate schedule for Rule 25-6.0343, and setting a hearing date on October 4, 2006.

The FCTA praises and applauds the Commission and the Florida Legislature in taking positive steps to address the storm damage and protracted power outages that were experienced during the recent storm seasons. Cable operators are no longer purely providers of cable TV, but

are now offering voice service and data service both nationally and, more importantly, in Florida. Accordingly, the cable industry has an equal interest in assuring against downed poles and outages. The electric distribution system is vital to the cable industry's plant and feed to its customers. The cable industry is in a very competitive environment. Last hurricane season, satellite trucks were following the downed poles to market residences for satellite TV services. Safe, strong poles are in the cable industry's best interest. However, the FCTA believes that the power companies are waiving the "safety" flag inappropriately in the direction of attaching entities. The FCC has recognized that the public welfare depends upon safe and reliable provision of utility services, yet the FCC also recognized that the 1996 Act reinforces the vital role of telecommunications and cable services.

#### **RULE 25-6.0342 THIRD-PARTY ATTACHMENT STANDARDS AND PROCEDURES.**

Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through conduits and trenches. Proposed Rule 25-6.034 requires investor-owned utilities (IOUs) to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0342 requires IOUs to establish, as part of their construction standards adopted pursuant to Rule 25-6.034, F.A.C., third-party attachment standards and procedures for attachments by others to the utility's electric transmission and distribution poles. FCTA members attach their facilities to distribution poles owned by IOUs and municipal electric utilities (Munis) and rural electric cooperatives (Coops). The electric IOUs own a substantial majority of the pole plant in Florida and will have enormous incentives to use their bottleneck control of distribution infrastructure to leverage their position in their ongoing disputes with the cable industry over third-party attachments. The electric and cable industries have been

litigating for 20 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 during the last 20 years is set forth in Exhibit 1 attached hereto.

Section 366.05(1), Florida Statutes, was amended by SB 888 recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service. Although the statutory authority delegated to the Commission is clear that **the Commission has the power to adopt construction standards**, these rules sub-delegate the Commission's authority to the IOUs to establish construction standards and attachment standards as part of their construction standards.<sup>1</sup> The same sub-delegation has been made in Rule 25-6.0343(1)(a), (b), (e), and (f) and (3)(a) and (b), and (4), which sub-delegates the Commission's authority to establish construction and attachment standards to the (Munis) and (Coops). Rules 25-6.034(7), 25-6.0342(3) and Rule 25-6.0343(4) require IOUs as well as the municipal electric utilities and rural electric cooperatives, respectively, to solicit input from third-party attachers. However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. This sub-delegation constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules,

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<sup>1</sup> The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the utilities. The FCTA's concern is underscored as a result of granting such discretion to utilities in light of the long history of conflict and incentives for abuse that the utilities have in relation to the cable industry as third-party attachers.

The construction standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. Another example of the inextricable ties between the construction standards in general and the attachment standards that are a part of the construction standards is that the extreme wind loading standards of the NESC that would be required in the utility's construction standards would have to be considered in connection with the wind load of third-party attachments. This example is equally applicable to the Muni and Coop rules for standards of construction which are to be guided by extreme wind loading standards specified by the NESC, and which would have to be considered in connection with third-party attachment standards.

Although the rules give the Commission authority to resolve any disputes over the construction and attachment standards, any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, nondiscriminatory access rights granted under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224. The FCC jurisdiction may be triggered by construction and attachment standards that are facially unreasonable and unjust or by an unreasonable and unjust application of such standards. Pursuant to Section 366.05(1), Florida Statutes, the Commission has an obligation to independently assure that the construction and attachment standards are just and

reasonable, consistent with federal law. Consequently, Rules 25-6.034(1)(2), (5), (6) and (7), 25-6.0342, and 25-6.0343(1)(a), (b), (e), and (f), and (3)(a) and (b), and (4) encroach upon the FCC's exclusive jurisdiction and are invalid under Section 120.52(8)(b).

The FCC has stated that "it would not invalidate summarily all local requirements," while in the same paragraph, the FCC made equally clear that state and local safety requirements apply *only* if there is no "direct conflict with federal policy.... Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Dkt. Nos. 96-98, 95-1 85, 11 FCC Rcd. 16073 § 1154 (1996) ("*Local Competition Order*").

The FCC went on to say that it would consider the merits of "any individual case" alleging safety, reliability or engineering as a basis for denial.<sup>2</sup> The FCC also specifically rejected "the contention of some utilities that *they* are the primary arbiters of such concerns, or that their determinations should be presumed reasonable," while noting that § 224(f)(1) "reflects Congress' intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators."<sup>3</sup> On reconsideration of that Order, the FCC refused to categorically restrict the type of pole attachments that must be allowed, reiterating that

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<sup>2</sup> Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, *Public Notice* (December 23, 2004) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 172 (1999)).

<sup>3</sup> *Id.* at 16074 § 1158; see also *In the Matter of Kansas City Cable Partners v. Kansas City Power & Light Company*, 14 FCC Rcd 11599, T 11 (1 999) (stating that "the utility is not the final arbiter of [standards for safety, reliability, and generally applicable engineering standards] and its conclusions are *not* presumed reasonable") (emphasis added).

“when evaluating any attachment request, including a wireless attachment, access determinations are to be based on the statutory factors of safety, reliability, and engineering principles.”<sup>4</sup> Those statutory factors are subject to a reasonableness determination by the FCC (or a *certified* state, which Florida is not) on a case by case basis, where, as here, a prospective attaching entity protests the denial of access on one of those, or other, grounds.

Indeed, as stated by the FCC only a few months ago in response to similar 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,” the FCC ruled:

Pursuant to the provisions of section 224, the Commission, through its Bureaus, has exercised its jurisdiction in prior pole attachment complaint proceedings to determine whether a pole owner’s adoption or application of specific engineering standards was unjust and unreasonable. Making such a determination does not require the Commission to establish a set of engineering standards that utilities must use across-the-board. Indeed, in adopting rules governing pole attachments, the Commission expressly declined to establish a comprehensive set of engineering standards that would govern when a utility could deny access to its poles based on capacity, safety, reliability, or engineering concerns. The Commission concluded, instead, that “the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis.”<sup>5</sup>

There is abundant precedent for the FCC’s jurisdiction over safety issues. The FCC routinely considers allegations that attachments will pose safety problems. *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 owner’s alleged safety issues, as they were not supported by the

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<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 772 (1999).

<sup>5</sup> *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, lv 8-10 (rel March 2, 2006) (internal citations omitted).

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); *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 has also affirmatively considered specific safety requirements in rulemaking proceedings, such as the impact of over lashing by attaching entities and third parties, including the impact on wind and weight load burdens. *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). Accordingly, the FCC has, and does exercise, jurisdiction over pole safety issues. Consequently, the proposed rules violate federal legal precedent in giving unilateral and unfettered discretion to utilities to set construction and attachment standards and deny access. Section 224 has already been interpreted to preclude any unilateral determination at insufficient capacity exists for third-party attachments. *Southern Company, et al. v. Federal Communications Commission*, 293 F.3d 1338, 1347-49 (11<sup>th</sup> Cir. 2002). Specifically, the case law provides that electric utilities do not have “unfettered discretion” to determine insufficient capacity and may only refuse to make capacity available on a particular pole “when it is agreed that capacity is insufficient.” Accordingly, Rule 25-6.0342 that gives the utility the unilateral authority to deny access is in violation of section 224 of the

Communications Act and the rules, regulations, FCC decisions, and applicable judicial precedent. Further, the assignment of authority under the rules to the Commission to resolve such disputes is clearly a violation of FCC rules and policy in cases where safety conditions are used unreasonably to deny access. As previously stated above, FCC jurisdiction applies to unreasonable denials of access based on safety, reliability, engineering, and capacity.

If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of 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 ("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. Moreover, utilities also have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overloading of fiber optic cable to existing strand – a practice the Federal Communications Commission ("FCC") has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. 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.

Rule 25-6.0342 as proposed will subject cable third-party attachers to an unlawful exercise of delegated authority and an obstruction of their rights granted under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224. The FCTA's requested changes to Rule 25-6.0342 are attached hereto as Exhibit 3.

#### **RULE 25-6.0341 LOCATION OF THE UTILITY'S ELECTRIC DISTRIBUTION FACILITIES.**

Rule 25-6.0341(1), (2) and (3) all create the potential for relocating existing facilities by IOUs from the rear edge of a lot to the front edge of the lot. Rule 25-6.0343(2)(a), (b), and (c) also have the same potential for relocation of existing facilities by Munis and Coops from the rear lot to the front lot. Rear lot facilities are able to serve twice as many residences, and relocation to the front lot would require a duplication of facilities to serve the same number of residences that rear lot facilities can serve.

For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. Consequently, relocation from rear lot to front lot is less efficient and more costly. In a substantial number of cases, good maintenance will be more cost-efficient than relocation of

facilities. However, the IOUs and Munis and Coops are given sole discretion to make decisions to relocate their facilities, and cable third-party attachers will be compelled to relocate their facilities.

Therefore, Rules 25-6.0341(1), (2), and (3) and 25-6.0343(2)(a), (b), and (c), should be limited to initial installations, and the utilities should not be given complete discretion to make determinations in the case of expansions, rebuilds or relocations. The FCTA appreciates the provision in Rules 25-6.0341(4) and 25-6.0343(4) requiring the electric utility to seek input from and, to the extent practical, to coordinate the construction of its facilities with the third-party attacher. However, the opportunity for input must be timely with respect to the FCTA members' evaluation of construction alternatives, and the FCTA members' budgeting time deadlines. Specifically, language should be inserted providing that an electric utility provide third-party attachers with reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate construction alternatives and make budgeting plans. Therefore, the cited rules are invalid in violation of Section 120.52(8), in that the rules give complete discretion to the utilities to make decisions as to relocation of their facilities without any meaningful input (since the utilities may disregard input from third-party attachers) or consideration of the costs that will be incurred by third-party attachers as a result of such relocations, and without a requirement of sufficient advance notice to accommodate a third-party attacher's needs to evaluate construction alternatives and make budgeting decisions. In general, utilities make their construction plans at least a year in advance and 12 months advance notice is reasonable. Additional language to allow third-party attachers a larger degree of participation and a requirement of a greater degree of cooperation from the utilities in the process of coordinating construction of its facilities with third-party attachers.

**PROPOSED RULES 25-6.0341 AND 25-6.0342 ARE ANTI-COMPETITIVE AND NOT FACTUALLY SUPPORTED AS THE MOST EFFECTIVE MEANS OF MEETING THE GOALS OF PRODUCING STORM DAMAGE AND PROTRACTED OUTAGES.**

There has been no competent, substantial 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 to take remedial or corrective actions to repair or restore transmissions lines and substations to design strengths and performance criteria. 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. The FCTA's requested changes to Rule 25-6.0341 are attached hereto as Exhibit 4.

Respectfully submitted this 4<sup>th</sup> day of August 2006.



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**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Florida Cable Telecommunications Association has been served upon the following parties electronically and by U.S. Mail this 4<sup>th</sup> day of August 2006.

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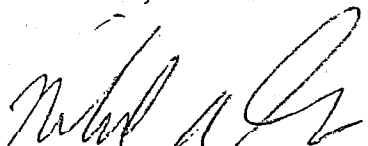
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Pennington Law Firm (Time Warner)  
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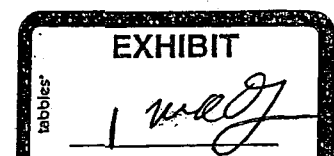
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Southern Pressure Treaters Association

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\_\_\_\_\_  
Michael A. Gross

- *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 (11<sup>th</sup> 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 11<sup>th</sup> Circuit's decision in *Gulf Power II*.
- *Alabama Power Co. and Gulf Power Co. v. FCC*, 311 F. 3d 1357 (11<sup>th</sup> 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



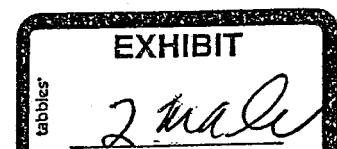
received under the Cable Formula and payment of make-ready expenses. The Court concluded that, to do this, a utility must be able to show "*with regard to each pole* that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is 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.

## 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 Southwest, 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 "GPSS 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 Southwest, 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. The \$2,146 amount was the average amount that had been charged by Georgia Power where Knology was found not to be the cause of the pole replacement.)
- \$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 primary issue in the case was Kansas Cit Power & Light's failure to perform make-ready work in timely fashion. The amount per pole was provided by KCPL in response to a request from Time Warner for estimated cost of pole replacements.)<sup>1</sup>

#### 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).

<sup>1</sup> The per pole cost data cited is provided for illustrative purposes only. It should be noted that pole costs and associated labor costs have gone up substantially in general; and particular poles may be extremely expensive depending on characteristics of individual poles. The price of a single pole may vary by as much as tenfold depending on the characteristics of the poles.

- "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).<sup>2</sup>

**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 Cable Association was contesting Georgia Power's \$150 up-front fee for make-ready work. The Enforcement Bureau found the fee unreasonable and concluded that "Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs." It is not clear from the decision the specific tasks that this fee was designed to cover.)

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<sup>2</sup> The audit fees cited involved the total cost for a pole count. Audits currently are much broader in scope, and the costs have increased substantially.

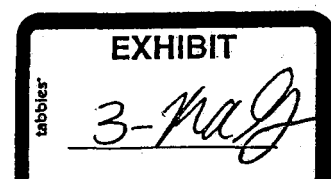
## FCTA PROPOSED CHANGES TO RULE 25-6.0342

### 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) 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.

<sup>1</sup> 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. Michael A. Gross (MAG)/FCTA Comments at pages 4 and 5. M.T. (Mickey) Harrelson (MTH)/FCTA Comment at pages 5 through 9.



(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.<sup>2</sup>

(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 this rule is intended to interfere with section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224, inclusive of any successor statutes and applicable rules, regulations, FCC decisions and judicial precedents.<sup>3</sup>

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

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

<sup>2</sup> 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 5 through 10.

<sup>3</sup> See footnote 2 above.

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July 28, 2006

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

RE: Docket Nos. 060172 & 060173-EI  
Embarq's Request for Hearing and Proposal for Lower Cost Alternatives

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth Embarq's request for a hearing and its proposal for lower cost regulatory alternatives, in accordance with the Notice of Rulemaking issued June 28, 2006 (Order No. PSC-06-0556-NOR-EU) and ch. 120, F.S.

Request for Hearing

In accordance with s. 120.54(3)(c)1., F.S., and Rule 28-103.004, F.A.C. Embarq requests a hearing on Proposed Rule 25-6.034, F.A.C. Embarq also understands that Proposed Rules 25-6.0341, 6.0342 and 6.0343 are already set for hearing (See, Order No. PSC-06-0610-PCO-EU and Order No. PSC-06-0632-PCO-EU), but to the extent a formal request for hearing may be necessary for these rules this letter also serves as that request.

Embarq is affected by the proposed rules because Embarq is a lawful third-party attacher to electric utility poles under federal law and agreements entered into between Embarq and individual electric utilities. Embarq currently has in place an estimated 250,000 attachments with approximately 30 electric utilities in Florida. The rules proposed by the Commission will affect both the manner and costs of Embarq's attachments. Embarq is requesting a hearing so that it will have an opportunity to present information to the Commission regarding Embarq's legal, operational and cost concerns with the rules as they are currently proposed.

Susan S. Masterton  
COUNSEL  
LAW AND EXTERNAL AFFAIRS- REGULATORY  
Voice: (850) 599-1560  
Fax: (850) 878-0777

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION CLERK

### Proposal for lower cost alternatives

In accordance with s. 120.541, F.S., Embarq proposes the following lower cost alternatives to the rules proposed by the Commission. Embarq is a "substantially affected person" because it is a lawful third-party attacher as described above and the rules will affect the manner and costs of Embarq's attachments. The Commission already has recognized that Embarq's interests are affected by the proposed rules by including a requirement that the electric utilities seek input from third-party attachers related to construction and attachment standards and location decisions (although Embarq believes these provisions are insufficient to protect Embarq's interests).

First, regarding Proposed Rules 25-6.034 and 25-6.0342, F.A.C., relating to standards for electric utility construction and standards for third-party attachments to electric utility poles (and those portions of Proposed Rule 25-6.0343 that contain similar language for municipal and rural cooperative electric utilities), Embarq proposes that the 2002 National Electric Safety Code (NESC) is the appropriate standard for electric company construction and for third-party attachments. Embarq believes the adoption of this standard by the Commission substantially accomplishes the goals of the statutes that are implemented by the rules. The goals of these statutes are, broadly, to establish standards that ensure the availability of adequate and reliable energy, ensure the safety of the public and ensure the availability of adequate services and facilities to those reasonably entitled to receive such services. (See, ss. 366.04 and 366.05, F.S.) During the 2006 legislative session the Legislature adopted ch. 2006-230, Laws of Florida, amending ss. 366.04 and 366.05, F.S., to allow the Commission to adopt standards that exceed the NESC standards; however, the only requirement the law imposes upon the Commission is to adopt the NESC standards. The Legislature specifically did not alter its earlier finding that compliance with the NESC standards constitutes adequate safety standards for the protection of the public.

The pole attachment agreements generally used within the industry provide that poles and attachments will be constructed in accordance with the NESC standards. In addition, the rulemaking record does not support the insufficiency of the NESC standards (particularly as they relate to attachments) as the cause of electric outages experienced during extreme weather events, nor does the record support that exceeding the NESC standards will result in fewer or shorter electric outages. In fact, the Commission itself does not know what additional standards might be necessary to achieve the statutory objectives and, so, has delegated to the individual electric utilities the ability to adopt standards in excess of the NESC, entirely at each utility's discretion.<sup>1</sup> The NESC provides uniform standards that allow third parties to plan for and place attachments throughout the state on a consistent basis. The proposed rules would allow electric utilities to adopt potentially widely varying standards that could significantly increase the operational difficulties and costs imposed on third-party attachers.

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<sup>1</sup> Embarq believes that this is an unlawful delegation of the Commission's rulemaking authority and intends to raise this issue through the appropriate proceedings at the appropriate time.



The proposed rules leave the adoption of these "excessive" standards entirely within the discretion of the electric utilities (which Embarq believes is unlawful). While the proposed rules require the electric companies to "seek input" from third parties and allow disputes regarding the standards to be brought before the Commission, there is no clear mechanism for notice to third parties of the standards the electric utilities propose to adopt (in fact, the utilities have stated that much of this information is proprietary). Also, there are no clear guidelines for the Commission to decide whether a proposed excessive standard is appropriate. Because the proposed rules do not set forth specific standards in excess of the NESC or a specific process for developing or challenging these standards, Embarq is not able to accurately assess the cost impact of any additional standards, the administrative costs of providing "input" to the electric utilities in the development of the standards, or the costs Embarq would incur if it finds it necessary to file a challenge with the Commission. In addition, given that the Commission cannot know what the standards ultimately will be, the Commission cannot determine the added value of the rule or the additional costs that any new standards exceeding the NESC may engender. At least, setting forth the specific, fact-supported construction or attachment standards in the rules would be a lower cost alternative because it would provide Embarq a clear point of entry in the development of the standards and allow Embarq to assess, and perhaps ameliorate, the cost impacts associated with a particular standard.

Regarding Proposed Rule 25-6.0341, F.A.C., related to the location of electric utilities (and those portions of Proposed Rule 25-6.0343 that contain similar language for municipal and rural cooperative electric utilities), Embarq proposes that a lower cost alternative is to apply the rule only to the installation of new facilities. Embarq believes that a prospective application of the rule addresses the access issues that the Commission asserts are the basis for the proposed rule. A prospective rule would be a more cost-effective alternative, as well, in that it would avoid the considerable costs (as well as the disruption) associated with removing existing facilities currently located in the back of a customer's premises and placing new facilities in the front or in the public right-of-way.<sup>2</sup> Embarq believes these relocation costs and disruptions are likely to significantly outweigh any potential benefits of improved access to the facilities for restoration purposes.

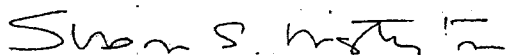
In addition to this letter and to the cost estimates filed today under separate cover, Embarq intends to file comprehensive comments addressing Embarq's legal, operational and cost concerns with the proposed rules by the August 4, 2006 deadline set forth in Order No. PSC-06-0610-PCO-EU. In addition, Embarq intends to fully participate in the rulemaking hearing for Proposed Rules 25-6.0341 and 25-6.0342 scheduled for August 31, 2006, in the hearing for Proposed Rule 25-6.0343 scheduled for October 4, 2006 and in the hearing for Proposed Rule 25-6.034, F.A.C., whenever it is scheduled.

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<sup>2</sup> Embarq has provided an estimate of the potential costs associated with Proposed Rule 25-6.0341, F.A.C., as requested at the July 13<sup>th</sup> staff workshop in a separate filing on this same day.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,



Susan S. Masterton

Cc: Larry Harris, Esq., FPSC  
Charles J. Rehwinkel  
Interested Persons of Record

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

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28<sup>th</sup> day of July, 2006, to the following:

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2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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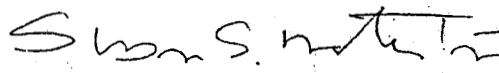
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Susan S. Masterton

ORIGINAL

Exhibit: EQ-1

Voice | Data | Internet | Wireless | Entertainment



**EMBARQ™**

Embarq Corporation  
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Tallahassee, FL 32301  
EMBARQ.com

July 28, 2006

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

RE: Docket Nos. 060172 & 060173-EU – Post July 13, 2006 Workshop  
Comments of Embarq

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth the post July 13, 2006 workshop comments of Embarq. These comments are filed in addition to the request for a hearing and proposal for lower-cost regulatory alternatives filed by Embarq on this same date in accordance with the Notice of Rulemaking issued June 28, 2006.

The staff workshop held on July 13, 2006 was noticed as being for the purpose of allowing third party attachers to present data on the cost impact, if any, of proposed Rules 25-6.0341 and 25-6.0342, F.A.C., on their companies. While Embarq did not have cost data available to present at the workshop, the company has attempted to provide such data in these post workshop comments.

**Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities.**

**Requirement for electric facilities to be placed adjacent to a public road, normally in front of the customer's premises**

Up to this point, the proposed rulemaking lacks a sufficiently defined scope necessary to accurately estimate the potential cost impacts to third party attachers by requiring electric distribution facilities to be placed adjacent to a public road, normally in front of the customer's premises, to the extent practical, feasible and cost-effective. The electric utilities' filings have been vague as to the scope and volume of their planned re-construction of existing aerial plant and have instead simply made vague references to a ten year plan. A request for estimated cost, against this vague backdrop is ill-fated at the outset. The ultimate cost of reconstructing existing aerial plant will be a site- and route-specific result with

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DOCUMENT NUMBER-DATE

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FROM COMMISSION CLERK

considerable variability. It is entirely predictable however that the costs of moving existing aerial plant from the rear of residential lots to the front will generate an extreme and costly construction environment. Reconstructing cables in existing neighborhoods will require significant disruption to customers, due to the tearing up of yards, trees, landscaping, fences, sidewalks, driveways, and streets. The cost of working in this environment is extremely high compared to doing work ahead of time as neighborhoods are initially constructed. (Embarq is supportive of higher standards in initial construction situations.) While there are certainly benefits to underground plant and or having stronger overhead plant, it should be kept in mind that even this new plant will experience some failure during extreme hurricanes, and therefore the cost/benefit of re-constructing aerial plant is suspect and unquantified at this point.

**Requirement for electric facilities to use easements and road rights-of-way for all new and replacement electric overhead distribution facilities**

If the electric utility reconstructs overhead facilities, moving aerial cable from back-lot to front is not a simple matter of moving an existing cable. It requires all new facilities at the front, and scrapping the existing facilities at the back. Putting the cost of the cable work aside, the new investment in taller heavier poles placed along the road will bring a cost increase as well through higher attachment fees. Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so.

In the electric overhead-to-overhead replacement situation, if Embarq also remains overhead, the construction cost to rebuild its aerial line on new electric utility poles is estimated to fall in a range of \$110k to \$170k per mile, depending on whether the electric utility attempts to charge the attacher for the cost of the new pole. Again, given the current complete lack of scope, Embarq can only report at this time that if every mile of its shared overhead routes were rebuilt, the resulting cost estimates would range from \$360 million to \$560 million which is an extreme result which obviously calls for a more granular definition and cost benefit analysis before being allowed to proceed.

**Requirement for electric facilities to use front-lot easements provided by the applicant for all new and replacement electric underground distributions facilities.**

If the electric utility places new underground facilities, they propose cost recovery of the highly-disruptive trench/bore situation be guaranteed to the electric utility through a combination local entity funding of (75%) and electric rate increases of the remaining (25%). Nowhere does the electric utility industry's proposals address how the attacher, in this case Embarq will recover its costs. As with sharing overhead facilities discussed above, the potential for the electric utility to

inappropriately allocate to attaching parties such as Embarq the shared underground trenching costs which are already 100% recovered thru their 75/25% proposal. Any costs passed to the attacher relative to joint electric utility and incumbent local exchange company (ILEC) underground construction should acknowledge that the electric utility already has included 100% recovery in their proposal.

In the electric overhead-to-underground replacement situation, if Embarq also buries facilities, the construction cost to retire aerial facilities and rebuild with buried is estimated to fall into a range of \$190k to \$260k per mile if Embarq has to pay for the trench. Again lacking necessary definition of scale and scope, Embarq is left to report that if every mile of shared overhead routes were to be buried, this would amount to \$630 million to \$860 million for Embarq. Assuming that the electric utility's proposal to recover 100% of their costs from the combination of local government and electric rate increases results in a cost-free use of the joint trench, the estimated cost range in that context is \$90K to \$120K per mile. Again extending this unit cost range to the entire potential population of existing aerial plant results in unworkable total cost estimates of \$300M to \$400M.

**Requirement for electric facilities to use road rights-of-way for conversions of overhead to underground facilities requested by a local government.**

Embarq's input for this scenario would be the same as for the previous aerial to underground scenario described above.

**Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.**

Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

**Rule 25-6.0342 Third-Party Attachment Standards and Procedures.**

**Requirement for electric facilities to 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.**

Due to a lack of necessary information the cost of following new written standards issued by the electric utility can not be quantified at this time. The

responses to the questions above attempt to provide some understanding for unit costs and potentially extremely costly outcomes were these rules to go forward.

**Impact and estimated incremental cost of requiring the Attachment Standards and Procedures to meet or exceed the National Electric Safety Code and other applicable state and federal laws.**

The cost of the not yet defined higher standards for new facilities cannot be quantified. However, the cost of changing standards on existing facilities is potentially prohibitive and warrants further cost/benefit analysis as explained above.

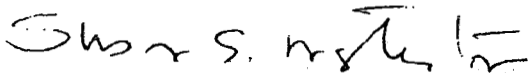
**Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.**

The proposed rule requirement that would have each electric utility seek input from third-party attachers in establishing its Attachment Standards and Procedures and have disputes resolved by the Commission does not address the concerns of Embarq. Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

These comments are submitted specifically to address the questions from the July 13 workshop regarding quantification of cost impacts to Embarq of the proposed rules. Embarq will file additional comments on the proposed rule on August 4, 2006 as required by the pre-hearing order.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,



Susan S. Masterton

cc: Larry Harris, Esq., FPSC  
Charles J. Rehwinkel  
Interested Persons of Record



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

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28<sup>th</sup> day of July, 2006, to the following:

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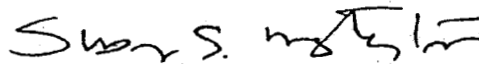
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Susan S. Masterton

9. The amount taken as a credit for the taxable year under s. 220.1895.
10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.
11. The amount taken as a credit for the taxable year under s. 220.187.
12. The amount taken as a credit for the taxable year under s. 220.192.
13. The amount taken as a credit for the taxable year under s. 220.193.

Section 15. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.—

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c)(b) The anticipated environmental impact of each proposed electrical power plant site.

(d)(e) Possible alternatives to the proposed plan.

(e)(d) The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f)(e) The extent to which the plan is consistent with the state comprehensive plan.

(g)(f) The plan with respect to the information of the state on energy availability and consumption.

Section 16. Subsection (6) of section 366.04, Florida Statutes, is amended to read:

## 366.04 Jurisdiction of commission.—

(6) The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall, at a minimum:

(a) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and

(b) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2).

The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 17. Subsections (1) and (8) of section 366.05, Florida Statutes, are amended to read:

## 366.05 Powers.—

(1) 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; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action

taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 18. Section 366.92, Florida Statutes, is created to read:

366.92 Florida renewable energy policy.—

(1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and at the same time, minimize the costs of power supply to electric utilities and their customers.

(2) For the purposes of this section, "Florida renewable energy resources" shall mean renewable energy, as defined in s. 377.803, that is produced in Florida.

(3) The commission may adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The commission may change the goals. The commission may review and reestablish the goals at least once every five years.

(4) The commission may adopt rules to administer and implement the provisions of this section.

Section 19. (1) The Florida Public Service Commission shall direct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine the hardening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007.

(2) The commission shall conduct a review to determine what should be done to enhance the reliability of Florida's transmission and distribution grids during extreme weather events, including the strengthening of distribution and transmission facilities. Considerations may include:

(a) Recommendations for promoting and encouraging underground electric distribution for new service or construction provided by public utilities.

(b) Recommendations for promoting and encouraging the conversion of existing overhead distribution facilities to underground facilities, including any recommended incentives to local governments for local-government-sponsored conversions.

(c) Recommendations as to whether incentives for local-government-sponsored conversions should include participation by a public utility in the conversion costs as an investment in the reliability of the grid in total, with such investment recognized as a new plant in service for regulatory purposes.

(d) Recommendations for promoting and encouraging the use of road rights-of-way for the location of underground facilities in any local-government-sponsored conversion project, provided the customers of the public utility do not incur increased liability and future relocation costs.

(3) The commission shall submit its review and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2007.

(4) This section does not limit the existing jurisdiction or powers of the commission. It may not be construed to delay or defer any activities that are currently docketed which relate to matters to be addressed by the study required by this section, nor may it be construed to delay or defer any case or proceeding that may be initiated before the commission pursuant to current statutory powers of the commission.

Section 20. Subsections (5), (8), (9), (12), (18), (24), and (27) of section 403.503, Florida Statutes, are amended, subsections (6) through (28) are renumbered as (7) through (29), respectively, and new subsections (6) and (16) are added to that section, to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.—As used in this act:

(5) “Application” means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information proceeding and shall include the documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program.

(6) “Associated facilities” means, for the purpose of certification, those facilities which directly support the construction and operation of the electrical power plant such as fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

(8) “Completeness” means that the application has addressed all applicable sections of the prescribed application format, and but does not mean that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(9) “Corridor” means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for

## PART III

## GENERAL MANAGEMENT REQUIREMENTS

## 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. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. 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~~ comply with 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 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.

(c) 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 Article 250.26d 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, assumed on or after the effective date of this rule; and

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

(4) ~~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.~~

(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. 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.~~

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 \_\_\_\_\_.

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 attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

~~(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.~~

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

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

History New \_\_\_\_\_.



Sprint Local Exchange Carrier (Sprint - LEC)  
Plant and Engineering Series

Exhibit: EQ-4

Section 629-001  
Issue 4: February 2004

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## JOINT BURIED UTILITIES INSTALLATION PROCEDURES AND PRECAUTIONS

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### 1. GENERAL

- 1.01 The purpose of this practice is to provide direction when working with joint trench applications.
- 1.02 Division of costs must be agreed upon in writing by all parties prior to the beginning of any work. A sample is included as Exhibit A. Local field teams will prepare their own agreement following example. This document must be approved by the Legal Department before agreement is finalized and returned to all parties.
- 1.03 The separations of telephone and power supply circuits shown are based on the National Electrical Safety Code. Where more stringent requirements are prescribed by state or local regulatory bodies, these requirements must be observed.



- 1.04 Other utilities will be placed jointly in the same trench with telephone cables when a mutual agreement is agreed to by all parties involved. Required trenching is normally provided by the developer or the power supply company or their contractor. The cost is usually shared between trench occupants.
- 1.05 This practice is oriented primarily toward rear-lot construction; however, other locations not illustrated in this practice may be used.
- 1.06 For the purpose of identifying the types of joint plant construction involved, the following definitions are provided:
- (a) Main trench is that trench in the easement or public right-of-way that accommodates CATV, power primary and secondary circuits, and telephone distribution cable and service wires. The placement of gas lines in trench and its location must be agreed upon by all parties.
  - (b) Service trench is that trench which extends from the terminal facilities to the customer's residence or building.
  - (c) Pedestals are placed side by side. An *American Wire Gauge (AWG) #6 bare solid copper wire* should bond the ground between each terminal. Pedestals should be placed 12" from the side and rear property lines.
  - (d) Road crossings are to maintain 36" minimum depth.

## 2. EFFECTIVE DATE

- 2.01 This practice is effective upon receipt.

## 3. SUPERSESSION

- 3.01 *This practice cancels and supersedes Plant and Engineering Practice, Section 629-100-201, Issue 3, August, 1998. This practice has been revised to change subparagraph 1.06(c) and paragraph 9.04. Changes and additions are typed in bold italics.*

## 4. CLASSIFICATION

- 4.01 This practice is mandatory as written unless superseded by local regulatory conditions or requirements.



## **5. RESPONSIBILITIES**

- 5.01 The telephone and other utility companies shall coordinate the planning of joint-use installations and determine which company will be responsible for trenching and whether a contractor will be used for the trenching operation.
- 5.02 The company responsible for trenching will secure from the developer a signed agreement specifying final grades.

NOTE: In new developments all companies concerned will obtain the necessary easements.

- 5.03 All concerned utility companies should specify on work drawings or work activities the location and depth of the trench for final grades and show proposed grade changes by developer, if any, and location of all splices, terminals, transformers, etc.; also whether the installation is to be on a separate trench, vertical or random separate losses.

## **6. PRELIMINARY WORK PLANS**

- 6.01 The company responsible for trenching shall formulate plans for doing the work after sufficient field inspection by all concerned companies to establish what work is required and how it can best be accomplished. In making such plans the requirements of all companies must be considered, as well as the date on which service is required. Requirements must be specified on the work activity.
- 6.02 Plan all work so that backfilling can be completed on the same day if practicable. Pipe pushing should be completed prior to the installation of cables and/or pipes. Where conduits are required for any condition in joint buried distribution systems, separate conduits for CATV, power and telephone wires and/or cables must be provided.

NOTE: Arrangements should be made with the developer to clear and grade the terrain to within 6 inches of final grade so that cables will be at the specified depth after final grading is completed.



- 6.03 All conduits or pipe pushes must be placed prior to placement of cables. Where conduits are required for any specific condition in a joint trench, separate conduits for power supply and communications cables must be provided.
- 6.04 Each company is responsible for timely delivery of reels of cable, wire, pipe and other materials and should observe necessary precautions in safeguarding such materials after delivery.
- 6.05 OSP engineer shall specify on the work activity and coordinate with the power company engineer all connections between the power supply mutli-grounded neutral and the communications cable shield(s).

## **7. TRENCHING - MAIN TRENCH**

- 7.01 The main trench should provide at least 24" of cover over telephone facilities and 4" of width. The bottom of the trench should be smooth and free of rocks and/or other objects that could damage the cable.

NOTE: When gas lines are present additional trench width may be required.

- 7.02 When random separation has been determined to be used and agreed upon by all parties, all CATV, power and telephone cables and wires shall be placed in the bottom of the trench. Be sure that the cables and wires are in the trench and not lodged against the sides (see Figure 1). Figure 2 shows typical horizontal separation and Figure 3 shows vertical separation. In those areas where it cannot be mutually agreed to perform random separation, due to potential employee, customer and foreign worker safety issues, it is recommended that the power cable be placed on the bottom of the trench and separated by 6-12 inches of compacted earth.
- 7.03 Figures 4 through 7 illustrate typical locations of a main trench in relation to a Power Transformer Pads. Depending on the width of the right-of-way or easement in relation to the trench, the transformer may vary.

## **8. TRENCHING - SERVICE TRENCH**

- 8.01 The service trench should provide at least 12" of cover. The bottom of the trench should be smooth and free of rocks and/or other objects that could damage the cable.

NOTE: When gas lines are present additional trench width may be required.



- 8.02 The service trench may be dug before or after the main trench. If it is dug after the cables are installed in the main trench, then the last 18" at the service trench end should be dug by hand with extreme caution due to possible damage to the main cables.

## 9. CABLE AND PEDESTAL INSTALLATION

- 9.01 Methods used in placing cables in joint use trenches will depend on the location of the route, obstructions, terrain, and soil conditions. Three suggested methods of cable placing are as follows:
- (a) When soil conditions are such that the trench will not cave in, cables may be placed by pulling them out along the ground from reels located at the end of the section or at some intermediate point. The cables may be laid in the trench individually or together. Reel ends must be brought back to lot line or the previous pedestal location.
  - (b) When sand or fluid soil is encountered and the trench sides are unstable, the cable must be placed as soon as possible after trenching. This can be done by laying the cables out along the route in advance of the trenching operation and placing them in the trench as soon as the trencher passes. All of the cables to be installed should be in position before the trenching is started.
  - (c) When conditions and equipment warrant direct burial, telephone and power cables should be plowed in place with the power cable feeding out of the bottom tube of the plow, provided adequate separation is possible.
- 9.02 To facilitate separating cables and wires for maintenance reasons, avoid entwining power and telephone cables.
- 9.03 Pedestals should be placed at locations shown on the work print. The pedestals should be placed prior to the backfilling of the trench to avoid damage to the cables.
- 9.04 When pedestals are installed within 6 feet of each other or power, they must be tied together with *a (AWG) #6 bare solid copper wire* for bonding purposes. These pedestals should be in line with the trench.



- 9.05 Backfilling should be done as soon as possible after the cables are in the trench. Rock or other debris should not be replaced in the trench as it may damage the cables and cause problems when reentry is required.

## **10. BONDING**

- 10.01 Attachment of the bonding wire to the power neutral ground wire should be made in accordance with local procedures. The telephone shield and the power neutral shall be bonded together at all telephone terminals and at all transformer locations or where the work prints specify otherwise.
- 10.02 To minimize the hazard in joint buried cable plant, the telephone cable shield should be bonded to the electric companies multi-neutral ground at every transformer location or every 1000' whichever results in the greater number of bonds.
- 10.03 At customer service entrances a common ground should be provided to an approved ground electrode.
- 10.04 When cable is buried in the same easement with or along side an aerial power line, bond the cable shield or closure to the power-neutral-ground wire at or near both ends of the exposure and at least once every mile. If the cable is buried on the opposite side of a highway, street, alley, etc. from an aerial power line, bond the cable shield or closure to the power-neutral-ground wire at all convenient locations where either the power line or telephone plant crosses the highway, street, or alley except that it will not be necessary to place such bonds at more frequent intervals than 1/2 mile separation. It is desirable to have at least one bond per mile in such situations. When a cable closure is placed on a pole having a vertical neutral ground wire, bond the closure to the ground.

## **11. SAFETY**

- 11.01 Before engaging in any work which will endanger the public, warning devices must be placed, conspicuously, to alert traffic or pedestrians. Where further protection is required, use suitable barriers for guards.
- 11.02 Prevent all unauthorized persons from approaching or working in a potentially hazardous area, as far as is practical.





11.03 Communications employees must use a voltage tester, high voltage rubber gloves, rubber blanket, goggles and insulated hand tools when working around energized power supply lines or equipment. Before commencing any work, these safety devices must be carefully inspected to ensure safe and effective operating condition.

11.04 Communications employees must remove all metal articles or jewelry when working around energized power supply lines or equipment; i.e., rings, necklaces, watches, etc. Clothes with rivets can also pose a hazard as they will conduct electricity.

NOTE: REMEMBER: "NO JOB IS SO IMPORTANT AND SO SERVICE IS SO URGENT THAT WE CANNOT TAKE TIME TO PERFORM OUR WORK SAFELY."

11.05 Working in Excavations - Special precautions shall be taken when employees are working in excavations/trenches. General precautions to take include:

(a) A "competent" person needs to inspect and evaluate the hazards of an excavation/trench daily and when conditions of the excavation/trench change.

NOTE: A "competent" person is one who is capable of identifying existing and predictable hazards in the surrounding work area and has the authority to take prompt corrective measures to eliminate them.

(b) Protective systems; i.e., shoring, sloping benching, and trench boxes, shall be in place for the excavation/trench if it is deeper than 5 feet or shallower when conditions warrant; i.e., soil cohesiveness, water, traffic, disturbed soil.

11.06 More information on excavation and trench safety can be obtained from your local business unit safety professional or by ordering safety training booklet A-MS20-0072, from Forms Management.

11.07 Direct buried power supply cables with insulated concentric neutral wires are very easily mistaken for communications cables. Some power supply cables have three red strips separated at 120 degrees for the entire length of the cable, some have one red stripe. These may be indistinguishable at times. Extreme care must be taken whenever working around power supply cables.



## **12. TESTING AND MAINTENANCE**

- 12.01 Sheath fault testing must be performed upon completion of backfill. Appropriate action must be taken immediately to correct any faults.
- 12.02 Locate sheath damage and depth of the communications cable(s). This may be accomplished by utilizing standard locating equipment, i.e., the Dynatel 573 or 573A. Refer to Figure 4 for detailed drawing.
- 12.03 To determine the proper cable to enter for repairs, and to avoid damaging another or cutting into an energized power supply cable, isolate a pair in the desired cable, short the pair and strap it to the cable shield. (DO NOT strap to the ground lug as this will cause tone to spread to other existing facilities.) At the other end or pedestal, place the 573 or 573A transmitter red clip onto the isolated pair tip and ring, connect the black clip to the cable shield. (Not the ground lug.) Place the transmitter switch on "cable locate" mode (R.F. for sections up to one mile in length) place the dyna-coupler into the receivers external jack, place the receiver switch to the peak mode. Place the dyna-coupler around each cable in question (one at a time). The cable with the peak strength signal (tone) is the desired cable.

NOTE: The cable shield under test must be isolated from ground at both ends of the section under test. See Figure 4 for drawing detail.

- 12.04 DO NOT use mechanized equipment to excavate in close proximity to cables or other buried facilities, until the actual depth is determined and all joint facilities have been exposed.

Mechanized equipment may then be used only to a depth of two (2) feet above the facility closest to the ground surface. This will minimize the possibility of accidental contact with any buried cable.

## **13. REPAIRS IN JOINT TRENCH**

- 13.01 Locate damaged sheath conductors utilizing standard trouble locating equipment.



- 13.02 Request location of other facilities through a call to the area one call center. Always notify the appropriate one call center before digging. During emergency situations or rehab procedures, maintenance crews must call the one call center.
- 13.03 Notify the operating power supply company of the need to expose the cable for repairs.
- 13.04 Locate and expose the communications cable. Dig down along side the cable until parallel, then dig into the trench to expose the cable. If necessary expose the power supply cable, only for assurance of location and that proper cable has been isolated for repair. Use of insulated or wood handled hand tools is imperative, for employee's safety. High voltage rubber gloves must be used wherever a voltage hazard exists.
- 13.05 When the cable shield under repair is opened, it must be bonded across the opening to prevent currents from entering the repair opening, (use "B" bond connection). This will also prevent differing potentials from building up on each side of the opening.
- 13.06 When safety concerns are raised as to the safety of employees working in a joint trench making repairs, the power company must be contacted for assistance to insulate or isolate, if possible, the section under repair. The expenses incurred by this operation could be billed to the communications company.
- 13.07 The use of rubber blankets will be necessary to insulate employees from suspected ground faults. Place the blankets in the trench in the work area. Wood board and plywood sheeting will be used to provide added mechanical protection.
- NOTE: In very wet conditions or when rubber blankets become overlaid with mud, the blankets will not provide adequate electrical protection. Check with the power supply company, if ground faults are suspected.
- 13.08 The economics of these type repairs must be considered along with section replacement via directional boring, prior to start of any excavations.

#### **14. LOCAL EXCEPTIONS**

##### **14.01 Mid-Atlantic Operations**

- (a) None



Sprint Local Exchange Carrier (Sprint - LEC)  
*Plant and Engineering Series*

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14.02 North Central Operations

(a) None

14.03 Southern Operations

(a) None

14.04 Western Operations

(a) None



Figure 1

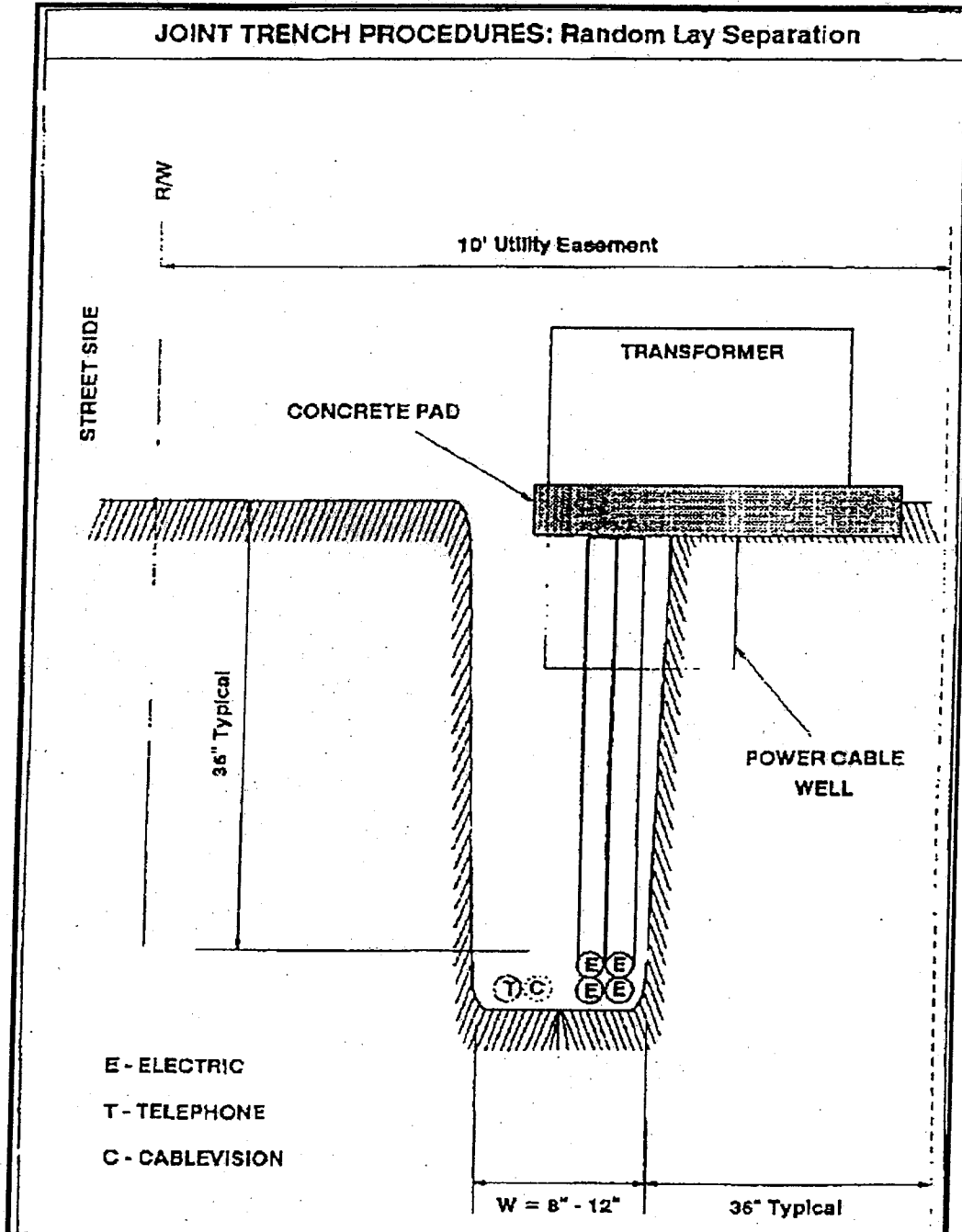




Figure 2

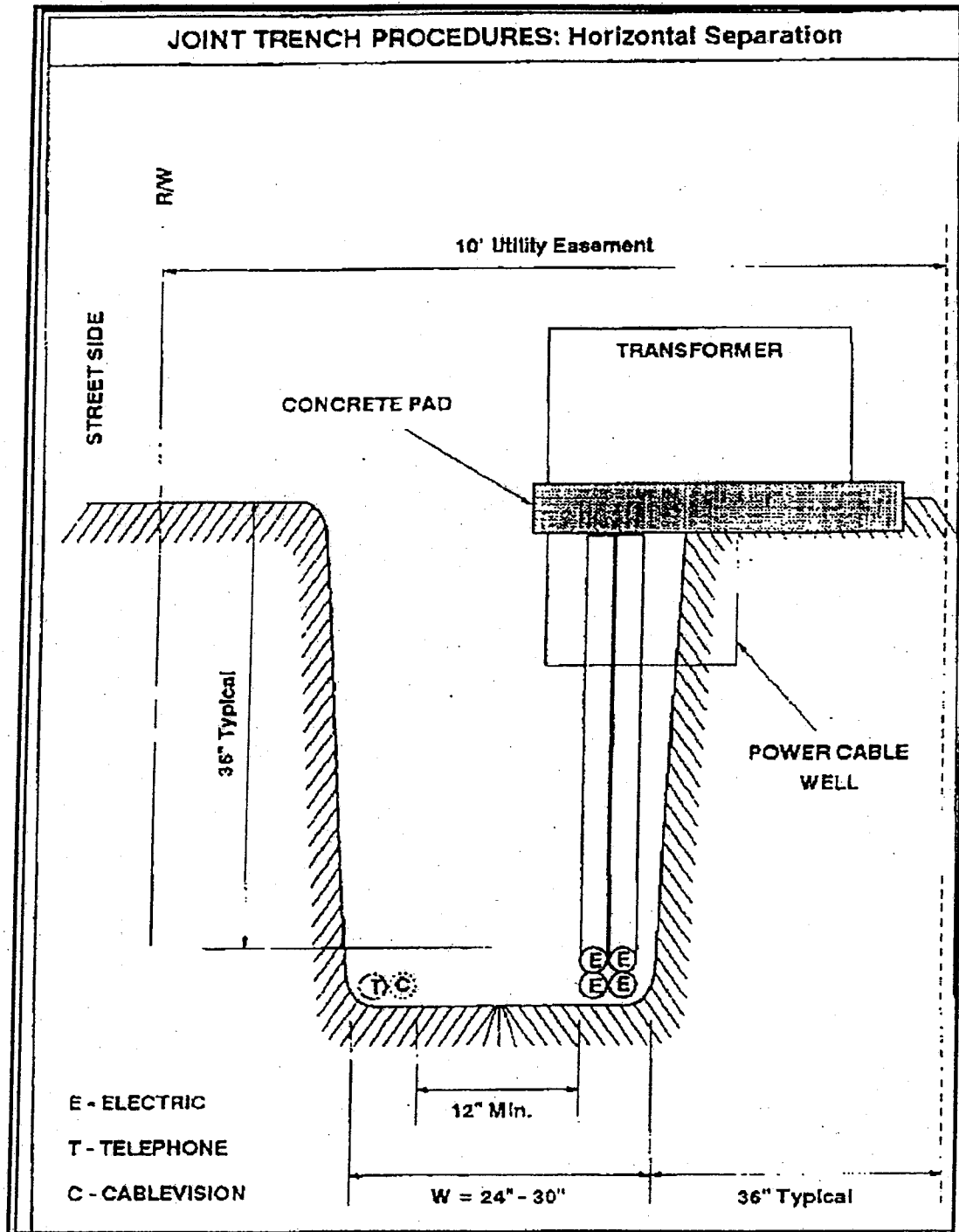




Figure 3

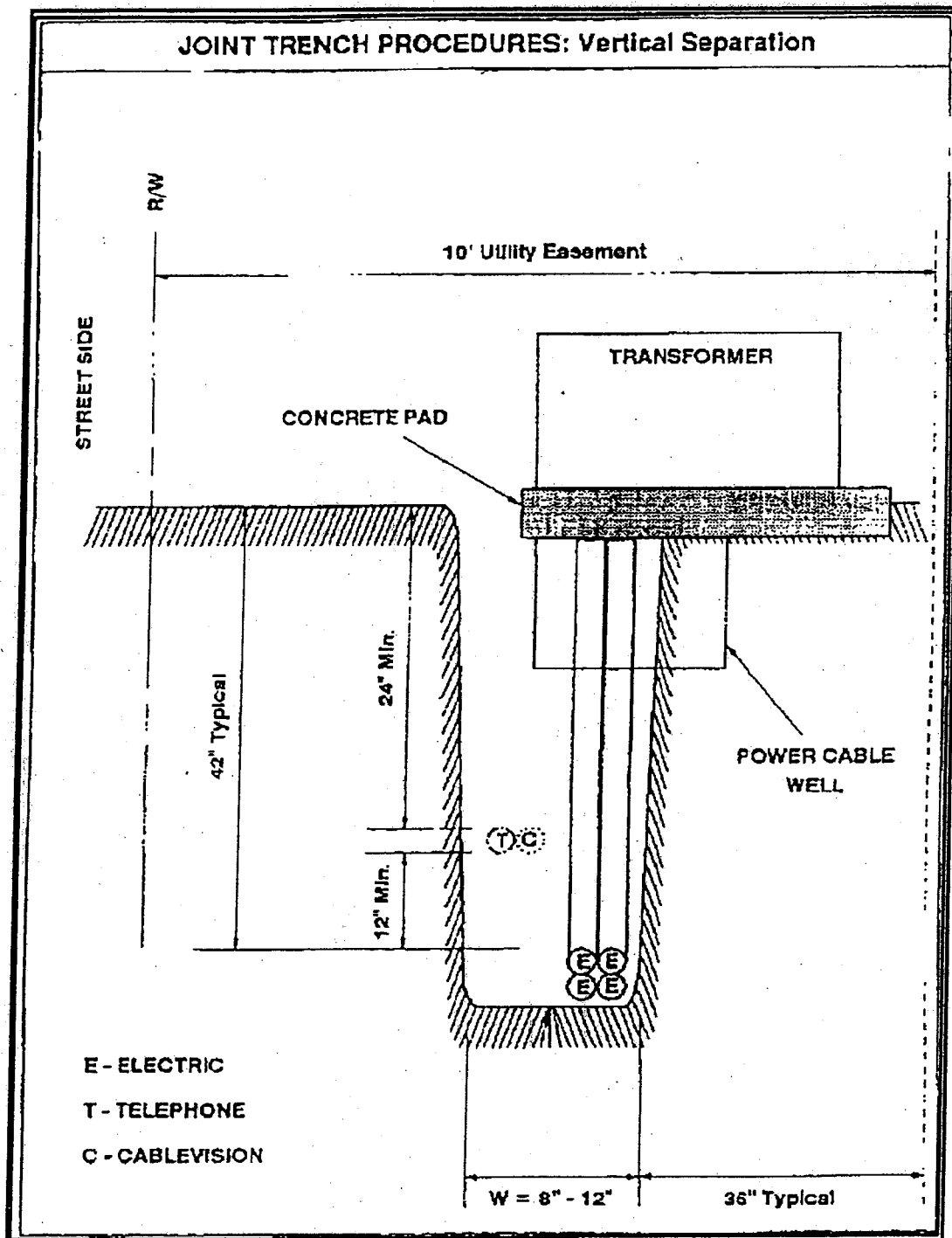




Figure 6

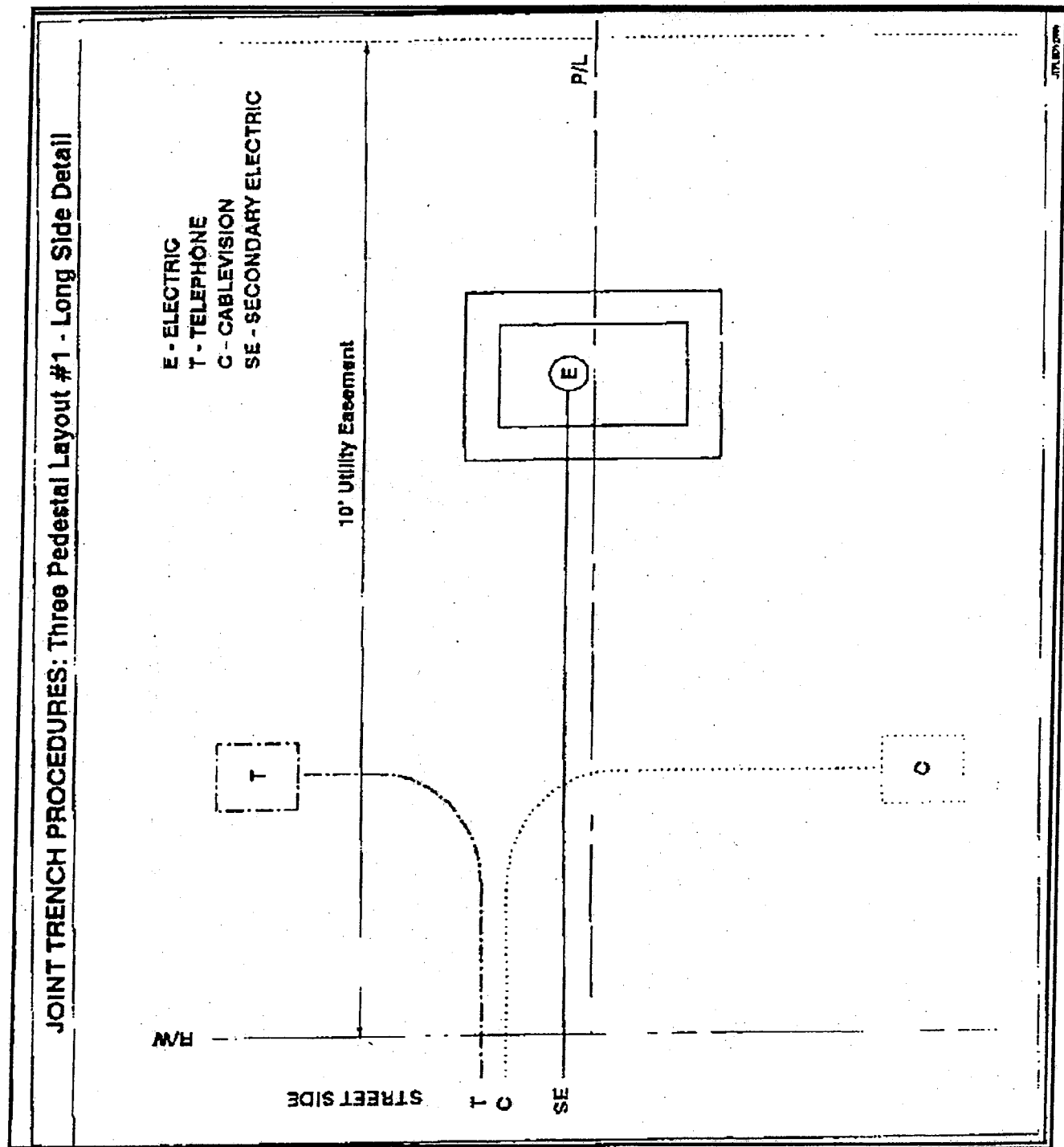
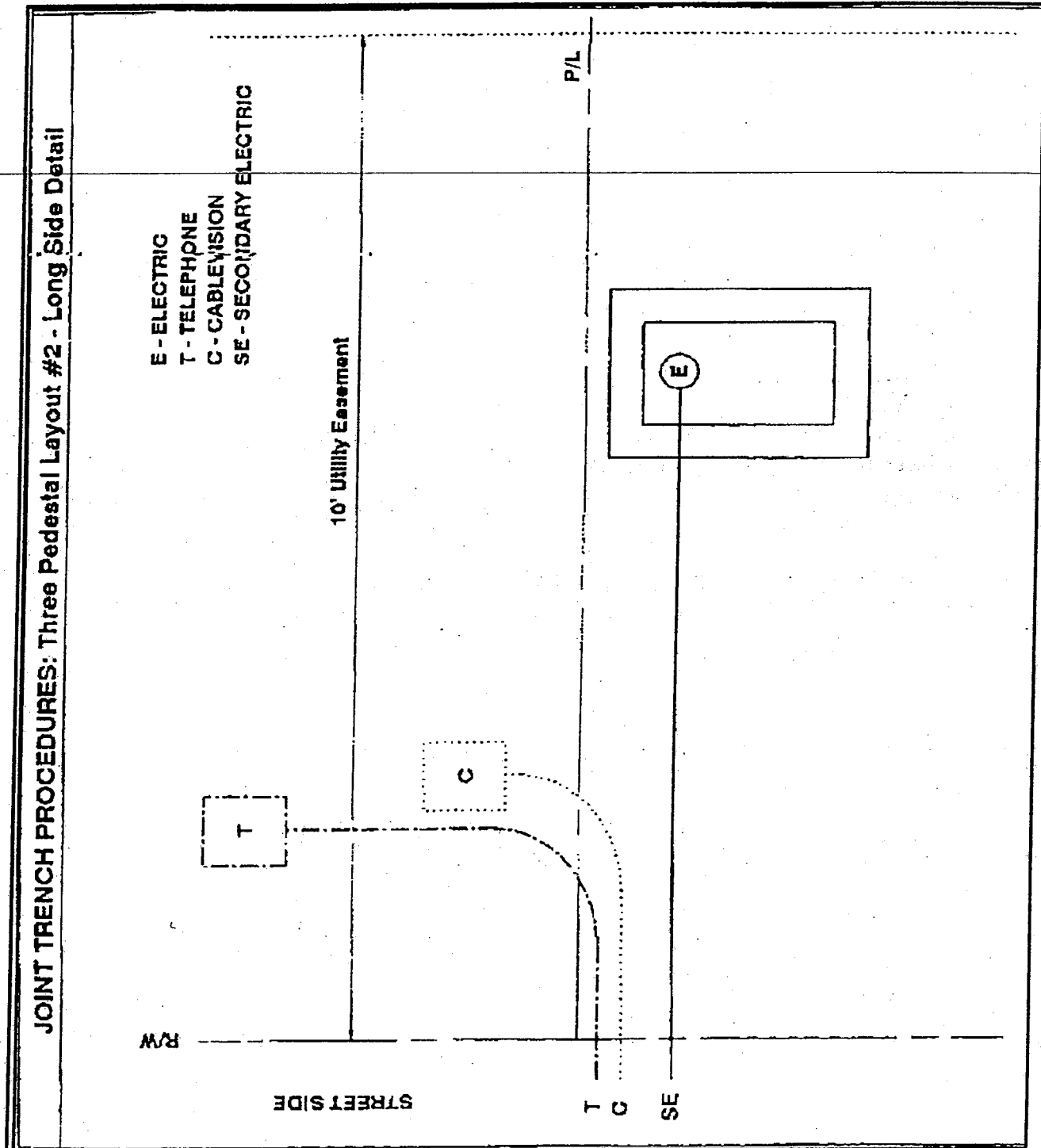






Figure 7





Sprint Local Exchange Carrier (Sprint - LEC)  
Plant and Engineering Series

Section 629-100-201  
Issue 4: February, 2004

EXHIBIT A  
JOINT TRENCH INSTALLATION PROJECT AGREEMENT

Project Name: \_\_\_\_\_

XYZ's Work Order Number: \_\_\_\_\_

Sprint's Work Order Number: \_\_\_\_\_

Project Description: \_\_\_\_\_

IN ACCORDANCE WITH the Joint Trench Installation Master Agreement which was executed by XYZ Power and Light Company and Sprint on the \_\_\_\_\_ day of \_\_\_\_\_, 1997, and in accordance with Joint Trench Prices mutually agreed upon by the respective local managements, Sprint shall pay the total sum of \$\_\_\_\_\_ to XYZ Power and Light Company for joint trench work performed by XYZ Power and Light Company on the above named project.

The terms and conditions of the Joint Trench Installation Master Agreement shall apply in full to this Joint Trench Installation Project Agreement and are incorporated herein.

Accepted:

Accepted:

\_\_\_\_\_  
for XYZ (Date)

\_\_\_\_\_  
for Sprint (Date)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Print Title



EXHIBIT B (CONT.)  
JOINT TRENCH INSTALLATION MASTER AGREEMENT

- c) provide an "as built" copy of Sprint's construction drawings upon completion of the project if Sprint's facilities are installed by XYZ,
- 5. The lump sum price for trench work performed by XYZ shall be calculated in accordance with joint trench prices that are mutually agreed upon by XYZ's and Sprint's local management from time to time.
- 6. This Agreement is subject to XYZ's Tariff, Sprint's Tariff, and the Rules of the Florida Public Service Commission.
- 7. General Terms and Conditions:
  - a) Limitations of Liability. Neither party shall be liable to the other party for any indirect or consequential damages resulting from performance, nonperformance, or delay in performance under this Agreement, and/or termination of this Agreement, excluding payment for work performed
  - b) Default and Termination. Each party may terminate this Agreement upon default of the other to comply with any of the provisions of Agreement or default in any of its obligations under this Agreement. Either party may terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other. All obligations for payment, including indemnity, survive termination.
  - c) Non-assignment. This Agreement shall not be assigned by either party.

IN WITNESS WHEREOF the parties represent and warrant that they have authority to execute this Agreement and hereto have caused this Agreement to be duly executed to be effective as this day and year written above.

25-6.0341 Location of the Utility's Electric Distribution Facilities.<sup>1</sup> In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road normally in front of the customer's premises.

(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, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

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

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

History— New.

<sup>1</sup> See pages 8-13 of Embark's Comments for an explanation the shaded changes.

# ORIGINAL



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Embarq Corporation  
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Tallahassee, FL 32301  
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July 28, 2006

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

RE: Docket Nos.060172 & 060173-EU – Post July 13, 2006 Workshop  
Comments of Embarq

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth the post July 13, 2006 workshop comments of Embarq. These comments are filed in addition to the request for a hearing and proposal for lower cost regulatory alternatives filed by Embarq on this same date in accordance with the Notice of Rulemaking issued June 28, 2006.

The staff workshop held on July 13, 2006 was noticed as being for the purpose of allowing third party attachers to present data on the cost impact, if any, of proposed Rules 25-6.0341 and 25-6.0342, F.A.C., on their companies. While Embarq did not have cost data available to present at the workshop, the company has attempted to provide such data in these post workshop comments.

**Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities.**

**Requirement for electric facilities to be placed adjacent to a public road, normally in front of the customer's premises**

Up to this point, the proposed rulemaking lacks a sufficiently defined scope necessary to accurately estimate the potential cost impacts to third party attachers by requiring electric distribution facilities to be placed adjacent to a public road, normally in front of the customer's premises, to the extent practical, feasible and cost-effective. The electric utilities' filings have been vague as to the scope and volume of their planned re-construction of existing aerial plant and have instead simply made vague references to a ten year plan. A request for estimated cost, against this vague backdrop is ill-fated at the outset. The ultimate cost of reconstructing existing aerial plant will be a site- and route-specific result with

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FROM COMMISSION CLERK

considerable variability. It is entirely predictable however that the costs of moving existing aerial plant from the rear of residential lots to the front will generate an extreme and costly construction environment. Reconstructing cables in existing neighborhoods will require significant disruption to customers, due to the tearing up of yards, trees, landscaping, fences, sidewalks, driveways, and streets. The cost of working in this environment is extremely high compared to doing work ahead of time as neighborhoods are initially constructed. (Embarq is supportive of higher standards in initial construction situations.) While there are certainly benefits to underground plant and or having stronger overhead plant, it should be kept in mind that even this new plant will experience some failure during extreme hurricanes, and therefore the cost/benefit of re-constructing aerial plant is suspect and unquantified at this point.

**Requirement for electric facilities to use easements and road rights-of-way for all new and replacement electric overhead distribution facilities**

If the electric utility reconstructs overhead facilities, moving aerial cable from back-lot to front is not a simple matter of moving an existing cable. It requires all new facilities at the front, and scrapping the existing facilities at the back. Putting the cost of the cable work aside, the new investment in taller heavier poles placed along the road will bring a cost increase as well through higher attachment fees. Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so.

In the electric overhead-to-overhead replacement situation, if Embarq also remains overhead, the construction cost to rebuild its aerial line on new electric utility poles is estimated to fall in a range of \$110k to \$170k per mile, depending on whether the electric utility attempts to charge the attacher for the cost of the new pole. Again, given the current complete lack of scope, Embarq can only report at this time that if every mile of its shared overhead routes were rebuilt, the resulting cost estimates would range from \$360 million to \$560 million which is an extreme result which obviously calls for a more granular definition and cost benefit analysis before being allowed to proceed.

**Requirement for electric facilities to use front-lot easements provided by the applicant for all new and replacement electric underground distributions facilities.**

If the electric utility places new underground facilities, they propose cost recovery of the highly-disruptive trench/bore situation be guaranteed to the electric utility through a combination local entity funding of (75%) and electric rate increases of the remaining (25%). Nowhere does the electric utility industry's proposals address how the attacher, in this case Embarq will recover its costs. As with sharing overhead facilities discussed above, the potential for the electric utility to

inappropriately allocate to attaching parties such as Embarras the shared underground trenching costs which are already 100% recovered thru their 75/25% proposal. Any costs passed to the attacher relative to joint electric utility and incumbent local exchange company (ILEC) underground construction should acknowledge that the electric utility already has included 100% recovery in their proposal.

In the electric overhead-to-underground replacement situation, if Embarras also buries facilities, the construction cost to retire aerial facilities and rebuild with buried is estimated to fall into a range of \$190k to \$260k per mile if Embarras has to pay for the trench. Again lacking necessary definition of scale and scope, Embarras is left to report that if every mile of shared overhead routes were to be buried, this would amount to \$630 million to \$860 million for Embarras. Assuming that the electric utility's proposal to recover 100% of their costs from the combination of local government and electric rate increases results in a cost-free use of the joint trench, the estimated cost range in that context is \$90K to \$120K per mile. Again extending this unit cost range to the entire potential population of existing aerial plant results in unworkable total cost estimates of \$300M to \$400M.

**Requirement for electric facilities to use road rights-of-way for conversions of overhead to underground facilities requested by a local government.**

Embarras's input for this scenario would be the same as for the previous aerial to underground scenario described above.

**Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.**

Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarras enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

**Rule 25-6.0342 Third-Party Attachment Standards and Procedures.**

**Requirement for electric facilities to 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.**

Due to a lack of necessary information the cost of following new written standards issued by the electric utility can not be quantified at this time. The

responses to the questions above attempt to provide some understanding for unit costs and potentially extremely costly outcomes were these rules to go forward.

**Impact and estimated incremental cost of requiring the Attachment Standards and Procedures to meet or exceed the National Electric Safety Code and other applicable state and federal laws.**

The cost of the not yet defined higher standards for new facilities cannot be quantified. However, the cost of changing standards on existing facilities is potentially prohibitive and warrants further cost/benefit analysis as explained above.

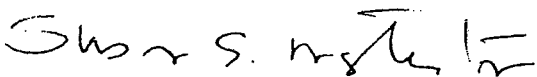
**Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.**

The proposed rule requirement that would have each electric utility seek input from third-party attachers in establishing its Attachment Standards and Procedures and have disputes resolved by the Commission does not address the concerns of Embarq. Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

These comments are submitted specifically to address the questions from the July 13 workshop regarding quantification of cost impacts to Embarq of the proposed rules. Embarq will file additional comments on the proposed rule on August 4, 2006 as required by the pre-hearing order.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,



Susan S. Masterton

cc: Larry Harris, Esq., FPSC  
Charles J. Rehwinkel  
Interested Persons of Record



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

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28<sup>th</sup> day of July, 2006, to the following:

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Tallahassee, FL 32399-0850

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Florida Electric Cooperatives  
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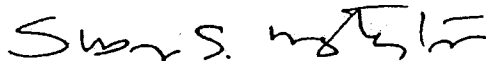
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Susan S. Masterton

**FLORIDA PUBLIC SERVICE COMMISSION**

Proposed rules governing placement of new  
electric distribution facilities underground, and  
conversion of existing overhead distribution  
facilities to underground facilities, to address  
effects of extreme weather events

) Docket No. 060172-EU  
)  
)  
)  
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)

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  
)  
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) Filed: August 4, 2006

**COMMENTS OF EMBARQ FLORIDA, INC. REGARDING  
PROPOSED RULES 25-6.034, 25-6.0341 and 25-6.0342**

**INTRODUCTION**

Pursuant to Order No. PSC-06-610-PCO-EU and Order No. PSC-06-0646-PCO-EU, Embarq Florida, Inc. ("Embarq") submits these comments and proposed rule changes for the rule hearing on these proposed rules scheduled for August 31, 2006.<sup>1</sup> At the hearing, representatives of Embarq will attend to present and answer questions about the legal, operational and cost issues Embarq raises regarding these proposed rules. In addition, Embarq incorporates and expands upon the comments previously filed by Embarq in its July 28, 2006 filings.<sup>2</sup>

While Embarq agrees that public safety is vital and that improvements to the electric infrastructure may be necessary to mitigate some affects of hurricane force winds

<sup>1</sup> While the Second Order on Procedure provides a due date for comments on Rule 25-6.034 (and other rules) of August 11, 2006, Embarq's comments on this rule are intertwined with its comments on Rule 25-6.0342. Therefore, Embarq is including its comments on Rule 25-6.034 in this filing.

<sup>2</sup> Letter from Embarq dated July 28, 2006 requesting a hearing and proposing lower cost regulatory alternative; Letter from Embarq dated July 28, 2006 providing post-workshop comments for the July 13, 2006 workshop, attached as Exhibit EQ-1.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

and flooding, Embarras is concerned with the proposed rulemaking that provides unilateral authority to electric utilities to establish construction standards and attachment criteria. This unilateral delegation of the Commission's rulemaking authority may significantly jeopardize Embarras's ability to provide quality and expedient service to its customers in a cost effective manner and may also affect the long standing joint use terms and conditions and operating standards currently in place today. In addition, Embarras believes that the proposed rules related to location of facilities from back-lot to front-lot are too broad in encompassing the relocation of facilities in certain situations. Embarras proposes that applying the rules only to new construction is a more practical and cost-effective approach.

#### **RULES 25-6.034 AND 25-6.0342 RELATING TO CONSTRUCTION AND ATTACHMENT STANDARDS**

##### **The proposed rules are an invalid exercise of delegated legislative authority**

##### **The proposed rules improperly delegate the Commission's rulemaking authority to electric utilities**

Rulemaking is a function of administrative agencies and can only be exercised if the authority to make rules has been specifically delegated to an agency by the Legislature. See, *Southwest Florida Water Management District v. Save the Manatee Club*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000) Delegation of agency rulemaking authority to private entities is unlawful. See, *Florida Attorney General Opinion 078-53*, issued March 28, 1978. In that opinion, the Attorney General responded to an inquiry from the Public Service Commission regarding its regulation of motor carriers. One of the questions the Commission asked concerned whether the submission of rates by private rate organizations to the Commission for approval was an unlawful delegation of the

Commission's statutory responsibility for rate setting. The Attorney General determined that it was not, because the Commission made the final determination regarding the appropriate rates.

The basis for the Attorney General's opinion was a Florida Supreme Court case relating to the investment of certain highway funds based on the recommendation of a board that did not consist entirely of "public" officers. See, *State of Florida v. State Road Department*, 173 So. 2d 693 (Fla. 1965). In that case, the Supreme Court ruled that there was no unlawful delegation, as long as the non-public board operated in an advisory capacity only and the final decision was made by a public official.

In sections 366.04 and 366.05, F.S., the Legislature has delegated to the Commission the authority to adopt rules establishing safety and reliability standards for electric utilities. In 2006, the Legislature expanded that authority by providing that as far as safety the NESC standards, as adopted by the Commission, are "minimum" standards and that as far as reliability the Commission has the ability to "adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service." See, sections 16 and 17 of chapter 2006-230, Laws of Florida attached as Exhibit EQ-2. Contrary to the express terms of the statute and Florida law, in Proposed Rules 25-6.034 and 25-6.0342 the Commission improperly delegates to electric utilities the rulemaking authority delegated to the Commission by the Legislature.

The Commission does not have jurisdiction to regulate pole attachments

The Commission does not have jurisdiction over pole attachments and, therefore, the Commission does not have the authority to adopt proposed Rule 25-6.0342 to the extent it regulates attachments. See, *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648 (Fla.

1980). Under 47 U.S.C. § 224, the FCC has jurisdiction over pole attachments unless a state commission certifies the following to the FCC: (1) that it regulates rates, terms, and conditions for pole attachments; and (2) that in so regulating such rates, term, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services. See 47 U.S.C. § 224 (c)(2). In *Hawkins*, the Commission notified the FCC that it had authority to regulate pole attachment agreements pursuant to 47 U.S.C. § 224. In response to a challenge of the Commission's jurisdiction, the Supreme Court ruled that the Commission did not have the authority under Florida law to regulate pole attachment agreements.

For electric utilities and incumbent local exchange companies, such as Embarq, attachment terms, conditions and rates are governed by long-standing agreements between the companies. These agreements provide the manner of attachments, for construction and attachment standards, and for cost sharing of the expenses associated with construction and attachments. The Commission's proposal to allow the electric utilities to unilaterally adopt standards, particularly standards for third-party attachments, without regard for the provisions of these agreements may constitute an impairment of private contracts in violation of the Florida Constitution. See, *United Telephone Company of Florida v. Public Service Commission*, 496 So. 2d 116 (Fla. 1986) (invalidating orders of the Commission because they interfered with the private contracts between telecommunications companies relating to jurisdictional separations). See also, *GTE and BellSouth v. Public Service Commission*, Case Numbers 99-5368RP & 99-5369-RP, Agency Final Order issued July 13, 2000 (invalidating rules of the Commission

because they interfered with private contracts between telecommunications companies and their customers). While hardening outside plant against storm damage is a worthwhile endeavor, the proposed rules indirectly impose changes to the rates, terms and conditions of long standing joint use agreements between electric utilities and telephone companies, exceeding the Florida Commission's lawful jurisdiction.

**The proposed rules unreasonably affect Embarq's operations and costs as they relate to pole attachments and joint use facilities**

Electric utilities should not be allowed to unilaterally set standards

The National Electrical Safety Code (NESC) sets forth the criteria for construction, attachments and joint use that historically have been negotiated and implemented by the electric and telecommunications industries. There is nothing in the rulemaking record that supports that the damage caused by the 2004 and 2005 hurricanes in Florida was the result of the inadequacy of the NESC standards. Exhibit EQ-3 includes revisions to proposed Rules 25-6.034 and 25-6.0342 that reflect Embarq's proposal that the rules incorporate only the NESC standards.

The construction standards currently used by Embarq for aerial and buried facilities were derived from industry-accepted standard processes, methods and procedures which included the personal, property, and electrical safety requirements established by ANSI, Bellcore (now Telcordia) and the NESC. The electric, telecommunications and cable industries have always worked cooperatively to set standards for joint use of poles and joint placement of facilities underground. The proposed rules unnecessarily turn this cooperative endeavor into an adversarial process by charging electric utilities with setting the standards and relegating telecommunications companies and cable companies to the role of challengers. The context of the proposed rules indicates that any challenges likely

will be resolved based solely on the effect of the standards relating to the provision of electric service, not telecommunications or cable service. This is patently unfair and not in the best interests of the state's consumers.

Allowing a single industry to set the standards for all is unreasonable, especially when inherently there is some measure of contention involved in setting these standards due to pole attachments and the cost-sharing and space allocation arrangements contained in existing joint use agreements. Construction standards significantly affect not only electric utilities but also affect local exchange companies, since both entities are both pole owners and attachers. Providing unilateral authority to electric utilities to set the standards without input from other pole owners places an unreasonable level of control with an industry that has historically been contentious toward non-electric companies, and, at times, has evidenced a disregard for the rights of the other pole owners.

For instance, a concern with allowing the electric utilities to define construction standards is the potential that a utility could establish shorter, e.g. 30'- 35' class 1 poles, as its standard, which would effectively eliminate attachment space on the pole for communication attachments. This decision would affect the telecommunications companies' ability to cost-effectively reach their customers and would violate established FCC rules. Third-party attachers might also be required to utilize electric-company-managed rights-of-way and easements to access electric company poles. Over the years, construction corridors have been significantly reduced by the various publicly and privately owned companies placing facilities. This situation would become yet another potential roadblock to the cost-effective provisioning of service to Embarq customers



should electric utilities deny or monopolize rights-of-way or seek unbalanced cost sharing for the use of their easements.

Allowing electric utilities to define construction standards also create the potential that telecommunications-company-owned poles that carry electric distribution facilities will not meet the electric utility hardening standards. In this scenario, the telecommunications company might be required to place a significantly larger class of poles or to place steel poles or concrete poles. Aside from the significant first-cost expense of the poles, additional expense would be required to maintain a unique inventory of materials and hardware used for attaching facilities, as well as specialized labor to place these types of poles. Existing agreements between the telecommunications company and the electric company would be voided and new agreements would be required, with no benefit to the telecommunications company or its customers. Again, the telecommunications company would face a potential, significant increase in cost that Embarq fears may be unrecoverable under the statutory price regulation scheme that governs Embarq's rates.

#### Standard for aerial and underground facilities

In the area of underground construction, accepted industry standards, based largely on the NESC standards, have been used to guide electric utilities and local exchange carriers in the construction and use of common trenches. (An example of these standards, applicable to Embarq, is attached as Exhibit EQ-4.) These industry standards for undergrounding have been very successful for many years and have not created any significant safety or customer-affecting concerns. Embarq is supportive of joint trench in

new construction and some rebuilds. However, the use of joint trench requires coordination and agreement between all parties to mitigate customer-affecting trouble.

In addition, the proposed rules would be more acceptable to Embark if aerial construction standards were mutually designed and agreed upon among the pole owners and attachers and if the standards assume reasonable cost sharing. Any adopted rules should ensure plant design planning and construction use a combination of aerial and underground construction to meet “far-side” (both sides of the street) distribution and that planning and construction are done in a collaborative environment. Building separate outside plant networks or employing different methodologies to reach common customers will impose a greater cost on all of the current joint participants.

Any standards exceeding the NESC should be adopted by the Commission by rule

If the rulemaking record supports the implementation of any standards for pole construction, pole attachments or joint use of underground trenches that exceed the NESC, the Commission should adopt these excessive standards in the rules, giving all affected parties the opportunity to craft the standards in the most cost-effective and operationally sound manner, considering the impacts on all affected entities. Embark is not aware of any NESC standards that should be exceeded, so it cannot provide an amended rule with these new standards at this time. However, to the extent the electric utilities or the Commission propose any standards in excess of the NESC standards, Embark believes those standards should be explicitly set forth in the rules.

**RULE 25-34.0341 RELATING TO THE LOCATION OF FACILITIES**

**The proposed rule unreasonably affects Embark’s operations and costs**

Impacts of moving aerial from back to front

### **New construction**

Initial, or new “front-lot” construction in planned, yet-to-be developed subdivisions would, as the Commission points out, provide some benefit (once the area is established) to the restoration of facilities following a severe weather event, due in part to the utility’s ability to move from home to home, unencumbered by yard fencing, storage buildings, or swimming pools that remained intact following the weather event. Embark has suggested that the proposed rule should apply only to these new facilities. Exhibit EQ-5 includes revisions to Proposed Rule 25-6.0341 that reflect Embark’s proposal that the rule apply only to new construction.

### **Aerial to aerial relocation**

The ultimate cost of reconstructing existing aerial plant will be site and route specific with considerable variability. It is entirely predictable, however, that the costs of moving existing aerial plant from the rear of residential lots to the front will generate an extreme and costly construction environment. Reconstructing cables in existing neighborhoods will require significant disruption to customers, due to the tearing up of yards, trees, landscaping, fences, sidewalks, driveways, and streets. The cost of working in this environment is extremely high compared to doing work ahead of time as neighborhoods are initially constructed. While there are certainly benefits to underground plant and or having stronger overhead plant, it should be kept in mind that even this new plant will experience some failure during extreme hurricanes, and therefore the cost/benefit of reconstructing aerial plant is suspect and unquantified at this point.

If the electric utility reconstructs overhead facilities, moving aerial cable from back-lot to front is not a simple matter of moving an existing cable. It requires all new

facilities at the front, and scrapping the existing facilities at the back. Putting the cost of the cable work aside, the new investment in taller heavier poles placed along the road will bring a cost increase as well through higher attachment fees. Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so. Aside from additional labor and material costs of the pole-based facilities, as well as those attached to the customer's home, e.g. NID, drop, grounding protection, additional time and resources would be required to transfer active subscriber services from the back-lot facilities to the newly constructed front-lot facilities. In addition, facilities attached to the customer's home may have to be relocated to a completely new area of the home in order to receive service drops from the front-lot pole line.

Should front-line construction for electric companies be approved, Embarq might choose to purchase in-place electric company poles, cut to a height no greater than 30', and continue to utilize the back-lot provisioning of services. Aside from the "first cost" view of utilizing existing power poles, a benefit would be that telecommunication facilities are now constructed on poles with a higher class rating. An example is a 45 foot class 3 electric pole cut to 30 feet to support communications would in essence be rated as a "stronger" structure when it only supports facilities lower than 30 feet.

In the electric overhead-to-overhead replacement situation, if Embarq also remains overhead, the construction cost to rebuild its aerial line on new electric utility poles is estimated to fall in a range of \$110k to \$170k per mile, depending on whether the electric

utility attempts to charge the attacher for the cost of the new pole. If every mile of Embarq's shared overhead routes were rebuilt, the resulting cost estimates would range from \$360 million to \$560 million, which is an extreme result which obviously calls for a more granular definition and cost benefit analysis before a rule is adopted.

#### **Aerial to underground relocation**

If the electric utility places new underground facilities, they propose that the cost recovery of the highly-disruptive trench/bore situation be guaranteed to the electric utility through a combination local entity funding of seventy-five percent (75%) and electric rate increases of the remaining twenty-five percent (25%). Nowhere do the proposed rules address how the attacher, in this case Embarq, will recover its costs. As with sharing overhead facilities discussed above, the potential for the electric utility to inappropriately allocate to attaching parties such as Embarq the shared underground trenching costs which are already 100% recovered thru their 75%/25% proposal. Any costs passed to the attacher relative to joint electric utility and incumbent local exchange company (ILEC) underground construction should acknowledge that the electric utility already has included 100% recovery in their proposal.

In the electric overhead-to-underground replacement situation, if Embarq also buries facilities, the construction cost to retire aerial facilities and rebuild with buried is estimated to fall into a range of \$190k to \$260k per mile if Embarq has to pay for the trench. If every mile of shared overhead routes were to be buried, this would amount to \$630 million to \$860 million for Embarq. Assuming that the electric utilities' proposal to recover 100% of their costs from the combination of local government and electric rate increases results in a cost-free use of the joint trench, the estimated cost range in that

context is \$90K to \$120K per mile. Again extending this unit cost range to the entire potential population of existing aerial plant results in unworkable total cost estimates of \$300M to \$400M.

#### **Additional cost considerations**

In addition, Embarq is concerned with the added cost and construction of additional poles and material to provision customers living on the opposite side or “far side” of the main distribution facilities. Depending on plant/facility design, front-line construction could effectively triple the number of poles over the number used in back-lot construction.

Moving the back-lot leads to front-lot construction creates construction complexities and concerns not generally found in back-lot construction scenarios. Typically the water, gas and sewer lines all occupy the street side rights- of- ways (ROW) and/or cross the ROW on each side of the street to reach each home. New or replacement construction significantly increases the potential of damage to these existing utilities. In addition, repair activities by the water, sewer and gas companies, increases facility protection and maintenance costs for pole owners and pole attachers in areas where ground disturbance degrades the integrity of the pole. Despite required notification to one call location centers, accidents still occur.

The current back-lot construction methodology allows Embarq and others attached to the same poles the ability to reach twice the number of homes out of the single facility as front lot construction allows. The front-lot construction requires facilities to be placed on each side of the street or requires directional drilling of the street about every fourth home and requires pulling facilities under the street to a distribution point on the “far

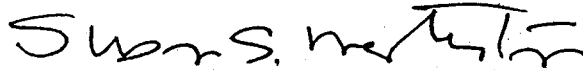
side", a process which must be replicated for the entire length of the street. Existing gas, water and sewer utilities create a somewhat perilous situation in that during the boring operation a nick in any one of those facilities would create a very costly and potentially deadly situation. Past history has shown that there have been instances across the country where just a nick in a natural gas line has destroyed property and taken lives.

### CONCLUSION

Based on Embarq's comments as set forth above, Embarq requests that the Commission adopt changes to the proposed rules that:

- Adopt the NESC as the basis for electric utility construction and attachment standards in Proposed Rules 25-6.034 and 25-6.0342.
- Set forth the specific standards in excess of the NESC in Proposed Rules 25-6.034 and 25-6.0342, if standards in excess of the NESC are determined to be cost-effective and justified to increase electric utility safety and reliability,.
- Apply Proposed Rule 25-6.0341 only to new construction.

Respectfully submitted this 4<sup>th</sup> day of August 2006.



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Counsel for Embarq Florida, Inc.

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**Tiffany Williams**

**From:** John W. McWhirter [jmcwhirter@mac-law.com]  
**Sent:** Wednesday, December 20, 2006 2:30 PM  
**To:** Records Clerk  
**Subject:** Removal of address

We will be closing our Tallahassee office on January 1. We have already discontinued fax service. Henceforth please discontinue mailings to the Tallahassee office 117 S. Gadsden Street and faxes to 850.222.5606.

Thank you. Have a happy Christmas.

John W. McWhirter, Jr.  
McWhirter Reeves Davidson, PA.  
400 N. Tampa St  
PO Box 3350  
Tampa, FL 33601  
813.224.0866  
813.221.1854 FAX

# TIWILLIA

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## FCTA PROPOSED CHANGES TO RULE 25-6.0341

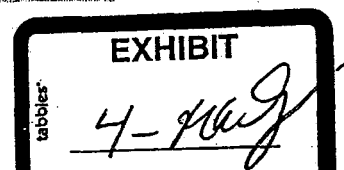
25-6.0341 Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front 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 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 attacher. The electric utility shall provide third-party attachers with reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate their construction alternatives and to make



necessary budgeting plans. Nothing herein shall be construed to interfere with section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224, inclusive of any successor statutes and applicable rules, regulations, FCC decisions and judicial precedents.<sup>1</sup>

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

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

History— New.

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<sup>1</sup> 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. MAG/FCTA Comments at pages 10 and 11. MTH/FCTA Comments at pages 1 through 4. 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.

BEFORE THE PUBLIC SERVICE COMMISSION

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: August 4, 2006

**COMMENTS OF M.T. (MICKEY) HARRELSON, CONSULTANT, SUBMITTED  
ON BEHALF OF THE FLORIDA CABLE TELECOMMUNICATIONS  
ASSOCIATION, INC. ON RULES 25-6.0341 AND 25-6.0342, FLORIDA  
ADMINISTRATIVE CODE**

**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 joint users 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. Since most FCTA members have to provide their own trench or conduit, the location of underground electric lines has little effect on our members. 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 between all joint users will be extremely important to the success of this initiative.

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. We believe relocations will and should have limited application after complete analysis.

## PREVIOUS ORDERS AND DOCKETS.

The FCTA supports and appreciates the tremendous resources and efforts which are being applied to hurricane preparedness and, when necessary, future hurricane recovery in Florida.

Florida PSC order PSC-06-0144-PAA-EI issued February 27, 2006 required investor owned electric utilities to inspect wood distribution and transmission poles on an eight year cycle for adequate strength including the effects of pole attachments.

Florida PSC order PSC-06-0351-PAA-EI required a three-year Vegetation Management cycle (tree-trimming) for distribution circuits. It required an audit of joint-use attachment agreements. It required a six-year transmission structure inspection program which included substations. This order also required hardening of existing transmission structures.

FCTA members understand the massive commitment of resources, money and management time, as well as workforce, required to establish and maintain these initiatives. There will be much work to be done to correct deficiencies found in the inspections. The millions of dollars to replace rotten poles, broken or deteriorated guy wires and anchors and remediate other weakened poles or structures have not even been estimated.

The most extensive improvement in prevention and recovery from hurricane caused power outages will be realized by three initiatives. They are vegetation management, transmission line and substation inspections and distribution pole inspections. Transmission line related outages occur as far away as hundreds of miles from the immediate impact area of the hurricane. To date the cost of the inspections have



been estimated. No estimate has been reported of the cost of fixing what is found to be wrong during the inspections.

The Florida PSC should place a high priority on requiring transmission and distribution pole inspections, and the pole replacements and maintenance which those inspections indicate, and tree trimming.

The initiative (2) in order PSC-06-0351-PAA-EI 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 Florida PSC has already ordered the detailed audits as stated above.

The investor owned electric utilities have begun submitting plans and answering 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.

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.

The proposed rule requires "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.

The way to define "Unauthorized Attachment" for purposes of this proposed audit should include: attachments belonging to a company or agency which does not have a current agreement, an agreement with a predecessor owner, or a contested attachment agreement with the pole owner. Such a definition would serve to bring the non-

authorized attacher into a formal contract and establish its duty to comply with the proposed attachment standards contemplated by the FPSC.

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**

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 initiatives mentioned above.

Audits of third party attachments to all poles in Florida would be a monumental task.

Construction standards, attachments 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 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.

## PREVIOUS WORKSHOP

A more detailed presentation of some important issues pertaining to these two proposed rules was made by this author at a July 13, 20006 workshop. Those comments are incorporated herein and attached as Exhibit I.

Respectfully submitted this 4<sup>th</sup> day of August 2006.

Prepared by:

M.T. (Mickey) Harrelson  
Professional Engineer  
P.O. Box 432  
McRae, GA 31055

**DOCKET NO. 060173-EU**  
**STAFF WORKSHOP**  
**July 13, 2006**

**JOINT USE OF POLES BY ELECTRIC, TELEPHONE,  
CABLE TV, AND OTHERS IN FLORIDA**

**Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities**

1. Regarding location of the utilities' electric distribution facilities, it is very difficult to respond to the request for cost impact on cable TV of the proposed rule #25-6.0341. For new overhead or underground lines, we prefer that they be constructed in accessible locations. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. Input into electric construction projects is appreciated. We request that the opportunity for input be timely with respect to the evaluation of construction alternatives and our budgeting time deadlines. Funding of line relocation and conversion to underground projects remains a major concern.

**Rule 25-6.0342 Third-Party Attachment Standards and Procedures**

2. The implementation of Rule 25-6 0342, third-party attachment standards and procedures, could be very helpful to power and communications companies if the individual power companies adopt rules which recognize when it is prudent to exceed NESC requirements for joint pole use and when, as the pole fills up, the NESC requirements should govern. The application of extreme wind loading, if adopted and where it is applied geographically, will be as required by the Florida PSC. Thoughtful application of guying to help achieve required strength of pole lines can be very effective. The failure of guy wires, guy splices and guy anchors caused many pole failures during the hurricanes. Critical guys should be inspected and tested as thoroughly as wood poles are required to be. It is my understanding that the application of extreme wind loading is not to be applied state wide. We can not estimate the cost impact of extreme wind loading at this time.
3. Power lines, hardware for attaching lines to poles and power apparatus such as transformers, fused switches, lightning arrester assemblies, outdoor lights and many others usually account for most of the wind load on a pole. Wind load is a product of the surface area exposed to the wind multiplied times the force of the assumed wind and also multiplied times the pole height from the fixed point (often the ground line or the lowest guy wire) on the pole. What causes hurricane related pole failures is falling trees, flying building debris, soft soil, weak guy failure, rotten pole failure, and finally wind

**EXHIBIT**

**1 - MTH**

force on poles, lines and attachments. Tornados within hurricanes have winds in excess of "extreme wind design speeds" which can and frequently do break poles which meet extreme wind criteria. Taking all these facts into consideration, it is unlikely that a broken pole failed because of a communication cable which would not have failed otherwise.

4. Rarely, multiple cable lines which are attached much lower than power facilities on poles do account for more wind load than very basic power lines with only two to four small wires with little or no electric apparatus attached.
5. Almost all power companies already have construction standards for power lines which specify power line and apparatus configurations for basic power pole assemblies. Examples are: one, two, or three primary voltage wires at the top of the pole with a neutral wire below; one, two, or three transformers on a pole; one or more electric service wires, both underground thru riser pipe or overhead thru the air; outdoor lighting fixtures and many other types of electric apparatus and wires.
6. Power Company construction standards do not contain drawings depicting the many combinations of power assembly units which are used in actual practice. Examples include adding transformers, underground service risers, outdoor light fixtures, secondary voltage cables, etc. to the various power line assembly configurations.
7. The RUS construction standards which are used by most Electric Cooperatives are available to the public and cable TV companies. Cable TV companies need access to the construction standards of all power companies with which they have attachment agreements. Without the standards it is impossible to determine what make ready work is appropriate to rearrange facilities on existing poles or make new attachments.
8. Many of the violations of the NESC separation requirements between power and communications facilities and many violations of the NESC pole loading limitations occur as a result of power facilities being added after the initial construction of power and communication lines.
9. The communications companies also have construction standards for attaching to poles, separation from power requirements, and pole loading limitations. The company which requires additional space or pole strength to accommodate its new attachment must pay the power company to rearrange facilities or install a new pole if necessary and pay the cost of other attachers to provide such space. This also applies to the power company when it needs additional space or strength for power facilities. The power company must bear the cost of additional space for its facilities. It may not take back space from a legal attacher or add facilities in violation of NESC rules.
10. *The National Electrical Safety Code (NESC)* is a performance standard which contains detailed rules for what must be accomplished for safety of power and communications lines. The NESC does not dictate how to accomplish what is required by the rules. Therefore, power and communications companies must have construction standards



which specify how they will accomplish what the NESC requires. For example they may use wood or concrete poles, build lines with tall poles spaced far apart or shorter poles spaced more closely etc.

11. It is accepted good practice to exceed many of the NESC requirements upon initial construction although it is not "necessary for safety." This practice allows enough pole strength and height to accommodate the addition of facilities by power companies, communications companies, and government agencies which often utilize poles for traffic signals, signal control circuit cables and other facilities.
12. Most power companies and telephone companies which own poles already have procedures for authorizing attachments by cable TV and others. They also have specifications for cable attachments, separation from power facilities and other cables, etc. Reliance on NESC requirements varies greatly among various companies. Compliance with NESC requirements is mandatory, as it should be. These procedures and attachment requirements are usually covered in existing joint use contracts or license to attach contracts.
13. The major problem with many of these existing contracts is that they contain provisions which are inconsistent with FCC rulings, and they contain some attachment rules which unreasonably exceed NESC requirements. Many of the attachment rules are not enforced by the pole owner in the field where workers often cooperate. When these type contracts and rules are used as the basis for a compliance audit they result in a very high alleged violation rate and erroneous assignment of responsibility. Many of these contracts give power companies "sole discretion" to specify attachment requirements and to change those requirements when they see fit. Pole attachment policies and procedures must be "just reasonable and non-discriminatory." Litigation involving one such contract has gone on for six years at the FCC and is still not resolved. We are concerned that power companies may simply submit those type of attachment rules and represent them as already agreed to by cable operators. One example of a power company requirement is 40 inches separation of cable TV below a power guy wire attachment. The NESC requires 6 inches. Therefore almost three feet of additional pole height is required for a pole with a power guy and a TV cable. Significantly, the addition of storm guying to distribution poles in certain areas is the most effective and economical way to greatly strengthen the lines. If this rule is enforced it could disrupt a very effective method of pole hardening. Great care by the commission staff and cooperation between utility representatives can identify such counterproductive rules which exceed NESC rules. One power company attachment rule requires 12 inches separation between communications drop attachment points on power poles. That is not an NESC requirement. It has nothing to do with safety or pole strength. Until recently it had never been enforced by the power company but now is mandatory, they say.
14. The common requirements for separation between cable TV and power, which exceed NESC requirements, are acceptable for new or existing poles with adequate height and strength capacity. In fact, more initial separation (up to 6 or 8 feet) between power and

cable is now required by some power cooperatives. For tall pole initial designs this is good planning. Facilities are routinely added to poles over time by power companies, communications companies and a growing number of others. As poles have more attachments added, the NESC rules must be applied as the final Standard for safety for separation of facilities and the strength of the poles.

15. Some power companies retain spacing requirements between cable and power which exceed NESC requirements even if they necessitate changing poles to taller poles. This practice is not necessary for safety, wasteful of resources, and unreasonable. NESC requirements (as modified by the FPSC) should be the final determination if an existing pole is required to be strengthened and/or made taller.
16. A significant number of poles in Florida contain violations of the separation requirements. Some of these violations have been caused by all of the various companies and agencies on the poles. Many of the NESC violations do not present serious safety hazards. Part 4 of the NESC contains safe work rules for electric and communications workers. Separate OSHA regulations also apply. Utility workers who are properly trained and equipped can perform their jobs safely even on non-standard or storm damaged pole lines.
17. Measures should be taken to correct serious safety hazards, correct practices by all electric, communications and other organizations which create NESC violations, and provide for orderly correction of existing violations. This should be done while incorporating whatever increased pole strength requirements are adopted in Florida. The NESC states in rule 214. "....defects....if not promptly corrected, shall be recorded;..." and ".....defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected or isolated."
18. We appreciate the ability to have input into the revision of power company Attachment Standards and Procedures and will work to achieve good results.

Submitted by:

Michael T. (Mickey) Harrelson, Consultant  
On behalf of the Florida Cable Telecommunications Association

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: August 18, 2006

**RESPONSIVE COMMENTS OF M.T. (MICKEY) HARRELSON,  
CONSULTANT, SUBMITTED ON BEHALF OF THE FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION, INC., ON THE AFFIDAVIT OF  
DR. LAWRENCE M. SLAVIN AND APPENDIX 1 CONCERNING  
RULE 25-6.034, FLORIDA ADMINISTRATIVE CODE, FILED ON AUGUST 11,  
2006, AS PART OF THE INITIAL COMMENTS OF VERIZON FLORIDA INC.,  
CONCERNING PROPOSED AMENDMENTS TO RULES 25-6.034, 25-6.064,  
25-6.078, AND 25-6.115**

Dr. Slavin is particularly qualified to render opinions on proposed Rule 25-6.034 because of his education and background and his past and present service as a member of the NESC Subcommittee 5.

Dr. Slavin presented in Appendix 1 a thorough and technically oriented explanation of Grades of Construction, Loading requirements for grades B & C and strength requirements. He explained that direct wind forces on poles and lines increase in proportion to the square of the wind speed. The NESC requires applying extreme wind design to structures greater than 60 feet high, not to distribution poles of less height. Applying an extreme wind calculation, in the 150 mph zone, to a distribution pole will require a pole almost 400% as strong as required by the NESC. Even in the 110 mph zone the distribution pole must be 200 % as strong as presently required.

Figure 2 of Dr. Slavin's report illustrates that extremely strong (large diameter) wood poles will be required to provide the design strength which is now provided by the commonly used 40 foot class 4 pole. The results are a minimum class 1 is required. For 110 mph wind design a class H1, 120 mph and 130 mph requires a class H2, 140 mph requires a class H4, and 150 mph requires an H5.

I have checked with a large manufacturer of wood utility poles. The required class 1 and H 1 thru H 5 wood poles, indicated in Figure 2, are rare to non-existent in today's supply of wood utility distribution poles. Approximately only one in 30 of the 40 foot poles produced is class 1. H 1 thru H 5 – 40 foot poles must be special ordered. A class H 5 – 40 foot pole is equivalent to the bottom 40 feet of an 80 foot class 1 pole. The volume of wood in a pole increases approximately 15% for each increase in pole class for a given pole length. Prices increase about the same amount (15%) per pole class increase for commonly available poles. The compound increase between a class 4 pole and a class 1 pole is 52%. The increase between class 4 and class H 5 is 306%.

The non-availability of large wood poles together with the high cost of utilizing steel or concrete poles for distribution lines are more reasons to go slowly with implementing Rule 25-6.034.

Dr. Slavin also pointed out that much of the damage to lines on less than 60 foot poles is caused by wind-blown debris rather than the direct effect of the wind.

I have observed that another large factor in pole safety failure is leaning poles. The poles did not break but leaned over to an unsafe angle due to storm forces and soil

too soft to hold the pole upright. Stronger (larger diameter) poles will not solve this problem. Storm guys, if practical, will solve the structure strength and soft soil problem.

Nothing is gained by having extremely strong distribution poles broken by flying trees and other debris or pushed over in soil too soft to resist the force of the wind.

I agree with Dr. Slavin's recommendations in paragraph 5 of Appendix 1 to his affidavit. Do not apply extreme wind design requirements to distribution poles or do so only under very limited, well-defined circumstances.

Submitted by:

Michael T. (Mickey) Harrelson, Consultant  
Professional Engineer  
P. O. Box 432  
McRae, GA 31055

On behalf of the Florida Cable Telecommunications Association

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: August 11, 2006

**COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. AND REQUESTED CHANGES TO RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078 AND 25-6.115, FLORIDA ADMINISTRATIVE 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, submits its comments and suggested rule changes for Rules 25-6.034, 25-6.0345 and 25-6.064, 25-6.078, and 25-6.115, to be considered at the public hearing scheduled for August 31, 2006.

**RULE 25-6.034 CONSTRUCTION STANDARDS**

Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through conduits and trenches. Proposed Rule 25-6.034 requires investor-owned utilities (IOUs) to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0342 requires IOUs to establish, as part of their construction standards adopted pursuant to Rule 25-6.034, F.A.C., third-party attachment standards and

procedures for attachments by others to the utility's electric transmission and distribution poles. FCTA members attach their facilities to distribution poles owned by IOUs and municipal electric utilities (Munis) and rural electric cooperatives (Coops). The electric IOUs own a substantial majority of the pole plant in Florida and will have enormous incentives to use their bottleneck control of distribution infrastructure to leverage their position in their ongoing disputes with the cable industry over third-party attachments. The electric and cable industries have been litigating for 20 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 during the last 20 years is set forth in Exhibit 1 attached to the FCTA's Comments filed on August 4, 2006.

Section 366.05(1), Florida Statutes, was amended by SB 888 recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service. Although the statutory authority delegated to the Commission is clear that **the Commission has the power to adopt construction standards**, these rules sub-delegate the Commission's authority to the IOUs to establish construction standards and attachment standards as part of their construction standards.<sup>1</sup> The same sub-delegation has been made in Rule 25-6.0343(1)(a), (b), (e), and (f) and (3)(a) and (b), and (4), which sub-delegates the Commission's authority to establish construction and attachment standards to the (Munis) and (Coops). Rules 25-6.034(7), 25-6.0342(3) and Rule 25-6.0343(4) require IOUs as well as the municipal electric utilities and rural electric cooperatives, respectively, to solicit input from third-party attachers.

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<sup>1</sup> The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. Rule 25-6.034 is vague and contains inadequate guidelines for the utilities to establish the Construction Standards, and although the rules reserve an ad hoc right of the Staff to request a copy of the rules, there is no requirement for Commission review and approval of the standards either before or after the standards become effective. This sub-delegation constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules, the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the utilities. The FCTA's concern is underscored as a result of granting such discretion to utilities in light of the long history of conflict and incentives for abuse that the utilities have in relation to the cable industry as third-party attachers.

The construction standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. Another example of the inextricable ties between the construction standards in general and the attachment standards that are a part of the construction standards is that the extreme wind loading standards of the NESC that would be required in the utility's construction standards would have to be considered in connection with the wind load of third-party attachments. This example is equally applicable to the Muni and Coop rules for standards of construction which are to be guided by extreme wind loading



standards specified by the NESC, and which would have to be considered in connection with third-party attachment standards.

Although the rules give the Commission authority to resolve any disputes over the construction and attachment standards, any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, nondiscriminatory access rights granted under section 224 of the Commissions Act of 1934, 47 U.S.C.A. § 224. The FCC jurisdiction may be triggered by construction and attachment standards that are facially unreasonable and unjust or by an unreasonable and unjust application of such standards. Pursuant to Section 366.05(1), Florida Statutes, the Commission has an obligation to independently assure that the construction and attachment standards are just and reasonable, consistent with federal law. Consequently, Rules 25-6.034(1)(2), (5), (6) and (7), and 25-6.0342, encroach upon the FCC's exclusive jurisdiction and are invalid under Section 120.52(8)(b).

The FCC has stated that "it would not invalidate summarily all local requirements," while in the same paragraph, the FCC made equally clear that state and local safety requirements apply *only* if there is no "direct conflict with federal policy.... Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Dkt. Nos. 96-98, 95-1 85, 11 FCC Rcd. 16073 § 1154 (1996) ("*Local Competition Order*").

The FCC went on to say that it would consider the merits of “any individual case” alleging safety, reliability or engineering as a basis for denial.<sup>2</sup> The FCC also specifically rejected “the contention of some utilities that *they* are the primary arbiters of such concerns, or that their determinations should be presumed reasonable,” while noting that § 224(f)(1) “reflects Congress’ intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators.”<sup>3</sup> On reconsideration of that Order, the FCC refused to categorically restrict the type of pole attachments that must be allowed, reiterating that “when evaluating any attachment request, including a wireless attachment, access determinations are to be based on the statutory factors of safety, reliability, and engineering principles.”<sup>4</sup> Those statutory factors are subject to a reasonableness determination by the FCC (or a *certified* state, which Florida is not) on a case by case basis, where, as here, a prospective attaching entity protests the denial of access on one of those, or other, grounds.

Indeed, as stated by the FCC only a few months ago in response to similar 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,” the FCC ruled:

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<sup>2</sup> Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, *Public Notice* (December 23, 2004) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 172 (1999)).

<sup>3</sup> *Id.* at 16074 § 1158; see also *In the Matter of Kansas City Cable Partners v. Kansas City Power & Light Company*, 14 FCC Rcd 11599, T 11 (1999) (stating that “the utility is not the final arbiter of [standards for safety, reliability, and generally applicable engineering standards] and its conclusions are *not* presumed reasonable”) (emphasis added).

<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 772 (1999).

Pursuant to the provisions of section 224, the Commission, through its Bureaus, has exercised its jurisdiction in prior pole attachment complaint proceedings to determine whether a pole owner's adoption or application of specific engineering standards was unjust and unreasonable. Making such a determination does not require the Commission to establish a set of engineering standards that utilities must use across-the-board. Indeed, in adopting rules governing pole attachments, the Commission expressly declined to establish a comprehensive set of engineering standards that would govern when a utility could deny access to its poles based on capacity, safety, reliability, or engineering concerns. The Commission concluded, instead, that "the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis."<sup>5</sup>

There is abundant precedent for the FCC's jurisdiction over safety issues. The FCC routinely considers allegations that attachments will pose safety problems. *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 owner's 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); *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 has also affirmatively considered specific safety requirements in rulemaking proceedings, such as the impact of over lashing by attaching entities and third parties, including the impact on wind and weight load burdens. *In the Matter of Amendment of Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of the Telecommunications*

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<sup>5</sup> *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, lv 8-10 (rel March 2, 2006) (internal citations omitted).

*Act of 1996*, Consolidated Partial Order on Reconsideration, CS Dkt. Nos. 97-98, 97-151, 16 FCC Rcd. 12103 ¶¶ 73-78 (2001). Accordingly, the FCC has, and does exercise, jurisdiction over pole safety issues. Consequently, the proposed rules violate federal legal precedent in giving unilateral and unfettered discretion to utilities to set construction and attachment standards and deny access. Section 224 has already been interpreted to preclude any unilateral determination that insufficient capacity exists for third-party attachments. *Southern Company, et al. v. Federal Communications Commission*, 293 F.3d 1338, 1347-49 (11<sup>th</sup> Cir. 2002). Specifically, the case law provides that electric utilities do not have “unfettered discretion” to determine insufficient capacity and may only refuse to make capacity available on a particular pole “when it is agreed that capacity is insufficient.” Accordingly, Rule 25-6.0342 that gives the utility the unilateral authority to deny access is in violation of section 224 of the Communications Act and the rules, regulations, FCC decisions, and applicable judicial precedent. Further, the assignment of authority under the rules to the Commission to resolve such disputes is clearly a violation of FCC rules and policy in cases where safety conditions are used unreasonably to deny access. As previously stated above, FCC jurisdiction applies to unreasonable denials of access based on safety, reliability, engineering, and capacity.

If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of 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 (“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. Moreover, utilities also have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overlashing of fiber optic cable to existing strand – a practice the Federal Communications Commission (“FCC”) has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. 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 as Exhibit 2 to the FCTA’s Comments filed on August 4, 2006, 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.

Rule 25-6.034 as proposed will subject cable third-party attachers to an unlawful exercise of delegated authority and an obstruction of their rights granted under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224, and exclude third-party attachers from meaningful participation in the development of the Construction Standards. The FCTA’s requested changes to Rule 25-6.034 are attached hereto as **Composite Exhibit 1**.

**PROPOSED RULE 25-6.034 IS 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 to take remedial or corrective actions to repair or restore transmissions lines and substations to design strengths and performance criteria. 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.

## **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.

## **RULES 25-6.064, 25-6.078 AND 25-6.115**

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.

Respectfully submitted this 11<sup>th</sup> day of August 2006.



Michael A. Gross  
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## CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing 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 11<sup>th</sup> day of August 2006.

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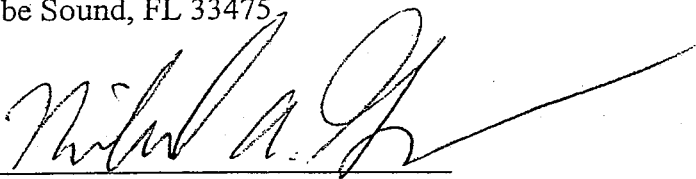
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A handwritten signature in black ink, appearing to read 'Michael A. Gross', written over a horizontal line.

Michael A. Gross

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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<br><br>Filed: August 11, 2006 |
|--|--|

**COMMENTS OF M.T. (MICKEY) HARRELSON, CONSULTANT, SUBMITTED ON BEHALF OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. ON RULES 25-6.034 AND 25-6-0345, FLORIDA ADMINSTRATIVE CODE**

**25-6.034 Standard of Construction**

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

(2) 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).<sup>1</sup> 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. Therefore, please add "Upon request by a third party attacher, licensed to make attachments to the utility's poles, the utility shall provide a copy of its construction standards to the attaching company."

(3) No comments at this time

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<sup>1</sup> See FCTA's suggested changes to Rule 25-6.034(2), providing for participation by third-party attachers and deleting language from subsection (7).

(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. The intent of the rule should be "to incorporate extreme wind loading requirements, approved by the FPSC (the administrative authority), into distribution

standards.” That is even though the NESC requires extreme wind design only for structures which exceed 60 feet in height. Florida electric utilities must establish guidelines and procedures for applying them to distribution poles less than 60 feet in height as ordered by the FPSC. By specifically limiting the rule language to require application of extreme wind loading to distribution poles less than 60 feet high, the FPSC will be much more focused on the increased pole and line strength it contemplated to better withstand hurricanes in exposed areas near the coast. Perhaps it will also relieve many of the concerns relating to the FPSC’s broad mandate to the electric utilities to develop construction standards which exceed NESC requirements.

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. Where storm guying of poles is feasible, it is a very effective and cost efficient means of strengthening distribution lines. These areas 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 all utilities, and

that specific projects should be reviewed by the FPSC if ultimately disputed by an affected utility which believes the project to be not feasible or not cost effective.

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.

(7) FCTA expects to participate actively to provide responsible input to the proposed standards as they affect FCTA members. We look forward to the opportunity.

#### **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."

Prepared by:

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BEFORE THE PUBLIC SERVICE COMMISSION

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: August 4, 2006

**COMMENTS OF M.T. (MICKEY) HARRELSON, CONSULTANT, SUBMITTED  
ON BEHALF OF THE FLORIDA CABLE TELECOMMUNICATIONS  
ASSOCIATION, INC. ON RULES 25-6.0341 AND 25-6.0342, FLORIDA  
ADMINISTRATIVE CODE**

**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 joint users 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. Since most FCTA members have to provide their own trench or conduit, the location of underground electric lines has little effect on our members. 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 between all joint users will be extremely important to the success of this initiative.

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. We believe relocations will and should have limited application after complete analysis.



## PREVIOUS ORDERS AND DOCKETS.

The FCTA supports and appreciates the tremendous resources and efforts which are being applied to hurricane preparedness and, when necessary, future hurricane recovery in Florida.

Florida PSC order PSC-06-0144-PAA-EI issued February 27, 2006 required investor owned electric utilities to inspect wood distribution and transmission poles on an eight year cycle for adequate strength including the effects of pole attachments.

Florida PSC order PSC-06-0351-PAA-EI required a three-year Vegetation Management cycle (tree-trimming) for distribution circuits. It required an audit of joint-use attachment agreements. It required a six-year transmission structure inspection program which included substations. This order also required hardening of existing transmission structures.

FCTA members understand the massive commitment of resources, money and management time, as well as workforce, required to establish and maintain these initiatives. There will be much work to be done to correct deficiencies found in the inspections. The millions of dollars to replace rotten poles, broken or deteriorated guy wires and anchors and remediate other weakened poles or structures have not even been estimated.

The most extensive improvement in prevention and recovery from hurricane caused power outages will be realized by three initiatives. They are vegetation management, transmission line and substation inspections and distribution pole inspections. Transmission line related outages occur as far away as hundreds of miles from the immediate impact area of the hurricane. To date the cost of the inspections have

been estimated. No estimate has been reported of the cost of fixing what is found to be wrong during the inspections.

The Florida PSC should place a high priority on requiring transmission and distribution pole inspections, and the pole replacements and maintenance which those inspections indicate, and tree trimming.

The initiative (2) in order PSC-06-0351-PAA-EI 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 Florida PSC has already ordered the detailed audits as stated above.

The investor owned electric utilities have begun submitting plans and answering 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.

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.

The proposed rule requires "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.

The way to define "Unauthorized Attachment" for purposes of this proposed audit should include: attachments belonging to a company or agency which does not have a current agreement, an agreement with a predecessor owner, or a contested attachment agreement with the pole owner. Such a definition would serve to bring the non-

authorized attacher into a formal contract and establish its duty to comply with the proposed attachment standards contemplated by the FPSC.

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**

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 initiatives mentioned above.

Audits of third party attachments to all poles in Florida would be a monumental task.

Construction standards, attachments 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 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.

## PREVIOUS WORKSHOP

A more detailed presentation of some important issues pertaining to these two proposed rules was made by this author at a July 13, 2006 workshop. Those comments are incorporated herein and attached as Exhibit I.

Respectfully submitted this 4<sup>th</sup> day of August 2006.

Prepared by:

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**DOCKET NO. 060173-EU**  
**STAFF WORKSHOP**  
**July 13, 2006**

**JOINT USE OF POLES BY ELECTRIC, TELEPHONE,  
CABLE TV, AND OTHERS IN FLORIDA**

**Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities**

1. Regarding location of the utilities' electric distribution facilities, it is very difficult to respond to the request for cost impact on cable TV of the proposed rule #25-6.0341. For new overhead or underground lines, we prefer that they be constructed in accessible locations. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. Input into electric construction projects is appreciated. We request that the opportunity for input be timely with respect to the evaluation of construction alternatives and our budgeting time deadlines. Funding of line relocation and conversion to underground projects remains a major concern.

**Rule 25-6.0342 Third-Party Attachment Standards and Procedures**

2. The implementation of Rule 25-6 0342, third-party attachment standards and procedures, could be very helpful to power and communications companies if the individual power companies adopt rules which recognize when it is prudent to exceed NESC requirements for joint pole use and when, as the pole fills up, the NESC requirements should govern. The application of extreme wind loading, if adopted and where it is applied geographically, will be as required by the Florida PSC. Thoughtful application of guying to help achieve required strength of pole lines can be very effective. The failure of guy wires, guy splices and guy anchors caused many pole failures during the hurricanes. Critical guys should be inspected and tested as thoroughly as wood poles are required to be. It is my understanding that the application of extreme wind loading is not to be applied state wide. We can not estimate the cost impact of extreme wind loading at this time.
3. Power lines, hardware for attaching lines to poles and power apparatus such as transformers, fused switches, lightning arrester assemblies, outdoor lights and many others usually account for most of the wind load on a pole. Wind load is a product of the surface area exposed to the wind multiplied times the force of the assumed wind and also multiplied times the pole height from the fixed point (often the ground line or the lowest guy wire) on the pole. What causes hurricane related pole failures is falling trees, flying building debris, soft soil, weak guy failure, rotten pole failure, and finally wind



force on poles, lines and attachments. Tornadoes within hurricanes have winds in excess of "extreme wind design speeds" which can and frequently do break poles which meet extreme wind criteria. Taking all these facts into consideration, it is unlikely that a broken pole failed because of a communication cable which would not have failed otherwise.

4. Rarely, multiple cable lines which are attached much lower than power facilities on poles do account for more wind load than very basic power lines with only two to four small wires with little or no electric apparatus attached.
5. Almost all power companies already have construction standards for power lines which specify power line and apparatus configurations for basic power pole assemblies. Examples are: one, two, or three primary voltage wires at the top of the pole with a neutral wire below; one, two, or three transformers on a pole; one or more electric service wires, both underground thru riser pipe or overhead thru the air; outdoor lighting fixtures and many other types of electric apparatus and wires.
6. Power Company construction standards do not contain drawings depicting the many combinations of power assembly units which are used in actual practice. Examples include adding transformers, underground service risers, outdoor light fixtures, secondary voltage cables, etc. to the various power line assembly configurations.
7. The RUS construction standards which are used by most Electric Cooperatives are available to the public and cable TV companies. Cable TV companies need access to the construction standards of all power companies with which they have attachment agreements. Without the standards it is impossible to determine what make ready work is appropriate to rearrange facilities on existing poles or make new attachments.
8. Many of the violations of the NESC separation requirements between power and communications facilities and many violations of the NESC pole loading limitations occur as a result of power facilities being added after the initial construction of power and communication lines.
9. The communications companies also have construction standards for attaching to poles, separation from power requirements, and pole loading limitations. The company which requires additional space or pole strength to accommodate its new attachment must pay the power company to rearrange facilities or install a new pole if necessary and pay the cost of other attachers to provide such space. This also applies to the power company when it needs additional space or strength for power facilities. The power company must bear the cost of additional space for its facilities. It may not take back space from a legal attacher or add facilities in violation of NESC rules.
10. *The National Electrical Safety Code (NESC)* is a performance standard which contains detailed rules for what must be accomplished for safety of power and communications lines. The NESC does not dictate how to accomplish what is required by the rules. Therefore, power and communications companies must have construction standards

which specify how they will accomplish what the NESC requires. For example they may use wood or concrete poles, build lines with tall poles spaced far apart or shorter poles spaced more closely etc.

11. It is accepted good practice to exceed many of the NESC requirements upon initial construction although it is not "necessary for safety." This practice allows enough pole strength and height to accommodate the addition of facilities by power companies, communications companies, and government agencies which often utilize poles for traffic signals, signal control circuit cables and other facilities.
12. Most power companies and telephone companies which own poles already have procedures for authorizing attachments by cable TV and others. They also have specifications for cable attachments, separation from power facilities and other cables, etc. Reliance on NESC requirements varies greatly among various companies. Compliance with NESC requirements is mandatory, as it should be. These procedures and attachment requirements are usually covered in existing joint use contracts or license to attach contracts.
13. The major problem with many of these existing contracts is that they contain provisions which are inconsistent with FCC rulings, and they contain some attachment rules which unreasonably exceed NESC requirements. Many of the attachment rules are not enforced by the pole owner in the field where workers often cooperate. When these type contracts and rules are used as the basis for a compliance audit they result in a very high alleged violation rate and erroneous assignment of responsibility. Many of these contracts give power companies "sole discretion" to specify attachment requirements and to change those requirements when they see fit. Pole attachment policies and procedures must be "just reasonable and non-discriminatory." Litigation involving one such contract has gone on for six years at the FCC and is still not resolved. We are concerned that power companies may simply submit those type of attachment rules and represent them as already agreed to by cable operators. One example of a power company requirement is 40 inches separation of cable TV below a power guy wire attachment. The NESC requires 6 inches. Therefore almost three feet of additional pole height is required for a pole with a power guy and a TV cable. Significantly, the addition of storm guying to distribution poles in certain areas is the most effective and economical way to greatly strengthen the lines. If this rule is enforced it could disrupt a very effective method of pole hardening. Great care by the commission staff and cooperation between utility representatives can identify such counterproductive rules which exceed NESC rules. One power company attachment rule requires 12 inches separation between communications drop attachment points on power poles. That is not an NESC requirement. It has nothing to do with safety or pole strength. Until recently it had never been enforced by the power company but now is mandatory, they say.
14. The common requirements for separation between cable TV and power, which exceed NESC requirements, are acceptable for new or existing poles with adequate height and strength capacity. In fact, more initial separation (up to 6 or 8 feet) between power and

cable is now required by some power cooperatives. For tall pole initial designs this is good planning. Facilities are routinely added to poles over time by power companies, communications companies and a growing number of others. As poles have more attachments added, the NESC rules must be applied as the final Standard for safety for separation of facilities and the strength of the poles.

15. Some power companies retain spacing requirements between cable and power which exceed NESC requirements even if they necessitate changing poles to taller poles. This practice is not necessary for safety, wasteful of resources, and unreasonable. NESC requirements (as modified by the FPSC) should be the final determination if an existing pole is required to be strengthened and/or made taller.
16. A significant number of poles in Florida contain violations of the separation requirements. Some of these violations have been caused by all of the various companies and agencies on the poles. Many of the NESC violations do not present serious safety hazards. Part 4 of the NESC contains safe work rules for electric and communications workers. Separate OSHA regulations also apply. Utility workers who are properly trained and equipped can perform their jobs safely even on non-standard or storm damaged pole lines.
17. Measures should be taken to correct serious safety hazards, correct practices by all electric, communications and other organizations which create NESC violations, and provide for orderly correction of existing violations. This should be done while incorporating whatever increased pole strength requirements are adopted in Florida. The NESC states in rule 214. "....defects....if not promptly corrected, shall be recorded;..." and ".....defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected or isolated."
18. We appreciate the ability to have input into the revision of power company Attachment Standards and Procedures and will work to achieve good results.

Submitted by:

Michael T. (Mickey) Harrelson, Consultant

On behalf of the Florida Cable Telecommunications Association

# COMPOSITE EXHIBIT MAG-1

## 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. 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.

<sup>1</sup> 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 2 through 4. M.T. (Mickey) Harrelson (MTH)/FCTA Comments at page 1; MTH/FCTA Comments filed on August 4, 2006, at pages 5 through 9, a copy being attached; MTH/FCTA Post July 13, 2006, Post Workshop Comments at pages 1 through 4, a copy being attached.

Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff 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.<sup>2</sup> 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,<sup>3</sup> comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 2007<sup>4</sup> edition of the

<sup>2</sup> 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 1.

<sup>3</sup> 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 1 and 2.

<sup>4</sup> The 2007 Edition is now available and may be used at any time on or after the publication date. MTH/FCTA Comments at page 2.

NESC, published August 1, 2006<sup>5</sup>. 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 Facilities constructed prior to the effective date of the 2007<sup>2</sup> 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.<sup>6</sup>

(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 2007<sup>2</sup> edition of the NESC. 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.<sup>7</sup> 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 taking into account

<sup>5</sup> The 2007 Edition of the NESC was published on August 1, 2006. MTH/FCTA Comments at page 2.

<sup>6</sup> 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 2 and 3.

<sup>7</sup> 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 3 and 4.

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.

(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.<sup>8</sup> 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 this rule is intended to interfere with section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224, inclusive of any successor statutes and applicable rules, regulations, FCC decisions and judicial precedents.<sup>9</sup>

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 \_\_\_\_\_.

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<sup>8</sup> The deleted language has been replaced by additional language inserted in subsection (2). MAG/FCTA Comments at page 2 through 4.

<sup>9</sup> 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 4 through 8.

## 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 2007<sup>2</sup> edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2006<sup>1</sup>, 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~~<sup>10</sup>, comply with the standards in these provisions. Standards contained in the 2007<sup>2</sup> edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.<sup>11</sup>

(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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<sup>10</sup> See footnote 3.

<sup>11</sup> 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<br>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<sub>OH</sub>) shall be calculated as follows:

|                          |          |   |          |  |          |   |
|--------------------------|----------|---|----------|--|----------|---|
| <u>CIAC<sub>OH</sub></u> | <u>=</u> | <u>Total estimated work order job cost of installing the facilities</u> | <u>=</u> | <u>Four years expected incremental base energy revenue</u> | <u>=</u> | <u>Four years expected incremental base demand revenue, if applicable</u> |
|--------------------------|----------|---|----------|--|----------|---|

(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<sub>OH</sub> be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities

(CIAC<sub>UG</sub>) shall be calculated as follows:

|                          |          |                          |          |  |
|--------------------------|----------|--------------------------|----------|--|
| <u>CIAC<sub>UG</sub></u> | <u>=</u> | <u>CIAC<sub>OH</sub></u> | <u>+</u> | <u>Estimated difference between cost of providing the service underground and overhead</u> |
|--------------------------|----------|--------------------------|----------|--|

~~(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:~~

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

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

$$\text{CIAC}_{\text{oh}} = (\text{Actual or estimated} - (4 \times \text{nonfuel energy} - (4 \times \text{expected annual job cost for new} - \text{charge per KWH} \times - \text{demand charge poles and conductors} - \text{expected annual KWH} - \text{revenues from sales}$$

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<sub>oh</sub> (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.<sup>12</sup>~~

(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)<sup>13</sup>~~ (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.

<sup>12</sup> This subsection has been deleted as a result of the invalidity of Rule 25-6.034, Standards of Construction, in its current form. 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 10.

<sup>13</sup> 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)~~<sup>14</sup> (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 hHowever, 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)~~<sup>15</sup> (13) A detailed statement of its standard facilities extension and upgrade policies

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<sup>14</sup> See footnote 13.

<sup>15</sup> See footnote 13.

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)<sup>16</sup>(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 \_\_\_\_\_.

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<sup>16</sup> See footnote 13.



## 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.~~<sup>17</sup>

~~(2)(3)~~<sup>18</sup>(2) On or before October 15<sup>th</sup> 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), ~~(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.

~~(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

<sup>17</sup> See footnote 12.

<sup>18</sup> 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~~ conversion 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) ~~s~~Such work meets the investor-owned ~~public~~ utility's construction standards;

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

(c) ~~s~~Such 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~~The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, Standards of Construction,<sup>19</sup> 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.<sup>20</sup>

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

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<sup>19</sup> See footnote 12.

<sup>20</sup> See footnote 12.

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~~4~~) 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.

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding )  
overhead electric facilities to allow more )  
stringent construction standards than required )  
by National Electric Safety Code )  
and )

Docket No. 060173-EU  
Filed: July 28, 2006

In re: Proposed rules governing placement of )  
new electric distribution facilities underground, )  
and conversion of existing overhead )  
distribution facilities to underground facilities, )  
to address effects of extreme weather events )

Docket No. 060172-EU

VERIZON FLORIDA INC.'S REQUEST FOR HEARING

In accordance with the Order Establishing Procedures for this rulemaking (Order No. PSC-06-0610-PCO-EU), Florida Statutes § 120.54(3)(c) and Florida Administrative Code § 28-103.004, Verizon Florida Inc. ("Verizon") asks the Commission to set a hearing on the proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078, and 25-6.115 that Staff has proposed in this docket. Verizon is an "affected person" under Florida Statutes, § 120.54(3)(c), and Florida Administrative Code Rule § 28-103.004(3), and is, therefore, entitled to a hearing.

The Commission has already set a hearing on proposed new Rules 25-6.0341, 25-6.0342, and 25-6.0343, and Verizon intends to participate in that hearing. The Commission did not, however, set a hearing for the proposed changes to Rule 25-6.034, 25-6.064, 25-6.078, or 25-6.115, even though they would, if adopted, substantially modify the existing rules.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

With respect to proposed Rule 25-6.034, whereas the existing rule prescribes construction and maintenance of electric utility facilities "in accordance with generally accepted engineering practices," the proposed rule would, in addition, require each electric utility to establish its own construction standards for overhead and underground facilities that, "at a minimum," comply with the National Electrical Safety Code ("NESC"), and that are "guided by the extreme wind loading standards" in the 2002 edition of the NESC. See proposed Rule 25-6.034(2), (4) & (5).

Verizon attaches to approximately 381,000 electric utility poles. In addition, about 29,632 of Verizon's 107,863 poles bear attachments by electric utilities. Therefore, Verizon is necessarily affected by proposed Rule 25-6.034 (as well as the other proposed rules already slated for hearing). If the rules are adopted, Verizon will have to comply with the construction and maintenance standards set by the electric utilities with respect to third-party attachments. Because these new standards may differ from the existing, uniform national NESC standard, they could require Verizon to upgrade or rearrange its attachments to electric utility facilities, or even to remove them. For these and other reasons, the proposed rule would likely have a negative financial impact on Verizon. Verizon and other ILECs that attach to electric utility poles would be particularly disadvantaged because, unlike the rate-regulated electric utilities, the price-regulated ILECs cannot pass on increased costs to their customers.

To the extent new standards are imposed upon Verizon through the new rules, they may also impermissibly interfere with Verizon's joint-use and license agreements that govern Verizon's attachments to electric facilities. Among other things, the new standards could dramatically affect Verizon's rental rates and impose additional

financial and operational burdens that are not contemplated under the existing contracts.

Indeed, section 25-6.034(7), on its face, recognizes that the rule will affect companies, like Verizon, that attach to electric utility poles, because it requires the utility to seek input from other entities "with existing agreements to share the use of its electric facilities." The proposed rule, however, does *not* require the electric utility to actually factor other entities' input into the standards themselves, so Verizon will have no meaningful way of protecting its interests once the electric utility is given the authority to develop its own standards. The rules appear to allow disputes or challenges to a utility's standards only *after* they are enacted. See proposed rule 25-6.034(7).

Verizon would, likewise, be affected by the changes to Rule 25-6.064, which requires investor-owned electric utilities to calculate amounts due as contributions-in-aid-of-construction ("CIAC") from customers who request new or upgraded facilities. Through pole rental fees paid to the electric utilities, Verizon pays a portion of their costs when they place new poles, and needs to protect its interest in preventing pole rental rates that are further skewed than they already are.

Proposed Rule 25-6.078 requires the electric utility to implement a tariffed policy for undergrounding facilities in new subdivisions. Verizon would be affected by this change to the extent an electric company's new undergrounding policy requires Verizon to convert or modify existing pole attachments, thus imposing costs upon Verizon.

Proposed Rule 25-6.115 addresses the electric utility's recovery of the costs of conversions from overhead to underground facilities. This Rule does not account for the fact that Verizon, as a price-regulated company, does not have the electric utilities'



ability to pass along to customers the costs of such conversions. The new Rule, if adopted, could thus have a negative financial impact upon Verizon and work to its competitive disadvantage.

Because adoption of the proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078, and 25-6.115 would directly (and negatively) affect Verizon, Verizon is entitled to a hearing on these amendments (as well as on the other rules already scheduled for hearing).

Respectfully submitted on July 28, 2006.

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Attorney for Verizon Florida Inc.

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|  |                       |
|--|-----------------------|
| In re: Proposed amendments to rules regarding )      | Docket No. 060173-EU  |
| overhead electric facilities to allow more )         |                       |
| stringent construction standards than required )     |                       |
| by National Electric Safety Code )                   |                       |
| and )  |                       |
| In re: Proposed rules governing placement of )       | Docket No. 060172-EU  |
| new electric distribution facilities underground, )  |                       |
| and conversion of existing overhead )                | Filed: August 4, 2006 |
| distribution facilities to underground facilities, ) |                       |
| to address effects of extreme weather events )       |                       |

**INITIAL COMMENTS OF VERIZON FLORIDA INC.  
CONCERNING PROPOSED RULES 25-6.0341 AND 25-6.0342**

Verizon Florida Inc. ("Verizon") submits these Initial Comments in compliance with the Commission's Order Establishing Procedures to be Followed at Rulemaking Hearing in this docket.<sup>1</sup> In support of these comments, Verizon also is filing the Affidavit of Steven R. Lindsay. For the reasons stated below, proposed Rules 25-6.0341 and 25-6.0342 should not be adopted in their current form.

A. Introduction

As a company that has made substantial investments in utility poles and attachments in Florida, Verizon shares the Commission's concern about network reliability and storm readiness. Verizon owns approximately 107,863 poles in Florida, almost 30,000 of which bear attachments by electric utilities.<sup>2</sup> Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of

<sup>1</sup> By Orders dated July 27, 2006 and August 2, 2006, the Commission established different filing schedules for the other proposed rules and rule amendments under review. Verizon will address other proposed rules and amendments in accordance with the schedules adopted in those Orders.

<sup>2</sup> Lindsay Aff. ¶ 2.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

poles Verizon owns.<sup>3</sup> Verizon's affiliates MCImetro Access Transmission Services LLC d/b/a Verizon Transmission Services and MCI Communications Services, Inc. attach to an additional 3,000 electric utility poles.<sup>4</sup> Verizon already has placed a substantial part of its Florida network underground and is rapidly installing additional facilities below ground as part of its FiOS project.<sup>5</sup> FiOS, which provides fiber to customers' homes, is provisioned almost entirely underground, protecting it from storms.<sup>6</sup> Verizon thus has made, and continues to make, significant strides toward a storm-hardened network.

Although Verizon shares the Commission's goal of network reliability, proposed Rules 25-6.0341 and 25-6.0342 as currently drafted could potentially harm Verizon and its customers in several ways. First, for example, depending on how the electric utilities exercise the discretion that would be given them under Rule 25-6.0341, Verizon could be forced to incur substantial costs, such as paying increased rent for additional poles or paying to migrate facilities underground.<sup>7</sup> Because Verizon attaches to so many electric poles in Florida, these increased costs could be enormous.<sup>8</sup> Second, proposed Rules 25-6.0341 and 25-6.0342 (along with the other proposed rules and amendments) threaten to divert Verizon's resources from the FiOS project it is rolling out to meet the intense competition it faces in its Florida market.<sup>9</sup> Third, proposed Rule 25-6.0342 would authorize electric utilities to establish standards for pole attachments varying from the National Electrical Safety Code ("NESC"), which could require Verizon to upgrade, rearrange or even remove its attachments from electric utility poles. Not only might

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* ¶ 3.

<sup>6</sup> *Id.* ¶¶ 3, 8.

<sup>7</sup> *Id.* ¶ 5. Whether Verizon would have to pay additional rent would depend on the terms of the applicable joint use agreement.

<sup>8</sup> *Id.* ¶¶ 5-7.

<sup>9</sup> *Id.* ¶ 8.

such standards conflict with Verizon's joint use and license agreements, but they could increase its rental rates and impose additional financial and operational burdens.<sup>10</sup>

Verizon addresses its concerns with proposed Rules 25-6.0341 and 25-6.0342 in more detail below.

B. Proposed Rule 25-6.0341

Proposed Rule 25-6.0341 states as a general principle that "to the extent practical, feasible, and cost-effective," electric distribution facilities normally should be placed in front of customers' premises, adjacent to public roads. Three subsections apply this principle to scenarios involving (1) construction of overhead facilities; (2) installation of underground facilities; and (3) conversion of overhead facilities to underground facilities. In the third scenario, a local government requesting the conversion must meet the electric utility's financial and operational requirements before the electric utility must place facilities in road rights of way. When the projects described in proposed Rule 25-6.0341 affect third-party attachments, the electric utility must seek input from the third-party attachers, but it is not required to take any action based on the input it receives. The electric utility also must, "to the extent practical, coordinate the construction of its facilities with the third-party attacher," but the timing and extent of the required coordination are not specified.

Proposed Rule 25-6.0341 fails to take into account sufficiently the burdens that could be placed on third-party attachers by electric utility construction, installation and migration projects. For example, by failing to specify the amount of notice that must be

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<sup>10</sup> *Id.* ¶ 9. Again, whether Verizon would be required pay additional pole would depend on the terms of the applicable joint use agreement.

given or the extent of the coordination that must be afforded in connection with such projects, the proposed rule leaves electric utilities free to move forward with little regard for the operational disruption that could result to attachers. As noted above, Verizon is in the midst of a massive project to bring its FiOS network to customers' homes. To the extent electric utilities were to rely on this proposed rule to install or move their own facilities, Verizon would require extensive notice (at least 12 months) and effective coordination so Verizon could make any necessary adjustments to its plans. For instance, Verizon would want to avoid relocation of copper facilities when its plans call for replacing those facilities with fiber in the near future. With effective coordination, such costly duplication of effort could, at least to some extent, be avoided. Further revisions to the rule are necessary to ensure that the required notice is specified and the duty to coordinate is described in detail.

The proposed rule also does not address the costs that would be incurred by third-party attachers. To the extent electric utilities add poles when moving them from the back property line to the front, the additional costs to attachers could be enormous. If Verizon were required to place attachments on 10% more poles, its costs would increase by some \$20 million, most of which would be one-time engineering and transfer costs.<sup>11</sup> If the number of poles to which Verizon attaches were increased by 50%, Verizon's cost would be \$50 million.<sup>12</sup> Moving facilities underground also entails tremendous costs. In a feasibility study Verizon conducted to determine the cost of

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<sup>11</sup> *Id.* ¶ 6 and Attachment A. Note that this figure represents the costs that would be experienced during the first year after installation. This figure assumes an increase to attachment fees, which, if imposed under the applicable joint use agreement, would continue on a recurring basis, raising Verizon's costs further still.

<sup>12</sup> The potential for increasing the number of pole attachments by 50% or even more becomes greater when the extreme wind loading standards addressed in proposed Rule 25-6.034 are taken into account.

moving facilities underground on Davis Islands, it determined the cost to be \$4,000 per household.<sup>13</sup> Placing copper facilities underground would be particularly expensive and wasteful for Verizon because of its plans to install underground fiber facilities. If, on the other hand, Verizon decides not to migrate its facilities, it may be required to buy the poles that have been abandoned and pay for easement rights.<sup>14</sup> Although the proposed rules provide compensation to the electric utilities, no similar provision is made for attachers, nor are attachers given any right to object to electric utilities' plans to migrate facilities. Proposed Rule 25-6.0341 should be revised to take into account the costs that would be imposed on third-party attachers.

Proposed Rule 25-6.0341 also raises serious concerns with respect to Verizon's carrier-of-last resort obligations under Florida law, which among other things require local exchange telecommunications companies, until January 1, 2009, "to furnish basic local exchange telecommunication service within a reasonable time period to any person requesting such service within the company's service territory." Fla. Stat. § 364.025(1). To the extent that standards under the proposed rule disrupt Verizon's ability to fulfill its carrier-of-last-resort obligations, the standards would conflict with Florida law. The proposed rule should be revised to prevent such a conflict.

C. Proposed Rule 25-6.0342

Proposed Rule 25-6.0342 requires electric utilities to include in their construction standards "safety, reliability, pole loading capacity, and engineering standards and procedures for" third-party attachments. Electric utilities would be required to develop

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<sup>13</sup> Lindsay Aff. ¶ 7.

<sup>14</sup> *Id.* ¶ 5.

these standards within 180 days, after seeking input from other entities with joint use agreements, but without any requirement that the electric utilities accept any of the input they receive. No prior Commission approval of the standards is contemplated, whether for the initial standards or any subsequent revisions. Indeed, the electric utility is not even required to provide the Commission with access to a copy of the standards unless the Commission makes a specific request.<sup>15</sup> Only broad guidance is provided as to what requirements the third-party attachment standards must meet. They are required to "meet or exceed" the applicable edition of the NESC, as well as other applicable standards under state and federal law to ensure "as far as 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." Disputes concerning implementation of the proposed rule are to be resolved by the Commission.

As a threshold matter, the Commission lacks jurisdiction to regulate the rates, terms and conditions of pole attachments. Under federal law, the FCC has such jurisdiction unless "such matters are regulated by a State." 47 U.S.C. § 224 (b)(1) and (c)(1). Whether a state may be said to regulate such rates, terms and conditions is not left in doubt, because a state that regulates pole attachments is required to file a certification to that effect with the FCC. 47 U.S.C. § 224 (c)(2). There can be no dispute, therefore, that the Florida legislature has not authorized the Commission to regulate pole attachments. When the Commission issued an order more than 25 years

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<sup>15</sup> These procedural requirements are stated in proposed Rule 25-6.034, which describes the development of the construction standards of which the third-party attachment standards are to be a part.

ago certifying that it had such authority, the Florida Supreme Court quashed the order. *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648 (Fla. 1980). To Verizon's knowledge, the Commission has not issued any subsequent order certifying its authority to regulate pole attachments, and no party to this docket has asserted otherwise. Thus, only the FCC may regulate the rates, terms and conditions of pole attachments in Florida, and to the extent proposed Rule 25-6.0342 would regulate such rates, terms and conditions, it would stand on infirm ground.

Proposed Rule 25-6.0342 also is problematic because it gives far too much discretion to the electric utilities to determine third-party attachment standards.<sup>16</sup> There is a significant risk that electric utilities could abuse that discretion by adopting standards that could harm attachers by requiring them to upgrade, rearrange or remove their attachments. The standards adopted by electric utilities apparently would remain in place until the completion of a dispute resolution proceeding, which could take several months, if not a year or more. As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers. Again the attachers would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. In short, giving electric utilities broad discretion to define and implement their own standards is particularly inappropriate in this context and should not be permitted.

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<sup>16</sup> Although SB 888 authorized the *Commission* to adopt construction standards that exceed the NESC, it did not authorize the Commission to permit electric utilities to establish those standards.



Verizon's pole attachment rates in Florida already are the highest of any operating company in the Verizon West (former GTE) footprint, and those rates are increasing at an alarming pace.<sup>17</sup> Proposed Rule 25-6.0342 threatens to accelerate the rate of increase by imposing even greater costs on attachers. Unlike rate-regulated electric utilities, telecommunications carriers cannot simply pass these cost increases on to their customers. The cost impact of the proposed rule to third-party attachers should be taken into account before any final rule is adopted.

For the foregoing reasons, Verizon respectfully submits that proposed Rules 25-6.0341 and 25-6.0342 should not be adopted in their current form. Further consideration of the interests and concerns of third-party attachers and other interested parties should be given before final rules are adopted.

Respectfully submitted on August 4, 2006.

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Attorney for Verizon Florida Inc.

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<sup>17</sup> Lindsay Aff. ¶ 10.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

|   |   |
|---|---|
| In re: Proposed amendments to rules regarding )<br>overhead electric facilities to allow more )<br>stringent construction standards than required )<br>by National Electric Safety Code )<br>and )<br>)   | Docket No. 060173-EU                              |
| In re: Proposed rules governing placement of )<br>new electric distribution facilities underground, )<br>and conversion of existing overhead )<br>distribution facilities to underground facilities, )<br>to address effects of extreme weather events )<br>_____ ) | Docket No. 060172-EU<br><br>Filed: August 4, 2006 |

**AFFIDAVIT OF STEVEN R. LINDSAY**

The undersigned, being duly sworn, states as follows:

1. I am employed by Verizon as a Staff Consultant – Network Engineering with responsibility for the negotiation and administration of joint use contracts with electric power companies, competitive local exchange carriers, cable TV companies, railroads, and governmental entities in the states of Florida, North Carolina, and South Carolina. My background in the telephone industry spans 26 years. I have worked as a cable splicer and an outside plant construction supervisor, and have held various other positions in outside plant engineering, most recently as a staff consultant negotiating joint use contracts. I was a Director on the Oregon Joint Use Association (OJUA) in 2005-06 prior to coming to Florida. I represented both Verizon and the OJUA in the Oregon joint use workshops and Commission formal and informal hearings concerning safety and joint use rule making. I have a Bachelors degree in Business Management from Nova University in Florida.

2. Verizon Florida Inc. ("Verizon") owns 107,863 poles in Florida, about 29,632 of which bear electric utility attachments. Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of poles that it owns. In addition, Verizon's affiliates, MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc., are attached to approximately 3,000 power poles under separate agreements.

3. Verizon actively maintains its network and invests heavily to ensure network reliability. A substantial portion of Verizon's Florida network already has been placed underground and through its FiOS project, Verizon is aggressively spending hundreds of millions of dollars to install its new, storm-hardened, fiber network, 99.9% of which is underground. This new passive optical (PON) network is virtually impervious to storm damage, flooding, and lightening strikes, and improves the survivability and recovery of the network. Unlike copper networks, a PON network does not employ live electronic signals; instead, fiber emits refracted light waves from point A to point B. Moreover, there are significant operational benefits with fiber that enables faster recovery and restoration. Verizon has passed 600,000 Florida households to date and has placed more than 26 million feet of fiber in the state. Verizon has made a \$550 million investment in Florida so far and the project is moving ahead full speed. As the FiOS project is further deployed, it is Verizon's intention to migrate existing customers served by copper facilities to fiber facilities.

4. Proposed new Rules 25-6.0341 and 25-6.0342 threaten significant harm to Verizon, both financially and operationally. Below I address three of the potential problems that implementation of these rules could pose.

5. First, proposed Rule 25-6.0341, as drafted, could lead to dramatically increased costs for pole attachers. For example, if electric utilities increase the number of poles in service, move their facilities to new poles or relocate facilities underground, third-party attachers will be affected.<sup>1</sup> Not only must they pay engineering and transfer expenses when poles are added or replaced with stronger poles, but under their joint use agreements they may be required to pay increased attachment fees.<sup>2</sup> And when an electric utility elects to move or relocate facilities Verizon may have to pay to acquire the abandoned facilities and pay for easement rights. While the proposed rules provide for the compensation of the electric utilities making these changes, they do not provide for the compensation of third-party attachers, and the electric utilities would have no incentive to take the carriers' costs into account.

6. Verizon presented an exhibit at the July 13, 2006 Staff workshop that projects estimated costs associated with proposed storm hardening requirements.<sup>3</sup> Assuming that Verizon is required to place 10% more poles in its network to comply with the electric companies' yet-to-be-defined standards, the additional cost experienced during the first year after installation would be approximately \$20 million, most of which would be from one-time engineering and transfer costs. This figure assumes an increase to attachment fees, which would continue after the first year, raising Verizon's

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<sup>1</sup> Other proposed rules could have the same kind of cost impact. For example, the amendments to proposed Rule 25-6.034 could result in an increased number of poles to shorten span lengths or an increase in pole sizes. Proposed Rule 25-6.034 and other proposed rules will be discussed in a subsequent filing.

<sup>2</sup> Whether Verizon must pay electric utilities additional attachment fees in a particular case will depend on the applicable joint use agreement.

<sup>3</sup> See Attachment A - Partial Cost Impact Analysis. The number of poles used represents 4% budgeted over actual number of poles placed.

costs further still. Making another equally valid assumption that 50% more poles would be required,<sup>4</sup> Verizon's first-year cost would be \$100 million.

7. The relocation of aerial facilities underground brings additional complexities and costs to the forefront that affect industry participants as well as customers. For example, Verizon participated in a multiple-phase project to investigate the feasibility of converting overhead utilities to underground facilities on Davis Islands located in Tampa, Florida. The project identified several benefits, including disaster preparedness and recovery. Verizon estimated that it would cost approximately \$10 million or \$4,000 per household to relocate its facilities in a scenario that included close coordination and cooperation with other utilities. The effort made it clear that undergrounding brings physical and legal complexities, including damage and disruptions caused by excavation, high costs associated with relocation, cost recovery issues, right-of-way issues, and negotiation of easements.

8. Second, proposed Rules 25-6.0341 and 25-6.0342 (as well as the other proposed rules) threaten to divert Verizon's resources from its capital-intensive FiOS project, which Verizon is rolling out to meet the heated competition it faces in its Florida market. FiOS brings fiber to customers' homes, providing them with telephone, broadband and television services, and enabling Verizon to compete head to head with cable companies and other service providers. To the extent Verizon is forced to expend resources coordinating with electric utilities' projects undertaken under the proposed rules, the FiOS rollout will be impeded, to the detriment of Florida consumers.

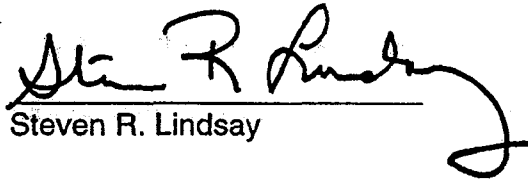
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<sup>4</sup> This assumption becomes more probable when the extreme wind loading standards addressed in proposed Rule 25-6.034 are taken into account.

9. Third, if Rule 25-6.0342 were adopted as currently proposed, Verizon would have to comply with the construction and maintenance standards set by the electric utilities with respect to third-party attachments. Because these new standards may differ from the existing, uniform national NESC standards, they could require Verizon to upgrade or rearrange its attachments to electric utility facilities, or even to remove them. To the extent new standards are imposed on Verizon through the proposed rule, they may also conflict with Verizon's joint use and license agreements that govern Verizon's attachments to electric facilities. Among other things, the new standards could dramatically affect Verizon's rental rates (depending of the terms of applicable joint use agreements) and impose additional financial and operational burdens that are not contemplated under the existing contracts.

10. Verizon's pole attachment rates are already increasing at an alarming rate and proposed Rule 25-6.0342 as currently drafted would accelerate this pace. Florida pole attachments rates are the highest of any other operating company in the Verizon West (former GTE) foot print. As an example, Verizon received a proposed attachment rate increase of 21% covering 2005 to 2006 from one electric utility. This proposed increase equals \$781,986 per year. The reason cited for the larger than anticipated increase is the utility's rising pole and maintenance costs, including costs from the 2004 storm season not recoverable from its rate payers. This utility also indicated that as a result of Florida legislation additional improvements will be made and costs will be reflected for the first time in the 2006 FERC data used to calculate charges.

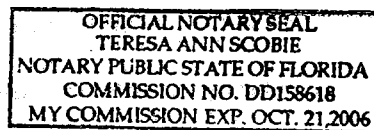
Further Affiant sayeth naught.

  
Steven R. Lindsay


Subscribed and sworn to before me this 4<sup>th</sup> day of August, 2006.

  
Notary Public, State of Florida

My commission expires:



## Attachment A



### PARTIAL COST IMPACT ANALYSIS

| Verizon 3rd Party Projected Attachment Costs Due to Storm Hardening Requirements by Florida PSC |                     |                  |                   |                |              |
|---|---------------------|------------------|-------------------|----------------|--------------|
| Based on Current Florida Attachments of:  |                     |                  |                   |                | 397,246      |
| Percent New Poles   | Number of New Poles | Attachment Costs | Engineering Costs | Transfer Costs | Totals       |
| 10%   | 39,725              | \$1,231,463      | \$8,342,166       | \$10,328,396   | \$19,902,025 |
| 15%   | 59,587              | \$1,847,194      | \$12,513,249      | \$15,492,594   | \$29,853,037 |
| 20%   | 79,449              | \$2,462,925      | \$16,684,332      | \$20,656,792   | \$39,804,049 |
| 25%   | 99,312              | \$3,078,657      | \$20,855,415      | \$25,820,890   | \$49,755,062 |
| 30%   | 119,174             | \$3,694,388      | \$25,026,496      | \$30,985,188   | \$59,706,074 |
| 35%   | 139,036             | \$4,310,119      | \$29,197,581      | \$36,149,595   | \$69,657,086 |
| 40%   | 158,898             | \$4,925,850      | \$33,368,664      | \$41,319,584   | \$79,608,088 |
| 45%   | 178,761             | \$5,541,582      | \$37,539,747      | \$46,477,762   | \$89,559,111 |
| 50%   | 198,623             | \$6,157,313      | \$41,710,830      | \$51,641,980   | \$99,510,123 |



ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding )  
overhead electric facilities to allow more )  
stringent construction standards than required )  
by National Electric Safety Code )

and )

In re: Proposed rules governing placement of )  
new electric distribution facilities underground, )  
and conversion of existing overhead )  
distribution facilities to underground facilities, )  
to address effects of extreme weather events )

Docket No. 060173-EU

Docket No. 060172-EU

Filed: August 11, 2006

**INITIAL COMMENTS OF VERIZON FLORIDA INC.  
CONCERNING PROPOSED AMENDMENTS TO  
RULES 25-6.034, 25-6.064, 25-6.078 AND 25-6.115**

Verizon Florida Inc. ("Verizon") submits these Initial Comments in compliance with the Commission's Second Order Establishing Procedures to be Followed at Rulemaking Hearing in this case. In support of these comments, Verizon also is filing the Affidavit of Dr. Lawrence M. Slavin. For the reasons stated below, the proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115 should not be adopted in their current form.

**A. Proposed Amendments to Rule 25-6.034**

The proposed amendments to Rule 25-6.034 would vest electric utilities with the authority to establish construction standards for overhead and underground electrical transmission and distribution facilities. Electric utilities would be required to develop these standards within 180 days, after seeking input from other entities with joint use agreements, but without any requirement that the electric utilities accepting any of the

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

input they receive. No prior Commission approval of the standards is contemplated, whether for the initial standards or any subsequent revisions, nor would the electric utilities be required to provide the Commission with access to a copy of the standards unless the Commission so requested. Only broad guidance is provided as to what requirements the standards must meet – each utility “at a minimum” must comply with the 2002 version of the National Electrical Safety Code (“NESC”), but the electric utility is free to impose whatever additional standards it chooses. An attacher or other party that is dissatisfied with electric utility’s standards may challenge them before the Commission, but the disputed standards apparently would remain in effect until the Commission resolved the dispute.

The proposed amendments to Rule 25-6.034 give far too much discretion to the electric utilities to determine construction standards, for many of the same reasons that Verizon previously noted with respect to proposed Rule 25-6.0342.<sup>1</sup> There is a significant risk that electric utilities could abuse their discretion by adopting construction standards that could harm attachers, for example by potentially increasing pole costs that the electric utilities could attempt to pass through to the attachers.<sup>2</sup> As is the case with proposed rule 25-6.0342, the standards adopted by electric utilities under the revised Rule 25-6.034 apparently would remain in place until the completion of a dispute resolution proceeding, which could take several months, if not a year or more. As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers.

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<sup>1</sup> See Initial Comments of Verizon Florida Inc. Concerning Proposed Rules 25-6.0341 and 25-6.0342 filed in this case on August 4, 2006.

<sup>2</sup> Whether electric utilities could actually pass through such costs would depend on the terms of the applicable joint use agreements.

The attachers would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. In short, giving electric utilities broad discretion to define and implement their own standards should not be permitted.

The discretion afforded electric utilities is particularly troublesome with respect to extreme wind loading. Rule 25-6.034(5) would call for electric utilities to be guided by the extreme wind loading standards, "to the extent reasonably practical, feasible, and cost-effective" for the construction of distribution facilities. Electric utilities would be required to include in their construction standards guidelines and procedures governing the use of extreme wind loading standards for "new construction"; "major planned work, including expansion, rebuild, or relocation of existing facilities"; and "targeted critical infrastructure facilities and thoroughfares." In other words, electric utilities arguably would be free to apply extreme wind loading standards to almost any distribution facilities they wish, regardless of pole grade and height. As outlined in the report attached to the Affidavit of Lawrence M. Slavin, applying the extreme wind loading standards in this manner would constitute a radical departure from the NESC, and could result in dramatically higher pole costs as well as significant unintended consequences.

As Dr. Slavin explains, to determine pole strength requirements for Grade B and C poles,<sup>3</sup> the NESC requires that two types of storms be taken into account: (i) combined ice and wind storms, governed by NESC Rule 250B; and (ii) extreme wind storms, governed by NESC Rule 250C. The combined ice and wind storm standards

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<sup>3</sup> Grade B and C poles carry primary power (more than 750 volts). Most distribution poles carrying primary power are Grade C poles, with the Grade B classification applying when greater reliability is required, such as at railroad crossings. Grade N applies to poles if they carry secondary power (less than 750 volts) or only support telecommunications cables, corresponding to the lowest level of reliability. Slavin Affidavit, Appendix 1 ("Slavin Report") § 2.3.

apply to Grade B and C poles regardless of their height, so all such poles, including distribution poles, must meet the standards outlined in Rule 250B.<sup>4</sup> Because the extreme wind loading standards only apply to poles that are at least 60 feet high, on the other hand, Rule 250C does not apply to most distribution poles, which typically are shorter than 60 feet.<sup>5</sup> Indeed, the NESC Committee has studied this issue carefully and has chosen this height exclusion so that the extreme wind loading standards would not apply to distribution poles.<sup>6</sup> The proposed amendment to Rule 25-6.034(5), which would require that electric utilities be guided by extreme wind loading standards when constructing distribution facilities, thus would mark a major departure from the NESC.<sup>7</sup>

To the extent electric utilities determine that applying the extreme wind loading standards of NESC Rule 250C would be "reasonably practical, feasible and cost-effective," and thus decide to be guided by them, one result would be a substantial increase in pole size (or stronger poles made of different materials) or in the number of poles, which would dramatically increase costs.<sup>8</sup> Stouter or more numerous poles also would lead to a number of unintended consequences, including an increase in the number or severity of traffic accidents.<sup>9</sup> Obviously, the more poles there are, the greater the likelihood there is that an automobile will collide with one and the driver will experience bodily harm or death. Moreover, increasing the number of poles can multiply the number of poles that are knocked down by flying debris during high wind

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<sup>4</sup> Slavin Report § 2.1.

<sup>5</sup> *Id.* § 2.2.

<sup>6</sup> *Id.* § 3.1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* § 4.1.

<sup>9</sup> *Id.* § 4.2.

storms, making the recovery process much more difficult and time consuming.<sup>10</sup> And the complexity of applying the high wind loading standards will lead to confusion and delay, and possible errors in implementation, to the detriment of consumers.<sup>11</sup> The Commission thus should proceed with great caution when it considers substituting its judgment for that of the NESC Committee, which has carefully taken these factors into account.

Because proposed Rule 25-6.034(5) represents such a dramatic change that could result in serious negative consequences, the best course of action would be for the Commission not to adopt this proposed amendment to Rule 25-6.034.<sup>12</sup> If the Commission nonetheless determines that it wishes to make changes, then at the least it should attempt to reduce the dramatic impact of the changes by making the following modifications: (i) it should make clear that extreme wind loading standards do not apply to Grade N poles (to which neither NESC Rule 250C nor NESC Rule 250B apply); (ii) the application of Rule 250C should be modified to lessen its impact, for example by using the reduced loads for Grade C poles from the 2007 edition of the NESC; and (iii) the changes should be applied on a trial basis and initially limited to a geographic area and a defined period, such as one to two years.<sup>13</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* § 5.

<sup>13</sup> *Id.*

B. Proposed amendments to Rules 25-6.064, 25-6.078 and 25-6.115

Verizon concurs with and adopts the arguments advanced in the Direct Testimony of Kirk Smith (at pages 19-22) filed by BellSouth concerning the proposed amendments to Rules 25-6.064, 25-6.078 and 25-6.115.

For the foregoing reasons, Verizon respectfully submits that the proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115 should not be adopted in their current form. Further consideration of the interests and concerns of third-party attachers and other interested parties should be given before final rules are adopted.

Respectfully submitted on August 11, 2006.

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Attorney for Verizon Florida Inc.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

|  |                        |
|--|------------------------|
| In re: Proposed amendments to rules regarding )      | Docket No. 060173-EU   |
| overhead electric facilities to allow more )         |                        |
| stringent construction standards than required )     |                        |
| by National Electric Safety Code )                   |                        |
| and )  |                        |
| )  |                        |
| )  |                        |
| In re: Proposed rules governing placement of )       | Docket No. 060172-EU   |
| new electric distribution facilities underground, )  | Filed: August 11, 2006 |
| and conversion of existing overhead )                |                        |
| distribution facilities to underground facilities, ) |                        |
| to address effects of extreme weather events )       |                        |
| _____ )  |                        |

**AFFIDAVIT OF DR. LAWRENCE M. SLAVIN**

The undersigned, being duly sworn, states as follows:

1. I am currently Principal of Outside Plant Consulting Services, Inc. Previously, I had an extensive career at Lucent (formerly AT&T), Bell Telephone Laboratories and Telcordia Technologies (formerly Bellcore). My career at Bell Laboratories, at which I was selected to be a Distinguished Member of Technical Staff, spanned more than 28 years (1961-1989), primarily in telecommunications product design and development. During the subsequent 12 years (1990-2001), I was a member of Telcordia's research and professional service organizations, and served as Director of the Network Facilities, Components, and Energy Group, responsible for requirements, testing, and analysis of outside plant media, components, and powering for telecommunications applications, as well as related installation and construction guidelines.

2. I received my Ph.D in mechanical engineering from New York University in 1969, my Master of Science in engineering mechanics from New York University in 1963 and my Bachelor of Science in mechanical engineering from The Cooper Union for the Advancement of Science & Art in 1961.

3. I have been an active member of NESC Subcommittee 5 since 1998, including the development of the 2002 edition of the NESC and the recently issued 2007 edition. Subcommittee 5 (Overhead Lines – Strength & Loading) is directly responsible for specifying the storm loads and associated structural strength requirements referenced by the PSC. I am Chair of Working Group 5.7 (Seminars and Presentations; Subcommittee 5), and have served on Working Group 5.2 (Complete Revision of Sections 25 and 26; Subcommittee 5), and on the immediately relevant Working Group 5.8 (Application of Extreme Wind to All Structures; Subcommittee 5). I have also been Chair of Working Group 4.10 (New Ice Loads and Clearances; Subcommittee 4, Overhead Lines – Clearances), and serve on as the Accredited Standards Committee ASC-O5 (responsible for *ANSI O5.1, Wood Poles, Specifications and Dimensions*).

4. As Chair of WG 5.7, I have been responsible for organizing and coordinating the following industry information sessions, as well as providing some of the associated technical presentations:

- ***Panel Session: Structural Reliability-Based Design of Utility Poles and the National Electrical Safety Code, 2003 IEEE Transmission & Distribution Conference and Exposition, 2003***
- ***Panel Session on National Electrical Safety Code (NESC), 2002 Edition, ANSI C2, 2001 IEEE Transmission & Distribution Conference and Exposition, 2001***



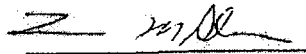
- ***Panel Session on Proposed Changes to Strength & Loading Requirements for the 2002 Edition of the National Electrical Safety Code (NESC), IEEE Power Engineering Society, Towers, Poles & Conductors (TP&C) Subcommittee Meeting, 2000***

I will be chairing a panel session regarding the strength and loading requirements of the 2007 edition of the NESC, and presenting related technical information, at the TP&C Subcommittee Meeting in January 2007.


5. Appendix 1 attached to this Affidavit is a report I have prepared concerning proposed Rule 25-6.034 that is being considered in this proceeding. As I discuss in detail in the report, the proposed rule's requirement that electric utilities be guided by the extreme wind loading standards specified in the 2002 edition of the NESC could result in substantially higher facilities costs and lead to significant unintended consequences. Accordingly, I recommend that this requirement not be included in the proposed rule, or (if this recommendation is not accepted), that certain limitations be adopted.

6. Appendix 2 attached to this Affidavit provides more detailed information concerning my career in the telecommunications and related utility industries, including my activities in relevant professional organizations, such as the Main Committee and several Subcommittees for the NESC.

Further Affiant sayeth naught.

  
Lawrence M. Slavin

Subscribed and sworn to before me this 10 day of August, 2006.

  
Notary Public, State of NY  
My commission expires:  
May 6, 2009

JENNIFER L. OSORIO  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 6, 2009

## **APPENDIX 1**

### **Report Concerning Proposed Rule 25-6.034 As It Relates to Extreme Wind Loading Requirements**

#### **1. Introduction**

This note provides comments regarding the proposed Florida Public Service Commission (PSC) Rule 25-6.034 to require that the extreme wind loading of the 2002 edition of the National Electrical Safety Code (NESC) be reflected in the design of electric utility-owned poles, including those with third-party (telecommunications) attachments. In particular, NESC-2002 Figure 250-2(d), part of NESC Rule 250C, is cited as a guide. The stated objective of the PSC is to "enhance reliability and reduce restoration costs and outage times" due to hurricane events, such as recently experienced during Hurricane Wilma. The present comments discuss the NESC rules (2002 edition), as applicable to the State of Florida, recent relevant discussions and decisions within the NESC Committee, and the impact of adopting the Extreme Wind Loads of Rule 250C throughout Florida.

#### **2. NESC-2002**

The NESC is an American National Standards Institute (ANSI) standard based upon a consensus of those substantially concerned with its scope and provisions, including the Institute of Electrical and Electronic Engineers (IEEE), which also acts as the Secretariat. Other members of the NESC Committee include organizations representing providers of electric power or communications service, their suppliers, and other affected or interested parties. The NESC includes various provisions for the safeguarding of persons from hazards from the installation, operation, and maintenance of electric supply and communication lines and equipment. The rules contain the basic provisions that are considered necessary for the safety of employees and the public.

In general, adherence to the NESC is voluntary; however, many commissions throughout the United States routinely adopt the latest edition, or specific editions, for application within their jurisdictions. For example, the Florida PSC has adopted the 2002 edition.

Sections 25 and 26 of the NESC provide the required strengths and loadings of utility poles and other structures. Section 25 specifies the type storm loads that Grade B or C utility lines are required to withstand. ("Grades of Construction" are discussed below.) Section 26 specifies the required strengths of the structures, as subject to the storm loadings specified in Section 25. (Most of Section 26 -- e.g., Rule 261 -- applies to Grade B or C construction.) Two types of storms are specified -- (1) Combined Ice and Wind Loading (Rule 250B) and (2) Extreme Wind Loading (Rule 250C).

##### **2.1 *Combined Ice and Wind (Rule 250B)***

Rule 250B refers to the Loading District map, NESC Figure 250-1, reproduced below. The three loading districts in the United States (Heavy, Medium and Light) specify the amount of radial ice buildup and a concurrent wind pressure. The Heavy and Medium districts in the north and central portions of the United States are subject to  $\frac{1}{2}$  and  $\frac{1}{4}$  -

inch radial ice buildup, respectively, on all power and communications wires, cables, and conductors, and a concurrent wind pressure corresponding to 40 m.p.h.. The Light district in the southerly portion of the country, including Florida, is assumed to experience no ice buildup, but a wind pressure corresponding to 60 m.p.h. The latter wind speed, although only 50% greater than that assumed in the rest of the country, corresponds to a wind pressure of more than twice that in the Heavy or Medium districts, due to the strong (non-linear) dependence of the wind force on wind speed.<sup>1</sup> However, the lower pressure in the Heavy or Medium district is applied to a greater "sail area" due to the ice buildup on the wires and conductors. Depending upon the wire or conductor diameters, and the ice buildup levels, the resultant transverse loads in the "Light" district may exceed that in the so-called "Heavy" or "Medium" areas. In addition, the application of Rule 250B requires "overload" factors to be applied to the calculated wind forces to provide a conservative margin of safety when selecting appropriate pole sizes. A factor of 2-to-1 is applied to the common Grade C construction, and a factor of 4-to-1 is applied to Grade B construction, where required.<sup>2</sup> (See Section 2.3.) This procedure results in a fairly robust design that experience has shown to provide reliable, safe service.

#### PART 2. SAFETY RULES FOR OVERHEAD LINES

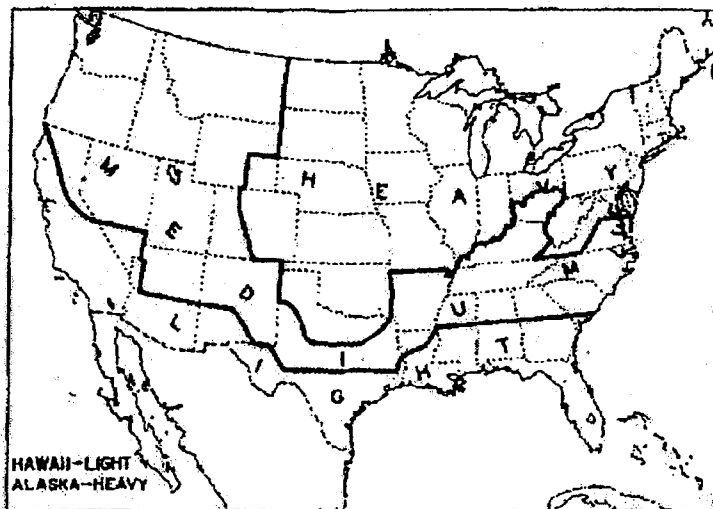


Fig 250-1  
General Loading Map of United States  
with Respect to Loading of Overhead Lines

<sup>1</sup> The wind pressure, or force, is proportional to the square of the wind speed.

<sup>2</sup> The present discussion assumes "tangent" pole lines, without significant corner angles where guys may be required. For such tangent lines, the transverse wind loads typically represent the critical design condition.

Rule 250B applies to all Grade B or C structures, regardless of height, and is typically used by most utilities to determine the strength requirements for distribution poles.

## 2.2 Extreme Wind (Rule 250C)

NESC Rule 250C refers to various wind maps, of which Figure 250-2(d), including the state of Florida, is reproduced below. The wind speeds<sup>3</sup> vary from approximately 95 m.p.h. (interpolated) in the north of the state to as much as 150 m.p.h. at the southern tip. The minimum 95 m.p.h. speed corresponds to a wind pressure of 2½ times that of the 60 m.p.h. wind assumed in the Light loading district. The maximum 150 m.p.h. speed corresponds to a wind pressure of more than six times that due to the 60 m.p.h. wind. However, the corresponding overload factors for Rule 250C are lower than that of Rule 250B, somewhat reducing the wide divergence in pole strength requirements. Nonetheless, if applicable, the impact on pole strength and sizes in Florida, and on utility construction practices and costs, would be major, as discussed in detail in Section 4. For various reasons, as discussed in Section 3.1, the NESC only applies Rule 250C to structures exceeding 60 feet in height above ground. This effectively exempts the vast majority of distribution poles. For cases where both Rule 250B and 250C apply, the larger effective loads would determine the required pole strength.

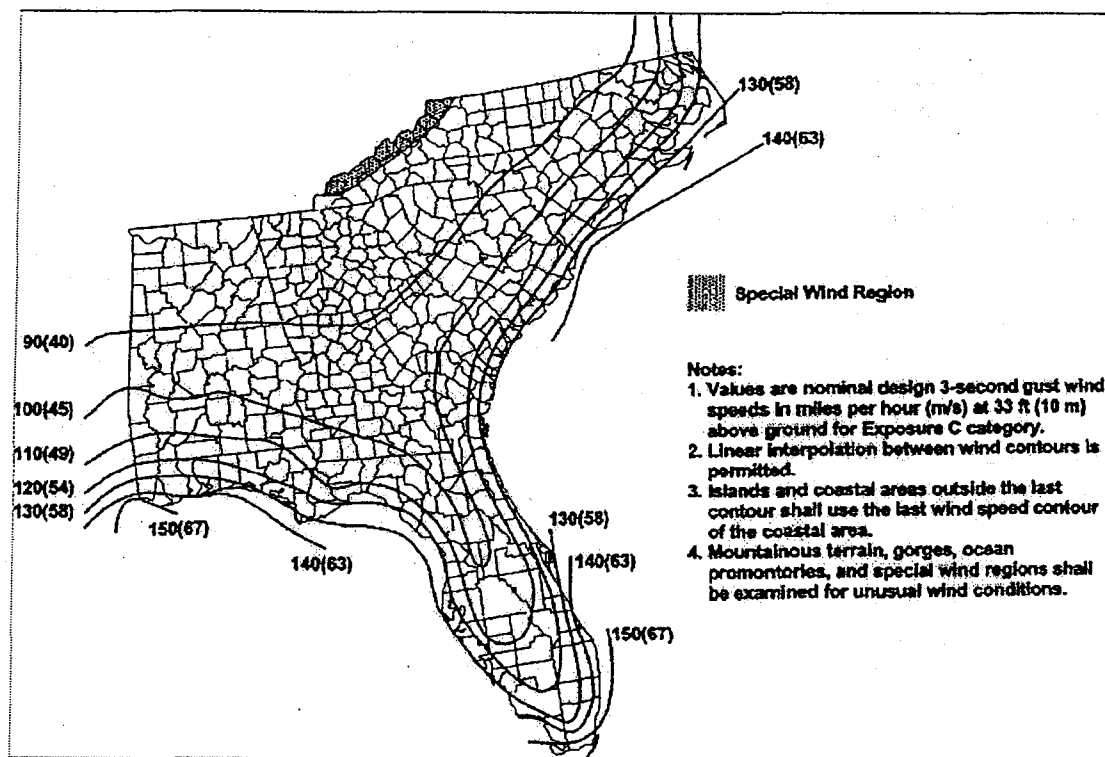


Fig 250-2(d)  
Eastern Gulf of Mexico and Southeastern US Hurricane Coastline

<sup>3</sup> Figure 250-2(d) refers to "3-second gust wind speeds", which is approximately 20% greater than the 1-minute average wind speed used as the basis for categorizing hurricane levels by the Saffir-Simpson Hurricane Scale.

### **2.3 Grades of Construction**

Section 24 of the NESC defines three Grades of Construction intended to distinguish between various situations, requiring varying levels of reliability, as implemented by the overload factors described above. In general, these grades depend upon the combination of voltage levels present in the power and communications conductors supported on the same poles, as well as various details, as specified. Most distribution poles carrying "primary power" (> 750 volts) at the upper portion of the pole, and communications cables below, are in the Grade C category. If the adjacent lines cross railroads tracks or limited access highways, a greater reliability level is required, corresponding to Grade B. Most power utility-owned poles are in the Grade C category.

The third grade of construction is Grade N, and applies if the voltages do not exceed 750 volts, corresponding to the lowest level of reliability.<sup>4</sup> This includes joint-usage poles supporting only "secondary power" (< 750 volts) or poles supporting only telecommunications cables.

The NESC does not provide specific storm loading or strength requirements for Grade N structures. NESC Section 25 (Loadings for Grades B and C) is not applicable to Grade N, and Section 26 (Rule 263) only states that "[t]he strength of Grade N construction need not be equal to or greater than Grade C" and that "[p]oles used for lines for which neither Grade B nor C is required shall be of initial size or guyed or braced to withstand expected loads, including line personnel working on them." This lack of specificity for Class N poles allows wide variability in application with respect to selecting appropriate pole strengths to withstand storms.

### **2.4 Required Strength & Pole Class**

Based upon the wind pressures corresponding to the storm loads, as applicable, an appropriate strength pole may be selected. Wood pole sizes and strengths are specified in *ANSI O5.1, Wood Poles, Specifications and Dimensions*. ANSI-O5.1 provides a pole classification system based upon the ability of a pole to withstand lateral loads placed near the top of the pole, in a cantilever situation, such as may correspond to transverse wind loads on a pole with attachments. For example, a popular size Class 4 pole would typically (on the average) withstand a lateral load of 2,400 lbs applied 2 feet from the tip of the pole. A Class 3 pole is stronger, and would withstand 3,000 lbs. Within poles of Class 1 - 10, lower class number poles correspond to stronger (i.e., larger diameter) poles. (Poles of strength greater than Class 1, are classified as H1, H2, and so on) with strength increasing with the H-number.)

Thus, a pole may be described as that supporting a specific "grade" of construction, corresponding to a level of required reliability (Grade B or C), or by a "class" size which is selected to match the strength needed to achieve the required reliability level. The strength is determined and calculated based upon the specified loading details (ice buildup and/or wind speed), the number and size (diameter) of the attachments to the pole, the span length between adjacent poles, and the grade of construction (via the overload factors discussed above).

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<sup>4</sup> Grade B applies if the adjacent lines cross railroads tracks or limited access highways.

### **3. Upcoming and Future Editions of NESC**

The 2007 edition of the NESC has recently been issued (August 2006) and is effective as of February 2007. Regarding storm loadings, several significant changes were introduced. Although Rule 250B was left unchanged, a new Rule 250D was added: "Extreme Ice with Concurrent Wind Loading." Similar to Rule 250C, Extreme Wind Loading, Rule 250D would only apply to structures exceeding 60 feet in height, exempting most distribution poles. In any case, this storm load would not have an impact in Florida due to the low associated ice (0-in.) and concurrent wind (30 m.p.h.) loads.

It is particularly interesting that Rule 250C has been modified for the common Grade C construction applications. In previous editions, the overload (design) factors for Grade B and C construction were the same, in spite of the greater implied reliability for the Grade B situations. This inequity was corrected in the 2007 edition by a *reduction* of as much as 25% in the effective design loads for Grade C construction. Thus, in contrast to possibly extending the Extreme Wind Loading to a larger category of structures and applications (e.g., poles  $\leq$  60 feet height) the NESC requirements, where applicable, have been reduced. Nonetheless, there had been extensive effort and discussions regarding the possible extension of Rule 250C to structures of all heights, as described below.

#### **3.1 *Extreme Wind Loading – Discussions***

There is a seemingly eternal debate within the NESC Committee to consider eliminating the 60-foot exemption -- so that poles of all heights would then be subject to extreme wind loading. Such a revision was discussed within the NESC Committee with regard to the 2007 edition but, once again, was rejected. In fact, as described above, where applicable -- i.e., poles taller than 60 feet -- the design requirement for Extreme Wind was actually reduced in severity for Grade C construction.

The rationale for rejecting consideration of extreme winds for "distribution" poles (i.e., poles < 60 feet tall) is that the vast majority of industry experiences indicate that almost all damage to such lines is caused by wind-blown debris such as falling branches, and not by the wind forces acting directly on the wires and poles. In that case, little would be gained by attempting to design such poles to withstand the direct hurricane wind forces. The NESC Loading Section (NESC Section 25) does not explicitly use the term "distribution" when referring to these applications, but the 60-foot height threshold was chosen intentionally to exclude the vast majority of such poles. (In contrast, taller structures, such as critical transmission towers, would benefit from such a requirement.) In addition, to the best of my knowledge, the NESC Committee has never discussed extending any of the storm loads of Section 25 of the NESC (i.e., Combined Ice and Wind or Extreme Wind) to Grade N applications, including telecommunications-only poles or joint-use poles with only secondary power (< 750 volts). Thus, the proposal of the PSC to extend Rule 250C to all distribution poles, regardless of height or grade of construction, would appear to be a major departure from present considerations in the NESC Committee, or industry in general. Thus, it would not appear to be "reasonably practical, feasible, and cost-effective" (to quote from proposed Rule 25-6.034(5)) to attempt to apply Rule 250C to Grade N joint-use distribution poles.

Related discussions within the NESC Committee to extend the Extreme Wind loading to structures of all heights (including distribution poles), focused on a particular change proposal, developed within Working Group 5.8, that would limit the impact of such an otherwise potentially dramatic change. In particular, for the Light Loading District portion of the country, which includes Florida, there would be no impact for distribution structures. However, based upon a multitude of industry comments objecting to even this diluted version of an Extreme Wind requirement for distribution poles throughout the country, this proposed change was not incorporated into the 2007 edition. It may be expected that this (rejected) change proposal will serve as a starting point for similar considerations for the 2012 edition of the NESC.

### **3.2 *Future NESC Meetings (2012 Edition)***

Although the 2007 edition of NESC is being issued essentially as this report is being written, efforts on the development of the subsequent 2012 edition are already being anticipated by Subcommittee 5. Due to the general interest in the effects of storm loads, such as hurricanes, and the effort required to properly consider the various aspects, Subcommittee 5 typically begins its meetings considerably earlier in the code cycle than most other subcommittees. Thus, initial meetings for development of the 2012 edition probably will begin in 2007. As a precursor, Working Group 5.7 of Subcommittee 5 (chaired by myself) will hold a panel session in January 2007 for the benefit of interested members of the power industry (IEEE Power Engineering Society, TP&C Subcommittee). The panel session will address the changes adopted in the 2007 edition, but will also discuss some of the proposals that were not accepted. The proposed (rejected) changes to Rule 250C, including the proposed extension to distribution structures, will be of particular interest, and will likely generate comments to be considered in the development of the 2012 edition.

## **4. Impact of Extending Rule 250C**

The unlimited application of Rule 250C to all poles would have a major impact on the cost and operations of the utilities and the third party attachers, and would likely significantly affect the system reliability and restoration efforts, as well as public safety – albeit not necessarily in the manner expected by the PSC.

### **4.1 *System Cost***

For electric utility-owned joint-use Grade N, Grade B or Grade C pole applications, the additional pole costs will depend upon the extent to which the proposed Extreme Wind load would exceed “reasonable” (albeit non-mandated) Grade N loads, and the already required Combined Ice and Wind load for Grade B or C applications for poles not exceeding 60 feet in height. Any increased strength requirement leads to stronger (larger diameter) poles, or a correspondingly greater number of poles (resulting in shorter span lengths), both of which would obviously be more expensive.

Figure 1 illustrates the relative pole strength in comparison to that currently required for the common Grade C joint-usage distribution application; e.g., including primary power



(> 750 volts) with telecommunications cables mounted below the power cables.<sup>5</sup> Assuming the pole does not exceed 60 feet in height (65 feet in length<sup>6</sup>), such a pole must be designed to the present Combined Ice and Wind Loading (NESC Rule 250B, Figure 250-1, Tables 250-1, 253-1 and 261-1A). For present purposes, a tangent line (no corner angles) is assumed, for which the design is based upon the ability to withstand the transverse wind loading. For Florida, located in the NESC Light Loading District (Figure 250-1), this corresponds to a wind speed of approximately 60 m.p.h., but with an additional overload/design factor of approximately 2-to-1 for Grade C, and 4-to-1 for Grade B. For Grade N, a 1-to-1 design factor is conveniently ("reasonably") assumed. For the proposed application of Extreme Wind requirements (NESC Rule 250C), the wind-speed for Florida ranges from less than 100 m.p.h. (assumed to be 95 m.p.h.) in north-central area, to as much as 150 m.p.h. at the southern tip.<sup>7</sup>

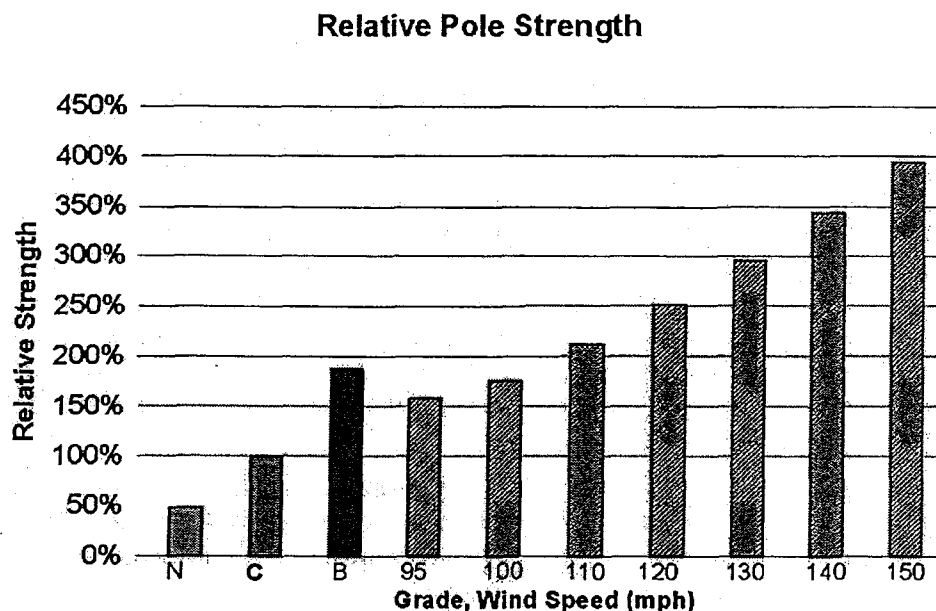


Figure 1  
Relative Distribution Pole Strength vs. Typical Grade C Strength  
Requirements (NESC-2002)

The three solid bars to the left side of Figure 1, labeled "N", "C" and "B", depict the relative magnitude of the present required pole strength for a Grade N, Grade C, or

<sup>5</sup> Grade B construction would typically be limited to special situations (such as railroad crossings and limited access highways).

<sup>6</sup> Wood poles are available in 5 foot increments, and are buried at a depth of 10% the length plus 2 feet, with a slightly greater depth for poles shorter than 40 feet; e.g., a 40-foot pole is buried at a depth of 6 feet, resulting in a 32 feet height above ground. (See ANSI-O5.1 wood pole standard.)

<sup>7</sup> A pole length of 40 feet is assumed. This parameter has only a minor effect on the results.

Grade B application. The seven cross-hatched bars to the right depict the relative magnitude of the required pole strength (which under the proposed rule would be the same for Grade N, C and B poles) due to Extreme Wind loads, at the wind speed indicated, should Rule 250C be directly extended to such applications. The results in Figure 1 thus show that the increased loading for an otherwise Grade C pole may be *increased* by a minimum of 50% (95 m.p.h.) or possibly as much as 300% (150 m.p.h.). In other words, the required strength, or number of poles, would be at least 1½ times -- and possibly as much as four times -- that currently required. For a Grade N pole application, the required strength would be at least three times -- and possibly as much as eight times -- a present reasonable design requirement. For the less common Grade B applications, the impact would not be realized for wind speeds less than 110 m.p.h.. Nonetheless, significant strength increases would be required for wind speeds exceeding 110 m.p.h., which are characteristic of significant portions of Florida, as shown in Figure 250-2(d).

Figure 2 illustrates the corresponding pole class that would be required, assuming a Class 4 pole is necessary for the reference Grade C application, and the same number of poles (or span length) is maintained. Similar to Figure 1, the three solid bars to the left side of Figure 2 depict the representative pole class for a Grade N, Grade C, or Grade B application. The seven cross-hatched bars to the right depict the required class pole corresponding to the PSC proposed application of the Extreme Wind loads (which would be the same for Grade N, C and B poles). A minimum increase of three class sizes (to Class 1) for Grade C would be required for the minimum 95 m.p.h. wind, and as much as eight class sizes (to Class H5) for the 150 m.p.h. case. A Class 7 pole would otherwise suffice for the Grade N construction. As above, the Grade B applications would be affected to a lesser degree, but the increased size would still be significant for wind speeds above 110 m.p.h.

The increased pole material costs, including shipping and storage, are directly related to the number of poles or pole size (class). For larger, stronger poles, increased installation costs for the heavier poles may also be anticipated. Furthermore, the availability of such larger size (diameter) poles may be an issue.

### Required Pole Class

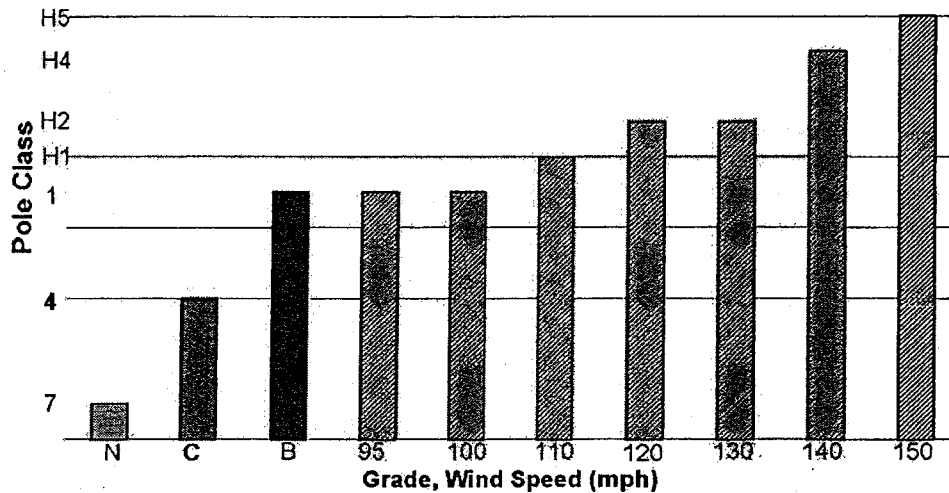


Figure 2  
Required Distribution Pole Class vs. Typical Grade C Strength Requirements (NESC-2002)

#### 4.2 Unintended Consequences

The imposition of the Extreme Wind requirement may result in unfortunate "unintended consequences," as sometimes occurs when changing long-standing practices that have generally been deemed successful. For example, as discussed above, the increased pole strength requirement would result in significantly stronger (stouter) poles or a larger number of more conventional size poles, corresponding to shorter spans. Such a practice would have a direct and negative impact on vehicular safety, and conflict with the objectives of the U.S. Department of Transportation, and presumably that of the DOTs of many states. The U.S. DOT is attempting to minimize the number of utility poles in order to reduce the incidence and severity of vehicular accidents. A greater number of poles, or stouter poles, would be contrary to such objectives. Thus, an attempt to modify a national safety code (*i.e.*, the NESC) to accomplish one objective may actually compromise public safety.

Other unintended consequences may also result from the introduction of the proposed Extreme Wind loading, due to a possible significant increase in the number of installed distribution poles along a given route. The June 8, 2006 Florida PSC Memorandum (page 5, Rollins) describes the likelihood that the supposedly less loaded individual poles would nonetheless be damaged in a hurricane, caused by the wind-blown debris and branches, resulting in the much more difficult, and time-consuming, recovery process to repair or reinstall many more poles.

Still another negative consequence relates to the engineering support associated with the implementation of the proposed Extreme Wind loads. The determination of the corresponding wind force is considerably more complicated than that of the existing transverse wind force based upon the present required Combined Ice and Wind loading. While such calculations are generally within the capability of experienced transmission engineers, with civil engineering training, they are beyond that of most distribution engineers. Indeed, one of the change proposals submitted for the 2007 edition was an attempt to simplify the engineering implementation of the Extreme Wind loads for even the applicable transmission applications. Although new or available software packages may alleviate the burden, there will be inevitable confusion and delays -- as well as possible errors in implementation -- in the design and installation of new facilities (including Verizon's fiber-optic networks), to the detriment of the consumers.

## **5. Recommendations**

My primary recommendation is that the Commission not alter the manner in which the NESC's extreme wind loading standards are applied. The NESC is a well-respected document that is generally recognized as having served the industry and public well. For this reason, the NESC Committee (e.g., Subcommittee 5, Strength & Loading) generally attempts to introduce significant changes in a gradual, evolutionary manner, in order to avoid or minimize the potential impact, including unintended negative consequences such as described above (Section 4.2). Thus, previous discussions within the NESC Committee (see Section 3.1 above) to extend the Extreme Wind loading to structures less than 60 feet tall (distribution poles), focused on a particular change proposal, developed within Subcommittee 5, that would limit the impact of such an otherwise potentially dramatic change. In particular, for the Light Loading District portion of the country, which includes Florida, the impact would have been insignificant. Nonetheless, based upon a multitude of industry comments objecting to even this diluted version of an Extreme Wind requirement for distribution poles throughout the country, this proposed change was not incorporated into the 2007 edition of the NESC.

Ideally, the Florida PSC should wait until the next code cycle of the NESC (2012 edition) before encouraging or requiring consideration of the NESC Extreme Wind loading. The related discussions within the NESC Committee during the development process would take into account the experiences during Hurricane Wilma, as well as other recent serious storms. Florida Power & Light, in particular, is well-represented on NESC Subcommittee 5. If the Florida PSC decides to change how the NESC's Extreme Wind loading standards are applied, it should be very cautious in the manner in which such a dramatic, controversial change is introduced. At the least, the Commission should attempt to limit the otherwise dramatic impact to as small a category of facilities as possible, or to reduce the magnitude of the impact. Thus, my alternative recommendation, in the event the Commission moves in this direction, is as follows:

- The proposed PSC rule should limit its scope to Grade B or Grade C applications of electric-only or joint-use poles owned by the electric utilities. Thus, Grade N applications -- which include joint-use poles with only secondary power (< 750

volts), as well as several categories of electric-only poles -- should be explicitly excluded from the proposed application of Rule 250C.

- The application of the NESC Extreme Wind load, as presently specified in NESC-2002, Rule 250C, should be modified to limit the quantitative impact to the affected distribution poles. For example, the reduced loads for Grade C construction incorporated into the latest (2007) edition of the NESC should be explicitly cited as consistent with the intent of PSC Rule 25-6034. For Grade C construction, the corresponding wind forces are reduced by as much as 25% compared to NESC-2002. NESC-2007 is being issued in August 2006, and is effective within six months (February 2007).
- The proposed PSC rule, preferably as modified above, should be applied on a trial basis, initially limited to a specified geographic area and a defined period (e.g., 1-2 years), in order to better understand the potential benefits and consequences of such a rule.

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## **APPENDIX 2**

### **About Outside Plant Consulting Services, Inc. (OPCS)**

**(Dr. Lawrence M. Slavin)**

Outside Plant Consulting Services, Inc. (OPCS) was established in the year 2002 to help meet the needs of the telecommunications and power industries in establishing standards, guidelines and practices for outside plant facilities and products. The OPCS Group provides related support services for field deployment, and product evaluation and analysis. Dr. Lawrence (Larry) M. Slavin, Principal of OPCS, has extensive experience and expertise in such activities, based upon his many years of service at AT&T/Lucent Bell Telephone Laboratories (Distinguished Member of Technical Staff) in telecommunications product design and development, followed by a career at Telcordia Technologies (Bellcore) in its research and professional service organizations.

As Principal Consultant and Manager/Director of the Network Facilities, Components, and Energy Group at Telcordia, Dr. Slavin was responsible for professional services related to the telecommunications industry. These activities included technical leadership in developing installation and construction practices and "generic requirements" documents, introducing new construction methods, and performing analyses on a wide variety of technologies and products (such as poles, duct, wire and cable, electronic equipment cabinets, flywheel energy storage systems and turbine-generators). Throughout his long career, he has had a leading role in the evolution of many telecommunications related fields and disciplines – including aerial and buried plant design and reliability; advanced construction and cable and duct placement techniques; copper pair, coaxial, and fiber-optic technology; flywheel energy storage systems; physical design and development of hardware and electronic and electro-optic systems (such as the "SLC 96" digital loop carrier); cable media and equipment reliability studies; exploratory fiber-optic hardware development; and systems engineering.

Dr. Slavin is a member of several subcommittees of the National Electrical Safety Code Committee, responsible for specifying safety standards for aerial and buried telecommunications and power facilities in the United States. He is also an active member and participant on the Accredited Standards Committee ASC-O5 ("ANSI-O5") for wood poles and products, as well as on several related committees of the American Society of Civil Engineers. In addition, Dr. Slavin is a Charter Member of the North American Society for Trenchless Technology, has been instrumental in the development of directional drilling standards, and directly supports training activities for the directional drilling industry at the Center for Underground Infrastructure and Research and Education (CUIRE) at Michigan State University. Specific present and recent industry activities are listed below.

## Industry Activities

- **National Electrical Safety Code Committee**
  - Represents the national telephone industry, via Alliance for Telecommunications Industry Solutions, ATIS
  - Executive Subcommittee
  - Main Committee
  - Subcommittee 4 (Overhead Lines – Clearances)
  - **Subcommittee 5 (Overhead Lines – Strength & Loading)**
  - Subcommittee 7 (Buried Lines)
- **Accredited Standards Committee ASC-O5**
  - ***ANSI O5.1, Wood Poles, Specifications and Dimensions***
  - ***ANSI O5.2, Wood Products, Structural Glued Laminated Timber for Utility Structures***
  - ***ANSI O5.3, Wood Products, Solid Sawn-Wood Products and Braces***
- **Pole Reliability Based Design (RBD) Committee, ASCE**
  - ***Reliability-Based Design of Utility Pole Structures***
- **Distribution Pole Standard Committee, ASCE**
- **Committee F17 on Plastic Piping Systems, ASTM**
  - Subcommittee F17.67 on Trenchless Plastic Pipeline Technology
  - Task Group Leader for development of HDD Standard ASTM F1962
  - ***ASTM F1962, Standard Guide for Use of Maxi-Horizontal Directional Drilling for Placement of Polyethylene Pipe or Conduit Under Obstacles, Including River Crossings***
- **Trenchless Installation of Pipelines (TIPS) Committee, ASCE**
  - ***ASCE Manual of Practice for Pipe Bursting Projects***
- **Center for Underground Infrastructure and Research and Education (CUIRE) at Michigan State University**
  - Industry Advisory Board
- **Trenchless Technology Center, Louisiana Tech University**
  - Industry Advisory Board
- **North American Society for Trenchless Technology (NASTT)**
  - Charter Member
  - Chair of Directional Drilling Subcommittee
- **Missouri Western State College**
  - HDD Steering Committee

ORIGINAL

FLORIDA PUBLIC SERVICE COMMISSION

Proposed rules governing placement of new ) Docket No. 060172-EU  
electric distribution facilities underground, and )  
conversion of existing overhead distribution )  
facilities to underground facilities, to address )  
effects of extreme weather events )  
\_\_\_\_\_ )

Proposed amendments to rules regarding ) Docket No. 060173-EU  
overhead electric facilities to allow more )  
stringent construction standards than required )  
by National Electric Safety Code )  
\_\_\_\_\_ ) Filed: July 28, 2006

**BELLSOUTH'S REQUEST FOR SCHEDULING OF A PUBLIC HEARING  
PURSUANT TO FLORIDA STATUTES § 120.54(3)(c)(1) AND RULE 28-  
103.004, FLORIDA ADMINISTRATIVE CODE**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-103.004, Florida Administrative Code, and Florida Statutes § 120.54(3)(c)(1), hereby timely requests the Florida Public Service Commission ("Commission") to schedule a public hearing on all issues related to proposed new Rules 25-6.0341, 25-6.0342, and Rule 25-6.0343, and proposed amendments to Rules 25-6.034, 25-6.064, and 25-6.078, and 25-6.115, Florida Administrative Code (collectively "Proposed Rules").<sup>1</sup> In support of its request, BellSouth states as follows:

**INTRODUCTION**

1. BellSouth is an incumbent local exchange company doing business in the State of Florida whose regulated operations are subject to the jurisdiction of the Commission pursuant to Chapter 364, Florida Statutes.

<sup>1</sup> BellSouth acknowledges that the Commission, *sua sponte*, set proposed Rules 25-6.0341, 25-6.0342, and 25-6.0343 directly for hearing in Order No. PSC-06-0610-PCO-EU. However, in abundance of caution and in order to preserve all of BellSouth's procedural rights, BellSouth seeks a public hearing on these proposed rules with this Request for Hearing.

DOCUMENT NUMBER-DATE

06748 JUL 28 08

FPSC-COMMISSION CLERK



2. BellSouth's principal place of business is 675 West Peachtree Street, N.E., Suite 4500, Atlanta, Georgia 30375. Pleadings and process may be served upon:

BellSouth Telecommunications, Inc.  
James Meza, III  
Manuel A. Gurdian  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558  
[james.meza@bellsouth.com](mailto:james.meza@bellsouth.com)  
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[nancy.sims@bellsouth.com](mailto:nancy.sims@bellsouth.com)

3. The Commission is currently engaged in rulemaking proceedings in Docket No. 060173-EU and Docket No. 060172-EU. According to the Commission, the new rules and amendments being considered in these dockets "are intended to strengthen Florida's electrical infrastructure and decrease restoration times following extreme weather events." Order No. PSC-06-0610-PCO-EU. The Proposed Rules were published in the Florida Administrative Weekly on July 7, 2006.

4. Florida Statutes § 120.54(3)(c)(1) provides:

If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency..., if requested by an affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted at a public

hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

5. Similarly, Rule 28-103.004(3), Florida Administrative Code, provides that an "agency must conduct a public hearing if the proposed rule does not relate exclusively to practice or procedure, and if an affected person timely submits a written request." See also *Cortese v. School Bd. of Palm Beach County*, 425 So.2d 554 (Fla. 4<sup>th</sup> DCA 1982) (Persons who are "affected" may present evidence and argument, and request a public hearing during the more informal proceedings for adoption of a proposed rule).

6. Pursuant to Section 120.54(3)(c)(1), Florida Statutes, and Rule 28-103.004, Florida Administrative Code, BellSouth has timely filed this request for public hearing.

7. As stated in more detail below, BellSouth is affected by the Proposed Rules because:

a. BellSouth owns approximately 459,000 poles in the state of Florida, with 307,459 of these bearing attachments (lines, transformers, etc.) by electric utilities.

b. BellSouth's lines and facilities are attached to approximately 756,000 electric utility poles, including those owned by investor-owned companies, municipal electrics, and rural electric cooperatives, throughout the state of Florida.

c. BellSouth has joint use and license agreements with electric utility, cable, and communications providers for installation and operation of equipment on utility poles.

**BELLSOUTH REQUESTS A PUBLIC HEARING ON THE  
FOLLOWING PROPOSED RULES**

8. In general, the Proposed Rules fail to take into account the national uniform standards currently governing pole construction and attachments and, unacceptably, render the electric utilities the policy makers. The Proposed Rules will demonstrably affect BellSouth's pole attachment rental rates and operational burdens and potentially impact service and reliability. Additionally and critically, unlike the electric utility monopolies that can pass any increased costs in complying with the Proposed Rules to their customers via rate of return regulation, BellSouth is price-regulated and thus would be economically disadvantaged in complying with the Proposed Rules.

**25-6.034**

9. Section 25-6.034(2) allows each electric utility to establish and maintain its own construction standards for overhead and underground facilities. In providing for company-by-company standards, the Commission eviscerates the National Electric Safety Code ("NESC") as the uniform national standard by which power and telephone companies operate. Further, the proposed rule localizes decision-making over the national telecommunications network. The fact that each electric utility may set differing standards will impact the design and construction processes of the attaching entities, like BellSouth. This will likely translate into increased costs and may impact service reliability for BellSouth.

10. Section 25-6.034(4)(b) expressly grandfathers electric facilities constructed prior to the 2002 version of the NESC, providing that such facilities

are governed by the edition of the NESC in effect at the time of the initial construction. The specific reference to electric facilities implies that no such grandfathering protection is contemplated for the facilities of other pole users. As is standard in joint use agreements, the attachments of *all* pole users should be governed by the version of the NESC that was in effect when the attachment was placed.

11. This section could also be read to justify or even require random inspections of third-party attachments by the electric companies to ensure *maintenance* of attachments in compliance with the latest version of the Code, allowing the electric companies to demand upgrades of attachments or changing out of poles, potentially at considerable ongoing (capital and expense) cost to attachers, like BellSouth.

12. Section 25-6.034(5) provides that each electric utility will establish guidelines and procedures governing the applicability and use of extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for three different enumerated classes of construction: new construction, "major planned work" and "critical infrastructure facilities."

13. To the extent that existing joint use or pole attachment agreements require attaching entities to contribute to the cost of pole replacements and upgrade plant to current NESC standards, there is a potential for electric utilities to attempt to use Proposed Rule 25-6.034(5) to shift all of the costs to others.

14. Moreover, the proposed rule is overbroad and vague as neither "major planned work" nor "critical infrastructure facilities" are defined. Planned

work that is "major" could include distance in feet or miles, number of lanes, length of construction or some other factor. Similarly, "critical infrastructure facilities" could include electrical substations, gas stations, community hospitals or neighborhood walk-in care facilities. The difference would directly and significantly impact BellSouth's costs. In both instances, again, this section disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities carte blanche over pole attachments.

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

16. Section 25-6.034(7) requires the electric utilities to "seek input" from other entities and provides that all disputes shall be resolved by the Commission. However, BellSouth is concerned that this provision does not adequately protect the interests of BellSouth or other attaching entities as the electric utilities are not required to collaborate with or obtain the consent of the attaching entities in developing and establishing construction standards for overhead and underground facilities. Further, as more fully discussed below, the Commission does not have jurisdiction to regulate pole attachment construction or disputes.

#### **25-6.0341**

17. Proposed Rule 25-6.0341 calls for electric utilities, as a general rule, to place overhead and underground distribution facilities adjacent to public roads in the front of customers' premises. Depending on the situation, this would require BellSouth to expend significant time, manpower and cost to obtain an easement from the property owner (as the new owner of the electric company's pole), or relocate and install new facilities in public rights-of-way. Proposed Rule 25-6.0341 fails to consider the additional costs of purchasing old used poles, the administrative costs attendant thereto and additional increased pole inspection costs.

18. Proposed Rule 25-6.0341 also fails to take into account the significant potential for cable cuts, facility damage, attendant outages and public safety issues that will likely arise when the electric utilities seek to place facilities beneath the significant number of BellSouth facilities that already exist in front easements or in the public rights-of-way.

19. At an absolute minimum, subsection (3) of Proposed Rule 25-6.0341, relating to aerial and underground conversions, should be limited to situations where both power and telecommunications are converting aerial facilities underground to allow for coordination of safe placement and mutually cost-efficient work efforts.

#### **25-6.0342**

20. Proposed Rule 25-6.0342 requires electric utilities to establish and maintain standards and procedures for attachments by others to transmission

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

21. First, the Commission does not have jurisdiction over pole attachments and, thus, the Commission does not have the authority to adopt Proposed Rule 25-6.0342 to the extent it regulates said attachments. See Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980). The issue of the Commission's authority over pole attachments was squarely before the Florida Supreme Court in 1980 when it decided Teleprompter Corp. v. Hawkins. In deciding this issue, the Supreme Court addressed 47 U.S.C. § 224, which is the federal statute granting the Federal Communications Commission ("FCC") authority to regulate pole attachments. Under 47 U.S.C. § 224, the FCC has jurisdiction over pole attachments unless a state commission certifies the following to the FCC: (1) that it regulates rates, terms, and conditions for pole attachments; and (2) that in so regulating such rates, term, and conditions, the State has the authority to consider and does consider the interests of the

subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services. See 47 U.S.C. § 224 (c)(2).

22. In Hawkins, the Commission, pursuant to 47 U.S.C. § 224, notified the FCC that it had authority to regulate pole attachment agreements. This declaration of authority was challenged on the grounds that the Commission did not have the authority under Florida law to regulate the agreements or the interests of cable subscribers. In quashing the Commission's certification, the Florida Supreme Court relied on the Commission's own prior finding in Southern Bell Tel. & Tel. Co., 65 PUR 3d 117, 119-20 (Fla.Pub.Serv.Comm'n 1966) that it lacked authority over pole attachments:

In 1913, when the Florida legislature enacted a comprehensive plan for the regulation of telephone and telegraph companies in this state, and conferred upon the commission authority to administer the act and to prescribe rules and regulations appropriate to the exercise of the powers conferred therein, the science of television transmission and the business of operating community antenna television systems were not in existence. The 1913 Florida legislature, therefore, could not have envisioned much less have intended to regulate and control the television transmission facilities and services with which we are concerned....*We must conclude...that the Florida Public Service Commission has no jurisdiction or authority over the operations of community antenna television systems and the rates they charge, or the service they provide to their customers.*

Id. at 649-50 (emphasis added).

23. Using this analysis, the Court recognized that the legislature had not subsequently conferred any relevant jurisdiction upon the Commission between 1913 and 1980. Accordingly, the Court found that the Commission



lacked jurisdiction over pole attachments. Likewise, there has been no statutory grant of jurisdiction over pole attachments since 1980. As such, the Commission lacks jurisdiction over pole attachments, and the Commission should consider this lack of jurisdiction in evaluating whether it can adopt Proposed Rule 25-6.0342.

24. Second, Proposed Rule 25-6.0342 is, at best, premature and, at worst, renders prior Orders of this Commission a nullity. Just five (5) months ago, the Commission ordered the electric utilities (and telecommunications companies) to inspect their poles every 8 years and report their findings. *See In re: Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection* program, Docket No. 060078-EI, Order No. PSC-06-0144-PAA-EI (Issued February 27, 2006). In ordering these pole inspections, the Commission expressly required the electric utilities to conduct “both remaining strength assessments as well as pole attachment loading assessments.” *Id.* at p.8.

25. Further, the Commission imposed significant and detailed reporting requirements upon the parties. The Commission ordered submission of an initial “comprehensive wood pole inspection plan” in order to “understand the nature of each electric IOU’s pole inspection program on a going-forward basis.” *Id.* at p.9. The Commission declared: “By requiring that such programs be provided in advance of the pole inspection data collection period, we can be assured that any issues that may arise...can be brought to our immediate attention.” *Id.*

26. The Commission also mandated an annual report of pole inspections, to contain:

1) A review of the methods the company used to determine NESC compliance for strength and structural integrity of the wood poles included in the previous year's annual inspections, taking into account pole loading where required;

\* \* \*

3) Summary data and results of the company's previous year's transmission and distribution wood pole inspections, addressing the strength, structural integrity, and loading requirements of the NESC.

*Id.* at p. 10.

27. Per the above-referenced Commission Order, the first report is due March 1, 2007. Yet, without the benefit of even the first report submitted or any data collected and analyzed, Proposed Rule 25-6.0342 requires electric utilities to adopt pole load capacity and engineering standards and procedures.

28. Third, to the extent this provision mandates that the Attachment Standards and Procedures "meet or exceed the NESC," it unnecessarily implicates and complicates a revision that is currently underway. The Proposed Rules are based upon the 2002 NESC guidelines. These guidelines are updated on a five-year cycle, such that the next update can be expected in 2007. Since the electric utilities have to establish their construction standards within six months from the adoption of the Proposed Rules, it would appear more efficient and appropriate at a minimum to await the issuance of the 2007 NESC guidelines to obviate another mandate from this Commission for revisions to newly-issued standards.

29. Fourth, like previous sections, Proposed Rule 25-6.0342 disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities carte blanche over pole attachments. While problems have occurred with certain providers failing to comply with applicable safety requirements when installing pole attachments, these problems are fairly isolated and do not warrant drastic changes to the current procedures in place to ensure safety and reliability uniformly. Additionally, the chief stress on the distribution infrastructure results from the significant load placed by the power industry—not telephone or cable. Moreover, additional factors (such as vegetation) affect the reliability of electric infrastructure. Addressing only attachments paints a misleading, lopsided picture.

30. For example, Proposed Rule 25-6.0342 could also be read to justify, or even require, random inspections of third-party attachments by the electric utilities to ensure attachments comply with the latest version of the NESC. Electric utilities could demand upgrading/rearranging/removing of attachments, or changing out of poles, potentially at considerable cost (capital and expense) to the other attachers. Not only would such a requirement shift significant costs to the attaching entities, but it could affect existing joint use and pole attachment agreements that already govern this subject matter.

31. Finally, to the extent that joint use agreements expressly address, among other things, which entity is responsible to pay for the costs of upgrades, replacement, and taller/stronger poles, the Proposed Rules could have an unintended consequence. Specifically, while BellSouth does not concede the

argument and specifically claims that such an argument would be inappropriate<sup>2</sup>, the electric utilities could attempt to use the Commission's Proposed Rules to claim that, under a joint use agreement, BellSouth is responsible for some portion of the costs of the upgrades -- costs that the electric utilities ordinarily pay -- despite the fact that BellSouth would not be the cost-causer nor the beneficiary of the taller or stronger poles. Such efforts clearly should not be countenanced and must be prohibited.

#### **25-6.0343**

32. Section 25-6.0343 allows each municipal electric utility and rural electric cooperative to establish and maintain its own construction standards for overhead and underground facilities, including Attachment Standards and Procedures, again creating a lack of uniformity. Since BellSouth serves areas in which investor owned utilities, municipal electric utilities and rural electric cooperatives serve customers, BellSouth could ostensibly be required to adhere to differing standards within one wire center or municipality. Additionally, the fact that each electric utility may set differing standards will impact the design and construction processes of the attaching entities, which will likely translate into increased costs and may impact service reliability.

33. As discussed more fully above, the Commission does not have jurisdiction over pole attachments and, thus, the Commission does not have the authority to adopt Proposed Rule 25-6.0343(3), which addresses third party

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<sup>2</sup> By acknowledging the existence of this argument, BellSouth does not concede it or believe that it is appropriate. In fact, in an abundance of caution, BellSouth denies the argument and reserves all rights and defenses associated with its Joint Use Agreements and any claim that the Proposed Rules impact said agreements.

Attachment Standards and Procedures, to the extent it regulates said attachments. See Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980).

**25-6.064**

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

**25-6.078**

35. To the extent a utility's policy filed pursuant to Proposed Rule 25-6.078 affects the installation of underground facilities in new subdivisions or the utility's charges for conversion implicates new construction, BellSouth has the same concerns with Proposed Rule 25-6.078 that are discussed above with regard to Proposed Rule 25-6.034.

**25-6.115**

36. BellSouth recognizes that several electric utilities have tariffs on recovering the costs of converting facilities. Proposed Rule 25-6.115 incorporates language on Undergrounding Fee Options that includes the recovery of the costs of converting facilities from the customer. However, this Rule does not take into

account that, unlike the electric utility monopolies that can pass along any costs incurred in conversion to their customers via rate of return regulation, BellSouth is price-regulated and will be economically and competitively disadvantaged in adding such costs to the bills of its customers. Thus, the distinction between the rate of return regulated industry and the price regulated industry merits a distinction in the manner in which such charges are handled.

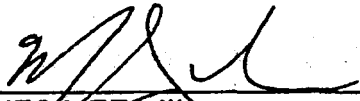
### **CONCLUSION**

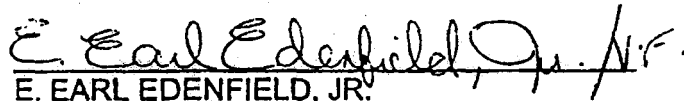
Based upon the foregoing, it is clear that the interests of BellSouth are affected by the Proposed Rules. Moreover, it is also clear that the Commission, in order to make a fully informed decision, must initiate the requested public hearing which will unequivocally yield a more complete record and understanding of the issues and potential solutions.

WHEREFORE, BellSouth requests that a public hearing pursuant to Section 120.54(3)(c)(1), Florida Statutes, and Rule 28-103.004, Florida Administrative Code, be held before the Commission and that the parties to the hearing be permitted the opportunity to present evidence, argument and oral statements on the Proposed Rules.

Respectfully submitted this 28th day of July, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
\_\_\_\_\_  
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643063v2

1 BELL SOUTH TELECOMMUNICATIONS, INC.

2 DIRECT TESTIMONY OF KIRK SMITH

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET NOS. 060172-EU and 060173-EU

5 AUGUST 4, 2006

6 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH  
7 TELECOMMUNICATIONS, INC. ("BELL SOUTH"), AND YOUR BUSINESS  
8 ADDRESS.

9  
10 A. My name is Kirk Smith. I am employed by BellSouth as Supervising Manager –  
11 Network Staff Support on the Network Operations and Industrial Engineering Staff  
12 for the nine-state BellSouth region. My business address is 3535 Colonnade  
13 Parkway, Rm. W3D, Birmingham, Alabama 35243.

14  
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND  
16 EXPERIENCE.

17  
18 A. I graduated from Auburn University in 1973 with a Bachelor of Science degree in  
19 Industrial Engineering. I became employed by BellSouth in June 1973. I have held  
20 various line and staff positions with the Company, including positions in  
21 Construction, Engineering, Installation, Maintenance, Mechanization (Deployments  
22 and Support) and Contract Administration (Outside Plant Construction, Facility  
23 Locates, Engineering and Joint Use). I managed Regional Emergency Generator



1 Pools that deploy emergency generators in large scale power outages throughout  
2 BellSouth's nine-state region. I provided support in my capacity as Manager-  
3 Network Operations Support for BellSouth to the BellSouth Regional Emergency  
4 Control Center and have field experience in storm restoration, including hurricanes,  
5 ice storms and tornadoes. I assumed my current position as Supervising Manager -  
6 Network Staff Support on the Network Operations and Industrial Engineering Staff  
7 in October 2002, and my current responsibilities include supervising a team of  
8 BellSouth managers responsible for bidding and negotiating contracts for Outside  
9 Plant Construction, Facility Locating, Engineering, and Joint Use. The team is also  
10 responsible for administration of CATV license agreements, agreements for CLECs  
11 pertaining to pole attachments and conduit occupancy, agreements for attachments  
12 to towers on some central offices, and BellSouth regional damage prevention  
13 activities. I participated at the workshop held in this matter on July 13, 2006. I also  
14 participated in the workshop held in Docket 060077-TL regarding the mandated  
15 pole inspection cycle on February 21, 2006.

16  
17 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

18  
19 A. The purpose of my testimony is to explain how proposed new Rules 25-6.0341 and  
20 25-6.0342, and proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and  
21 25-6.115 of the Florida Administrative Code (the "Proposed Rules")<sup>1</sup> will impact

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<sup>1</sup> Pursuant to Order No. PSC-06-0646-PCO-EU, BellSouth is required to file comments as to Proposed Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.78, and 25-6.115 on August 11, 2006. For ease of convenience, BellSouth files comments for all of the Proposed Rules it takes issues with herein, except for Proposed Rule

1 BellSouth from an operational and cost perspective.<sup>2</sup> BellSouth owns  
2 approximately 459,000 poles in the state of Florida, with 307,459 of these bearing  
3 attachments placed by electric utilities. BellSouth's lines and facilities are attached  
4 to approximately 756,000 electric utility poles, including poles owned by investor-  
5 owned companies, municipal electrics and rural electric cooperatives. While the  
6 Proposed Rules, on their face, impose requirements on electric utilities, the  
7 Proposed Rules will significantly impact BellSouth and other entities that attach to  
8 electric utility poles.

9  
10 Q. PLEASE PROVIDE AN OVERVIEW OF BELL SOUTH'S CONCERNS  
11 REGARDING THE PROPOSED RULES.

12  
13 A. BellSouth appreciates the Commission's interest in minimizing widespread power  
14 outages in the state following hurricanes or other extreme adverse weather  
15 conditions. BellSouth is concerned, however, that the Proposed Rules are  
16 premature, upset the status quo of using the National Electric Safety Code  
17 ("NESC") as the uniform national standard by which power and telephone  
18 companies operate, and give each power company the license to unilaterally create  
19 its own construction standards for overhead and underground facilities. BellSouth is  
20 also concerned that the Florida Public Service Commission ("Commission") has not  
21 adequately assessed or considered the operational and cost implications the

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25-6.0343. Per Order No. PSC-06-0632-PCU-EU, Rule 25-6.0343 will be addressed in a separate hearing, with initial comments due on September 8, 2006.

<sup>2</sup> My testimony on costs is based on estimates and assumptions because, until such time as we know how each electric utility will implement the Proposed Rules, it is impossible to identify the particular costs that BellSouth may experience.

1 Proposed Rules will have on BellSouth and other attaching entities, and; that,  
2 through the Proposed Rules, the Commission is effectively regulating pole  
3 attachments, even though, as explained by Ms. Tipton, it has no jurisdiction to do  
4 so. Finally, pole attachments are currently governed by joint use and pole license  
5 agreements between pole owners and attaching entities. The Proposed Rules will  
6 likely impact, and could interfere with, these contracts.

7  
8 Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE PROPOSED  
9 RULES ARE PREMATURE.

10  
11 A. Just six months ago, in February 2006, the Commission ordered electric utilities and  
12 telecommunications companies to inspect their poles every 8 years and conduct  
13 “both remaining strength assessments as well as pole attachment loading  
14 assessments.” *See In re: Proposal to require local exchange telecommunications*  
15 *companies to implement ten-year wood pole inspection program*, Docket No.  
16 060077-TL, Order No. PSC-06-0168-PAA-TL (Issued March 1, 2006) (hereinafter  
17 “*Telecom Inspection Order*”) and *In re: Proposal to require investor-owned electric*  
18 *utilities to implement ten-year wood pole inspection program*, Docket No. 060078-  
19 EI, Order No. PSC-06-0144-PAA-EI (Issued February 27, 2006) (hereinafter  
20 “*Electric Utility Inspection Order*”). The Commission also imposed significant and  
21 detailed reporting requirements on the parties. Specifically, both industries had to  
22 file an initial “comprehensive wood pole inspection plan.” *See Telecom Inspection*  
23 *Order* at p. 11; *see also Electric Utility Inspection Order* at p. 11. They also have to

1 file an annual report on a going forward basis that includes a review of the methods  
2 we used to determine NESC compliance for strength and structural integrity (taking  
3 into account pole loading where required), and summary data and results of the prior  
4 year's inspections, addressing the strength, structural integrity, and loading  
5 requirements of the NESC. *See Telecom Inspection Order* at p. 9; *see also Electric*  
6 *Utility Inspection Order* at p. 10. From participating in the Commission's workshop  
7 on the proposed pole inspection plan and reading the *Telecom Inspection Order* and  
8 the *Electric Utility Inspection Order*, I understood that one of the primary purposes  
9 of the pole inspection process was for pole owners to review their poles to assure  
10 that the poles are "reasonably robust" and that pole loadings are appropriate,  
11 presumably so that if problems were identified, they could be addressed.

12  
13 BellSouth worked very successfully with several major electric companies in the  
14 State to approach this pole inspection process in a joint fashion. The early results of  
15 the pole inspections are just now starting to come in, and the first report is due to the  
16 Commission in March 2007. Instead of first reviewing the data before  
17 implementing new rules, the Commission has adopted rules which result in electric  
18 companies adopting new overhead construction, pole loading capacity, and  
19 engineering standards and procedures. Indeed, the Proposed Rules specifically call  
20 for electric utilities to adopt standards for third party pole attachments that "meet or  
21 exceed" NESC requirements, presupposing that third-party attachments on poles  
22 cause safety and reliability problems. There has been no evidence presented to the  
23 Commission, nor any data compiled, indicating that this is the case. The Proposed

1 Rules do not take into account that the chief stress on the distribution infrastructure  
2 results from the significant load placed by the power industry – not telephone or  
3 cable. Moreover, additional factors, such as vegetation, affect the reliability of the  
4 electric infrastructure. Without reviewing the pole inspection data and looking at all  
5 of these factors, the Commission is putting the cart before the horse.

6  
7 Additionally, as the Commission is aware, BellSouth owns approximately 40% of  
8 the poles in its serving area in the State. These Proposed Rules, therefore, do not  
9 address a large percentage of Florida's poles and the attachments on those poles. It  
10 seems logical and more efficient for the Commission to collect data from the  
11 mandated pole inspection process and conduct a comprehensive analysis, taking into  
12 account the interests and concerns of all pole owners and attaching entities, their  
13 respective differences (i.e., price cap regulated vs. rate-of-return regulated), before  
14 adopting rules that upset long-standing uniform construction standards that, on their  
15 face, apply only to a portion of the poles in the State.

16  
17 Q. PLEASE EXPLAIN BELL SOUTH'S CONCERNS WITH THE PROPOSED  
18 AMENDMENTS TO RULE 25-6.034.

19  
20 A. Both the power and telecommunications industries currently follow the NESC as the  
21 rule of thumb, nationally. The Proposed Rules alter that national uniform scheme  
22 and allow each power company to set its own standards. Specifically, Proposed  
23 Rule 25-6.034(2) allows each investor-owned electric utility to establish and

1 maintain its own construction standards for overhead and underground facilities.

2 Given this broad discretion, electric utilities may use the Proposed Rules as an

3 opportunity to enhance their infrastructure and pass the associated costs along to

4 attaching entities. For instance, the electric utilities could demand that attachments

5 be upgraded, rearranged or removed, or that poles be replaced, and then attempt to

6 impose those costs on attaching entities, like BellSouth, despite the fact that

7 BellSouth might not be the cost-causer or the beneficiary of the taller or stronger

8 poles. In particular, to the extent that joint use agreements expressly address,

9 among other things, which entity is responsible to pay for the costs of upgrades,

10 replacement, and taller/stronger poles, the Proposed Rules could have an unintended

11 consequence. While BellSouth does not concede the argument and specifically

12 claims that such an argument would be inappropriate<sup>3</sup>, the electric utilities could

13 attempt to use the Commission's Proposed Rules to claim that, under existing joint

14 use agreements, BellSouth is responsible for some portion of the costs of the

15 upgrades -- costs that the electric utilities ordinarily pay per the agreements --

16 despite the fact that BellSouth would not be the cost-causer nor the beneficiary of

17 the taller or stronger poles.

18  
19 The electric companies might also attempt to use their leverage as the majority pole

20 owners to amend existing agreements so that they can recover the costs resulting

---

<sup>3</sup> By acknowledging the existence of this argument, BellSouth does not concede it or believe that it is appropriate. In fact, in an abundance of caution, BellSouth denies the argument and reserves all rights and defenses associated with its joint use agreements and any claim that the Proposed Rules impact said agreements.

1 from the Proposed Rules. This is surely an unintended consequence of the Proposed  
2 Rules which needs to be considered.

3  
4 The Commission should be cognizant of this cost-shifting risk, which potentially  
5 results in the electric utilities recovering all of the additional costs mandated by the  
6 Proposed Rules from attaching entities, and the electric utility rate payers through  
7 rate-of-return regulation.

8  
9 Additionally, if electric utilities place new taller or stronger poles, BellSouth and  
10 other attaching entities will certainly face higher pole rental rates as electrics will  
11 argue that their average historical pole costs and associated carrying costs have  
12 increased. To the extent this does occur and as later referenced in my testimony  
13 regarding Proposed Rule 25-6.064, BellSouth should receive a credit or reduction  
14 against the historical cost of the electric utility's average historical pole cost for the  
15 customers' contribution-in-aid of construction, and payments made by other  
16 attachers, to ensure that pole rental fees are not further skewed.

17  
18 Furthermore, the fact that the Proposed Rules allow each of the 40-plus electric  
19 utilities in Florida to set its own construction standards will also impact the design  
20 and construction processes of attaching entities, like BellSouth, and will certainly  
21 lead to cost increases that are not insignificant. For example, in implementing the  
22 Proposed Rules, the electrics may decide to enhance their infrastructure by placing  
23 non-wood poles, like steel, fiberglass or concrete poles. Currently, BellSouth

1 technicians are not adequately equipped with the tools to place attachments on these  
2 types of poles. Taking into account BellSouth providing its technicians with the  
3 proper tools and training, and the increase in the time it would take to place  
4 attachments on these poles, BellSouth's cost to place attachments could increase by  
5 approximately \$55 per attachment.

6  
7 BellSouth will likely not only be faced with the increased expense of designing and  
8 installing facilities to meet standards that are excessive in light of its infrastructure  
9 requirements, but we will also incur the added costs of training our thousands of  
10 employees on the potential 40-plus differing standards and any subsequent revisions  
11 to those standards. BellSouth technicians assigned to one wire center generally  
12 work on poles owned by multiple power companies operating within the  
13 geographical boundaries of that wire center. Currently, technicians rely on the  
14 NESC as the uniform construction standard. Under the Proposed Rules, each  
15 electric utility within the wire center boundaries could have its own set of standards.  
16 Also, though less common, as BellSouth places facilities, especially aerial facilities,  
17 it could move from one electric company's serving area into another such that poles  
18 one through five in a pole line might be governed by one power company's  
19 standards and poles six through ten in the same pole line, by another. It will be a  
20 challenge to adhere to differing standards within one wire center and communicate  
21 each power company's differing standards to the field technicians to ensure  
22 compliance.



1        Additionally, changes in construction standards and procedures could translate into  
2        a significant increase in BellSouth's workload. The Company might have to hire  
3        additional management and non-management employees, as well as buy more  
4        equipment and vehicles. We are unable to estimate the potential increase in these  
5        types of expenses because, again, we do not yet know how the electric utilities will  
6        implement the Proposed Rules.

7  
8        To add to the uncertainty, there are no guidelines governing how often an electric  
9        utility can revise its standards or how quickly BellSouth and other attachers would  
10       have to change their operations to comply with those revisions. As a point of  
11       interest, Proposed Rule 25-6.034(4) contemplates that the electric utilities use the 2002  
12       edition of the NESC as a baseline for developing their individual construction  
13       standards. My understanding is that the NESC is revised every 5 years, so we can  
14       expect an updated edition in 2007. According to the Proposed Rules, the electric utilities  
15       have 6 months to develop construction standards, putting their deadline in 2007. At  
16       a minimum, the Commission should consider postponing adoption of the Proposed  
17       Rules until it has had a chance to review the 2007 edition of the NESC to avoid  
18       another mandate from this Commission for changes to the electric utilities' newly-  
19       issued standards.

20  
21       BellSouth is also concerned that Proposed Rule 25-6.034(4)(b) expressly  
22       grandfathers electric facilities constructed prior to the 2002 edition of the NESC,  
23       providing that such facilities are governed by the edition of the NESC in effect at

1 the time of the initial construction. The specific reference to the electric facilities.  
2 implies that the pre-2002 facilities of the other attaching entities do not enjoy the  
3 same grandfathering protection. This is contrary to standard language in joint use  
4 contracts that the attachments of all pole users should be governed by the edition of  
5 the NESC in effect at the time the attachment was placed.

6  
7 Further, Proposed Rule 25-6.034(4)(b), together with Proposed Rules 25-6.0342 and  
8 25-6.0343 which require electricians to establish and maintain standards and  
9 procedures for third-party attachments, could be read to justify, or even require,  
10 random inspections of third-party attachments by the electric utilities to ensure that  
11 third party attachments comply with the latest edition of the NESC and the electric  
12 utilities' standards. The electric utilities would likely try to pass the cost of these  
13 inspections on to the attaching entities – again, through a creative, unreasonable  
14 interpretation of an existing provision in the joint use and pole attachment license  
15 agreements, or by using their leverage to amend those agreements.

16  
17 Moreover, Proposed Rule 25-6.034(5) provides that each investor-owned utility  
18 shall “establish guidelines and procedures governing the applicability and use of the  
19 extreme wind loading standards to enhance reliability and reduce restoration costs  
20 and outage times” for three different classes of construction: new construction,  
21 “major planned work” and “targeted critical infrastructure facilities.” The Proposed  
22 Rules are overbroad and vague because these terms are not defined. Planned work  
23 that is “major” could include distance in feet or miles, number of lanes, length of

1 construction or other factors. "Targeted critical infrastructure" could include  
2 electrical substations or gas stations, all community hospitals or some neighborhood  
3 walk-in facilities. Again, the Proposed Rules give each electric utility *carte blanche*  
4 to determine where extreme wind loading standards will be applied.

5  
6 Proposed Rule 25-6.034(6) requires electric utilities to establish guidelines and  
7 procedures to prevent damage to underground and overhead facilities from flooding  
8 and storm surges. The Commission should consider the impact of this proposed rule  
9 on all entities in these geographical areas with underground and overhead facilities,  
10 not just electric utilities.

11  
12 Proposed Rule 25-6.034(7) requires the electric utilities to "seek input" from  
13 attaching entities when developing construction standards, but the rule does not  
14 require that the electric utilities collaborate with, or obtain the approval of, the  
15 attaching entities. Thus, on a case by case basis, BellSouth will have to balance  
16 whether to install attachments in accordance with construction standards it may not  
17 agree with, or seek relief from the Commission (assuming the Commission had  
18 jurisdiction), presumably with the expense and burden of proving to the  
19 Commission why the standards in question are unreasonable. I anticipate that  
20 giving the electric utilities broad discretion over construction standards, with no  
21 parameters and no mandated level of collaboration from the attaching entities, will  
22 likely result in contentious relationships between the parties when, in fact, it is in the  
23 best interest of the public for them to act in cooperation.

1 Q. PLEASE EXPLAIN BELL SOUTH'S CONCERNS WITH PROPOSED NEW  
2 RULE 25-6.0341.

3  
4 A. Proposed Rule 25-6.0341 calls for electric utilities, as a general rule, to place  
5 overhead and underground facilities adjacent to public roads in front of customers'  
6 premises. If the electric utility moves its aerial facilities from the rear of a property  
7 to a pole line in the front, BellSouth would have to decide whether to stay on the  
8 abandoned pole, or relocate to the new pole. It would cost BellSouth an average of  
9 \$250 - \$300 per pole to remain on the abandoned pole and assume ownership of it,  
10 along with resulting administrative costs. BellSouth, as the new pole owner, may  
11 also have to expend time, manpower, and money to secure an easement from the  
12 property owner. These newly obtained poles would increase BellSouth's pole  
13 inspection costs by roughly \$30 per pole; and BellSouth would have to expend the  
14 time, manpower, and money to negotiate new agreements with the other cable and  
15 communications providers attached to the poles.

16  
17 BellSouth's lines and facilities are attached to approximately 756,000 electric utility  
18 poles, including poles owned by investor-owned companies, municipal electrics and  
19 rural electric cooperatives. The following table represents assumptions that the  
20 electric companies will abandon between 10% and 40% of poles that have  
21 BellSouth attachments. It also provides a forecast of cost to BellSouth to assume  
22 ownership of those poles for a per pole cost within a range of \$250 - \$300.

1

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

2

3

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5

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15

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

BellSouth's other option would be to relocate its attachments to the new pole at the front of the property.<sup>4</sup> We estimate the cost of placing the new aerial facility to be anywhere between \$25 and \$40 per foot. If we assume that BellSouth relocated 10% of its existing aerial cable attached to electric utility poles in a given year (which equates to 18,900,000 feet of aerial facilities) to follow the electric's move to front property lines, BellSouth would face a minimum cost of \$472,500,000. The following table provides an impact based on a range of possibilities:

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

<sup>4</sup> It is not unreasonable to think that BellSouth might be forced to choose relocation, even if its facilities on the rear pole line are in excellent condition, if a property owner refuses to grant BellSouth a new easement or seeks to take economic advantage of BellSouth's situation.

\$50.00    \$945,000,000    \$1,890,000,000    \$2,835,000,000    \$3,780,000,000.

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

Alternatively, should an electric company choose to replace existing poles with taller, stronger poles to strengthen an existing pole line, BellSouth would be required to transfer its facilities. Using the same assumption that the electric utilities will replace between 10% and 40% of their poles, the following table represents an estimate of cost to BellSouth to transfer facilities from one pole to the other. The BellSouth cost per transfer represents the price range from a simple to a more complex transfer.

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

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

1 In addition to the above costs, it is near certain that a push for electric utilities to  
2 bury facilities along public roads will also result in an increase in damage to  
3 BellSouth's existing buried facilities, as electric utilities will generally need to place  
4 their facilities beneath those of telecommunications and cable companies to meet  
5 NESC requirements. Through June 2006, BellSouth has already experienced  
6 approximately 2,500 incidents of damage to its buried facilities, with a total cost to  
7 BellSouth in excess of \$3 million. Seventy-five percent of these incidents occurred  
8 in street-side environments. While BellSouth diligently tries to recover its damages,  
9 BellSouth is not always successful and frequently has to expend resources to pursue  
10 collection activities, including litigation against the wrongdoer. Further, BellSouth  
11 experiences additional costs in these scenarios because (1) it must pull technicians  
12 away from other tasks to address facility damages and; (2) it takes preventative  
13 measures by talking to the excavators and making site visits to ensure, to the extent  
14 possible, that BellSouth facilities are protected. Additionally, an increase in burying  
15 facilities will result in an increase in BellSouth's locate costs as entities seeking to  
16 underground will request that BellSouth locate its existing buried facilities.  
17 Accordingly, the Proposed Rules will only result in the exponential increase in the  
18 costs BellSouth currently experiences with street-side, underground facilities.

19  
20 In sum, as evidenced by the above, there can be no dispute that the Proposed Rules  
21 will impact BellSouth and other attaching entities on many different fronts, with a  
22 great potential for significant cost increases. It is impossible to provide an accurate

1 estimate of the total anticipated costs because we have no idea how each of the 40-  
2 plus electric utilities in Florida will implement the Proposed Rules.

3  
4 Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH PROPOSED NEW  
5 RULE 25-6.0342.

6  
7 A. Proposed New Rule 25-6.0342 requires electric utilities to establish and maintain  
8 standards and procedures for attachments by others to transmission and distribution  
9 poles. Critically, this provision mandates that the Third-Party Attachment Standards  
10 and Procedures "meet or exceed" the NESC and other applicable standards imposed  
11 by state and federal law so that attachments do not, among other things, impair the  
12 safety and reliability of the electric system and exceed pole loading capacity; and  
13 that third party facilities are "constructed, installed, maintained, and operated in  
14 accordance with generally accepted engineering practices for the utility's service  
15 territory." Further, the Proposed Rule prohibits attachments that do not comply with  
16 the electric utility's Attachment Standards and Procedures.

17  
18 As a primary concern and as explained in Pam Tipton's testimony, the Commission  
19 has no jurisdiction over pole attachments and, thus, this Proposed Rule is an  
20 improper exercise of the Commission's power.

21  
22 From an operational perspective, the adoption of this Proposed Rule is premature  
23 and nullifies the Commission's orders mandating an 8 year pole inspection cycle.



1 Proposed Rule 25-6.0342 presupposes that third party attachments on poles cause  
2 safety or reliability problems. As I previously mentioned, there has been no  
3 evidence presented to the Commission, nor any data compiled, indicating that this is  
4 the case.

5  
6 Also to the point that the Proposed Rules are premature, I reiterate the fact that the  
7 2002 NESC is due to be revised in 2007. Proposed Rule 25-6.0342 mandates that  
8 the Third-Party Attachment Standards and Procedures "meet or exceed" the 2002  
9 edition of the NESC. As previously discussed, it would be more efficient, at a  
10 minimum, to await the issuance of the 2007 NESC guidelines to avoid the need for  
11 further revisions to pole construction standards.

12  
13 Like previous sections, Proposed Rule 25-6.0342 also disregards the advantages of  
14 uniform standards for pole construction and attachments and gives electric utilities  
15 *carte blanche* over pole attachments. While problems may have occurred with  
16 certain providers failing to comply with applicable safety requirements, no data has  
17 been compiled to indicate that the problems warrant drastic changes to the current  
18 uniform procedures in place to ensure safety and reliability. Additionally, as I  
19 mentioned previously, the chief stress on the distribution infrastructure results from  
20 the significant load placed by the power industry, not by telephone or cable.  
21 Moreover, other factors such as vegetation affect the reliability of the electric  
22 infrastructure. Addressing only attachments in the Proposed Rules paints a  
23 misleading and lopsided picture.

1       Lastly, as more fully explained in my testimony regarding the proposed  
2       amendments to Rule 25-6.034, BellSouth is also concerned that Proposed Rule 25-  
3       6.0342 could be read to justify, or even require, random inspections of third-party  
4       attachments by the electric utilities and that the electric utilities would likely try to  
5       pass the cost of these inspections on to the attaching entities through a creative,  
6       unreasonable interpretation of existing provisions in joint use and pole attachment  
7       license agreements, or by using their leverage to force an amendment to the those  
8       contracts. More significantly, despite the fact that the attaching entity might not be  
9       the cost-causer or the beneficiary of the taller or stronger poles, the electric utilities  
10      could use the same tactics to demand that attachments be upgraded, rearranged or  
11      removed, or that poles be replaced, potentially at considerable cost (capital and  
12      expense) to the attaching entities, like BellSouth. This attempted cost-shifting is not  
13      supported by the joint use agreements and, as such, BellSouth is not responsible for  
14      such costs.

15  
16   Q.   PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED  
17        AMENDMENTS TO RULE 25-6.064.

18  
19   A.   Section 25-6.064 requires an investor-owned electric utility to calculate amounts  
20        due as contributions-in-aid-of-construction from customers who request new  
21        facilities or upgraded facilities. As an attacher that pays pole rental fees, BellSouth  
22        pays a portion of the electric utility's costs when the electric utility installs a taller  
23        pole or a stronger pole of the same class because those costs are used when

1 factoring rental rates. To ensure that pole rental rates are not further skewed,  
2 BellSouth should receive a credit or reduction against the historical cost of the  
3 electric utility's average pole cost for the contribution-in-aid-of-construction, and  
4 for payments made by other attachers.

5  
6 Q. PLEASE EXPLAIN BELL SOUTH'S CONCERNS WITH THE PROPOSED  
7 AMENDMENTS TO 25-6.078.

8  
9 A. To the extent an electric utility's policy filed pursuant to Proposed Rule 25-6.078  
10 affects the installation of underground facilities in new subdivisions, or the utility's  
11 charges for conversion implicates new construction, I reiterate the concerns raised in  
12 my testimony regarding the proposed amendments to Rule 25-6.034.

13  
14 Q. PLEASE EXPLAIN BELL SOUTH'S CONCERNS WITH THE PROPOSED  
15 AMENDMENTS TO RULE 25-6.115.

16  
17 A. BellSouth recognizes that several electric utilities have tariffs addressing the  
18 recovery of costs for converting existing overhead facilities. Proposed Rule 25-  
19 6.115 incorporates language on Undergrounding Fee Options that includes the  
20 recovery of conversion costs from the customer. The Commission needs to  
21 consider, as Pam Tipton's testimony will explain in more detail, that BellSouth,  
22 unlike electric, cannot pass conversion costs along to its customers.

1 Q. EXPLAIN YOUR STATEMENT THAT THE PROPOSED RULES WILL  
2 LIKELY IMPACT OR INTERFERE WITH JOINT USE AND POLE  
3 ATTACHMENT LICENSE AGREEMENTS.

4  
5 A. I have touched on this point throughout my testimony, but as a primary example,  
6 joint use and other pole attachment license agreements generally address, among  
7 other things, which entity is responsible for paying the costs of new or upgraded  
8 poles and the transfers to those poles. Typically, under the terms of its joint use  
9 agreements with electric utilities, BellSouth would not contribute to these costs  
10 because BellSouth would not be the cost-causer, or the beneficiary of the new or  
11 upgraded poles. The electric utilities might attempt, however, to use the Proposed  
12 Rules as justification to interpret existing joint use provisions in a creative,  
13 unintended, and unreasonable manner to attempt to pursue these costs from  
14 BellSouth. BellSouth maintains that such a position would be contrary to the plain  
15 language and the spirit of the joint use agreements. Also as I previously mentioned,  
16 the electrics might try to use their leverage as majority pole owner to renegotiate  
17 unreasonable amendments to existing agreements.

18  
19 This example not only shows how the Proposed Rules might interfere with existing  
20 joint use and pole attachment license agreements, but also how they will likely  
21 produce the unintended consequence of creating a contentious relationship between  
22 the electrics and attaching entities. It seems logical that in attempting to increase  
23 service reliability and minimize public safety issues, especially following

1       hurricanes, the Commission should seek to foster positive working relationships  
2       between pole owners and attaching entities.

3   Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

4   A.    Yes.

1 Bellsouth Telecommunications, Inc.

2 Direct Testimony of Pam Tipton

3 Before the Florida Public Service Commission

4 Docket Nos. 060172-EU and 060173-EU

5 August 4, 2006

6  
7 Q. Please state your name, your position with Bellsouth  
8 Telecommunications, Inc. ("Bellsouth"), and your  
9 business address.

10  
11 A. My name is Pam Tipton. I am employed by BellSouth  
12 Telecommunications, Inc., as a Director, Regulatory and External Affairs,  
13 responsible for regulatory policy implementation in BellSouth's nine-state  
14 region. My business address is 675 West Peachtree Street, Atlanta,  
15 Georgia 30375.

16  
17 Q. Please summarize your background and experience.

18  
19 A. I received a Bachelor of Arts in Economics from Agnes Scott College in  
20 1986, and a Masters Certification in Project Management from George  
21 Washington University in 1996. I have over 18 years experience in  
22 telecommunications, with my primary focus in the areas of process  
23 development, services implementation, product management, marketing

1 strategy and regulatory policy implementation. I joined Southern Bell in  
2 1987, as a manager in Interconnection Operations, holding several roles  
3 over a 5-year period including process development and execution, quality  
4 controls and services implementation. In 1994, I became a Senior  
5 Manager with responsibility for End User Access Services and  
6 implementation of Virtual and (later) Physical Collocation. In 2000, I  
7 became Director, Interconnection Services, responsible for development  
8 and implementation of Unbundled Network Element ("UNE") products,  
9 including responsibility for access to poles, ducts and conduit, and later  
10 development of marketing and business strategies. In June 2003, I  
11 became responsible for implementation of state and federal regulatory  
12 mandates for Local and Access markets and the management of the  
13 switched services product portfolio. I assumed my current responsibilities  
14 on August 1, 2005.

15  
16 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC  
17 SERVICE COMMISSION?

18  
19 A. Yes. I have appeared before the Florida Public Service Commission in  
20 Docket No. 980800-TP, In re: Petition for Emergency Relief of Supra  
21 Telecommunications and Information Systems, Inc., Against BellSouth  
22 Telecommunications, Inc.; Docket No. 030851-TP, In the Matter of  
23 Implementation of requirements arising from Federal Communications

1 Commission triennial UNE review: Local Circuit Switching for Mass Market  
2 Customers; and Docket No. 041269-TP, In re: Petition to establish generic  
3 docket to consider amendments to interconnection agreements resulting  
4 from changes in law, by BellSouth Telecommunications, Inc. I have filed  
5 written testimony in other Dockets before this commission that were  
6 settled prior to hearing.

7  
8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9  
10 A. The purpose of my testimony is to provide BellSouth's policy position  
11 regarding the Commission's jurisdiction to regulate pole attachments. I  
12 will also explain the difference between rate-of-return and price-cap  
13 regulated industries, their respective ability (or inability) to recover  
14 increased costs and how these distinctions impact the different industries  
15 that will be subject to the Proposed Rules (Rules 25-6.0341, 25-6.0342,  
16 and 25-6.0343, and proposed amendments to Rules 25-6.034, 25-6.064,  
17 25-6.078 and 25-6.115 ).

18  
19 Q. PLEASE ELABORATE ON BELL SOUTH'S POSITION REGARDING THE  
20 COMMISSION'S JURISDICTION TO REGULATE POLE  
21 ATTACHMENTS.

22  
23 A. While I am not a lawyer, it is my understanding that the Commission does  
24 not have the authority to adopt any rule to the extent it regulates the terms



1 and conditions associated with pole attachments. First, Section 224 of the  
2 Telecommunications Act, places authority to regulate pole attachments  
3 squarely on the Federal Communications Commission ("FCC"):

4  
5 (b)(1) Subject to the provisions of subsection (c) of this  
6 section, the Commission shall regulate the rates, terms, and  
7 conditions for pole attachments to provide that such rates,  
8 terms, and conditions are just and reasonable, and shall  
9 adopt procedures necessary and appropriate to hear and  
10 resolve complaints concerning such rates, terms, and  
11 conditions.  
12

13 Subsection (c)(1) limits this authority in any case where such matters are  
14 regulated by a State and subsection (c)(2) provides limited circumstances  
15 in which this exception applies. My reading of 47 U.S.C. § 224 (c)(2) is  
16 that the FCC has jurisdiction over pole attachments unless a state certifies  
17 the following to the FCC: (1) that it regulates rates, terms, and conditions  
18 for pole attachments; and (2) that in so regulating such rates, term, and  
19 conditions, the state has the authority to consider and does consider the  
20 interests of the subscribers of the services offered via such attachments,  
21 as well as the interests of the consumers of the utility services.  
22

23 Q. HAS THE COMMISSION ATTEMPTED TO CERTIFY TO THE FCC THAT  
24 IT HAD JURISDICTION OVER POLE ATTACHMENTS AND IF SO,  
25 WHAT WAS THE OUTCOME?  
26

1       A.     Yes. While I am not a lawyer and BellSouth's legal counsel will file  
2       a brief addressing this issue more thoroughly, the Florida Supreme Court  
3       rejected the Commission's prior attempt to certify to the FCC, pursuant to  
4       47 U.S.C. § 224, that it had jurisdiction over pole attachments in  
5       Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980). Specifically,  
6       in Hawkins, the Commission, pursuant to 47 U.S.C. § 224, notified the  
7       FCC that it had authority to regulate pole attachment agreements. This  
8       declaration of authority was challenged on the grounds that the  
9       Commission did not have the authority under Florida law to regulate the  
10      agreements or the interests of cable subscribers. In quashing the  
11      Commission's certification, the Florida Supreme Court relied on the  
12      Commission's own prior finding in Southern Bell Tel. & Tel. Co., 65 PUR  
13      3d 117, 119-20 (Fla.Pub.Serv.Comm'n 1966) that it lacked authority over  
14      pole attachments:

15             In 1913, when the Florida legislature enacted a  
16             comprehensive plan for the regulation of telephone  
17             and telegraph companies in this state, and conferred  
18             upon the commission authority to administer the act  
19             and to prescribe rules and regulations appropriate to  
20             the exercise of the powers conferred therein, the  
21             science of television transmission and the business of  
22             operating community antenna television systems  
23             were not in existence. The 1913 Florida legislature,  
24             therefore, could not have envisioned much less have  
25             intended to regulate and control the television  
26             transmission facilities and services with which we are  
27             concerned....*We must conclude...that the Florida*  
28             *Public Service Commission has no jurisdiction or*  
29             *authority over the operations of community antenna*  
30             *television systems and the rates they charge, or the*  
31             *service they provide to their customers.*

1        Id. at 649-50 (emphasis added).

2  
3        Using this analysis, the Court recognized that the legislature had not  
4        subsequently conferred any relevant jurisdiction upon the Commission  
5        between 1913 and 1980. Accordingly, based upon my reading of  
6        Hawkins, the Court found that the Commission lacked jurisdiction over  
7        pole attachments.

8  
9        To my knowledge, there has been no statutory grant of jurisdiction over  
10       pole attachments or cable subscribers or providers since 1980 when the  
11       Florida Supreme Court decided Hawkins.<sup>1</sup> Therefore, it appears that the  
12       Commission does not have the authority to implement the Proposed Rules  
13       to the extent those rules result in the regulation of the rates, terms, and  
14       conditions associated with pole attachments.

15  
16    Q.    WHAT IS YOUR RESPONSE TO THE ARGUMENT THAT 47 USC § 224  
17       DOES NOT COVER CHARGES BETWEEN ILECS AND ELECTRIC  
18       UTILITIES?

19  

---

<sup>1</sup> Indeed, since the Hawkins decision, the Commission has recognized that it lacks jurisdiction over the regulation of pole attachment agreements. See *In re: Application of Marco Island Utilities, a division of Deltona Utilities, Inc. for a new class of service – effluent for spray irrigation in Collier County*, Docket No. 870743-SU, Order no. 20257 (November 4, 1988) (“Fourteen years later, the Florida Supreme Court dismissed the Commission’s resurrected claim of jurisdiction over the regulation of pole attachment agreements between regulated telephone companies and cable television systems. *Teleprompter Corporation v. Hawkins*, 384 So.2d 648 (Fla. 1980)”).

1 A. This argument is a "red herring" designed to circumvent the Supreme  
2 Court's decision in Hawkins. The Proposed Rules give the electric utilities  
3 the license to regulate all third-party attachments, not just those placed by  
4 ILECs. The federal Pole Attachment Act, in 47 U.S.C. § 224(c), clearly  
5 outlines what a state commission must do in order to regulate pole  
6 attachments placed by a cable television system or provider of  
7 telecommunications services on poles owned by utilities, including electric  
8 companies. Whether or not the FCC has jurisdiction over the rates ILECs  
9 pay for pole attachments does not change the fact that the Commission  
10 has not met the certification requirements of the federal statute and, thus,  
11 has no jurisdiction over pole attachments.

12  
13  
14 Q. ARE THERE OTHER REGULATORY DISTINCTIONS THE  
15 COMMISSION MUST CONSIDER WHEN IMPOSING NEW RULES TO  
16 GOVERN POLE ATTACHMENTS?

17  
18 A. Yes. In addition to the jurisdiction issue I discussed above, the  
19 Commission should consider the rate-of-return vs. price-cap regulation  
20 distinction between the electric companies and most ILECs.

21  
22 Q. PLEASE DESCRIBE THE DISTINCTION BETWEEN RATE-OF-RETURN  
23 REGULATED AND PRICE-CAP REGULATED INDUSTRIES AND

1 EXPLAIN WHY THE COMMISSION SHOULD CONSIDER THE  
2 DISTINCTION IN EVALUATING THE PROPOSED RULES.

3  
4 A. At a high level, under rate-of-return regulation, a company is entitled to  
5 recover allowable operating costs and a "fair" rate of return. Conversely,  
6 under price-cap regulation, a company's prices are capped at a certain  
7 rate and these rates generally cannot be modified to recover operational  
8 costs. In Florida, electric utilities are rate-of-return regulated while the  
9 majority of the ILECs, like BellSouth, are price-cap regulated. This  
10 difference in regulation is not insignificant, especially as it relates to the  
11 Proposed Rules.

12  
13 Specifically, the Proposed Rules do not take into account, that unlike the  
14 electric utility monopolies that can pass along to their customers any costs  
15 incurred in complying with the Proposed Rules via rate-of-return  
16 regulation, BellSouth is price-regulated and will be economically and  
17 competitively disadvantaged in adding such costs to the bills of its  
18 customers (assuming it even has the ability to raise its rates). Indeed,  
19 unlike the electric utilities, BellSouth must compete with regulated and  
20 unregulated companies for every customer it obtains in Florida. As Mr.  
21 Smith discussed in his testimony, the "passed-through" costs to BellSouth  
22 and other companies could be tremendous. The Commission needs to  
23 take into account these regulatory and competitive distinctions in

1 evaluating the impact of the Proposed Rules to ensure that they do not  
2 economically or competitively disadvantage a particular type of company.  
3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5  
6 A. Yes.  
7  
8

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|  |   |                        |
|--|---|------------------------|
| In re: Proposed amendments to rules    | ) |                        |
| Regarding overhead electric facilities | ) | DOCKET NO. 060173-EU   |
| to allow more stringent construction   | ) | FILED: August 18, 2006 |
| standards than required by National    | ) |                        |
| Electric Safety Code.                  | ) |                        |
| _____                                  | ) |                        |

**COMMENTS  
TAMPA ELECTRIC COMPANY  
ON RULE 25-6.0342, FLORIDA ADMINISTRATIVE CODE**

The purpose of Tampa Electric's Comments is to support the Commission's proposed Rule 25-6.0342 Third-Party Attachment Standards and Procedures and to supplement the Joint Comments of Florida Power and Light Company, Progress Energy Florida, Tampa Electric Company and Gulf Power Company filed August 18, 2006.

**The Commission's Basic Theme in the Various  
Infrastructure Related Dockets and the Proposed Rule 25-6.0342**

The Commission has unequivocally concluded that nothing should be attached to a pole that is not engineered to be there in advance. It reached this conclusion based on findings that pole attachments can have a significant wind loading and stress effect on a pole and can cause overloading. The Commission further found that some attachments are being made without notice or prior engineering. The Commission has logically concluded that steps should be taken to ensure that attachments do not occur prior to an assessment of the effect the pole attachment will have on individual poles. The Commission's conclusion that third party attachments should not be made unless they are engineered in advance to be there is squarely based on the Commission's concern for the safety and reliability of the system.

The proposed rules are an appropriate step to address a serious issue affecting the safety and reliability of electric infrastructure. It is crucial for the Commission to help electric utilities

deal with the threat to electrical distribution facilities in a fair and reasonable way. Part of the solution is the establishment, under the Commission's direction, of attachment standards and procedures and a requirement that the attachment must be engineered to meet or exceed the National Electric Safety Code (NESC) before the attachment is made to the facility. The rules provide a reasonable means of requiring all attachers to ensure that their attachment will not overload the pole and risk pole failure and resulting outages.

#### **Pole Attachment Wind Loading and Stress Effect on a Pole.**

As discussed in detail in Section III of the Joint Reply Comments, the facilities which are attached to a pole have a wind loading and stress effect on the pole. It is obvious that this wind loading and stress effect on poles must be considered in assessing whether the pole is appropriately sized and spaced.

#### **Illustrations of Various Overlashings**

Perhaps the best way to illustrate this is through the photographs included as Documents 1 - 27 in Exhibit 1 attached hereto. These documents show the size of various cable attachments and their affect on Tampa Electric's poles. Furthermore, these examples are not isolated occurrences but are present all over Tampa Electric's service area.

Document 1 shows the condition of a pole found in the field while working on another project. It is obvious that the third party attachment at the center of the pole is overloading the pole. This was caused by a cable television (CATV) company installing an unnoticed 300 foot span of cable over eight lanes of vehicle traffic with two additional overlashings of fiber. The cable had inadequate guying to hold up the additional weight of the cable and caused the pole to split. The pole was replaced with a special order spun concrete pole as shown in Documents 2 and 3.

Document 4 is a close up of an array of cable and communications attachments on a pole located on 30<sup>th</sup> Street, just south of Fletcher Avenue in Tampa. Notice the size of the overlashed cable relative to other attachments.



Document 5 is a full view of the 30<sup>th</sup> Street pole showing all of the wires and cables attached to the pole.

Document 6 taken at the intersection of Harney Road and Fowler Avenue/Main Street illustrates a number of cables in a bundle together with various items of equipment. This array of cable and equipment significantly affects wind stress and pole loading. Document 7 shows these same attachments at the Harney Road intersection looking to the east and Document 8 shows the western view of the entire pole at the Harney Road intersection.

Document 9 taken on Knights Griffin Road at the Knight's Creek Bridge illustrates the size of various overlashed cables which can be 3" – 4" in diameter. Documents 10 and 11 show the significant sag these cables have over a span.

Document 12 details a bundle of cables overlashed three or four times and attached to a wooden pole located on Fletcher Avenue near 42<sup>nd</sup> Street. Documents 13 and 14 show a concrete pole that replaced a wooden pole, because of an overloaded condition caused by an attacher.

Document 15 taken at Taylor Road just north of Thonotosassa Road shows another overlap detail with approximately a 3" diameter. Document 16 illustrates a sag of 3' – 4' across a span as a result of the additional weight caused by the attachment.

Documents 17 is a photograph of facilities on Thonotosassa Road west of McIntosh Road that shows the sag and stress placed on poles with both a short span crossing the road and a long span along the road. Documents 18 and 19 are photographs of facilities on Thonotosassa Road just west of Stone Lake Ranch which show how larger cable trunks that are attached to Tampa Electric poles adds weight that sags significantly at mid-span.

Documents 20 – 23 are photographs of facilities on North B Street west of Boulevard North near the University of Tampa. Documents 20 – 21 show a detail of an attachment with 10 – 12 cables in a larger bundle with a diameter of 3" – 4". Documents 22 – 23 illustrate the sag

effect these attachments have on our poles. The cable shown in Document 23 illustrates a 6' – 8' sag at mid-span.

Documents 24 – 26 provide another example of an overlashed cable with numerous cables in a bundle with a diameter of 4" or more and has equipment attached.

Document 27 shows the size of various cable attachments compared with Tampa Electric's street light bracket. These attachments are larger than the street light bracket which has a diameter of 2".

### **Overlashing**

Overlashing is the bundling of cables together with wire wrapped around a number of cables. An overlashing may begin with lashing just two cables but typically third party pole attachers continue to add cables as their system grows in an area. Tampa Electric has seen as many as seven cables lashed together. The result is that what began as a single cable may end up as a cable almost as big as your leg. Each overlashing adds wind loading and stress effects on the pole. Cable companies typically do not give notice of overlashing contending that such notice is unnecessary and not required because the pole attachment rental rate for a single cable or a seven-cable overlash is the same. This practice, of course, ignores the considerable additional wind loading and stress effect that the larger heavier cable has on the pole. During the initial installation of a third party cable, supporting guys and anchors are required to hold the weight of the cable and the effects of structural stress. As additional cables are overlashed onto the initial cable without notice, the guys and anchors are not changed out to ones that are strong enough to hold the additional weight. As discussed above, Tampa Electric has experienced instances where an unnoticed overlashed attachment has literally pulled the midsection out of the pole at the attachment causing the pole to fail.

### **Unnoticed Pole Attachments**

Notification of attachment by third parties is inconsistent, sporadic and incomplete. Tampa Electric also has experienced attachments by third parties who do not have a pole

attachment agreement with the company. Overlashings are not typically noticed at all. During the last Tampa Electric pole attachment count in the field, over 21,000 unreported telephone attachments were discovered and over 26,000 unreported cable television attachments were discovered. Despite contractual and other written agreements with third parties which require advanced authorization of new attachments prior to installation, unauthorized and unreported attachments continue to be a problem.

#### **Need for Pole Attachment Standards and Procedures**

There is certainly a need to develop pole attachment standards and procedures. This requirement is an essential tool in addressing pole attachment issues and is entirely consistent with the Commission's initiatives requiring pole inspections and audits of pole attachment agreements.

Pole attachment standards and procedures will reduce the number of unauthorized and unnoticed attachments which could lead to overloaded conditions on poles. The pole inspections and pole attachment audits are designed to identify poles that may be compromised or vulnerable to failure in extreme weather conditions. It is entirely reasonable for the Commission to have a multifaceted approach to assure requiring pole attachment standards be designed such that nothing is attached to a pole that is not engineered to be there in advance and then require pole inspections and audits to identify poles that may be compromised.

Florida Cable Telecommunications Association's (FCTA) consultant, M. T. Harrelson, in his August 4, 2006 comments acknowledges a need to develop attachment standards and observes:

"There is certainly a need to develop reasonable attachment standards. . ."

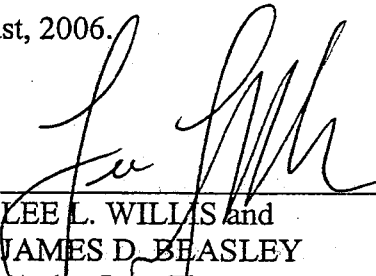
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"Power company construction standards should be available to attaching companies for reference during construction and maintenance activities."

### Summary

There is no question that third-party pole attachments increase wind loading and stress on a pole and can be the cause of the failure of a pole. This concern is particularly acute in Florida. It is critical that the proposed rule be added as another means of Florida's defense against hurricanes. The proposed rules are an important additional step in protecting the safety and reliability of critical infrastructure for provision of electric service. The joint objective of this Commission and electric utilities is to make facilities storm ready and the rules are an important part of the overall plan in accomplishing this objective. Tampa Electric urges that this rule be adopted.

Respectfully submitted this 18<sup>th</sup> day of August, 2006.



---

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Tampa

Electric Company has been furnished by Hand Delivery\* or U. S. Mail this 18th day of August, 2006 to the following:

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Florida Public Service Commission  
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Tallahassee, FL 32399-0850

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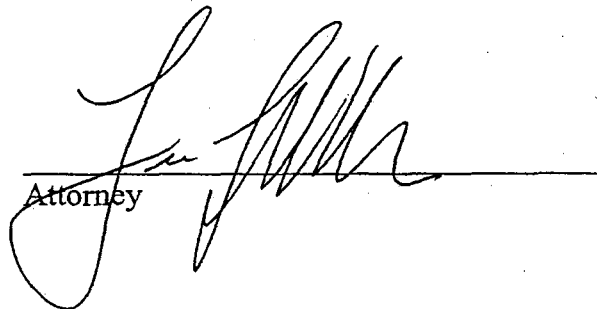
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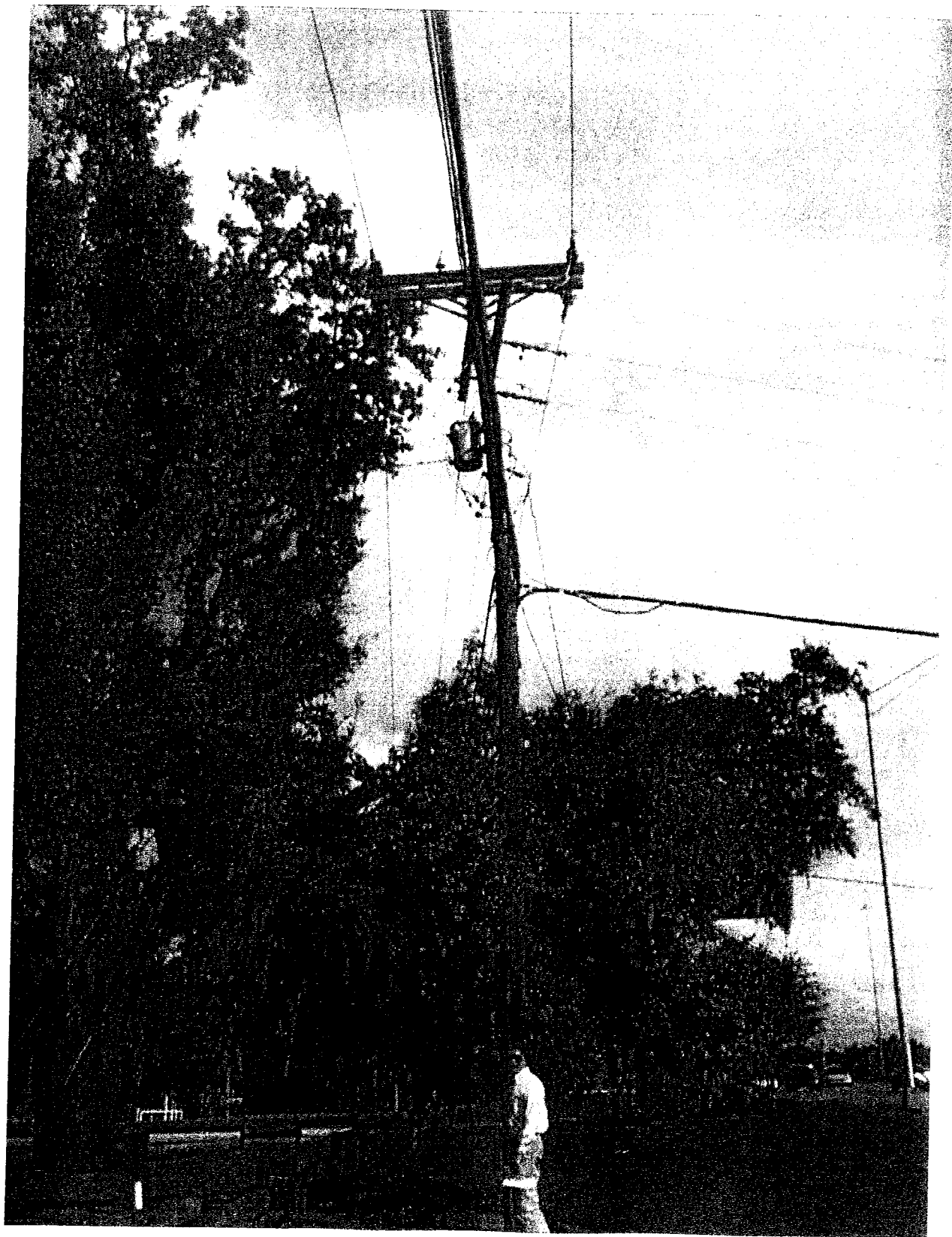
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Attorney

**DOCKET NO. 060173-EU**  
**EXHIBIT NO. \_\_\_\_ (TEC-1)**

**EXHIBIT OF**  
**TAMPA ELECTRIC COMPANY**

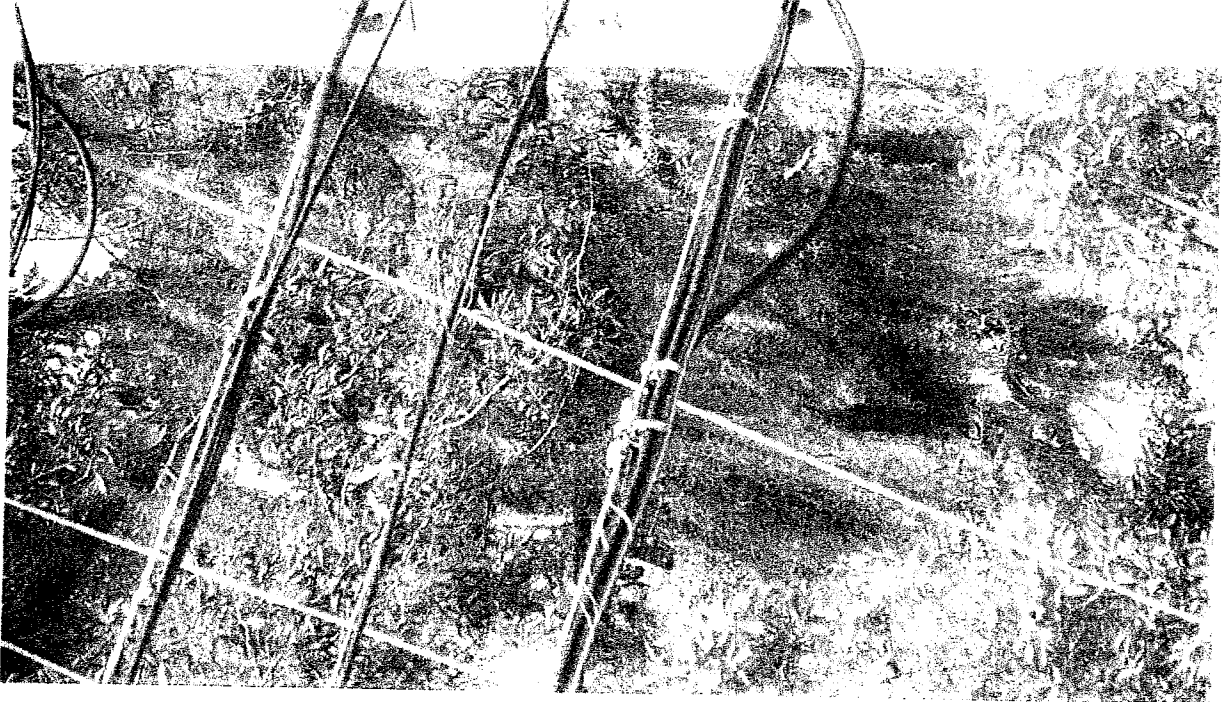
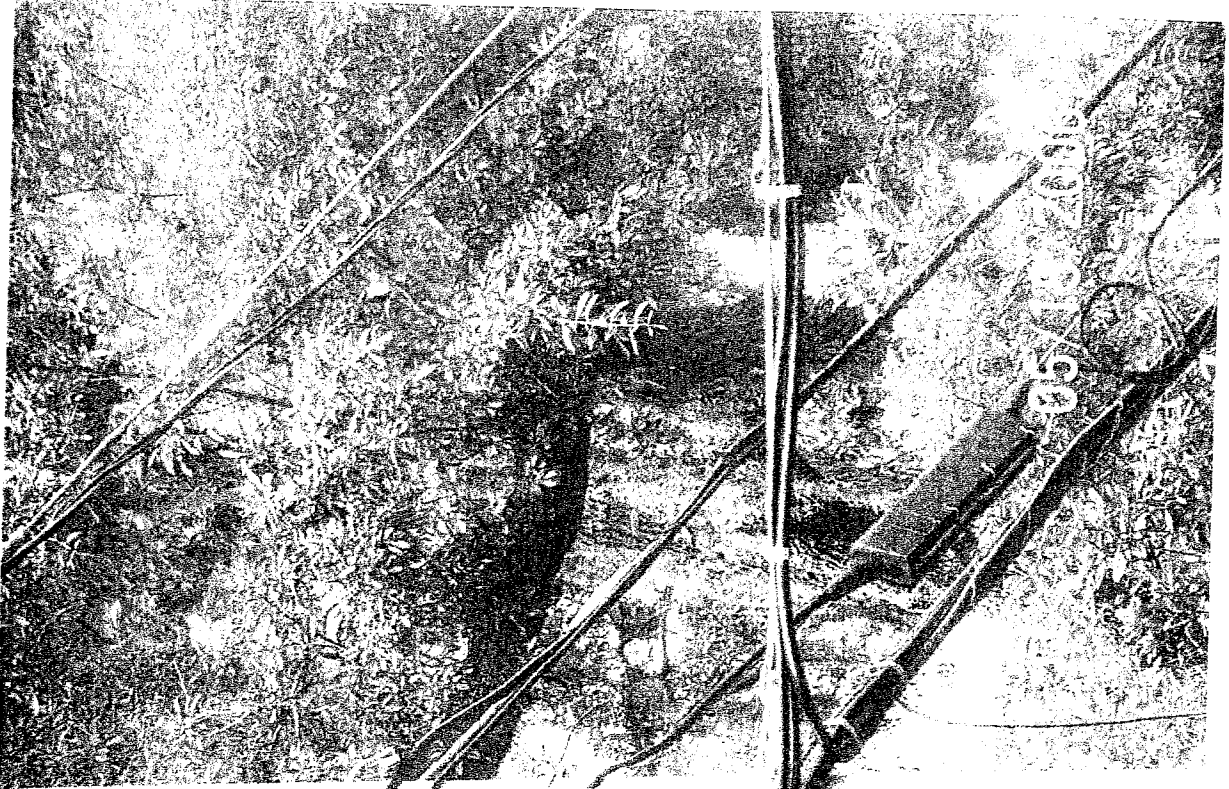
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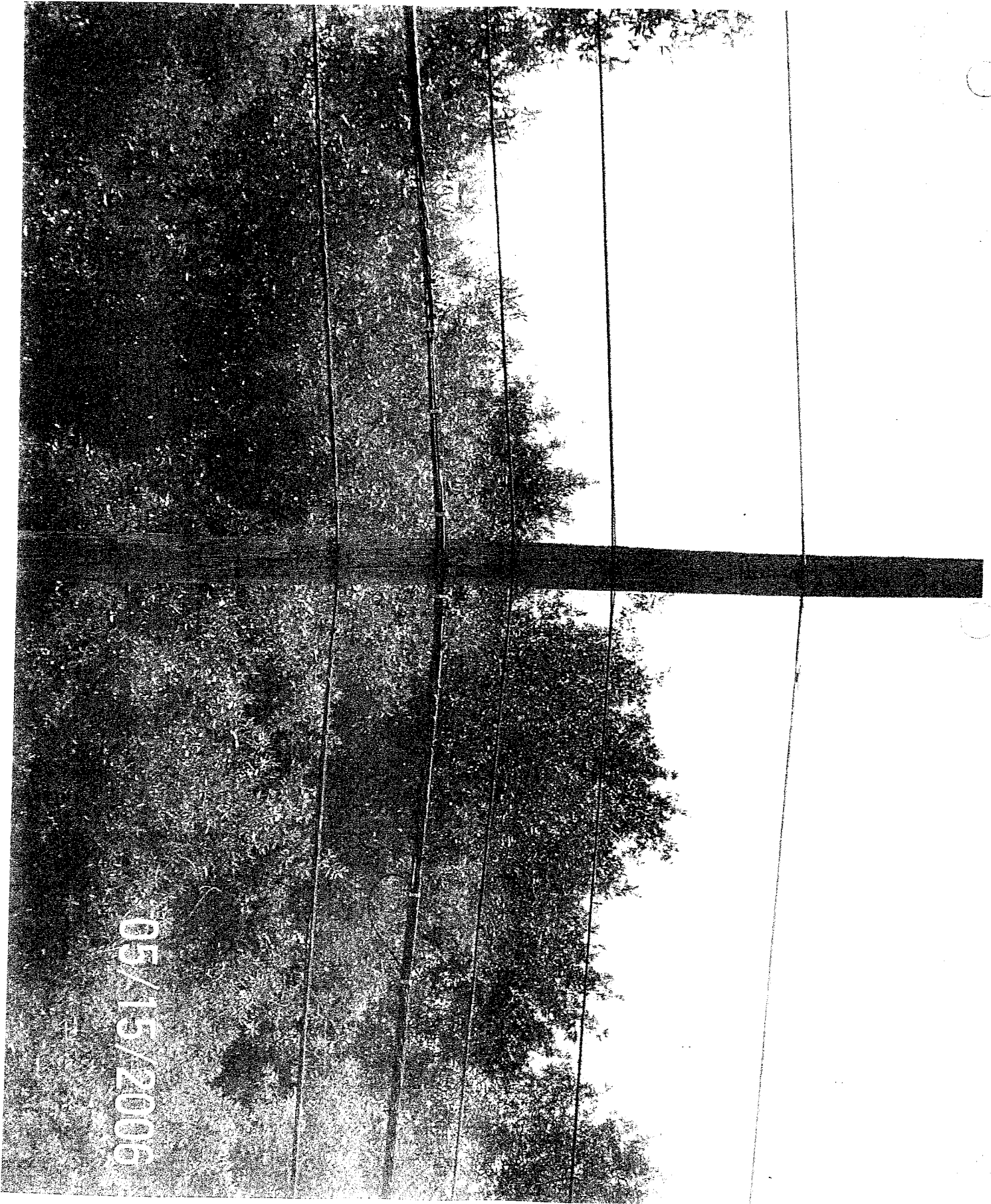




DOCUMENT 3



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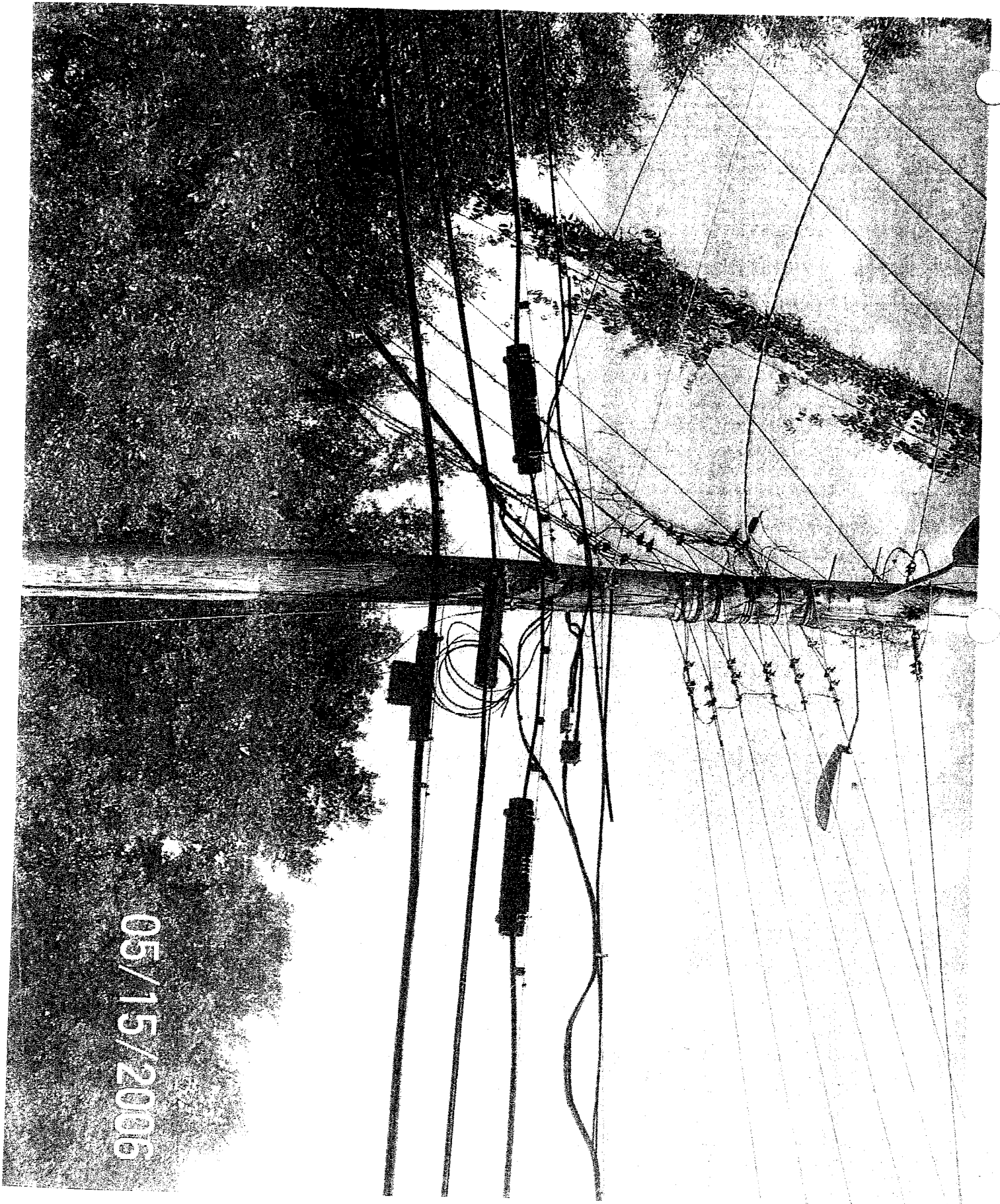






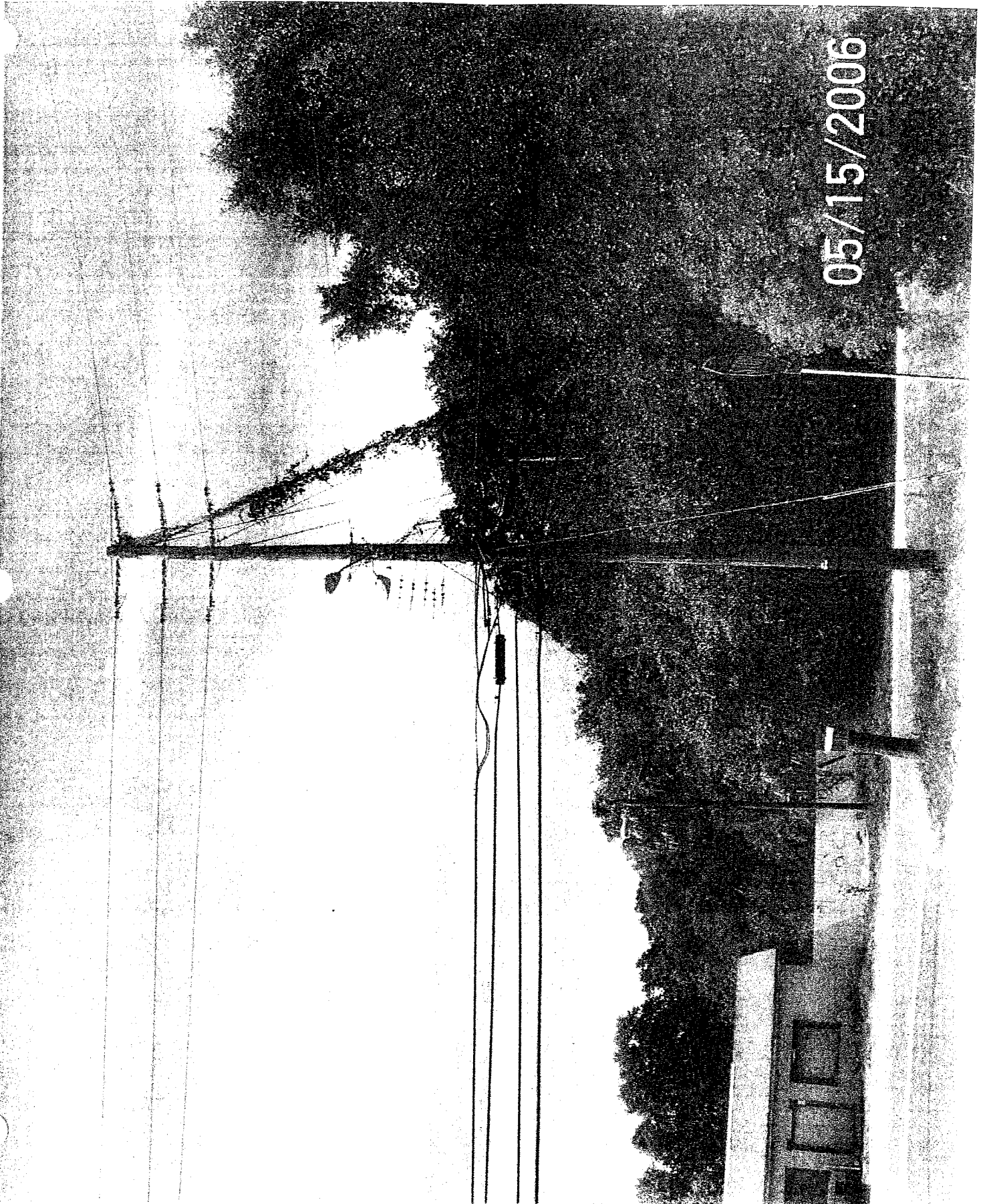


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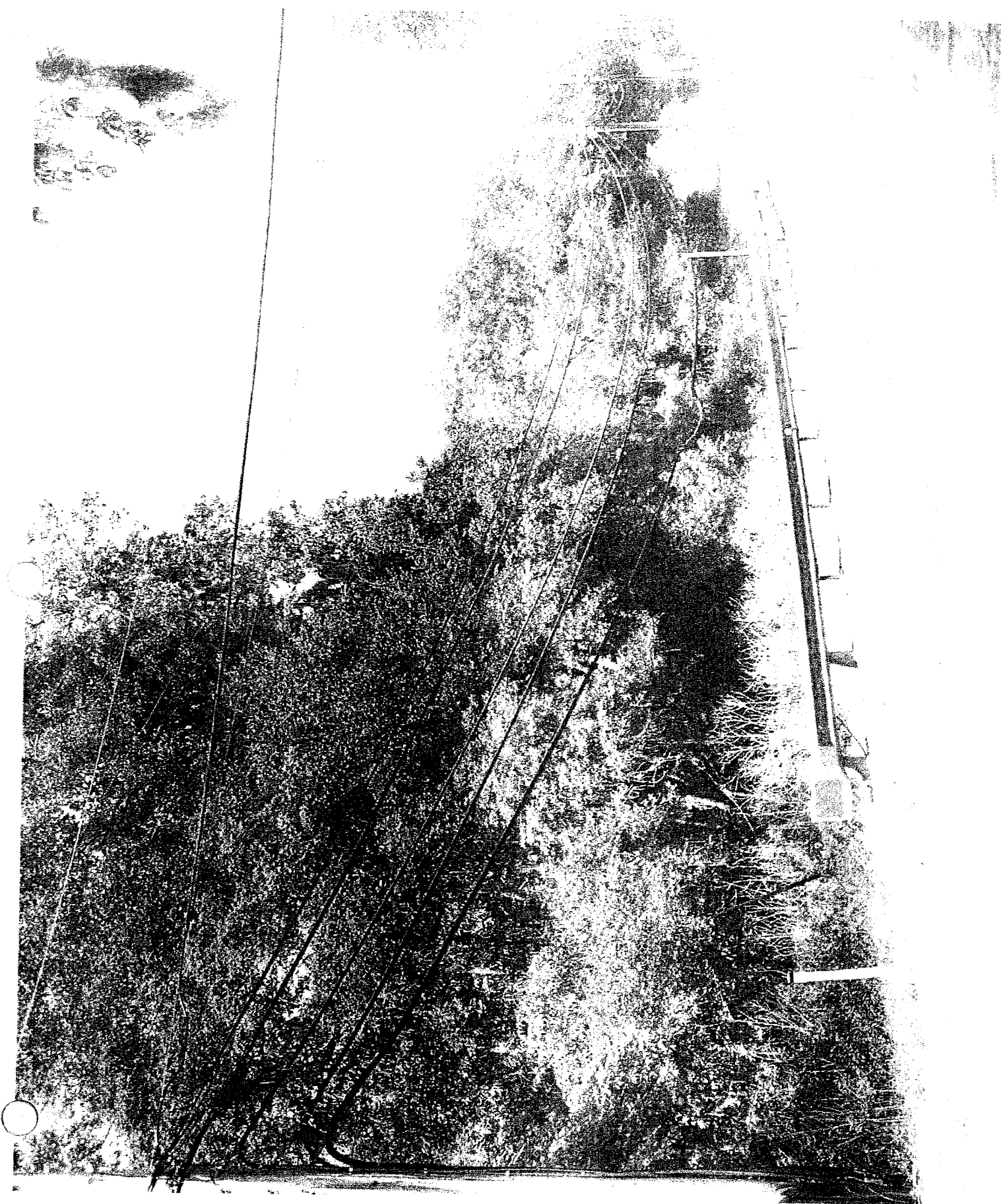
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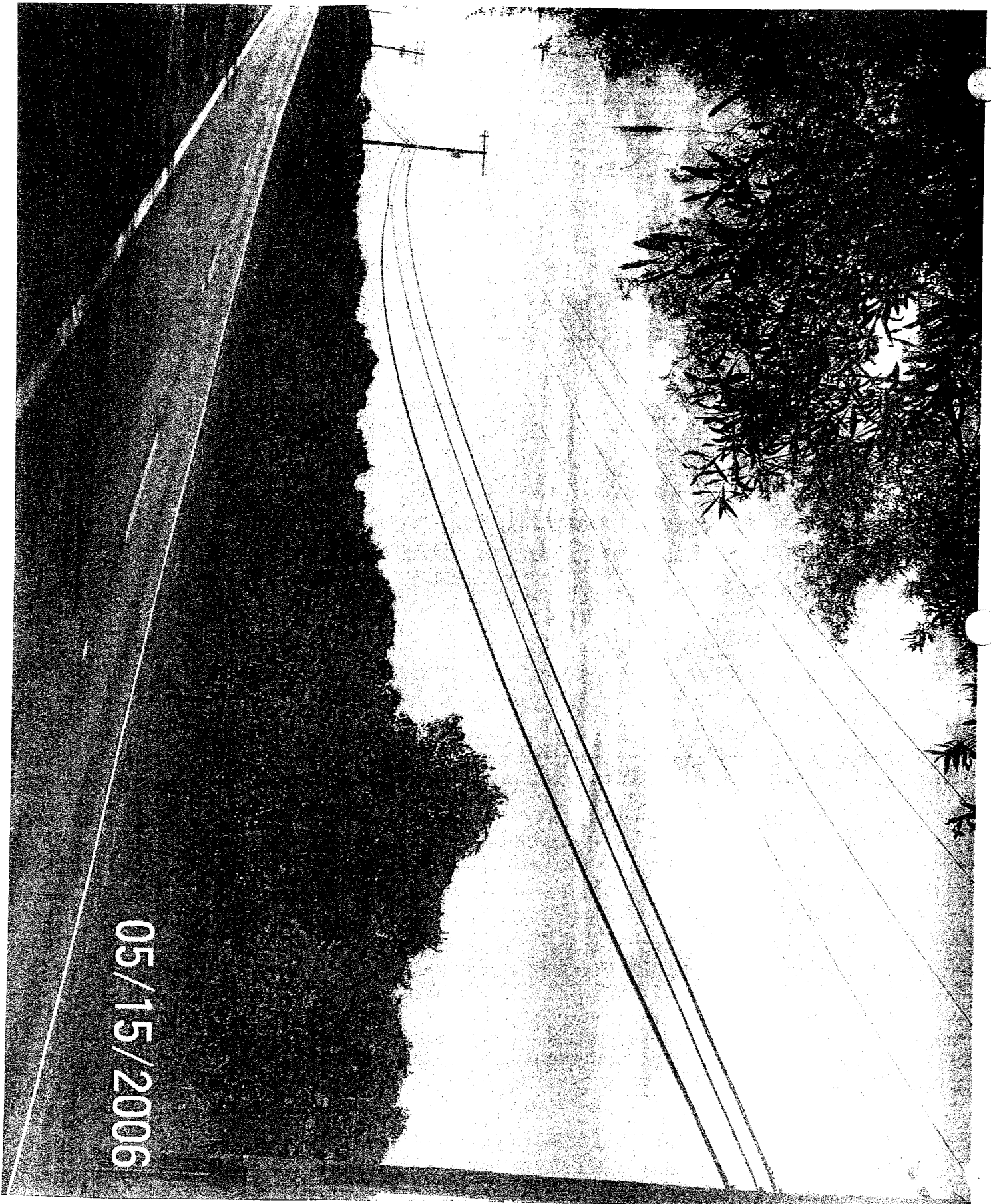


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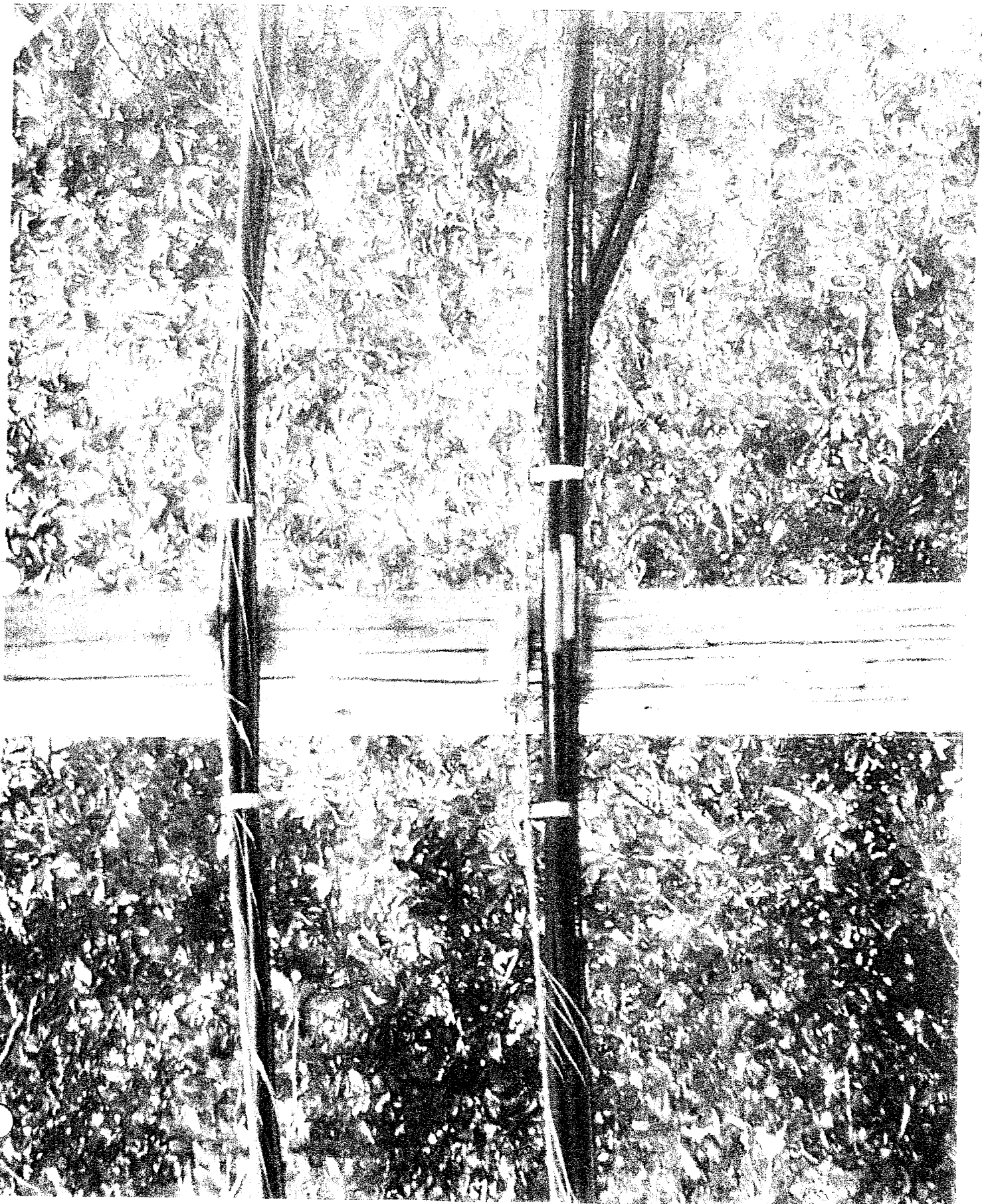




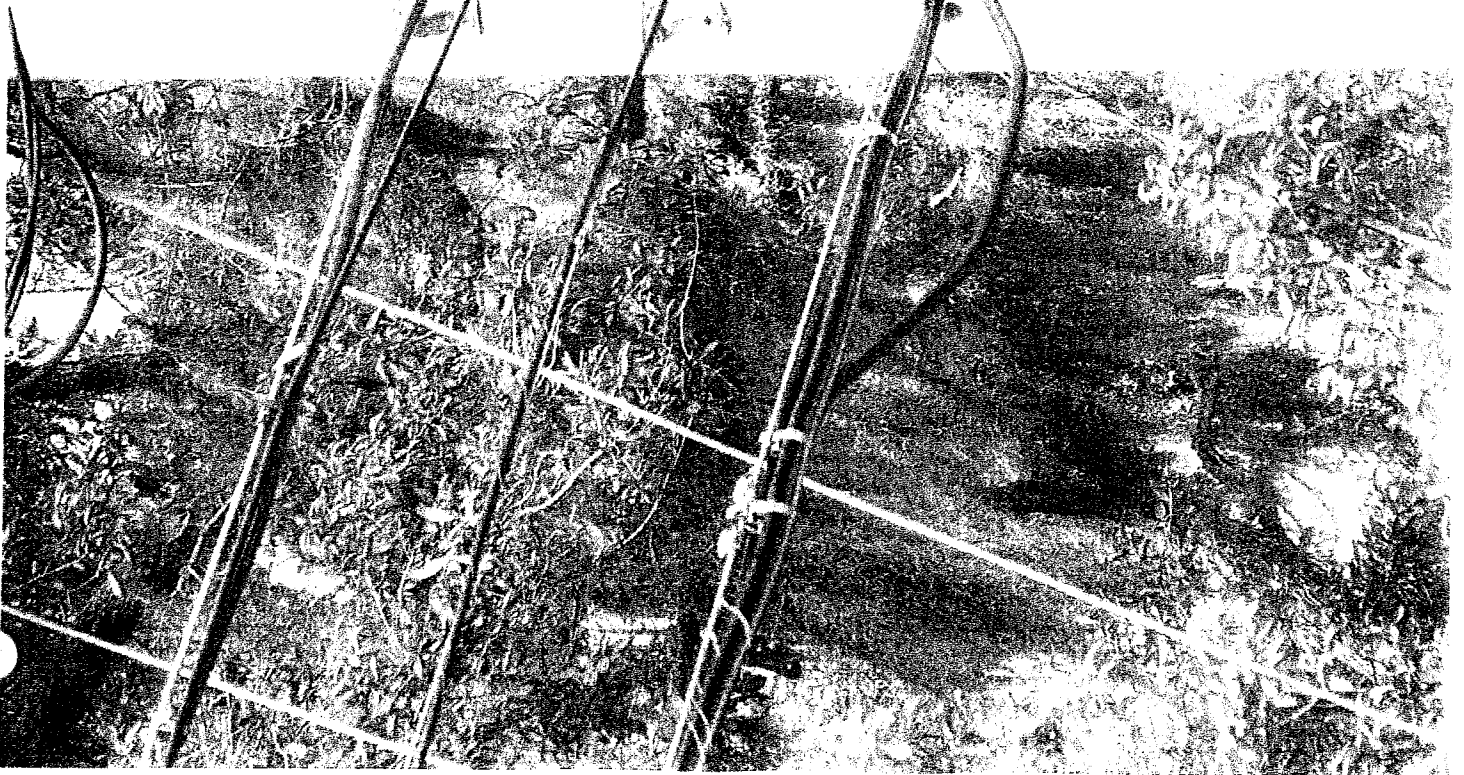
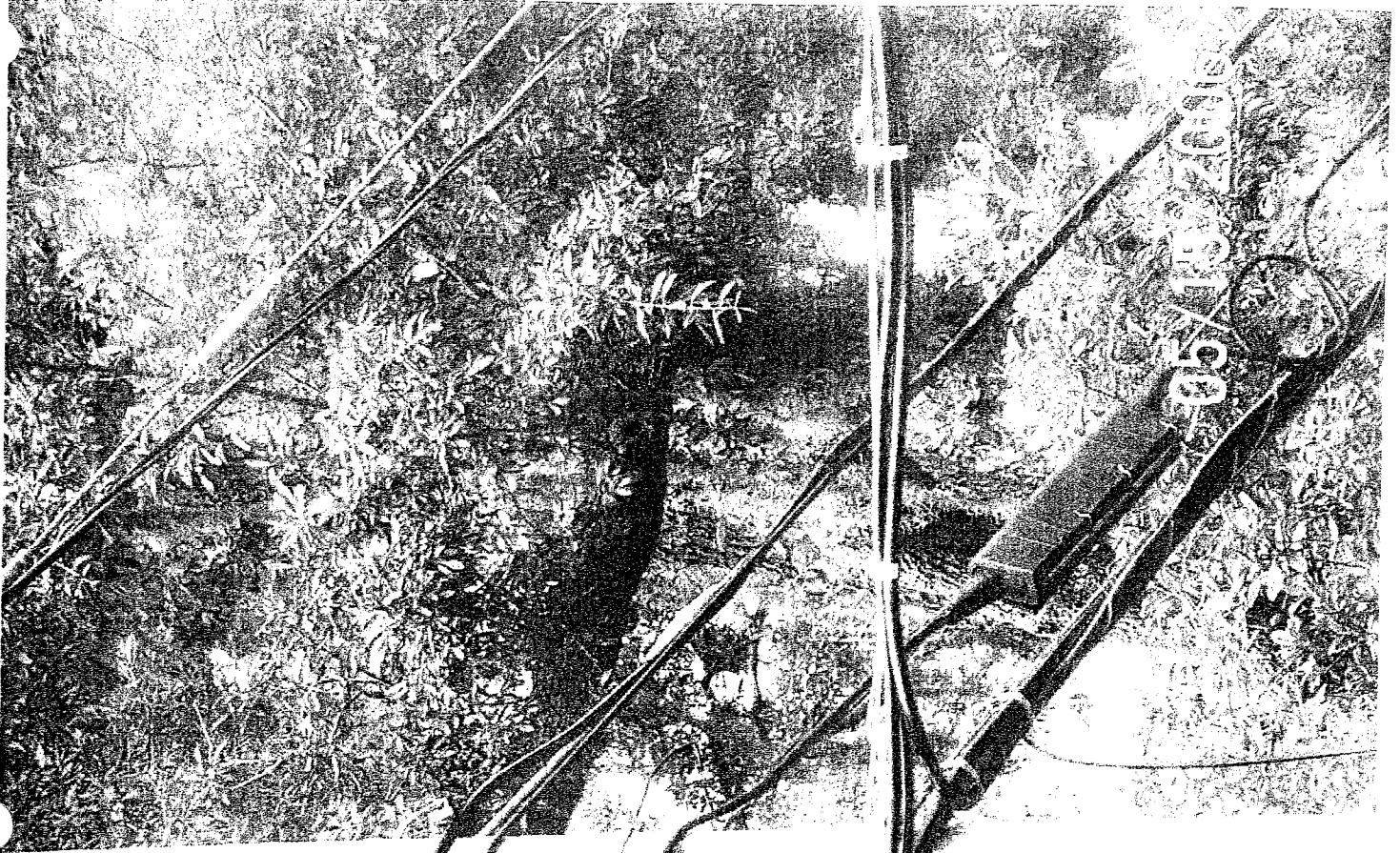
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DOCUMENT 12



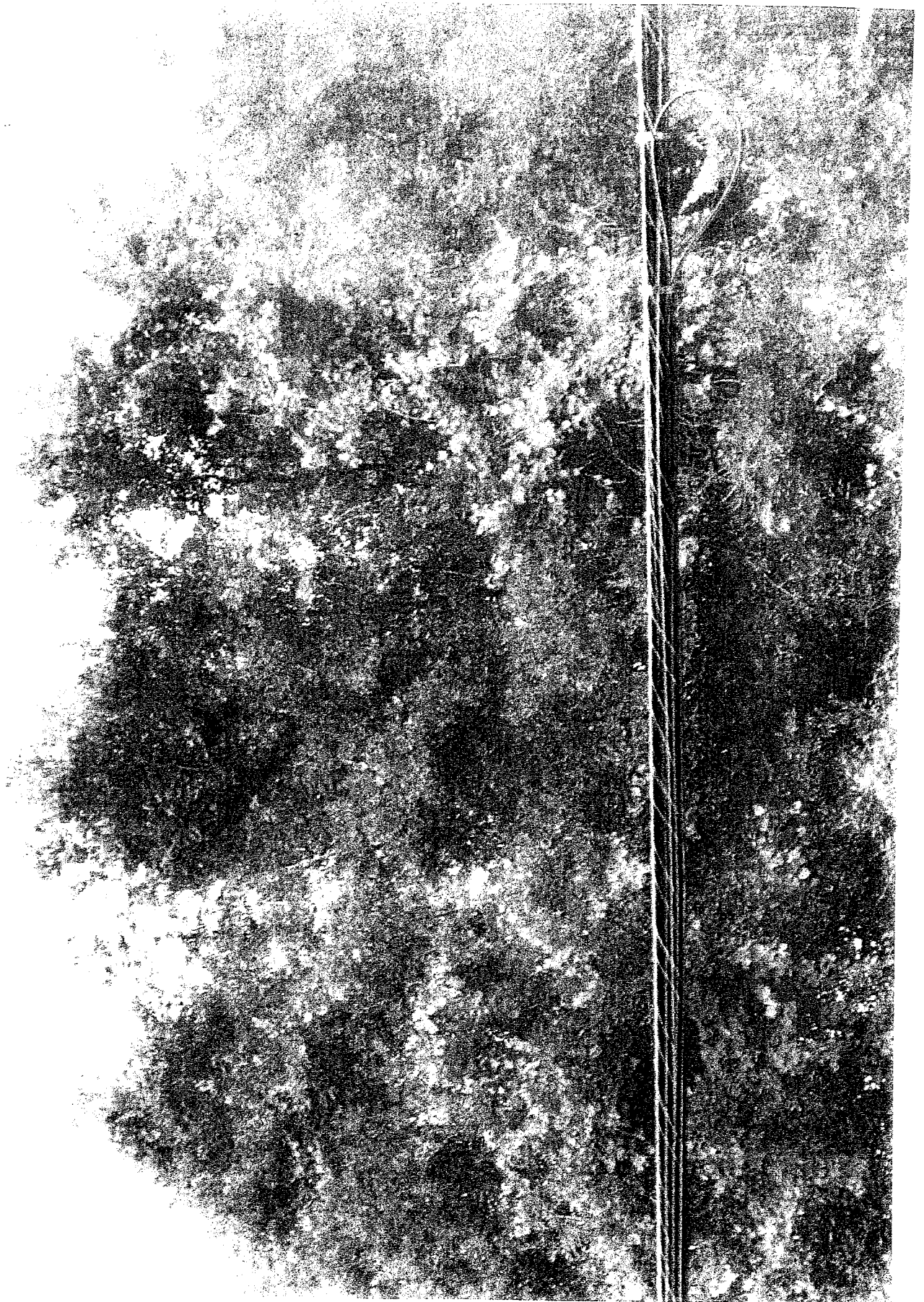
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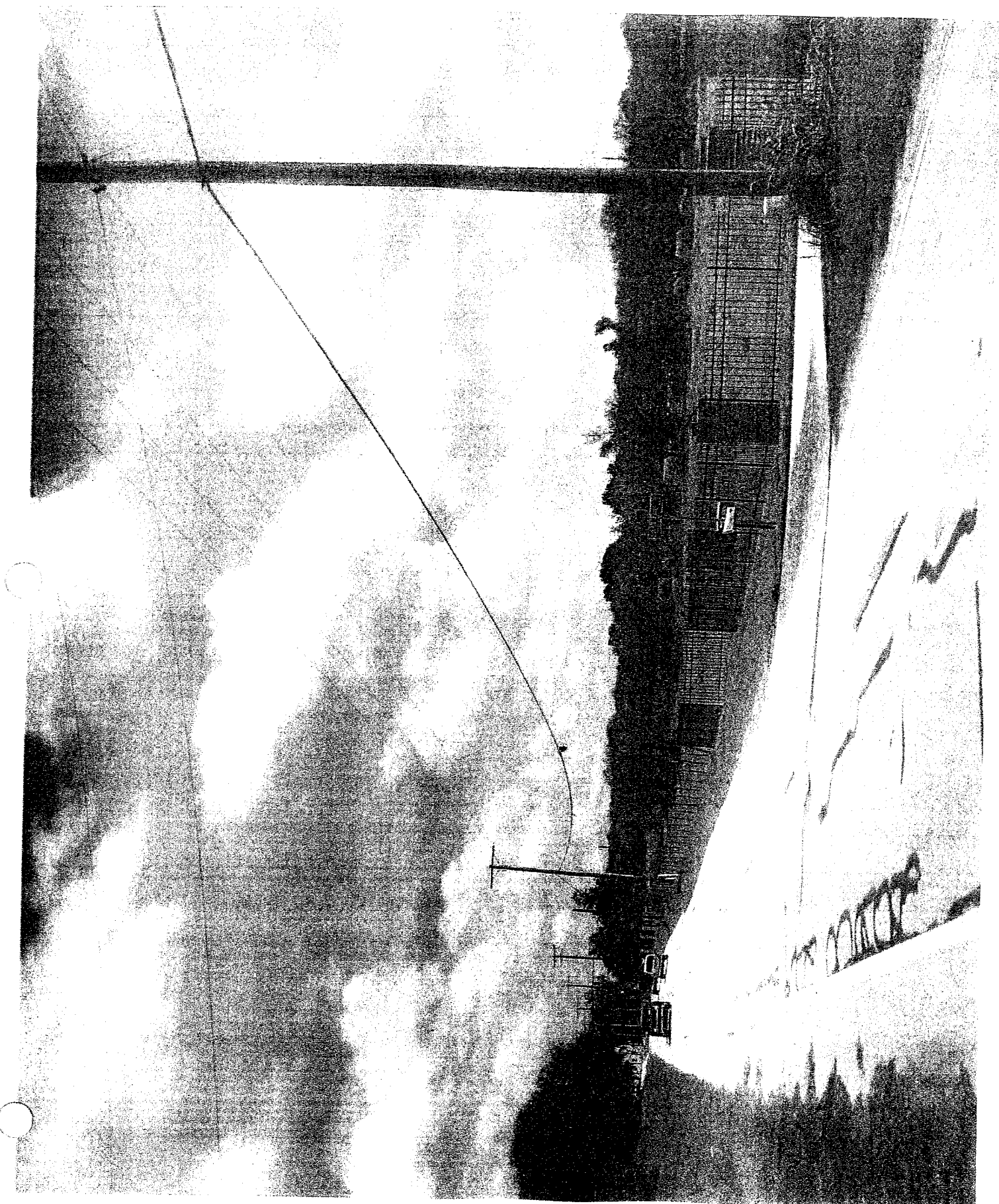




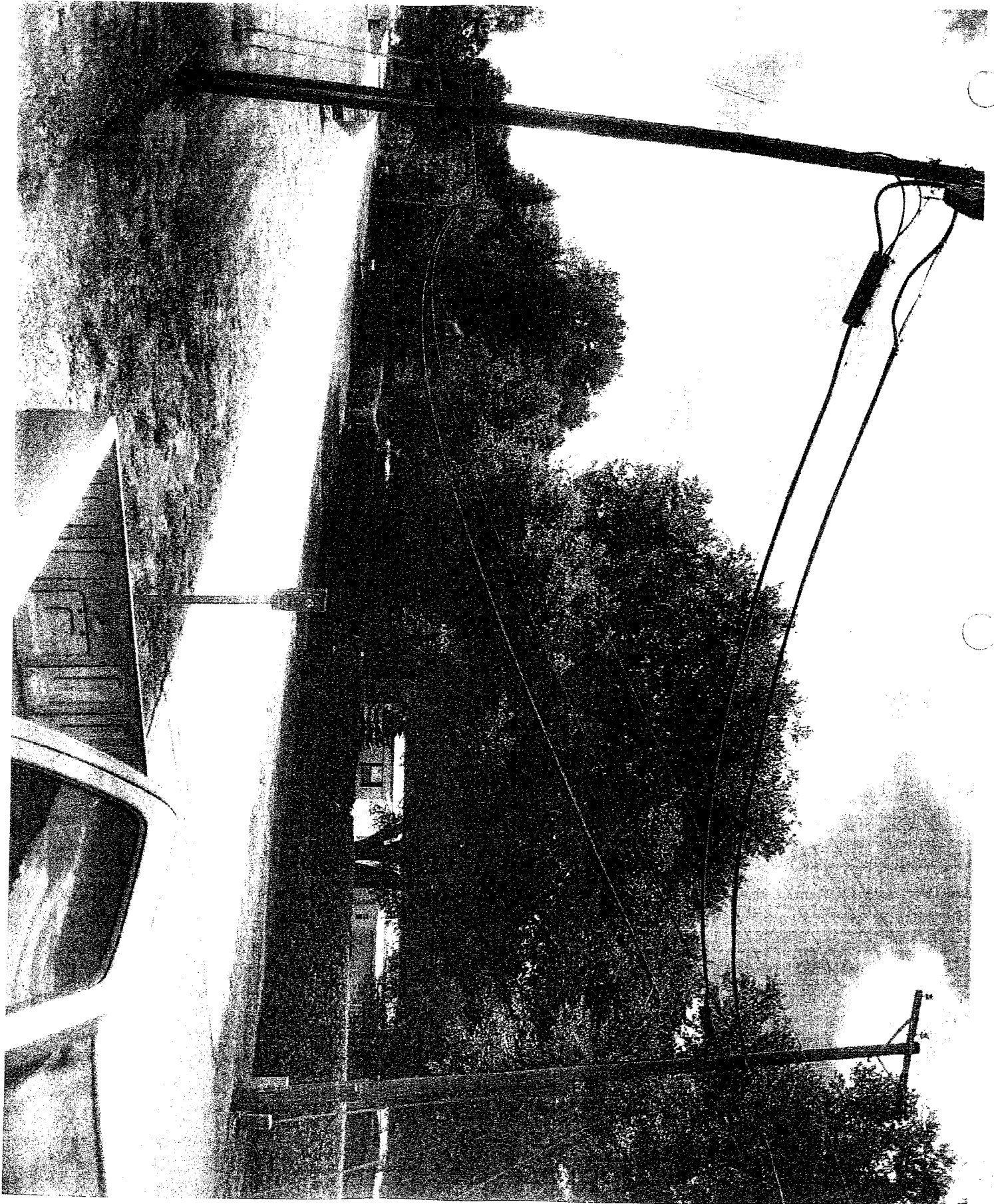
DOCUMENT 15



DOCUMENT 16







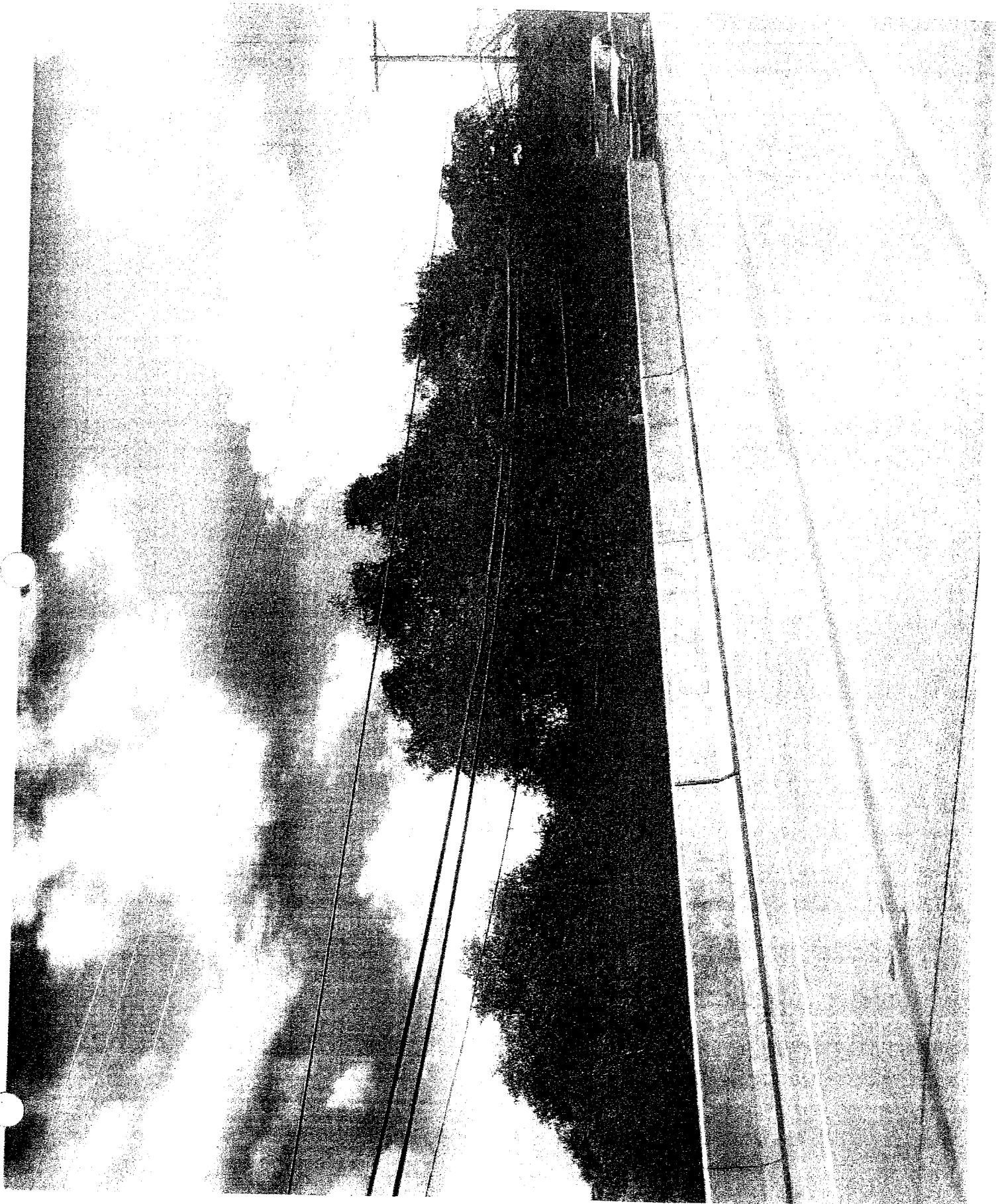
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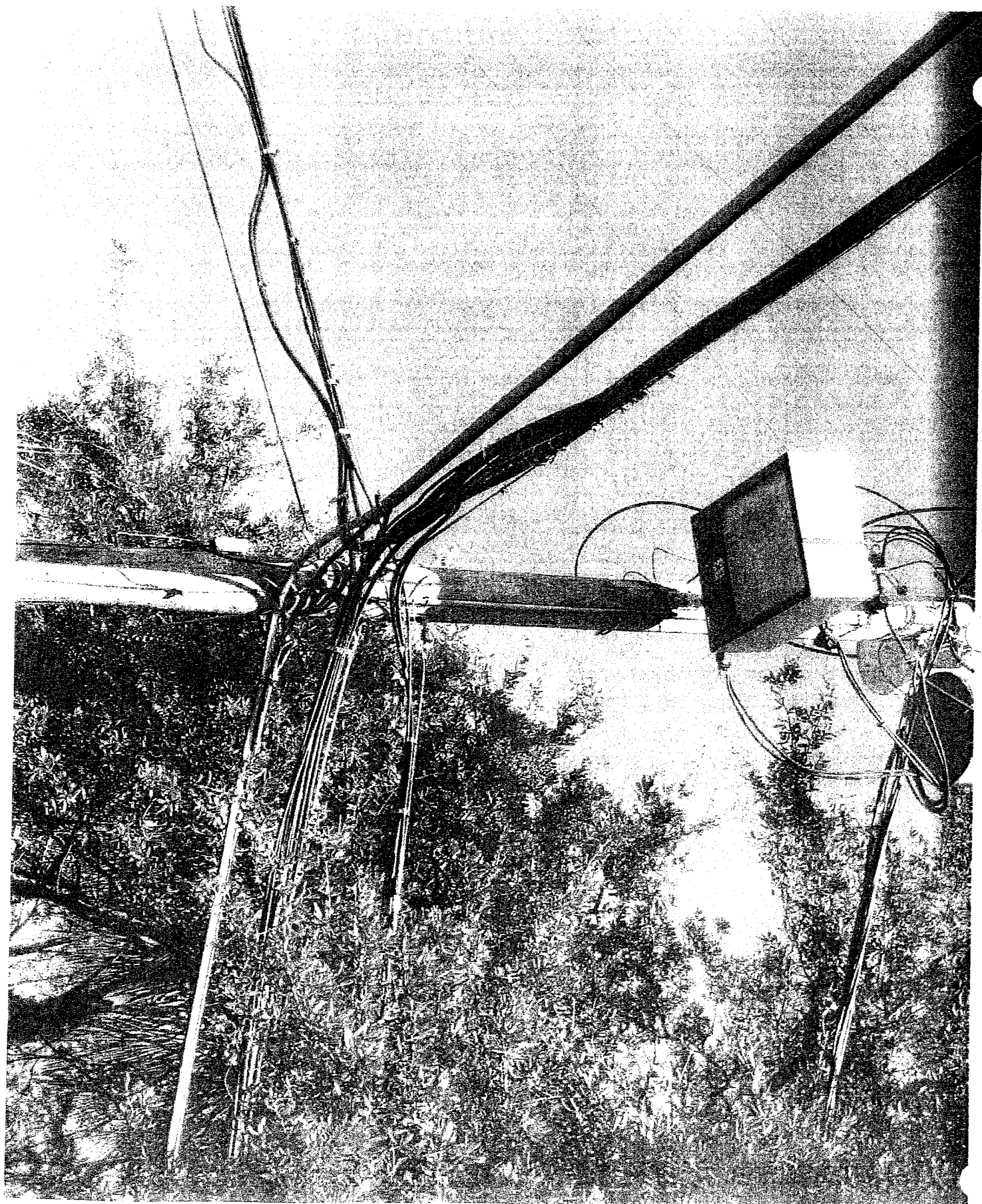


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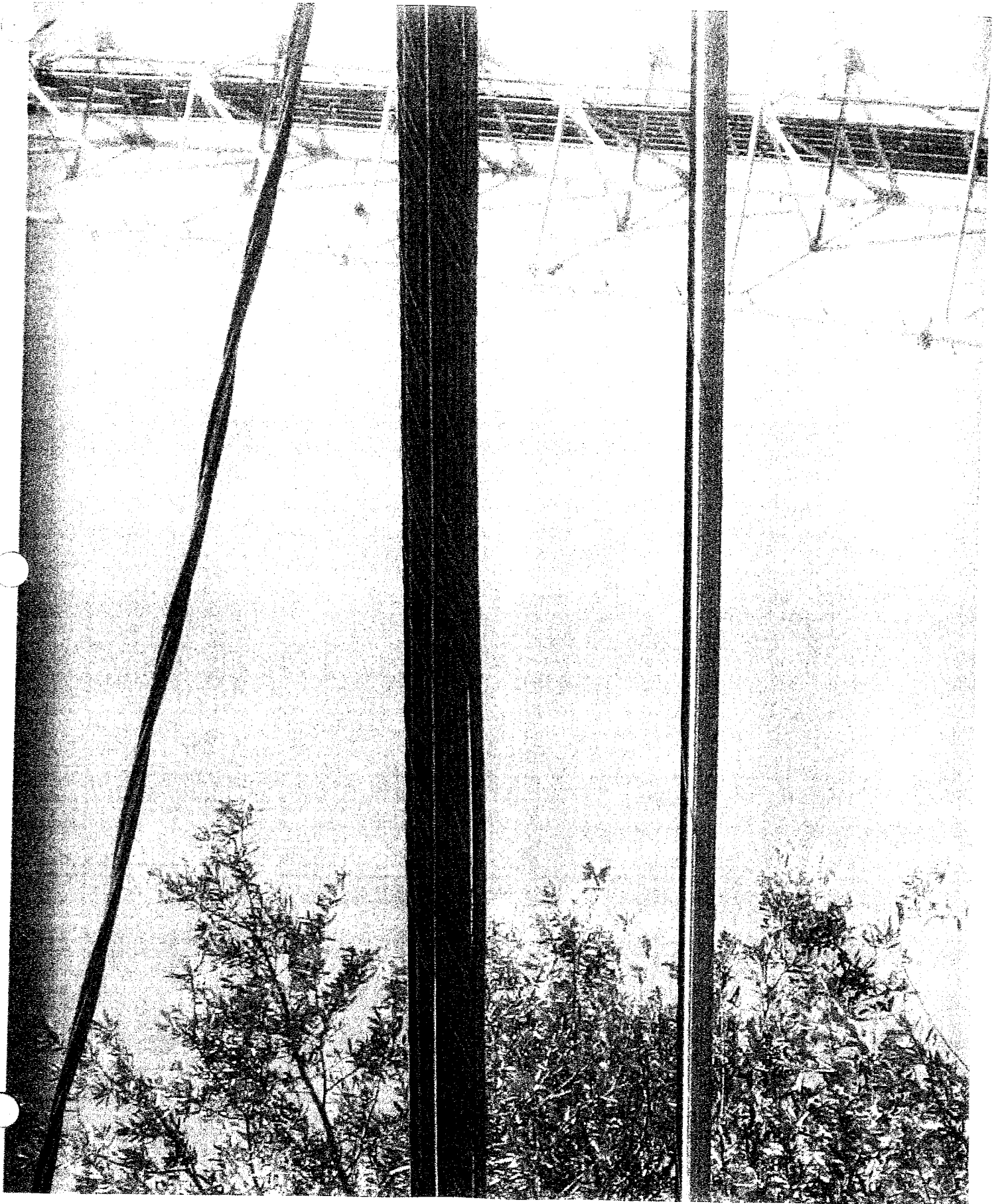
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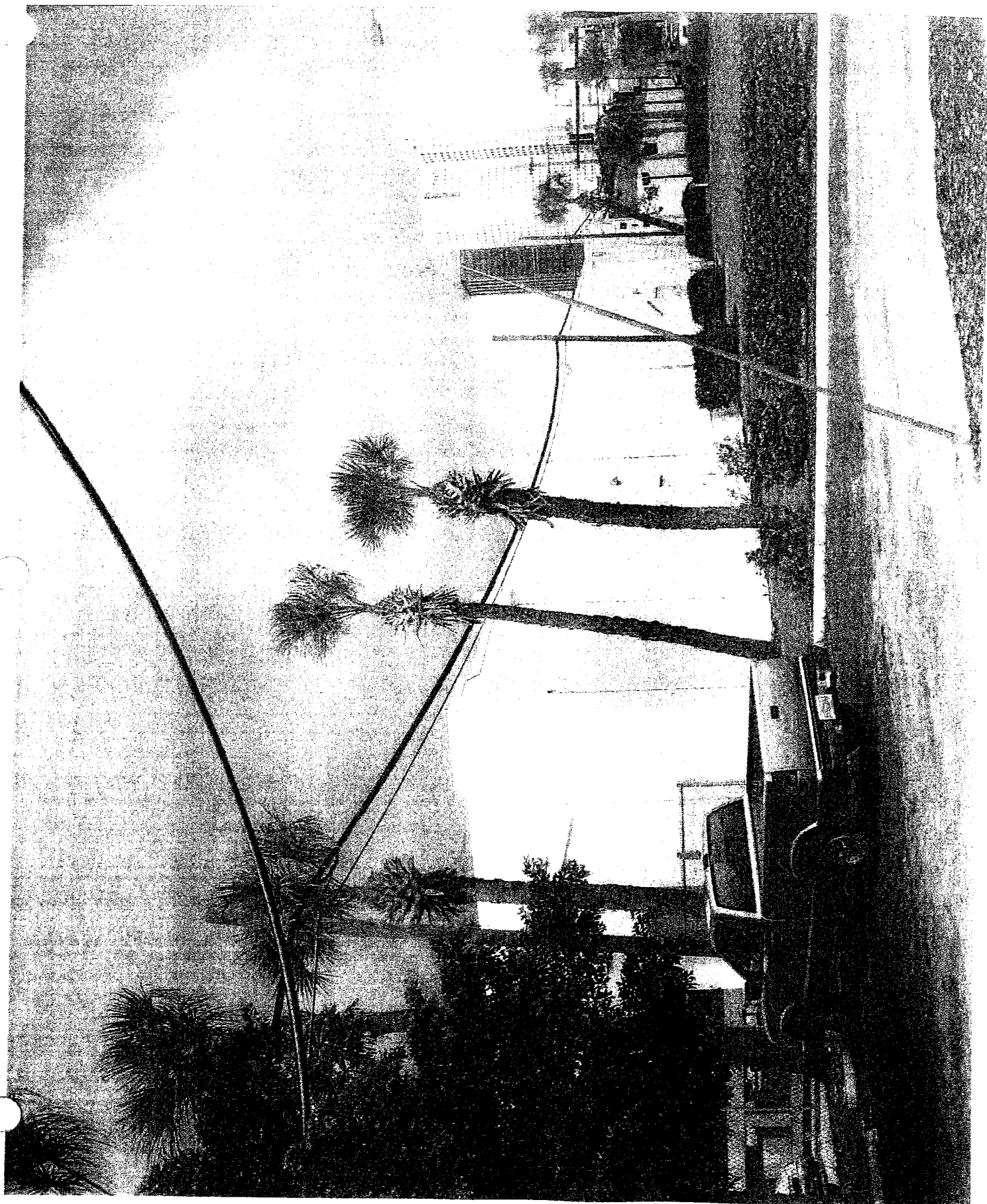
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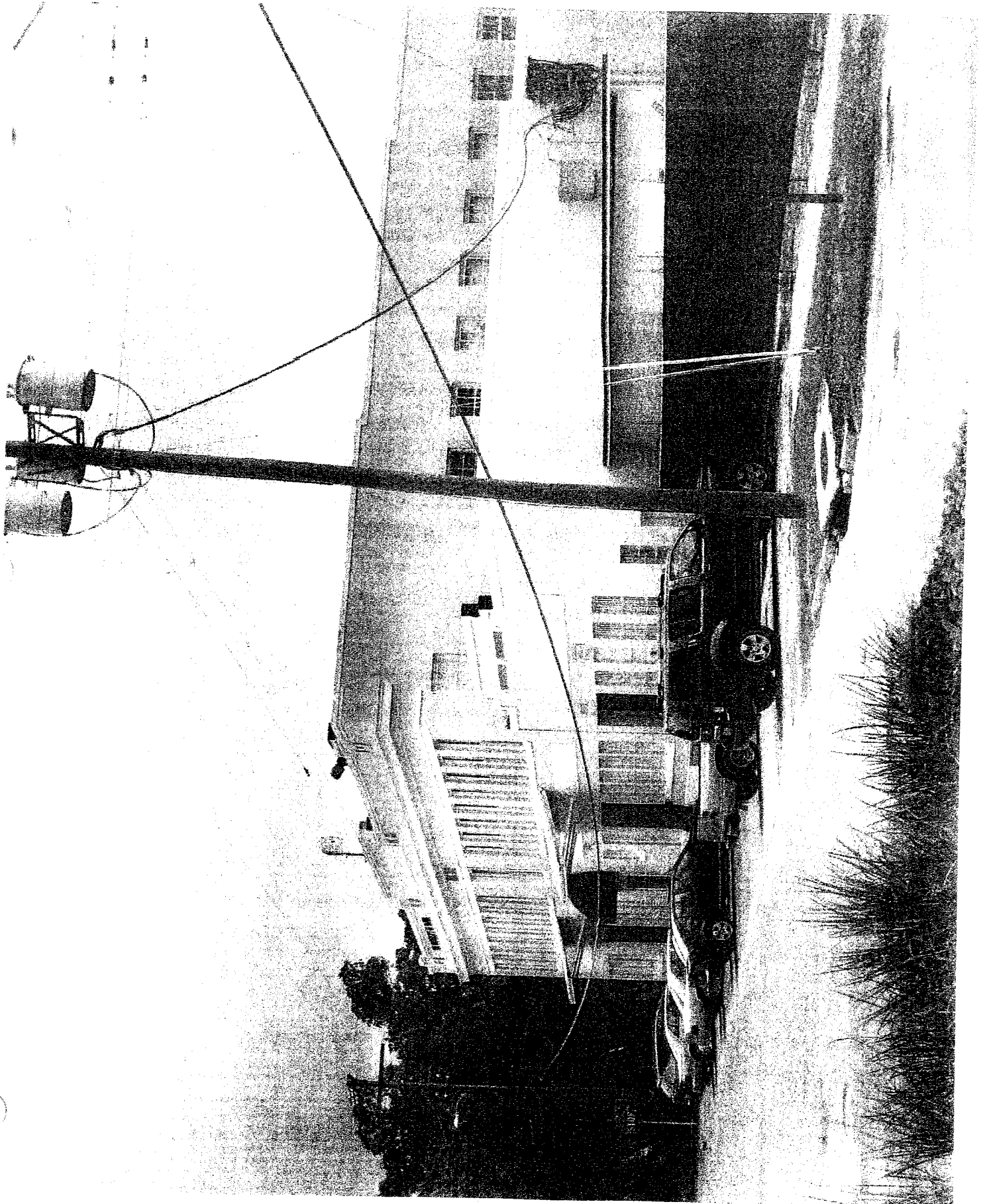




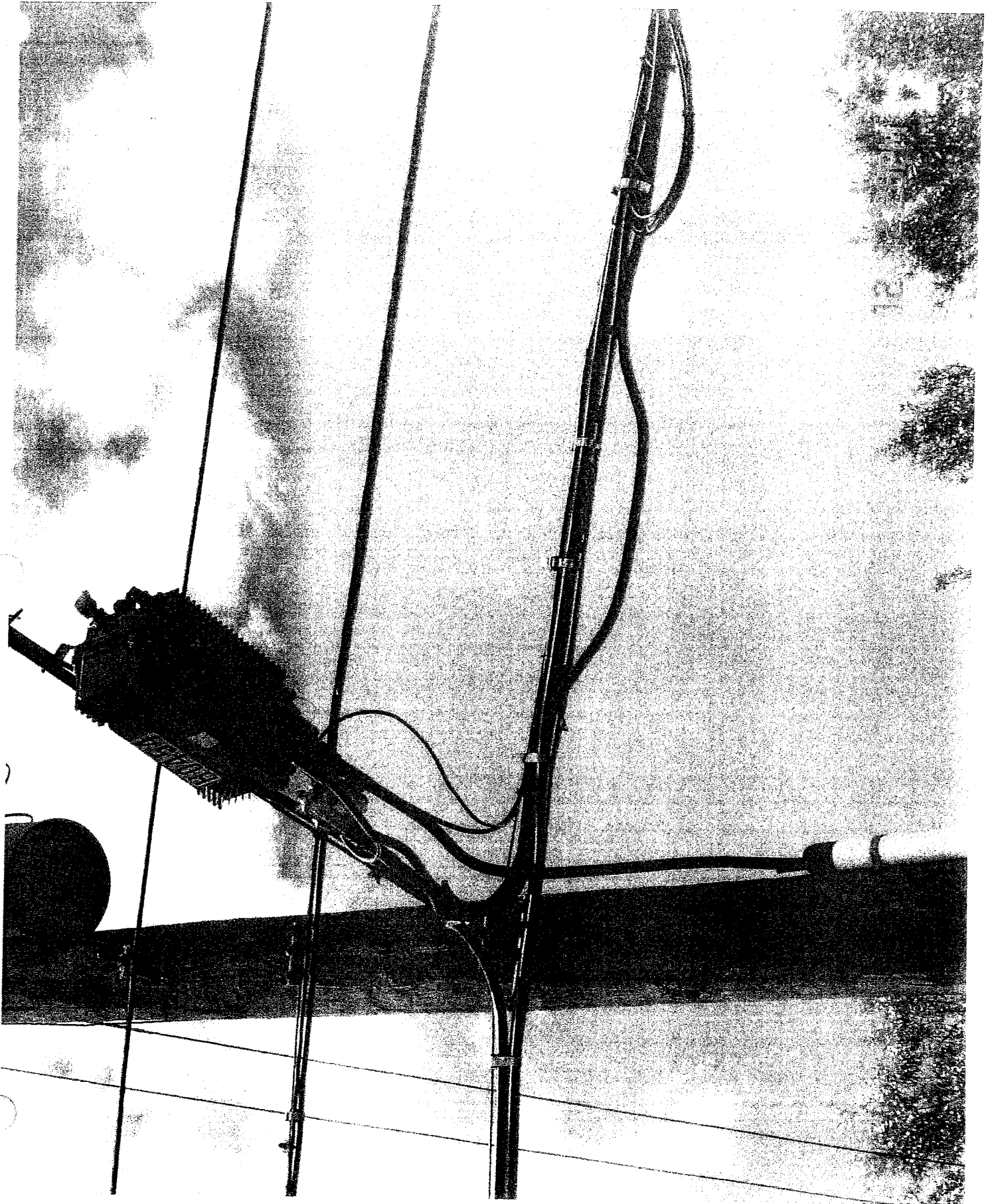
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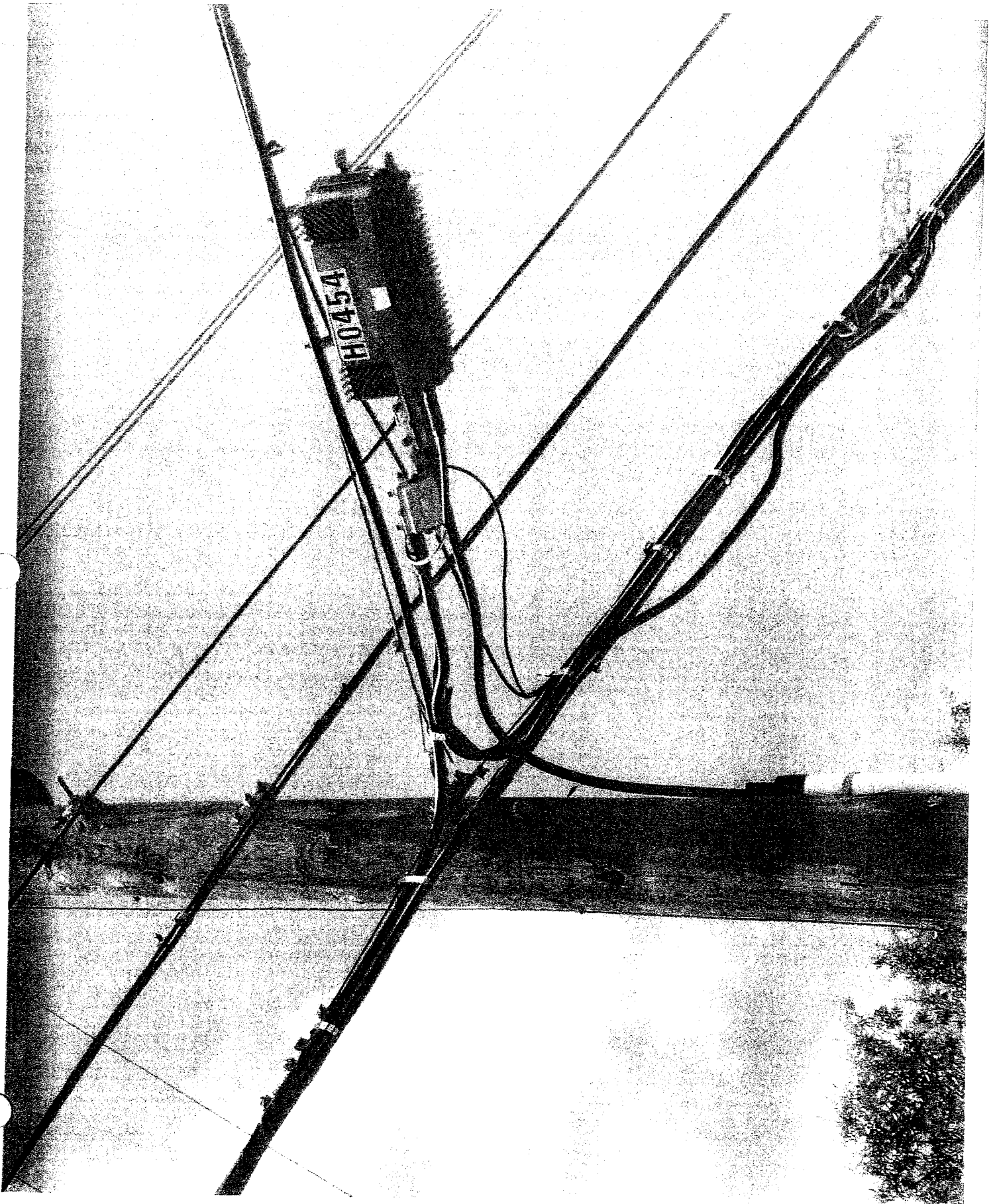
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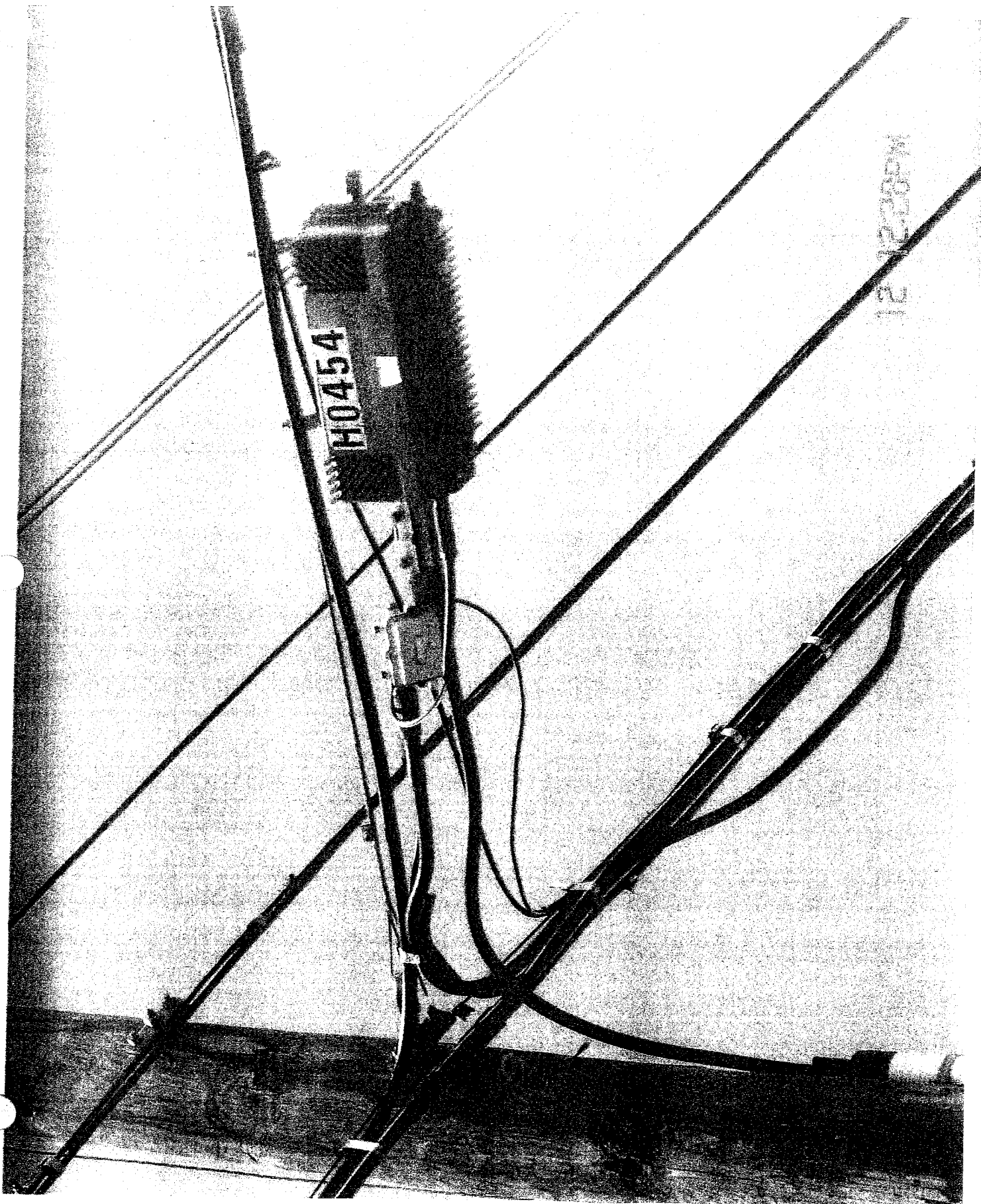
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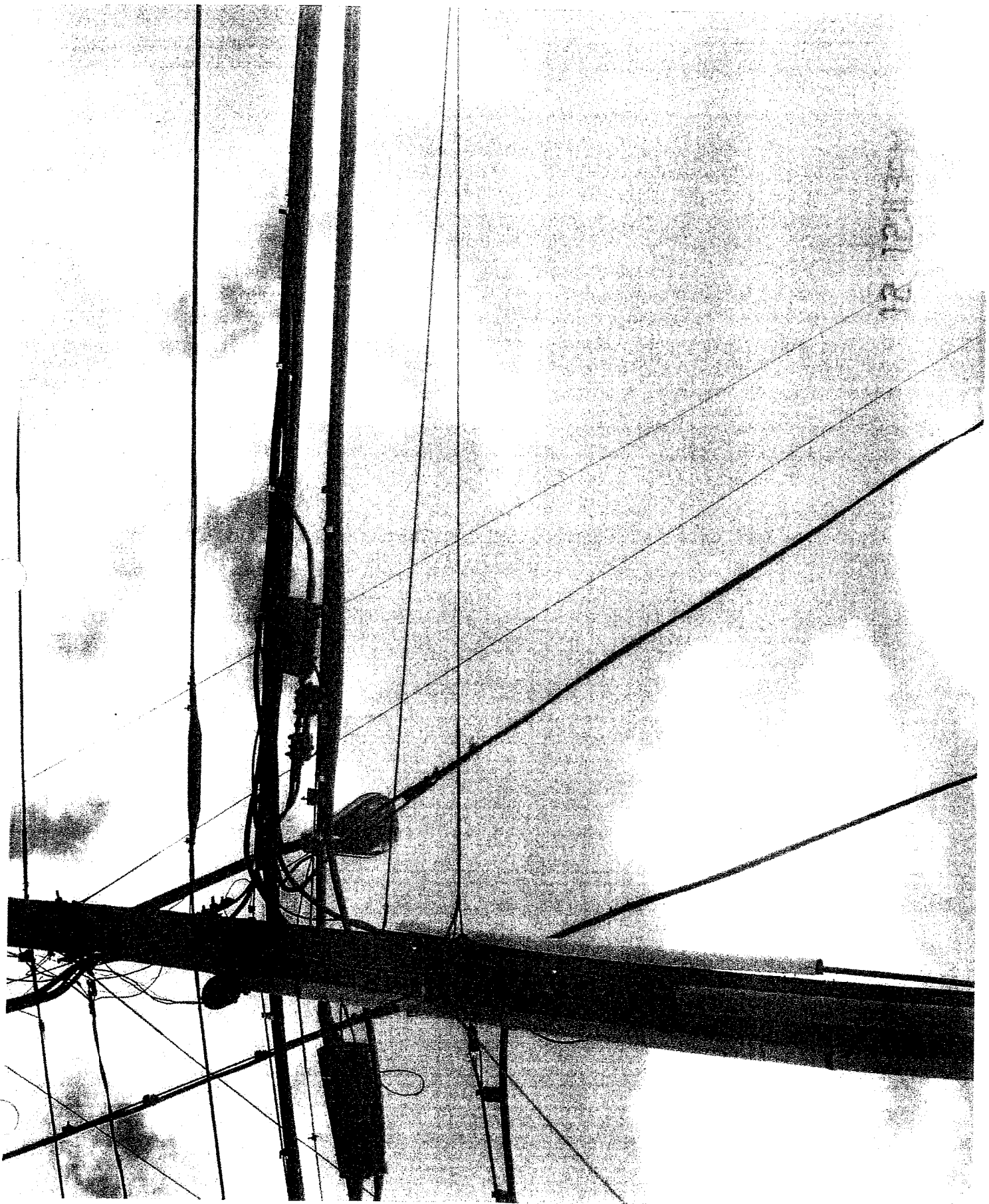
DOCUMENT 25











**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

|  |   |                        |
|--|---|------------------------|
| In re: Proposed amendments to rules    | ) |                        |
| regarding overhead electric facilities | ) | DOCKET NO. 060173-EU   |
| to allow more stringent construction   | ) | FILED: August 18, 2006 |
| standards than required by National    | ) |                        |
| Electrical Safety Code.                | ) |                        |
| _____                                  | ) |                        |

**JOINT REPLY COMMENTS**

Pursuant to Order No. PSC-06-0610-PCO-EU, issued July 18, 2006 in the above-referenced docket, Florida Power and Light Company ("FPL"), Progress Energy Florida ("PEF"), Tampa Electric Company ("Tampa Electric") and Gulf Power Company ("Gulf Power") (sometimes collectively referred to as the "investor-owned utilities" or "IOUs") file these Joint Reply Comments in support of the Florida Public Service Commission's ("PSC's" or "Commission's") adoption of proposed rules 25-6.0341 and 25-6.0342, Florida Administrative Code (the "Proposed Rules") in their current form.

**Introduction**

As a result of the extraordinary storm seasons of 2004 and 2005, the Commission has undertaken a multi-pronged approach to improve the electric infrastructure of this state in order to minimize future storm damage and customer outages.

This rulemaking together with the eight-year Pole Inspection Order No. PSC-06-0144-PAA-EI and the Storm Plan Order No. PSC-06-0351-PAA-EI have specified initiatives that the Commission has determined to be reasonable and necessary to storm harden the system. In each of these proceedings, the Commission has specifically determined that pole attachments affect the safety and reliability of the system and that action is necessary to reduce that effect. Staff

and this Commission have worked to develop and propose fair and balanced proposed infrastructure hardening rules, taking into consideration the comments made by various interested parties.

Verizon Florida, Inc. ("Verizon"), BellSouth Telecommunications, Inc. ("BellSouth"), Embarras Florida, Inc. ("Embarras"), the Florida Cable Telecommunications Association, Inc. ("FCTA") and Time Warner Telecom ("Time Warner") (sometimes collectively referred to as the "Third-Party Attachers" or the "Attachers")<sup>1</sup> filed comments and/or testimony that aim to undermine the Commission's storm hardening objectives. The objections of the Third-Party Attachers fall generally into six categories: 1) the Commission lacks legal authority and jurisdiction to adopt the Proposed Rules and/or the Commission is exceeding its authority or jurisdiction; 2) the IOUs should bear the costs associated with implementing the Proposed Rules; 3) the Proposed Rules lack the necessary evidentiary foundation; 4) Rule 25-6.0341 is too costly and, if adopted, should include specific advance notice and input requirements; 5) if adopted, Rule 25-6.0342 should not authorize attachment standards that exceed the current version of the National Electrical Safety Code ("NESC"); and 6) the Proposed Rules are premature.<sup>2</sup> For the reasons discussed below, the arguments of the Third-Party Attachers should be rejected. The

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<sup>1</sup> It should be noted at the outset that Verizon, BellSouth and Embarras are not on the same legal footing as FCTA and Time Warner. Pole-owning telephone companies have traditionally entered into voluntary "joint use" agreements with pole-owning electric utilities as the means by which the pole infrastructure has been shared between them. As will be developed more fully in Section I.C., below, incumbent local exchange carriers do not enjoy the pole attachment rights granted by the Pole Attachments Act (47 U.S.C. § 224) to cable television companies and other telecommunications carriers. It is telling that these companies would be aligned together in this proceeding in order to advance their interests at the expense of electric utilities.

<sup>2</sup> To the extent the comments and/or testimony submitted by the Attachers specifically address Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, and 25-6.115, the IOUs will generally reply to those comments on the schedule established in ORDER NO. PSC-06-0646-PCO-EU, issued August 2, 2006 in Docket Nos. 060172-EU and 060173-EU.

However, on some points where similar arguments are advanced by attachers with respect to Rules 25-6.034 and 25-6.0342. A reply to those arguments is provided in these comments.

Proposed Rules are an important additional step in exercising the Commission's safety and reliability jurisdiction to protect the critical distribution infrastructure for the provision of electric and communication services. The IOUs urge Staff and this Commission to move forward in adopting the Proposed Rules to ensure safe and reliable electric service taking into consideration the increased risk of hurricane activity that we currently face.

**I. The Proposed Rules are a valid exercise of the Commission's safety and reliability jurisdiction.**

The Attachers' arguments that the Commission's Proposed Rules either lack adequate legislative authority or exceed the Commission's delegated authority fall primarily into three categories: 1) the Commission's Proposed Rules exceed the state's jurisdiction over safety and reliability and unlawfully encroach on the jurisdiction of the Federal Communications Commission ("FCC"); 2) the Commission's Proposed Rules unlawfully sub-delegate the Commission's jurisdiction to electric utilities; and 3) the Proposed Rules are an unlawful impairment of contract in that they effectively void existing licensing and attachment agreements. As addressed below, each of these arguments is without merit.

**A. This Commission has jurisdiction over safety and reliability issues**

The FCTA and other Attachers continue to obfuscate the broad jurisdiction this Commission has over the safety and reliability of Florida electric distribution facilities. This jurisdiction was not in any way diminished by the Pole Attachments Act. With the Pole Attachments Act, Congress did not preempt the entire field of pole attachments issues. Rather, the Act clearly makes room for state regulation by distinguishing between two types of pole attachment issues: (1) contract issues, including the rates, terms and conditions applicable to the attachment, which *are* within the province of the FCC, unless a state reverse preempts the federal

agency;<sup>3</sup> and (2) safety, reliability, capacity and engineering issues raised by a request for attachment to a pole, which remain within the province of the states, which traditionally have regulated in this area, and which are not required to reverse preempt the FCC to exercise this jurisdiction.<sup>4</sup> 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 a state

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<sup>3</sup> In its original form, the Federal Act regulated only the contract issues arising from cable attachments to utility poles. Congress captured the contract issues by a single phrase: "rates, terms and conditions." 47 U.S.C. § 224. Access to utility poles was voluntary and outside the scope of the Act. As such, access was not a "rate, term or condition" of attachment. *See Arthur Young & Co. v. Mariner Corp.*, 630 So. 2d 1199, 1202 (Fla. 4<sup>th</sup> DCA 1994) (statutes must be given plain and obvious meaning). Additionally Congress recognized the local nature of pole attachment issues.<sup>3</sup> As such, Congress put in place a reverse preemption provision that allowed states to certify jurisdiction over pole attachment contract issues:

Each State which regulates the rates, terms, and conditions for pole attachment shall certify to the Commission that – (A) it regulates such rates, terms, and conditions; and (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via the attachments, as well as the interests of the consumers of the utility services.

47 U.S.C. § 224(c)(2) (1978)

<sup>4</sup> Specifically, 47 U.S.C. § 224(c)(1) provides, "Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State." (emphasis added). The dichotomy, set forth in the disjunctive "or" in 47 U.S.C. § 224(c)(1), is continued into the certification requirements where jurisdiction over each type of issue is handled differently under the 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. Thus, 47 U.S.C. § 224(c)(2) provides that "Each State which regulates the *rates, terms, and conditions* for pole attachments shall certify to the Commission that— (A) it regulates such *rates, terms, and conditions*; and (B) in so regulating such *rates, terms, and conditions*, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services." The Act provides no similar certification requirement for a state to certify that it regulates issues of safety and reliability. Rather, jurisdiction over safety, reliability, capacity and engineering issues rests entirely with the states to the extent they in fact regulate such issues. *See* 47 U.S.C. § 224(c)(1).

does not exercise such jurisdiction by, for example, having regulations related to safety and engineering of utility infrastructure. See 47 U.S.C. § 224(c)(1).<sup>5</sup>

In 1996, Congress expanded the Act to mandate *access* for cable and telecommunications companies. Congress did not change, however, the jurisdiction of states to regulate matters relating to safety, reliability, capacity or generally accepted engineering practices. When, for example, third-party attachers sought to bring questions of capacity under federal pole attachment jurisdiction, the Eleventh Circuit Court of Appeals would not permit such alteration of Congress's regulatory design.<sup>6</sup>

Recognizing Congress's express words, the FCC has acknowledged generally 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).

114 FCC Rcd 18049 (1999) at ¶ 114.

The FCC has expressly recognized that the parties to any such action have an obligation to flesh out the appropriate state jurisdiction and if appropriate, the FCC will stand down:

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<sup>5</sup> Even the FCC does not claim that Congress preempted the field of pole attachments and provided the FCC exclusive jurisdiction unless a state certified to the contrary. In fact, as to state and local regulations regarding safety and reliability issues, the Commission has consistently stated that "state and local requirements affecting attachments are entitled to deference even if the state has not sought to preempt federal regulations under section 224(c)." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report & Order, 11 FCC Rcd 15499, ¶¶ 1154, 1158 (1996). The state therefore need not certify that it regulates such issues in order to have jurisdiction over them In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Order on Reconsideration, 14 FCC Rcd 18049, ¶¶ 114, 116 (1999).

<sup>6</sup> Southern Company v. F.C.C., 293 F.3d 1338 (11<sup>th</sup> Cir., 2002).

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 to the state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. We continue to believe 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 regulations.

114 FCC Rcd 18049 (1999) at ¶ 116.

Given Congress' express mandate, and the FCC's statements, the preemption analysis under the Act obviously depends upon the nature of the issue. Jurisdiction over the historical contract issues ("rates, terms and conditions") is vested in the FCC unless a state elects to preempt FCC jurisdiction by filing a specific certificate to that effect. 47 U.S.C. § 224(c)(2). This is the jurisdictional issue the Florida Supreme Court addressed in *Teleprompter v. Hawkins*, 384 So. 2d 648 (Fla. 1980) ("*Hawkins*"). 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 U.S.C. § 224(c)(1). The *Hawkins* decision pre-dated Congress' pronouncements in the 1996 Act and, therefore, did not address (and could not have addressed) this Commission's jurisdiction over safety and reliability issues in any respect. Additionally, following the *Hawkins* decision, the Florida Legislature expanded this Commission's jurisdiction over the safety and reliability of electric distribution poles. See pg. 8, *infra*. As such, the attacher's reliance on the *Hawkins* decision is misplaced.

In summary, unlike jurisdiction over contract issues, which rests initially with the FCC, jurisdiction over safety and reliability issues rests with the state unless the state fails to exercise

(not certify) such jurisdiction themselves.<sup>7</sup> Significantly, the FCTA's representative, Mr. Michael Gross, has admitted this Commission's jurisdiction:

"[W]e agree this morning that this Commission does have authority to set safety and reliability standards, and I think that has been recognized by the FCC."

"The FCTA acknowledges that the State of Florida through this Commission has authority to set safety and reliability standards."

See Tr. 6/20/06 Agenda Conference, pp. 15-16.

**B. This Commission thoroughly regulates issues of safety and reliability**

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." 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. Section 366.04(5) provides that the Commission 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." In addition, section 366.05(1), Florida Statutes, grants the Commission the "power to . .

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<sup>7</sup> The analysis of the Commission's safety and reliability jurisdiction is similar to the concept that state law determines the meaning of the phrase "owned or controlled" in the Act. See, e.g., *UCA, LLC v. Lansdowne Comm. Dvlp. LLC*, 215 F. Supp. 742, 749 (E.D. Va. 2002) (noting that the FCC itself had determined that "[t]he scope of a utility's ownership or control of an easement or right-of-way is a matter of state law," meaning that "the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right of way to the extent necessary to permit such access.") (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 F.C.C.R. 15,499, 16,082 ¶ 1179 (Aug. 8, 1996)). Applying state law, the judge ruled that the utility did not "own or control" the easement, rendering moot and thus not reaching the question of a third-party attacher's federal attachment rights thereto.



. adopt construction standards that exceed the National Electrical Safety Code, for purpose of ensuring the reliable provision of service.”

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, 25.6039, 25-6.044, 25-6.0455, Florida Administrative Code (2006).<sup>8</sup>

The *Hawkins* case decided in 1980 held that the Commission’s jurisdiction does not extend to rates, terms and conditions of pole attachments. There was no discussion in that case concerning the Commission’s Grid Bill and safety jurisdiction which is the basis for the Proposed Rules. Indeed, subsection 366.04(6) conferring the Commission’s safety jurisdiction was not enacted until 1986. See Chapter 86-173, Laws of Florida, 1986. The *Hawkins* decision is simply inapplicable to this rulemaking that arises from the Commission’s reliability and safety jurisdiction.

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

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<sup>8</sup> Attachers generally acknowledge the obligation to meet state safety requirements in the attachment agreements. *See, e.g.*, Exhibit 1 (Gulf Power Cable Television Attachment Agreement with Comcast Cablevision of Panama City, Inc.), ¶ 3(A) (“CATV Company shall at no time make or maintain an attachment to Gulf’s pole or substitute pole if the spacing on the pole, the ground clearance, or other characteristics of the attachment are not in strict conformity with the [NESC] or any other applicable codes, rules or regulations of any governing body having jurisdiction.”).

**C. FCC pole attachment rate jurisdiction does not cover charges between ILECs and electric utilities**

BellSouth argues that by causing the utilities to buy more expensive poles, which in turn raises pole rental rates under its negotiated contracts with electric utilities encroaches on the FCC jurisdiction. This is totally incorrect. It is impossible to encroach on jurisdiction the FCC does not have at all.<sup>9</sup>

BellSouth first asserts that the Proposed Rules will require electric utilities to install more reliable but more expensive electric infrastructure which will increase pole attachment rental rates. While this may be true in some circumstances, the rules do not affect the FCC's jurisdiction.

The rates paid by Incumbent Local Exchange Carriers ("ILECs") to electric utilities are established by negotiated contract and are specifically excluded from the Federal Pole Attachment Act. The FCC has no jurisdiction over adjustment rates charged between ILECs and electric utilities.

BellSouth also asserts that it is not the cost causer. While that point may be subject to some debate, it is of no significance here. First, the Commission has no role in assigning costs. Second, the cause of a cost increase is heightened storm activity and governmental action taken in response to this activity in order to improve the safety and reliability of the system. Finally, the adjustment rates in contracts are a product of negotiation and are not under the jurisdiction of the FCC.

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<sup>9</sup> 47 USC § 224 (a)(1) defines the term "utility" to mean "a local exchange carrier or an electric, gas, water, steam or other public utility which owns or controls poles." "Pole Attachment" is defined by § 224 (a)(4) as "... any attachment by a cable television system or provider of telecommunication service to a pole ... owned or controlled by a utility." The term "telecommunications carrier" "... does not include any incumbent local exchange carrier ...". See 47 USC § 224 (a)(5).

In all events, the FCC's jurisdiction has never extended to establishing the capital, operating and maintenance costs of utility poles; it extends only to the methodology under which such costs will be included in pole attachment rates.

**D. FCTA's suggested revisions to proposed rule 25-6.0342(3) are at odds with this Commission's jurisdiction.**

The FCTA's suggested revisions to proposed rule 25-6.0342(3) would require that the parties "agree" to a denial of access for reasons of insufficient capacity, safety, reliability, and generally applicable engineering purposes, and if no agreement can be reached, take the dispute to the FCC "as the agency possessing jurisdiction to adjudicate an attacher's rights and obligations in a manner consistent with section 224 . . ." (FCTA August 4, 2006 Comments, Exhibit 3). There are a number of problems with this proposal.

First, any requirement that the attacher "agree" to denial for the reasons of insufficient capacity, safety, reliability, and generally applicable engineering principles would hold hostage the implementation of the Attachment Standards and Procedures. The FCTA itself already has taken the position in an FCC rate proceeding that there is no such thing as a "full capacity" pole, so long as the pole can be rearranged, strengthened or changed-out to accommodate a request for access. As such, from FCTA's perspective, the only "enforcement" of Attachment Standards and Procedures would be to determine when rearrangement, strengthening or make-ready must occur. Such a position would undermine the very purpose of Commission-approved Attachment Standards and Procedures, and interference with a utility's unequivocal right to deny access under § 224(f)(2).

Second, the FCC is *not* (as FCTA suggests) "the agency possessing jurisdiction" to adjudicate issues of capacity, safety, reliability, and generally applicable engineering purposes. This jurisdiction lies squarely with this Commission. To suggest otherwise would entirely

negate the safety and reliability jurisdiction conferred by Sections 366.04 and 366.05. Third, FCTA's proposed revisions prematurely attempt to "set" the jurisdiction over access disputes in the FCC. The FCC has *never* said that it is the sole arbiter of access disputes, and Congress did not intend it that way. FCTA even acknowledged this when its representative described this Commission's jurisdiction over access as "concurrent jurisdiction . . . between the FCC and the states." See Tr. 5/19/06 Rule Development Workshop, p. 97. In short, FCTA's proposed 25-6.0342(3) would unnecessarily strip this commission of its safety and reliability jurisdiction, result in a quagmire of inefficiencies, and otherwise be a total disaster.

**E. Rules 25-6.034 and 25-6.0342 do not unlawfully delegate the Commission's regulatory authority to electric utilities**

The proposed amendments to Rule 25-6.034, Construction Standards, and proposed new Rule 25-6.0342 should be read together. The proposed amendments to Rule 25-6.034 require each investor-owned electric utility to establish within 180 days of the effective date of the rule construction standards for overhead and underground electrical transmission and distribution facilities. New Rule 25-6.0342, Third Party Attachments, requires utilities, as a part of its construction standards adopted pursuant to Rule 25-6.034, to adopt standards and procedures for third-party attachments to utility facilities. Read together these rules require:

- (1) Each utility must establish construction standards which include pole attachment standards and procedures within 180 days of the effective date of the rule.
- (2) In establishing attachment standards, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities.
- (3) Copies of the standards must be maintained at its corporate headquarters and each district office and must be produced within two working days in Tallahassee for staff review in the companies' Tallahassee office.

- (4) Any dispute arising from the implementation of this rule shall be resolved by the Commission.

Contrary to the assertions of the Attachers, the Proposed Rules do not effect an unlawful delegation of Commission authority to the utilities. Instead the proposed amendment to Rule 25-6.034 and proposed new Rule 25-6.0342 simply direct utilities to adopt construction and attachment standards that meet certain minimum safety and reliability criteria. Proposed Rule 25-6.034 provides in pertinent part:

(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. . .

\* \* \*

(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, comply with the applicable edition of the National Electrical Safety Code. . .

(a) The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 200. . .

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

(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 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 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. (emphasis supplied)

Proposed Rule 25-6.0342 provides:

The attachment standards shall meet or exceed the [NESC] . . . and other applicable standards imposed by state or federal law so as to assure, as far as 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 and maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." (Emphasis supplied.)

These provisions provide a clear statement of standards the utilities must meet in developing the construction and attachment standards required by the rules.

As noted above, the Public Service Commission has very broad and exclusive jurisdiction over the safety and reliability of electric utility distribution facilities. Indeed, in 2006, the Florida Legislature supplemented the Commission's existing safety and reliability jurisdiction by amending Section 366.05 to provide the Commission "the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring reliable provision of service." See Section 17, Ch. 2006-230, *Laws of Florida* (2006 Senate Bill 888).

Implementing its safety and reliability jurisdiction under the new statutory provision, as well as existing grants of authority, the Commission has proposed infrastructure hardening rules,

including the proposed amendments to Rule 25-6.034 and proposed Rule 25-6.0342 related to third-party attachment standards and procedures.

The amendments to Rule 25-6.034 adopts the 2002 edition of the NESC and requires each utility to adopt construction standards that comply at a minimum with the NESC and assure that "the facilities shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices. . ." (See proposed Rule 25-6.034(3)) The utilities are directed to be guided by the extreme wind loading standards . . . of the 2002 edition of the NESC to the extent reasonably practical, feasible and cost-effective for specifically identified types of construction. (See proposed Rule 25-6.034(4) and (5)) The construction standards must also consider practical, feasible and cost-effective guidelines and procedures to deter damage to underground and supporting overhead facilities due to flooding and storm surges. (See proposed Rule 25-6.034(6))

Proposed Rule 25-6.0342 requires each utility to "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 [that] ... meet or exceed the applicable edition of the National Electrical Safety Code ... 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." See Proposed Rule 25-6.0432(1). According to proposed Rule 25-6.0432, no attachment to a utility's electric transmission or distribution poles shall be made except in compliance with the utility's Attachment Standards and Procedures. See Proposed Rule 25-6.0432(2). Disputes arising from implementation of the rules would be resolved by the

Commission. See Proposed new subsection (7) to Rule 25-6.034 and Proposed Rule 25-6.0432(3).

The argument that the Commission is “sub-delegating” its regulatory authority to electric utilities is a red herring designed to distract the Commission from its goal of ensuring standards are in place to harden electric utility infrastructure in the wake of an increased threat of hurricane activity and to delay or derail the rulemaking process. The proposed rules do not delegate regulatory authority to electric utilities. Consistent with its legislative grant of authority, the Commission retains power to decide whether the construction and attachment standards established by electric utilities under the rule satisfy the parameters for construction and attachment standards laid out in the statute and rule – i.e., that they are written for purposes of ensuring reliable provision of service and meet the criteria articulated in subsection (1) of the proposed rule. It is the Commission that: (1) has made the fundamental policy decision as to the guidelines that the standards must meet; (2) retains discretion to determine whether the utilities’ construction and attachment standards comply with the rules; and (3) will resolve complaints regarding the rule’s implementation. Because the proposed rules would not delegate regulatory authority to electric utilities, there is no merit to an argument that the Commission lacks legislative authority to subdelegate powers to a private entity. See, e.g., *St. Johns County v. Northeast Florida Builders Assoc. Inc.*, 583 So. 2d 635, 642 (Fla. 1991) (finding ordinance did not create an unlawful delegation of power because the fundamental policy decisions were made by the county, and the discretion of the school board was sufficiently limited); *County Collection Services, Inc. v. Charnock*, 789 So. 2d 1109, 1112 (Fla. 4th DCA 2001) (finding there was no improper delegation of authority by a county that entered into a contract assigning code enforcement and lot clearing liens to a contractor where the county retained the power to decide which liens to assign; the power to decide what collection techniques are permissible and to



prohibit the use of any technique it finds objectionable; the power to take back any assigned debt or lien; and the power to terminate the contract for any or no reason), *compare Florida Nutrition Counselors Assoc. v. Dept. of Business & Prof. Reg.*, 667 So. 2d 218, 221 (Fla. 1st DCA 1995) (holding, in part, that a proposed rule constituted an invalid delegation of authority to private individuals where no restrictions were imposed on the types of practices or standards such individuals may create); *City of Belleview v. Belleview Fire Fighters, Inc.*, 367 So. 2d 1086, 1088 (Fla. 1st DCA 1976) (finding improper delegation where, under the contract between the city and a private entity, the city was powerless to direct the exercise of police power in the fire fighting area).<sup>10</sup>

The utilities are the entities that must design, construct and maintain their systems – not the Commission or the Attachers. Consequently, the Commission rules, of necessity, must be a general statement of Commission policy with the specific implementation left to each utility, based on the particular facts and circumstances that each utility faces. As the Commission observed in Re: Aloha Utilities, Order No. PSC-04-0712-PAA-WS, issued in Docket Nos. 020896-WS and 010503-WU, on July 20, 2004:

Commission practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal. In keeping with this established practice, we decline to prescribe the specific treatment process to be used in this case. (Emphasis supplied.)

What is reasonably sufficient, adequate and efficient service may depend upon the facts and circumstances of that particular customer or territory or portion of a territory. Attempting to

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<sup>10</sup> The proposed rule is also consistent with the Attorney General Opinion, 078-53, cited by Embark (pp. 2-3), in which the Attorney General determined that the submission of rates by to the Commission by private parties did not mean that the Commission had unlawfully delegated its ratemaking authority because the Commission made the final determination regarding the appropriate rates. Here, the Commission makes the final determination regarding whether the attachment standards comply with the proposed rule.

define what is reasonably sufficient, adequate and efficient service for every potential set of circumstances statewide could dictate endless volumes of administrative rules and would require extensive Staff resources. Rather than doing this, the Proposed Rules rely upon the principle of management by exception whereby the Commission would entertain and resolve complaints of any interested party who believes that a particular utility has acted unreasonably in defining and adopting a particular construction standard.

The Commission properly relies on the principle of management by exception in numerous ways. Indeed, the IOUs are not aware of another instance where the Commission has pre-approved any type of construction standards as opposed to providing guidelines and enforcement mechanisms. Similarly, the Commission does not pre-approve every contract entered into by a public utility but instead addresses and resolves any contention by a substantially affected person that a utility acted imprudently in entering into a particular contract. The Commission has often stated that its role is to regulate utilities through continuing oversight as opposed to micromanaging day-to-day utility operations and decision making.

Here, in charging the utilities with the development of construction and attachment standards, the Commission has recognized that the development of those standards requires expertise and flexibility of the utility to deal with complex and fluid conditions. The Commission has appropriately reasoned that some areas may have higher risk of damage and that stronger facilities are required in those areas.

Construction standards are not uniform today.

Uniform standards among all utilities would not be practicable or cost beneficial for customers. Because of the diverse nature of Florida's geography, utilities need the flexibility to address unique infrastructure needs within and among respective service areas. The Commission's proposed rules are sensitive to this need for flexibility.

It would be difficult, if not impossible, for the Commission to incorporate all of the construction standards for the various utilities in the rule per se.<sup>11</sup> That the Commission's proposed rule 25-6.0432 does not do so does not render it invalid.

**F. Proposed rule 25-6.0342 would not void existing licensing agreements or constitute an impairment of private contracts**

The attachers make vague references to the potential for Attachment Standards and Procedures to "conflict" with existing agreements.<sup>12</sup> Their suggestions are misplaced for two reasons: (1) Attachers enter into attachment agreements knowing that those agreements may be subject to future regulatory change, and (2) the Commission has a legitimate justification for implementing the Proposed Rules.

**1. Expectations of attachers**

When attachers enter into agreements, they know the codes, standards and specifications may change during the term of the agreement. The NESC, for example, is revised from time-to-time. A utility's specifications are updated from time to time through experience, technology

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<sup>11</sup> Similarly, the Florida Supreme Court has repeatedly held that the "sufficiency of adequate standards depends on the complexity of the subject matter and the 'degree of difficulty involved in articulating finite standards'." See, e.g., *Avatar Dev. Corp. v. State*, 723 So. 2d 199, 207 (Fla. 1998) quoting *Askew v. Cross Key Waterways*, 372 So. 2d 913, 918 (Fla. 1978) and *Brown v. Apalachee Regional Planning Council*, 560 So. 2d 782 (Fla. 1990). The *Avatar* court found that "environmental protection requires highly technical, scientific regulatory schemes to ensure proper compliance with legislative policy" and determined that requiring the Legislature to "enact such rules, regulations and procedures capable of addressing the myriad of problems and situations that may arise implicating pollution control and prevention in Florida's varied environment" would be "difficult, if not impossible." As stated above, it would be difficult, if not impossible, to adopt uniform construction and attachment standards for the electric utilities given the diverse geographic nature of the utilities' service areas and the unique needs associated with each. Therefore, the Commission has established appropriate guidelines and conditions for the utilities to follow that reflect the Legislature's interest in ensuring that construction standards are designed to ensure the reliable provision of service.

<sup>12</sup> See, Verizon Florida Inc's Request for Hearing, at 2; Initial Comments of Verizon Florida, Inc. Concerning Proposed Rules 25-6.0341 and 25-6.-342, at 2-3; BellSouth Telecommunications, Inc. Direct Testimony of Kirk Smith, at 7, 21; Comments of Embarq Florida, Inc. Regarding Proposed Rules 25-6.034, 25-6.0341 and 25-6.0342, at 4.

and innovation. Further, many attachment agreements specifically reserve the right to alter or amend standards and specifications, and specifically note that certain requirements of the contract may change depending on regulatory requirements. Attachers know they are dealing with a heavily regulated industry.

## 2. Justification for implementation

The contracts clause in the United States Constitution does not preclude implementation of the Proposed Rules.

The primary inquiry into whether a state regulation has violated the Contracts Clause<sup>13</sup> requires courts to determine whether the regulation "operates as a substantial impairment of a contractual relationship." See *United States Fidelity & Guaranty Co. v. Department of Ins.*, 453 So. 2d 1355, 1360 (Fla. 1984)<sup>14</sup>; *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410-13 (1983); *Allied Structural Steel v. Spannaus*, 438 U.S. 234, 244 (1978). In determining whether a state regulation operates as a substantial impairment, courts place special emphasis on whether the industry of question is heavily regulated. See *Energy Reserves Group*, 459 U.S. at 413 (denying the plaintiff's impairment of contracts argument and emphasizing that the parties were operating in a heavily regulated industry); *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (same). The electric utility industry is a heavily regulated industry and the Attachers know of the heavy regulation when they sign attachment agreements. *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 38 (U.S. 1940) ("When he purchased into an enterprise

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<sup>13</sup> Article I of the U.S. Constitution states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." United States Const. art I, § 10, cl. 1. Although the text of the Contracts Clause is "facially absolute," the Supreme Court consistently holds that the absolute prohibition must be balanced against "the inherent police power of the State to safeguard the vital interests of its people." *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410 (1983); *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434 (1934).

<sup>14</sup> In *United States Fidelity & Guaranty Co.*, the Florida Supreme Court adopted the U.S. Supreme Court's method of analysis for Contracts Clause inquiries. See *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360.

already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic."); *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 ("One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them.") (citations omitted).

Further, in reviewing a state regulation under the Contracts Clause, courts give deference to: (1) legislative judgment on the reasonableness of a particular measure; and (2) the inherent police power of the State to safeguard the vital interests of its people. *See United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360; *Energy Reserves Group*, 459 U.S. at 412-13. Here, the Commission has a more than reasonable justification for implementing the Proposed Rules.

## **II. Regulation is not a reason to shift costs to electric utilities and their customers**

By ensuring that all attachments meet the required standards, the Proposed Rules will help ensure that pole owners, Attachers and their customers will experience improved reliability. The appreciable benefits of the Proposed Rules – benefits to all electric customers, as well as the attaching entities and their customers – do not come without a cost.

The attaching entities have presented no valid reason why they should enjoy the benefits of the Proposed Rules without sharing in the costs that are necessary to achieve these benefits, and there is no reason.

Nonetheless, the Attachers assert that the costs of implementing the Proposed Rules should be shifted to the electric utilities because the electric utilities are rate-of-return regulated. This argument must be rejected.

First, the rules and standards will apply to all Attachers in a fair and non-discriminatory manner. Increased costs to attaching entities will not be any greater than to any other user of the poles.

Second, the ILECs, Embarq, BellSouth and Verizon, each argue that they should not be forced to bear increased costs because they are price regulated. Their comments ignore or overlook the fact that they have each elected price cap regulation under Section 364.051, Florida Statutes. These ILECs could have chosen to remain subject to rate-of-return regulation had they desired to do so, and costs should not be shifted to IOUs and their customers simply because of a choice the ILECs made.

In addition, the price caps are not absolute. The ILECs' price caps may be eliminated if it is determined that the level of competition justifies their elimination or if circumstances have changed to justify an increase in the rates for basic local telecommunications services. *See* § 364.051(3), (4)(a), Fla. Stat. (2006).

The argument that the ILECs and other Attachers will be competitively disadvantaged if they are forced to bear some of the costs associated with implementation of the Proposed Rules is simply irrelevant to whether the Proposed Rules merit adoption as a reasonable and appropriate exercise of the Commission's safety and reliability jurisdiction.

### **III. The Commission has ample evidentiary support for its Proposed Rules**

The Attachers also argue that there is no factual basis for the Proposed Rules. They allege that the Attachers are not "cost-causers" and that the rules "presuppose" that third party attachments on poles cause safety or reliability problems (BellSouth Smith, pp. 17-18). The Attachers' arguments miss the mark as the purpose of the Proposed Rules is to strengthen utilities' infrastructure. Therefore, the appropriate question is not who or what is causing problems or pole failures, but rather, what can be done to further ensure storm readiness on a going forward basis.

The Commission has reasonably determined that nothing should be attached to a pole that is not engineered to be there in advance. It reached this conclusion after finding that pole

attachments can have significant wind loading and stress effect on a pole and can cause overloading and that some attachments are made without notice or prior engineering. The Commission consequently concluded that steps should be taken to assess the pole attachment effect on poles to prevent overloading.

Comments at the July 13, 2006, workshop made by the FCTA's consulting engineer confirmed the Commission's wind loading and stress concerns by presenting a photograph of an overloaded pole and observing:

Multiple cables which are attached lower than the power facilities on the poles do account for more wind load than the very basic power lines. . . . So there are poles out there where the cables are a very big factor of the wind loading but that normally is not the case. (Tr. 87) (Emphasis supplied.)

The IOUs agree that the wind loading effect of pole attachments creates stress on utility poles.<sup>15</sup>

Pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Indeed up to 40% of the pole loading on a typical pole line can be caused by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed.

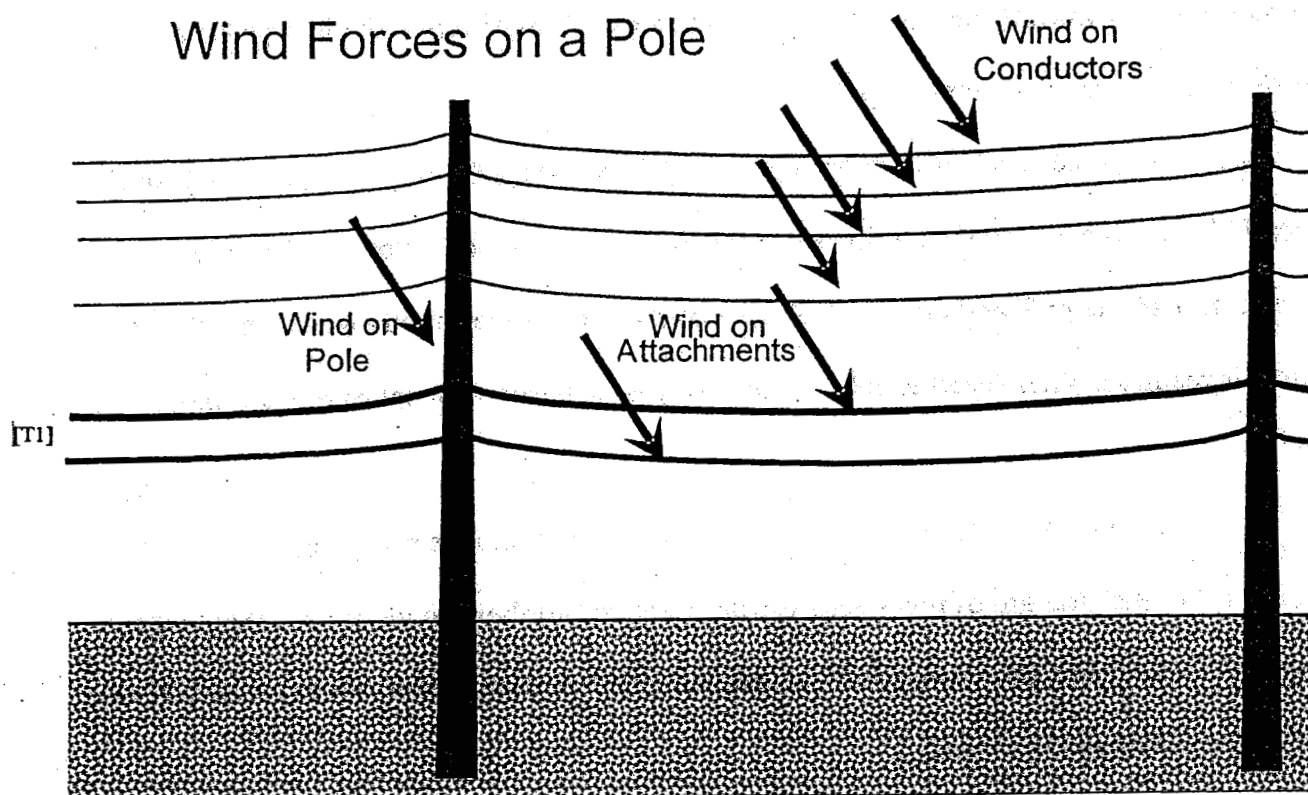
As illustrated in FIGURE III-1 below, the larger the surface area of the attachments and the span length, the larger the forces that act on the pole. Of the many forces that act on a pole, wind loading is the design criterion that most often determines how the design strength of a pole line is determined.<sup>16</sup> The illustration below shows two tangent poles<sup>17</sup> exposed to the forces of wind.

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<sup>15</sup> Please see Composite Exhibit 2 which contains affidavits of representatives of investor-owned utilities in support of these Joint Reply Comments.

<sup>16</sup> Other forces to be considered for pole design include axial (compression caused by the weight of facilities on a pole), shearing, and torsion stresses.

FIGURE III-1



Wind loading creates a stress called "bending moment" on the pole. The force applied by the wind increases with the cross sectional area of items placed on the pole, not the weight.

A comparison would be to consider the sail on a sailboat. When the sail is down, the boat is not moving and the force on the mast is limited to the small amount of wind force applied to it. However, when you raise the sail, the wind catches the sail, the force on the mast increases and the boat moves. Since poles are not supposed to move, they must be strong enough to withstand the wind force applied to the sails (attachments) placed on it. The larger the sail or the more attachments (by exposed area) placed on the pole, the stronger the pole must be.

<sup>17</sup> A tangent pole can be defined as a pole between the two end points of the pole line (the dead end poles). The simplest form of a tangent pole has a span of conductor reaching in opposite directions as displayed.



Given a desired wind band and equipment loads, several options are considered to optimize the pole line design. The most significant factors that are considered for the calculation of wind loading of wood poles are: 1) pole type/class (pole length and strength of pole); and 2) pole span length (distance between poles).

Regarding pole types, treated wood poles are the most common type of pole used, and are chosen for their durability, availability and cost effectiveness. Wood poles are available in different standard heights and classes. The class of pole determines its strength. If additional strength is required, other types of poles such as static-cast concrete or spun concrete may be used.

The second significant factor in the wind loading calculation is span length. Span length is a trade off of the strength of poles used versus how far apart they are installed. Span length is limited by property line limitations and the optimum number of poles that can be practically used given the desired wind load design.

Third-party pole attachments affect a pole's wind rating and play a significant role in pole line design. The addition of attachments may force a design to use larger and more expensive poles or to use shorter spans, increasing the total number of poles in a line, therefore, affecting the overall cost. Figure III-2 below illustrates the effects of attachments on a 50/2 wood pole line with 141 ft. spans.

FIGURE III-2:

## Effects of Various Attachments on Wind Loading

De-Rating Caused By Additional Attachments

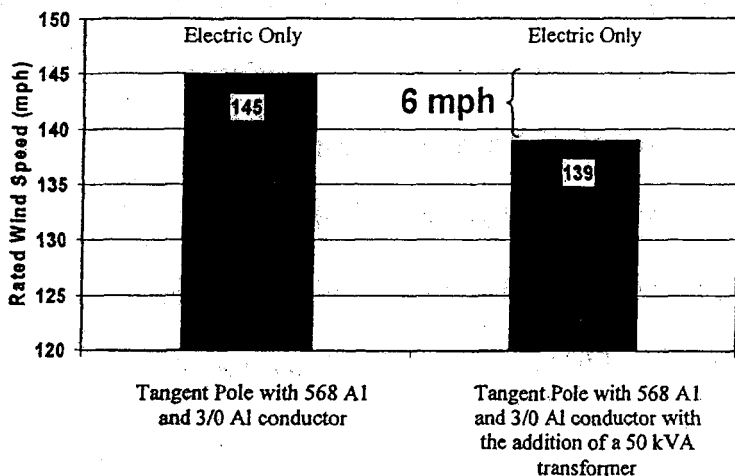


Figure 1

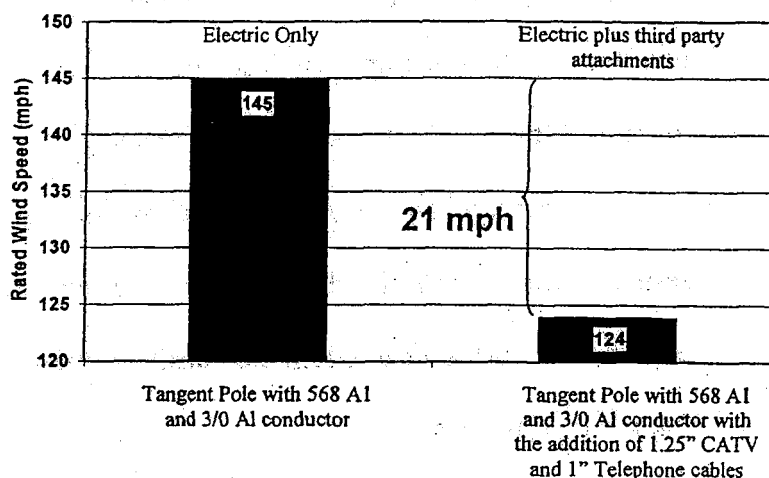


Figure 2

Figure 1 (on the left above) shows how a pole, the same pole, will be de-rated (decrease in the amount of wind force it should be able to withstand) by 6 mph when a 50 kVA electric transformer is added. Figure 2 (on the right above) shows how a pole – the same pole – will be de-rated 21 mph when two third party attachments are placed on that same pole. While the de-rating from the transformer would require a single larger pole to be installed, the de-rating caused by the third party attachments would require even larger poles for an entire pole line.<sup>18</sup>

As shown in the examples given, attachments can have a significant effect on wind loading. Although both electrical power equipment and telecommunications line attachments

<sup>18</sup> Note that FCTA has suggested storm guys as a means of hardening the infrastructure. While storm guys are a formidable method of hardening an infrastructure and should always be considered in a hardening solution, they may not necessarily provide the answer. As Florida becomes more and more urbanized, locations to place these guys are difficult to find and along a front easement require additional stub poles (almost doubling the number of poles required) and span guys to cross streets causing more congestion along the road right-of-way. The ability to acquire easements has become very difficult and in some cases financially unfeasible. Additionally storm guys require at least an extra foot of pole space which reduces the amount of space and may reduce the number of attachments that can be made by third parties on the pole.

play a role in overall pole loading, telecommunications equipment can also have a significant effect on overall pole wind loading as shown, contributing as much as 40% of the overall wind loading of a typical pole line. In addition, once the basic power circuit is accounted for, additional power equipment can be addressed on a pole by pole basis. Conversely, communications circuit changes must be applied to the entire pole line that they are installed on.

In sum, third-party pole attachments significantly affect wind ratings and pole line design. The Commission has ample evidentiary support for addressing third-party attachments as part of its endeavor to strengthen utilities' infrastructure and further ensure storm readiness on a going forward basis.

#### **IV. The Attachers' proposed revisions to Rule 25-6.0341 should be rejected**

##### **A. Requiring extensive mandatory notice to coordinate construction, installation and migration projects would be unworkable and ineffective**

FCTA urges the Commission to amend proposed rule 25-6.0341 to require utilities to provide "notice and an opportunity to participate" where an expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments and to "take into account the needs and requirements of third-party attachers in coordinating" the construction of its facilities with the attacher (FCTA, Exhibit 4). Further, FCTA suggests that the utility shall be required to provide "reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate their construction alternatives and to make necessary budgetary plans." *Id.* Verizon also suggests a requirement of mandatory advance notice of "at least 12 months" (Verizon, p. 4). These suggestions should be rejected.

The current language of the proposed rule, which requires the utility to "seek input from" and "to the extent practical, coordinate" with attachers where distribution projects affect existing attachments, strikes the appropriate balance between the third-party attacher's desire for

appropriate notice and the electric utilities' need for flexibility to address its specific system needs as they arise. To require utilities to provide substantial advance notice and consider the needs and requirements of third-party attachers whenever an attacher is affected by a project would undermine the reliability objectives of the Proposed Rules and elevate the Third-Party Attachers to the role of managing the utilities poles and projects.

Mandating 12-months advance notice or allowing for substantial delay by the attachers while the utility tries to get sign-off from the attacher (as suggested by FCTA in its Exhibit 3), will only impede the reliability of utility service to Florida customers that this rule is designed to encourage. In some cases, municipal, state and other critical relocation projects will need to be done with notice of six months or less in emergencies. The utilities need the flexibility to respond to the customers' needs. As the IOUs have consistently done, we will seek input and, to the extent practical, coordinate with third-party attachers where the projects affect existing attachments.

Contrary to FCTA's suggestions, proposed rule 25-6.0341 need not be modified. The Proposed Rules in no way conflict with requirements of the FCC or existing pole attachment agreements regarding advance notice, and there is no reason to believe that the IOUs will violate these guidelines.

**B. The cost calculations supplied by the Attachers are overstated and unreliable**

The benefits of improved reliability do not come without a cost. However, the Attachers' allegations of cost impact related to conversions appear to be exaggerated. For example, BellSouth witness Smith argues that there are two primary drivers for cost increases: 1) electric utilities abandoning poles due to relocations; and 2) electric utilities replacing existing poles with taller, stronger poles requiring BellSouth to transfer its facilities.

Among other reasons, electric utilities may "abandon" poles that have attachments where communities decide to convert facilities from overhead to underground. BellSouth presents cost calculations that assume that electric companies will abandon between 10% and 40% of poles that have BellSouth attachments (BellSouth Smith, p. 13). Even with an emphasis on promoting conversions to underground facilities, a 10% conversion rate is greatly exaggerated.

BellSouth's cost impacts based on its assertion that proposed rule 25-6.0341 calls for electric utilities to "as a general rule" place facilities in front of the customer's premises are also inflated. (BellSouth Smith p. 13). Proposed rule 25-6.0431 calls for electric utilities to place facilities adjacent to a public road "to the extent practical, feasible and cost-effective." The rule does not call for a broad brush approach to relocations. Rather, relocations would occur in a practical, feasible and cost-effective manner. Again, BellSouth's assumption that 10 to 40% of the poles to which it is attached will be affected appears to be significantly inflated.

Regarding the replacement of existing poles with taller, stronger poles, BellSouth's assertion that 40% of poles will be impacted in the near term is high, as is its range of cost per transfer of \$95 to \$470. (BellSouth Smith p. 15). The stronger poles that are being set are current industry standard poles and, therefore, BellSouth already has experience in attaching to these poles. Also, it is inappropriate to assume that all existing poles must be replaced as part of the hardening effort. These and other factors lead to inflated assumptions that render the cost calculations supplied by BellSouth and others unreliable.

Further, the impact on pole attachment rates in the near term is expected to be minimal and increases in rental rates will not be disproportionately borne by attachers. Because of third-party attachments, it will cost the IOUs more money to meet wind-loading requirements. The IOUs and their customers should not be forced to subsidize the costs of the more fortified system

that is needed to meet the needs of Attachers. Rather, the Attachers should bear their share of the costs.

**C. The suggestion that the proposed rule apply only to new construction should be rejected**

Limiting this rule to new construction would undermine one of the primary objectives of the Proposed Rules, which is to enhance the reliability of existing infrastructure.

**D. There is no demonstration that the proposed rule would interfere with the ILECs' ability to fulfill its statutory obligations**

-Verizon asserts that the proposed rule may interfere with its ability to fulfill its carrier-of-last resort obligations under Florida law. (Verizon, p. 5). Verizon provides no support for this assertion. Unsupported speculation about potential (and unlikely) unintended consequences of the Proposed Rules afford no basis for delaying their implementation.

**V. The Attachers' proposed revisions to Rule 25-6.0342 should be rejected**

**A. It is appropriate and consistent with Chapter 366 for the proposed rule to authorize standards that exceed those of the NESC**

BellSouth, Embarq, Time Warner and others suggest that the rules should incorporate only the NESC standards and not authorize standards that exceed those of the NESC. This should be rejected. As addressed above, the 2006 Legislature amended Section 366.05 to clearly provide the Commission "the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring reliable provision of service." See Section 17, Ch. 2006-230, *Laws of Florida* (2006 Senate Bill 888). Therefore, it is clearly within the Commission's authority to authorize standards that exceed the minimum NESC standards.

Even before 2006, the Commission had authority to, and did, authorize construction standards for electric utilities. In many cases the utilities' current construction standards already

exceed those of the NESC. The assertion by BellSouth and others that the Proposed Rules upset the status quo of using the NESC as the uniform national standard by which power and telephone companies operate is simply not correct.

Embarq also suggests that any standards that exceed the NESC should be adopted by the Commission by rule. For the same reasons the utilities must establish their respective construction and attachment standards, it would be difficult, if not impossible, for the Commission to adopt uniform standards that exceed the NESC. The proposed rule recognizes the need for flexibility in addressing differing circumstances within and among the utilities' respective service areas.

The investor-owned utilities oppose the proposals of Embarq, Time Warner and FCTA that would strike "at a minimum" from subsection (4) of Rule 25-6.034 and "meet or exceed" from subsection 1 of Rule 25-6.0342. A requirement that utilities could not exceed the provisions of the NESC would degenerate the reliability and safety of utility infrastructure and would essentially undermine the intent of the rules.

**B. Suggestions that the standards should be adopted by mutual agreement should be rejected as unworkable and inappropriate**

Several Attachers urged a more collaborative process in developing the construction and attachment standards. For example, the FCTA argues that the Attachment Standards and Procedures should be "jointly developed" with third-party attachers and submitted to the Commission for approval, including the opportunity for an evidentiary hearing. Similar arguments are advanced with respect to construction standards. (FCTA, Exhibit 3). See FCTA Composite Exhibit MAG-1. Similarly, Time Warner suggests that the Commission review the standards for consistency in implementing the NESC. (Time Warner, Attachment 1). These suggestions should be rejected as unworkable and inappropriate.

The rules appropriately balance a requirement of obtaining input without creating a situation where one party could effectively stall the process of finalization of the standards. As called for by the proposed rule, the electric utilities will seek input from the attaching entities in the development of the attachment standards and will coordinate the construction of a hardened infrastructure with all attaching entities. For the Proposed Rules to go further and give the attaching entities the ability to manage or veto the utility standards would undermine the objective of the Commission's proposed infrastructure hardening rules.

The rules provide full due process by allowing any affected party to file a complaint challenging the reasonableness of the standards developed by the utility after receiving input from the Attachers.

#### Conclusion

The Proposed Rules are an important part of the Commission's objective of ensuring facilities are storm ready in light of the increased threat of hurricane activity that we currently face. The Proposed Rules provide a critical means for dealing with this threat to electric distribution facilities in a fair and reasonable way and the Commission should move forward with adoption of the rules as currently proposed in a timely manner.



Respectfully submitted this 18th day of August, 2006.

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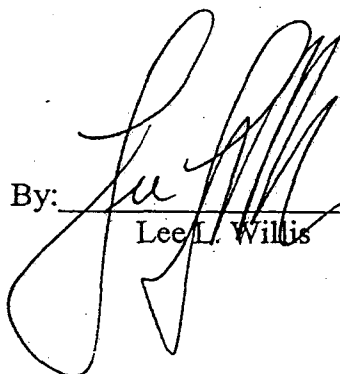
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ON BEHALF OF TAMPA ELECTRIC  
COMPANY

By:  \_\_\_\_\_  
Lee L. Willis

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Tampa Electric Company has been furnished by Hand Delivery\* or U. S. Mail this 18th day of August, 2006 to the following:

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\_\_\_\_\_  
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**EXHIBIT 1**

**DOCKET NO. 060173-EU**

**CABLE TELEVISION ATTACHMENT AGREEMENT  
WITH GULF POWER COMPANY**

## CABLE TELEVISION ATTACHMENT AGREEMENT

This Agreement is made and entered into the 17th day of March, 1995, by and between Gulf Power Company, a Maine corporation, hereinafter called "Gulf," and Comcast Cablevision of Panama City, Inc., hereinafter called "CATV Company."

WITNESSETH:

WHEREAS, CATV Company desires to furnish cable television service in the area described in Exhibit A, attached hereto, which service will require the installation and maintenance of cables, wires and appliances; and

WHEREAS, CATV Company desires to attach certain cables, wires and appliances to the poles of Gulf; and

WHEREAS, Gulf is willing to allow the attachment of cables, wires and appliances to its poles in the area described in Exhibit A where, in Gulf's judgment, that attachment will not interfere with its own service requirements, including considerations of economy and safety, and where Gulf is protected and indemnified against all costs to and liabilities against it arising from such attachment.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained Gulf and CATV Company hereby agree and contract with each other as follows:

1. Term of Agreement. The term of this Agreement shall commence on the 1st day of March, 1995 and subject to all of the provisions of this Agreement, shall continue in full force and effect thereafter until the 29th day of February, 2000 unless earlier terminated according to the provisions of this Agreement. The parties may agree to extend this Agreement for an additional five (5) year period and for consecutive five (5) year periods upon

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agreement as to terms, including fees and charges, for each additional extension period.

2. Conditions Precedent. As conditions to Gulf accepting a permit application from the CATV Company or granting a permit to the CATV Company, CATV Company shall submit evidence satisfactory to Gulf of the following:

A. CATV Company's authority to erect and maintain its facilities within public streets, highways and other thoroughfares, and any necessary consent or franchise from state or municipal authorities or from the owners of the property upon which the poles are located to construct and maintain its facilities on them;

B. CATV Company's financial stability;

C. Certificate of Insurance required under Paragraph 20; and

D. CATV Company's operational expertise.

Copies of the necessary consents or franchises from state or municipal authorities are attached hereto as Exhibit C.

3. Application and Permits.

A. Before attaching to any of Gulf's poles, CATV Company shall submit to Gulf an Application for CATV Attachment Permit. Gulf will acknowledge to CATV Company, in writing, its acceptance or rejection of each application within thirty (30) days after such receipt. The only exception shall be as provided in Section 3.B. The application and permit form is set forth in Exhibit B, attached hereto. The application shall be accompanied by two (2) detailed copies of CATV Company's construction drawings which clearly identify the poles to which the CATV Company will attach if a permit is granted. If the proposed attachment is satisfactory to Gulf, a permit will be granted upon payment of a one time permit fee of \$1.00 per attachment plus Make Ready costs as described in Section 12.A.. Prior to commencement of construction by the CATV Company, Gulf may

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require a pre-construction conference, at Gulf's discretion. Notwithstanding the issuance of an attachment permit, CATV Company shall at no time make or maintain an attachment to Gulf's pole or substitute pole if the spacing on the pole, the ground clearance, or other characteristics of the attachment are not in strict conformity with the National Electrical Safety Code (the "Code") and any other applicable codes, rules or regulations of any governing body having jurisdiction. Except as provided in Section 3.B., the failure of the CATV Company to obtain such a permit prior to making an attachment shall constitute a trespass and a violation of this Agreement. Gulf may forbid new attachments to its poles by CATV Company in the event CATV Company is in default hereunder.

B. Attachment to Gulf poles without obtaining a prior permit shall be allowed only for service drops. CATV Company shall ensure that such attachments are in strict conformity with the National Electrical Safety Code and any other applicable codes, rules or regulations of any governing body having jurisdiction. In particular, CATV Company shall not attach if Make Ready work is required to obtain adequate clearance or for any other reason. Any attachment made not in conformity with these requirements constitutes a default under this Agreement. Gulf reserves the right to suspend this provision in the event CATV Company is in default hereunder.

At the end of each month, CATV Company shall submit a permit application (Exhibit D) listing all such service drop attachments not previously permitted. The listing shall include the location or address, TLM pole number, number of poles attached to, and date of attachment. Each application shall include a one time permit fee of \$1.00 per attachment.

4. Payment and Billing. CATV Company shall pay Gulf a semi-annual rent of \$2.825 per pole. Bills for rent shall be rendered by Gulf on or before January 15th and July 15th of each year. All attachments permitted and those which exist on Gulf's poles on December 31st and June 30th of

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each year will be invoiced. CATV Company shall pay Gulf in advance for the succeeding six (6) months and such payment shall be based on the number of attachments permitted whether an attachment has been made or not. Upon the issuance of each attachment permit, CATV Company shall pay Gulf rental for each attachment on a prorated basis, based on the time remaining between the date the permit is granted and the end of the semi-annual rental period. Thereafter, such attachment shall be billed by Gulf with all other attachments on a semi-annual basis. In the event a field survey, as described in Section 15.B., indicates that not all attachments have been permitted, the difference between the number of attachments counted and the number of attachments permitted shall be billed as if all such attachments were in place 2 1/2 years prior to the field survey. The amount due from CATV Company for such attachments shall be based on the semi-annual billing rate in effect during each of the prior billing periods, plus eighteen (18%) percent interest per annum. Gulf shall notify CATV Company of the amount due and payment shall be due upon receipt of such notice. All bills for semi-annual rent, for inspections and for other charges under this Agreement shall be due upon receipt. Failure to pay bills within thirty (30) days after receipt is a default hereunder for which Gulf may terminate this Agreement. All bills thirty-one (31) days past due shall bear interest at eighteen (18%) percent per annum and interest shall begin to accrue as of the date due.

5. Bond. At the beginning of or during the contract period CATV Company may be required at Gulf's discretion to furnish bond or satisfactory evidence of contractual insurance coverage to guarantee the payment of any sums which may become due to Gulf for rentals, for work performed for the benefit of CATV Company, and for other charges under this Agreement including the removal of attachments upon termination of this Agreement in the amount as specified in the following schedule:

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| <u>Number of Attachments</u> | <u>Amounts of Coverage</u> |
|------------------------------|----------------------------|
| 0-500                        | \$10,000                   |
| 501-1000                     | 20,000                     |
| 1001-1500                    | 30,000                     |
| 1501-2000                    | 40,000                     |
| 2001-2500                    | 50,000                     |

Bond shall continue to increase by \$10,000 for each increase in number of attachments by increments of 500 up to a maximum of \$250,000.

6. Attachment and Maintenance. As used herein, an attachment is defined as the material or apparatus which is used by CATV Company in the construction, operation, or maintenance of its plant and which is attached to Gulf's poles. CATV Company shall erect and maintain at its own expense cables, wires and appliances in safe condition and in thorough repair. It shall be the sole obligation of CATV Company to ensure compliance with the applicable requirements and specifications of the National Electrical Safety Code and amendments thereto, including clearance requirements between power and cable lines, safe work practices, and any other applicable codes, rules or regulations now in effect or which hereafter may be issued of any governing body having jurisdiction. Upon CATV Company's knowledge of any violation of any code, rule, or regulation, CATV Company shall promptly institute corrective action, at its own expense. In the event CATV Company fails to correct any violation within a reasonable time, Gulf may correct the non-compliance and charge the reasonable costs thereof to CATV Company. Recognizing that strict compliance with the terms of this agreement is essential to the fair and equitable allocation of limited pole space among competing CATV companies, and as a deterrent to such non-compliance in order to preserve the public welfare, CATV Company shall pay Gulf its actual costs for such corrective action plus fifteen (15%) percent. CATV Company further agrees to indemnify and

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hold Gulf harmless for any injury or damages, including but not limited to actual damage awards, fines, settlements, attorney's fees and court or administrative costs, resulting from CATV Company's noncompliance with any applicable code, rule or regulation as described above.

CATV Company shall also comply with Gulf's specifications for construction. CATV Company shall be responsible for installing anchors and guys of sufficient size and strength to accommodate their own load. In order to avoid placing undue stress on Gulf's poles, necessary anchors and guys shall be installed prior to tensioning of the cable strand. Attached hereto are drawings marked Plates 1 through 11 inclusive which are descriptive of required construction under some conditions and are to serve as construction guides but may not apply in all situations. These drawings may be changed from time to time by Gulf and do not supersede any applicable National Electrical Safety Code requirements, except to the extent that they are more stringent than the Code.

7. CATV Attachment Identification. CATV Company may be required to mark its facilities in accordance with the Florida Utilities Coordinating Committee guidelines, or other method acceptable to Gulf. In any given area, the requirement to mark will depend on the date of the original agreement between CATV Company and Gulf for that area, or the date of any amendment to such agreement to expand to that area. The CATV Company with the earliest agreement or amendment for a given area shall not be required to mark its facilities. Subsequent CATV companies shall be required to mark all facilities installed in the given area.

If CATV Company follows Florida Utilities Coordinating Committee guidelines, CATV Company shall request registration of a unique marking tag for its attachments, if not already registered. Gulf will forward CATV Company's request to the appropriate authority.

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8. Gulf's Service Requirements. Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner best suited to fulfill its own service requirements, including considerations of economy and safety. Use of Gulf's poles under this Agreement will create or vest in CATV Company no ownership or property rights in Gulf's poles, notwithstanding the length of use. Gulf is in no way required to keep in place any of its poles or other facilities for a period longer than is necessary to meet its own service requirements. Gulf reserves the right to refuse to grant an attachment permit if Gulf determines that such pole is required for its exclusive use or that the pole may not be reasonably rearranged or replaced. Gulf will exercise due care to avoid interfering with CATV Company facilities. However, Gulf will in no way be liable to CATV Company for interruption of CATV Company's service or for interference with the operation of CATV Company's cables, wires and appliances, except for Gulf's negligence.

9. No Interference. CATV Company's attachments shall not interfere with the present or future use and maintenance of Gulf's poles by Gulf or with other parties' use of Gulf's poles nor interfere with the use and maintenance of facilities placed on the poles or which may from time to time be placed thereon, provided such other parties' use is in accordance with applicable regulations and specifications of Gulf and the National Electrical Safety Code, and other applicable codes, rules and regulations. Gulf shall be the sole judge as to the requirements for the present or future use of its poles and facilities and of any interference therewith.

10. Rules and Procedures. Gulf reserves the right to establish rules or procedures to implement and allocate Make Ready billing pursuant to Section 12.A. and to provide for an orderly process of pole attachment in the event CATV Company and one or more other parties desire to attach to the same poles and CATV Company shall adhere to such rules or procedures.

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11. Order on the Pole.

A. Telephone companies contracting for attachments to Gulf's poles are to be assigned to the lowest relative position on any given pole. CATV companies contracting with Gulf for pole attachments shall attach above the telephone facilities. Among two (2) or more CATV companies, position of attachments on the pole shall be determined according to the date of the original agreement between the CATV company and Gulf for a given area, or the date of any amendment to such agreement to expand to a given area. In any given area, the CATV company with the earliest agreement or amended agreement shall occupy the first position above the telephone facilities, if space is available. The second CATV company shall attach to the second position above the telephone facilities, if space is available, and so on.

B. When two (2) or more CATV companies desire to attach to the same Gulf poles, preference for attachment will be given in order of application for permit received, the application being properly completed and satisfying all the conditions of Section 2 hereof. The attaching CATV company shall attach in their assigned space, according to Section 11.A., if space is available. If any company with priority under paragraph 11.A. above, has not exercised its right to attach to space on a given pole, ~~companies attaching under subsequent agreements may make provisional~~ attachment in the space which ordinarily would be available to the company with priority, if their own assigned space is not available. However, if the company having priority subsequently requests attachment rights, any other companies with attachments in the area to which the earlier companies have priority shall relinquish their position and reattach their facilities farther up the pole as provided in Section 12 below. The company requesting attachment rights shall pay all make ready costs, if any, associated with such reattachment, and contact the other companies to initiate their transfer.

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12. Make Ready, Substitutions, Changes and Rearrangements.

A. Make Ready. If it should appear to Gulf that a pole is too short, or inadequate, or any rearrangement of Gulf's or other parties' facilities is required to accommodate the attachments of CATV company, Gulf shall notify CATV company of the pole substitutions, additions, changes and rearrangements which Gulf deems necessary and their estimated cost. Such notice shall constitute a denial of the applicable permit(s) unless CATV company authorizes Gulf to make the substitutions, additions, changes and rearrangements specified. CATV Company shall authorize the make ready work within thirty (30) days after notification from Gulf, otherwise the permit will be denied. Upon such authorization, CATV Company shall reimburse Gulf for all costs incurred by it in connection with such changes. CATV company shall reimburse the owner of any other facilities attached to that pole for any reasonable expense incurred by that owner in conjunction with such changes. CATV company shall pay to Gulf at the time of the issuance of each attachment permit Gulf's estimated cost of providing the space for all of the attachments covered by that permit pursuant to Section 3 of this Agreement.

In the event the CATV Company elects to install their facilities underground in Gulf's pole line, they shall remain underground for a minimum of five (5) spans before attaching to Gulf's poles. Where CATV Company shows sufficient reason, Gulf may grant a waiver of this provision in specific cases.

B. Substitutions, Changes, and Rearrangements. CATV Company shall, at its own expense, install the attachments and maintain them in safe condition in a manner satisfactory to Gulf. CATV Company shall, at its own expense, at any time requested by Gulf for good cause remove, relocate, replace, and repair its facilities on the poles, transfer them to substituted poles or perform any other work in connection with the facilities that Gulf

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may require. CATV Company shall notify Gulf immediately after completing the requested work. If the CATV Company fails to comply with Gulf's request within thirty (30) days of receipt of such request, Gulf may perform or have performed such work at CATV Company's expense with no liability therefor. CATV Company shall pay Gulf its cost for such work plus fifteen (15%) percent.

In any case deemed by Gulf to be an emergency, Gulf may, at the expense of CATV Company, arrange to remove, relocate, replace or renew the facilities of CATV Company, transfer them to substituted poles or perform any other work in connection with the facilities that may be required in the maintenance, replacement, removal or relocation of the poles or the facilities on them. Gulf will invoice CATV Company for actual expenses incurred in performing these emergency measures.

13. Use of Qualified Employees and Contractors. The CATV Company shall ensure that its employees and contractors are knowledgeable of the requirements of the NESC and other safe work practice codes for maintaining proper work practices in order to avoid dangerous conditions. CATV Company expressly agrees to take all necessary steps to ensure that its employees and contractors are adequately trained and qualified to work with and around energized conductors, and shall further ensure that its employees and contractors are appropriately and strictly supervised while performing work on Gulf's poles. CATV Company agrees to indemnify and hold harmless Gulf Power Company for any failure of CATV Company, its employees or contractors to fulfill their obligations to perform work in a safe and proper manner.

14. Damage to Facilities. CATV Company shall exercise caution to avoid damage to facilities of Gulf and of others on Gulf's poles. CATV Company assumes responsibility for any and all loss or expense arising out of such damage caused by it and shall reimburse Gulf or others occupying

Gulf's poles for such loss or expense. CATV Company shall immediately report damage caused by it to Gulf and to others occupying Gulf's poles which are in any way affected by such damage.

15. Inspections and Surveys.

A. Inspections. Gulf reserves the right to inspect each new attachment and to make periodic inspections of all attachments as plant conditions may warrant. CATV Company agrees to pay a \$25.00 per attachment violation fee for each Code violation found during such inspections. In addition, CATV Company agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments found during these inspections. Gulf's right of inspection as provided herein in no way operates to relieve CATV Company of any responsibility, obligation or liability arising hereunder nor does it impose any obligation on Gulf.

B. Field Surveys. Gulf reserves the right to make field surveys of its poles in the area described in Exhibit A as it may be amended from time to time pursuant to subparagraph C hereof, at intervals not more often than once every five (5) years, for the purpose of determining the actual number of CATV Company attachments. CATV Company agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments in excess of ten (10) or two percent (2%) of the last verified reported total, whichever is greater. ~~Gulf shall bear the cost of such field surveys, unless~~ the number of attachments counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued. In the event the number counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued, CATV Company shall pay, in addition to the violation fee, the cost of field surveys attributable to the area described in Exhibit A as amended, pursuant to Section 4 of this Agreement. Gulf shall notify CATV Company at least thirty (30) days in advance of the field survey and shall specify the method to be used in

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performing the survey. CATV Company will be given the opportunity to accompany Gulf or its contractor and to participate in the field survey. Should CATV Company disagree with results of the survey, a new survey may be performed by Gulf and CATV Company at CATV's sole expense.

C. Expansion of Service Area. Should at any time following execution of this Agreement the CATV Company desire to expand or modify the area described in Exhibit A, CATV Company shall provide Gulf in writing an amended Exhibit A which shall include such areas, and shall receive Gulf's written approval prior to such expansion or modification becoming a part of this agreement. Gulf shall approve or reject CATV Company's request within sixty (60) days of receipt of such request. No new attachments shall be made in the amended area before the amended Exhibit A is approved.

16. Franchises. CATV Company shall provide copies of franchise renewals to Gulf immediately upon CATV Company's receipt of same. In the event CATV Company fails to acquire or retain a franchise required within the area described in Exhibit A, such failure shall operate as grounds upon which Gulf may cancel the permits in or terminate this Agreement as to the area affected by such franchise pursuant to Section 23.

17. Removal. CATV Company may at any time remove its attachments from any pole upon prior written notice to Gulf. Upon verification by CATV Company to Gulf that pole attachments have been removed, Gulf will reimburse CATV Company the rental remaining from the date of the removal to the end of the semi-annual rental period which will be included as a credit on the next semi-annual bill.

18. Pole Abandonment. If Gulf desires at any time to abandon any pole, it shall give CATV Company notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. CATV Company may then purchase the pole from Gulf at fair market value;

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however, if at the expiration of such period CATV Company has not removed all of its attachments therefrom or purchased the pole, Gulf may proceed to remove such attachments at the expense of CATV Company with no liability therefor. CATV Company shall pay Gulf for its cost of removal plus fifteen (15%) percent.

19. Indemnification. CATV Company shall indemnify and hold harmless Gulf and its representatives, agents, officers and employees from and against any and all loss, damage, or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries (including death) to persons and for damages to property caused by or arising out of any negligent, wanton or intentional act or omission of CATV Company, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, in any way associated or connected with the performance of the obligations herein, in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent, or contributory negligence of Gulf, or its representatives, agents, officers or employees, it being expressly understood that the indemnity obligations hereunder shall extend only to that proportion of the loss, damage or liability which is attributable to the negligence, wanton or intentional acts of the CATV Company, such that each party bears responsibility for its own actions hereunder. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements and judgments associated with such demands, claims, suits or actions. The CATV shall make an immediate report to Gulf of the occurrence of any personal injury or property damage while working on Gulf's facilities.

20. Insurance. CATV Company shall procure and maintain insurance to protect it and Gulf against claims for damage to property or injury to or death to persons, as described but not limited by Section 19, in the amount

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of at least \$1,000,000 for damages arising from one occurrence, which amount may be modified by Gulf for good cause upon thirty (30) days prior written notice to CATV Company. Upon such notification, CATV Company shall procure and maintain insurance in the amount specified in the notification such amount not to exceed \$5,000,000. CATV Company shall also carry such insurance as will protect it from Workmen's Compensation Laws in effect as may be applicable to it. All insurance requirements shall be kept in force by CATV Company for the life of this Agreement and the company or companies issuing such insurance shall be approved by Gulf such approval not to be unreasonably withheld. Gulf shall be an additional insured under CATV Company's liability insurance policy and CATV Company shall furnish to Gulf, a certificate showing the issuance of such insurance and the insurance company's agreement that it will not cancel, terminate or change its policy except after thirty (30) days prior written notice to Gulf. CATV Company's obligation to indemnify Gulf specified in Section 19 is not limited to the amount of liability insurance coverage purchased by CATV Company.

21. Rights-of-Way. Gulf does not warrant the extent of its rights-of-way. Upon notice from Gulf to CATV Company that the use of any pole is forbidden by governmental authorities or property owners, the permit covering the use of that pole shall immediately terminate, and the cables, wires and appliances of CATV Company shall be removed immediately from the affected pole.

22. Types of Service. CATV Company is authorized to attach its cable plant to Gulf's poles for the purpose of delivering cable communications service to CATV Company's commercial and residential subscribers and for such other purposes as are or may be permitted pursuant to the cable television franchises granted by the governmental entities served by the CATV Company. In the event that federal or state law should permit

separate pole attachment rates be made for pole attachments other than for uses set forth above, Gulf and CATV Company agree to negotiate in good faith in order to derive a rental rate for such attachments which is mutually acceptable to both parties.

23. Termination and Cancellation.

A. Default. If CATV Company fails to comply with any of the provisions of this Agreement and fails within thirty (30) days after written notice from Gulf to cure a default, Gulf may terminate this Agreement or cancel the permits covering the poles as to which such default has occurred and CATV Company shall immediately remove all affected attachments. Should CATV Company fail to remove its attachments after such termination or cancellation within the (30) day period after Gulf's written notice to cure a default, Gulf may proceed to do so at the expense of CATV Company with no liability to Gulf therefor. CATV Company shall pay Gulf its cost for such removal plus fifteen (15%) percent. If CATV Company fails to perform work required to cure a default, Gulf may elect to perform such work at the expense of CATV Company with no liability therefor. CATV Company shall pay Gulf its costs for performing such work plus fifteen (15%) percent.

B. Termination Due to Nonattachment. If CATV Company has made no attachments to any of Gulf's poles within the area covered by an attachment agreement within one (1) year after the date of the agreement, Gulf may terminate the agreement immediately and shall provide notice to the CATV Company of such termination thereafter. Likewise, if CATV Company under an existing attachment agreement enters into an amendment to that agreement to include a new area but does not attach to any Gulf's poles within the new area within one (1) year after the date of the amendment, Gulf may terminate the amendment in the same manner as it would be able to terminate the agreement. Termination of any such

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amendment shall not affect the original agreement nor the area covered by the original agreement, if attachments are made under the original agreement within the applicable one (1) year period. If CATV Company makes attachments to Gulf's poles under an agreement or amendment of agreement but removes all such attachments and fails to make any new attachment for a period of one (1) year after the removal of the last attachment, Gulf may terminate the agreement or amendment of agreement as provided above.

C. Obligations Upon Expiration. CATV Company shall, within thirty (30) days following the expiration of this Agreement remove its attachment from Gulf's poles. Should CATV Company fail to remove its attachments within thirty (30) days after expiration of the term Gulf may proceed to do so at the expense of CATV Company with no liability of Gulf therefor. CATV Company shall pay Gulf its cost for such removal plus fifteen (15%) percent.

D. Obligations Prior to Removal of Attachments. Upon expiration or termination of this Agreement, the rights and obligations conferred hereunder shall remain in full force and effect until such time as CATV Company's attachments are removed from Gulf's poles, in accordance with Section 23.C., except that no new attachments shall be made.

E. Temporary Extension of Agreement Beyond Expiration or Termination. Upon expiration or termination, all rights and obligations conferred hereunder shall remain in full force and effect, including the right to apply for and make new attachments, so long as Gulf reasonably determines that the parties are actively and in good faith negotiating a new agreement. If, however, Gulf reasonably determines that negotiations have reached an impasse or that CATV Company is not proceeding in good faith, then Gulf may terminate this Agreement upon written notice of termination to CATV Company. CATV Company shall remove its attachments from

Gulf's poles within one hundred and twenty (120) days after such notice, unless before the end of the one hundred and twenty (120) days a new agreement is reached between Gulf and CATV Company or CATV Company otherwise obtains equitable relief from any court or governmental agency of competent jurisdiction. Nothing contained in this Agreement or otherwise shall be deemed to constitute a waiver by CATV Company of (i) any privilege or right of CATV Company, whether pursuant to law, by contract or otherwise, to any equitable or other judicial or administrative relief or (ii) any term or provision of applicable federal, state or local law, including, without limitation, the Pole Attachment Act (47 U.S.C. §224), 47 C.F.R. §1.1409(c) and related regulations. During the one hundred and twenty-day period following the notice of termination, no new attachments shall be permitted or made; all other rights and obligations conferred hereunder shall remain in full force and effect until such time that CATV Company's attachments have been removed from Gulf's poles. If not so removed, Gulf may remove such attachments at CATV Company's expense with no liability therefor. CATV Company shall pay Gulf its cost for such removal plus fifteen (15%) percent.

24. Rights Previously Conferred. Nothing in this Agreement shall be construed as affecting the rights or privileges to use Gulf's poles previously conferred by Gulf to others who are not parties to this Agreement. Gulf may continue to confer such rights or privileges. The attachment privileges granted to CATV Company in this Agreement are non-exclusive and subject to contracts and arrangements between Gulf and others who are not parties to his Agreement.

25. Waiver. Failure by Gulf to enforce any of the terms of this Agreement shall not constitute a waiver of future compliance with any such term or terms.

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26. Notice. All notices under this Agreement must be given in writing by registered or certified mail, return receipt requested, and mailed with sufficient postage prepaid to the party to be given such notice. Notice to Gulf shall be addressed to:

Project Services Administrator  
Gulf Power Company  
Post Office Box 1151  
Pensacola, FL 32520-1151

Notice to CATV Company shall be addressed to:

Comcast Cablevision of Panama City

Attn: General Manager

1316 Harrison Avenue

Panama City, FL 32401

27. Assignment. CATV Company shall not assign, transfer or sublet the privilege hereby granted without the prior consent in writing of Gulf. Gulf shall grant or deny a request for Consent to Assignment within sixty (60) days from receipt of the request. Such request shall be accompanied by the information described in Section 2.

28. Enforcement. In the event enforcement of any provisions of this Agreement becomes necessary, each company shall pay its own costs incurred in pursuing such enforcement including reasonable attorney's fees.

29. Laws of State. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

30. Severability. In the event any covenant, condition, or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction after construing this Agreement, the invalidity or unenforceability thereof shall in no way affect any of the other covenants, conditions, or provisions hereof; provided that such remaining covenants, conditions, or provisions can thereafter be applicable and

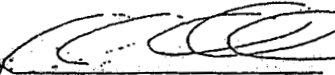
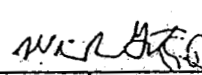
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effective without material prejudice to either Gulf or CATV Company. This instrument embodies the entire Agreement of the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Gulf and CATV Company and the authorized representatives of Gulf and CATV Company.

IN WITNESS WHEREOF, CATV Company and Gulf have caused this Agreement to be executed by their authorized representatives and be effective as of the day and year first written above.

ATTEST:

Corncast Cablevision of Panama City, Inc.

By:  By:   
Title: SVP

ATTEST:

Gulf Power Company

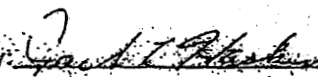
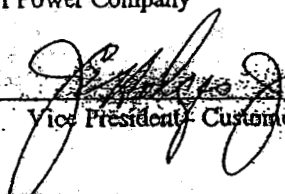
By:  By:   
ASSISTANT SECRETARY Vice President Customer Operations

EXHIBIT A

DESCRIPTION OF CATV SERVICE AREA

Name of Company Comcast Cablevision of Panama City

For Agreement Dated March 17, 1995

A description of the geographical boundaries of the Agreement by Township, Range and Section:

That part of Bay County, Florida lying Southerly of North Bay; Easterly of West Bay and St. Andrews Bluff; Northerly of East Bay; and lying South and West of a line which begins at a point where the North boundary of Section 1, Township 3 South, Range 14 West intersects North Bay, thence North along the West boundary of Section 31, Township 2 South, Range 13 West, and an extension thereof to the Northwest corner of Section 7, Township 2 South, Range 13 West, then East along the North boundary of said Section 7 and an extension thereof to the Northeast corner of Section 9, Township 2 South, Range 12 West; thence South along the East boundary of said Section 9 and an extension thereof to the Southeast corner of Section 33, Township 4 South, Range 12 West; then West along the South boundary of said Section 33 to a point where said line intersects East Bay, and,

Also, Woodlawn Subdivision, being a part of Section 28, Township 3 South, Range 15 West, and,

Also, U.S. Naval Reservation located in Section 33, Township 3 South, Range 15 West and in Section 4 South, Range 15 West, all in Bay County, Florida.

ATTEST:

Comcast Cablevision of Panama City, Inc.

By: 

By: 

Title: SVP

ATTEST:

Gulf Power Company

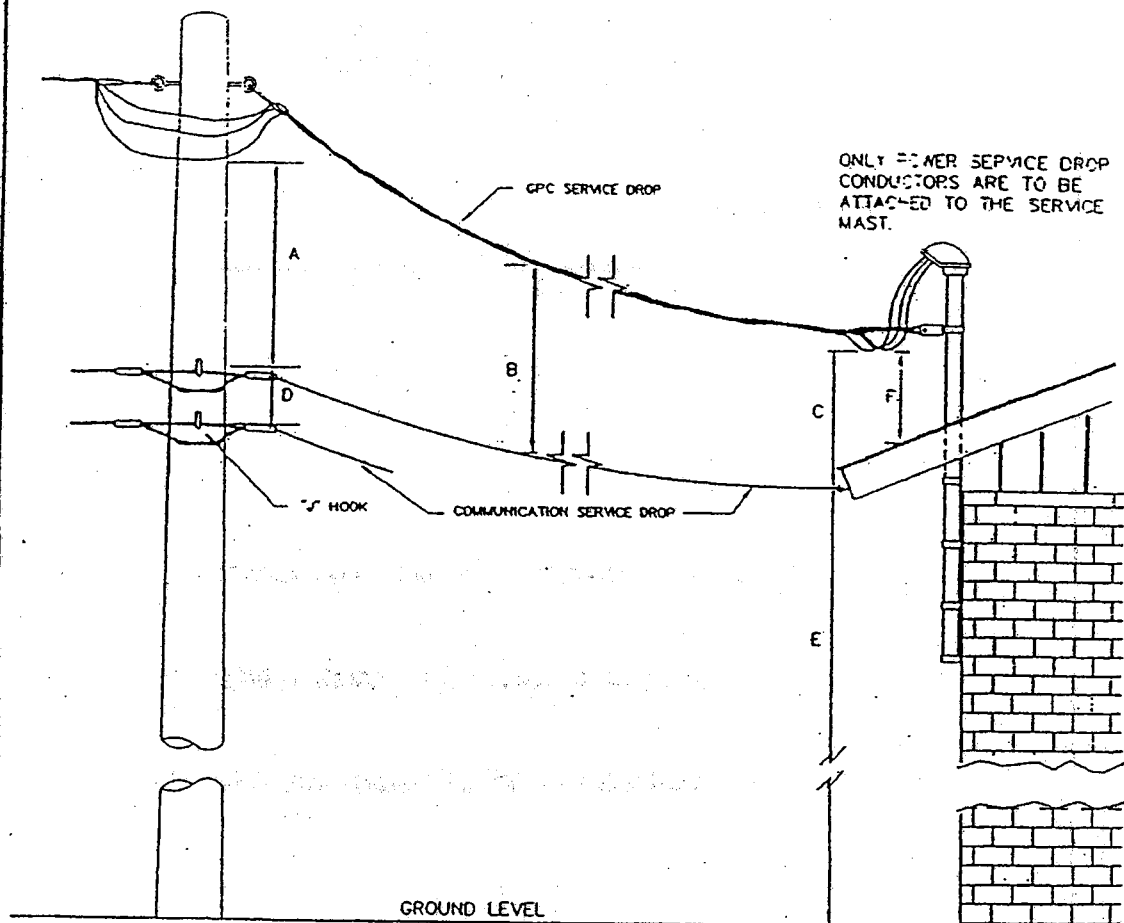
By: 

ASSISTANT SECRETARY

By: 

Vice President - Customer Operations

# SEPARATION OF SERVICE DROPS



| DIMENSION LETTER | REQUIRED CLEARANCE | NESC APPLICABLE REFERENCE SECTION |
|------------------|--------------------|-----------------------------------|
| A                | 40 INCHES          | TABLE 238-1, 238-B                |
| B                | 12 INCHES          | 235 C1<br>EXCEPTION ③             |
| C                | 12 INCHES          | 235 C1<br>EXCEPTION ③             |
| D                | 12 INCHES          | GPC REQUIREMENT                   |
| E                | 9.5 FEET MIN.      | TABLE 232-1                       |
| F                | 18 INCHES          | 234 C3                            |

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE

Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

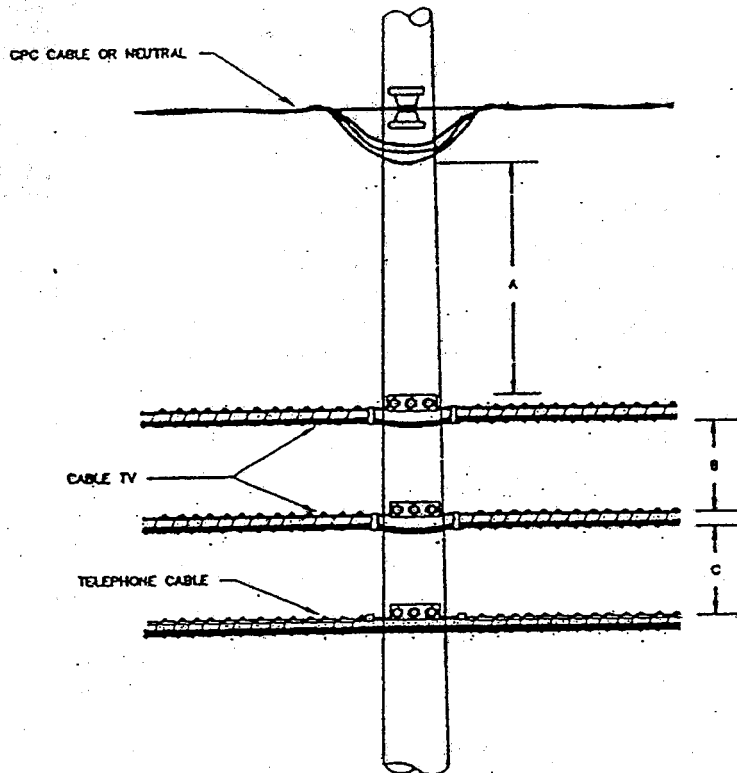
002328 COM

|          |                    |                    |  |          |
|----------|--------------------|--------------------|--|----------|
| DATE     | 5/29/92            | GULF POWER COMPANY |  |          |
| ENG      | R.B. DRN E. L. W.  |                    |  | 11/18/94 |
| APPROVED | <i>[Signature]</i> |                    |  |          |

PLATE  
C-1



## SEPARATION AT POLE PARALLEL FACILITIES



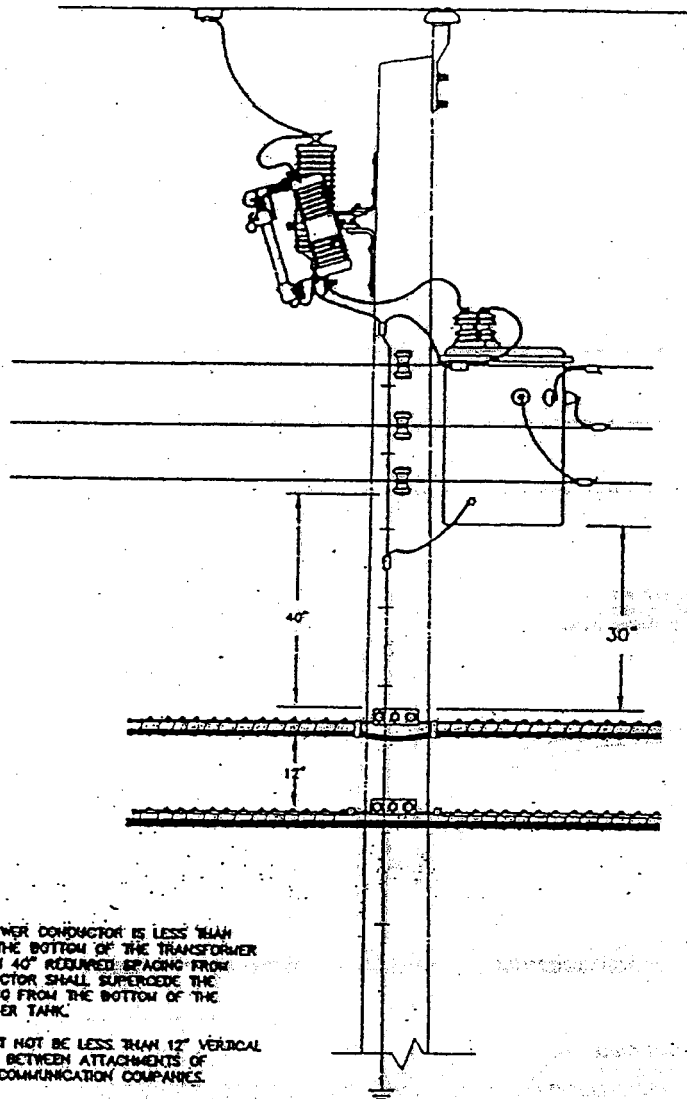
| DIMENSION<br>(LETTER) | REQUIRED<br>CLEARANCE | NEEC APPLICABLE<br>REFERENCE SECTION |
|-----------------------|-----------------------|--------------------------------------|
| A                     | 40 INCHES             | TABLE 238-1, 238-8                   |
| B                     | 12 INCHES             | GPC REQUIREMENT                      |
| C                     | 12 INCHES             | GPC REQUIREMENT                      |

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS  
MEASURED SURFACE-TO-SURFACE

Confidential-Business Proprietary  
Information POC EB Docket No. 04-381

|  |  |                     |
|--|--|---------------------|
| DATE <u>5/28/92</u><br>ENG. R.B. <u>ONE E.L.W.</u><br>APPROVED: <u>[Signature]</u> | <b>GULF POWER COMPANY</b><br><hr/> <hr/> <hr/> | PLATE<br><b>C-2</b> |
|--|--|---------------------|

# JOINT USE CONSTRUCTION TYPICAL SINGLE TRANSFORMER INSTALLATION 7.2 KV CONSTRUCTION



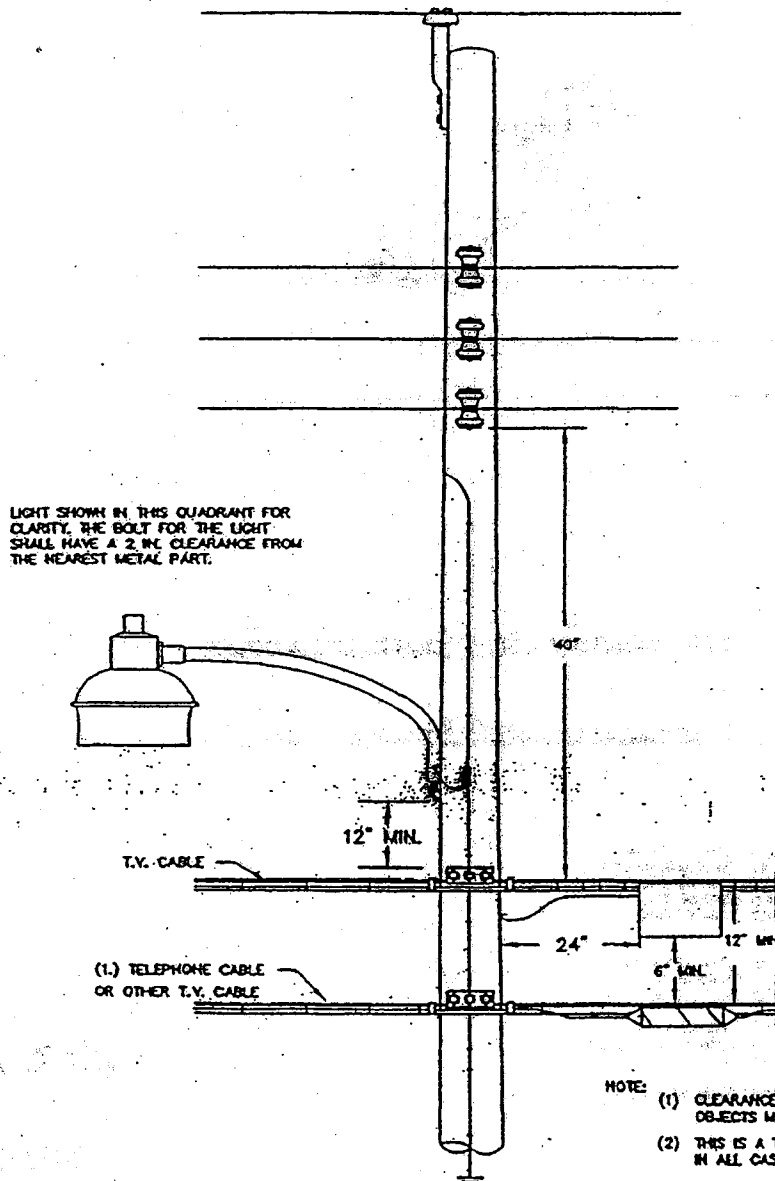
1. IF GULF POWER CONDUCTOR IS LESS THAN 10" FROM THE BOTTOM OF THE TRANSFORMER TANK, THEN 40" REQUIRED SPACING FROM THE CONDUCTOR SHALL SUPERCEDE THE 30" SPACING FROM THE BOTTOM OF THE TRANSFORMER TANK.
2. THERE MUST NOT BE LESS THAN 12" VERTICAL CLEARANCE BETWEEN ATTACHMENTS OF DIFFERENT COMMUNICATION COMPANIES.
3. THE DIMENSIONS OF THIS PLATE DO NOT SUPERCEDE ANY APPLICABLE NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.
4. THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

002330 COM

|                             |                    |  |       |
|-----------------------------|--------------------|--|-------|
| DATE 3/28/84                | GULF POWER COMPANY |  | PLATE |
| ENG. P.R. <i>E.L.W.</i>     | 5/28/81            |  | C-3   |
| APPROVED <i>[Signature]</i> |                    |  |       |

**JOINT USE CONSTRUCTION  
TYPICAL ATTACHMENT OF CATV DISTRIBUTION SYSTEMS TO  
GPCO POLES TYPICAL OUTDOOR LIGHT INSTALLATION**



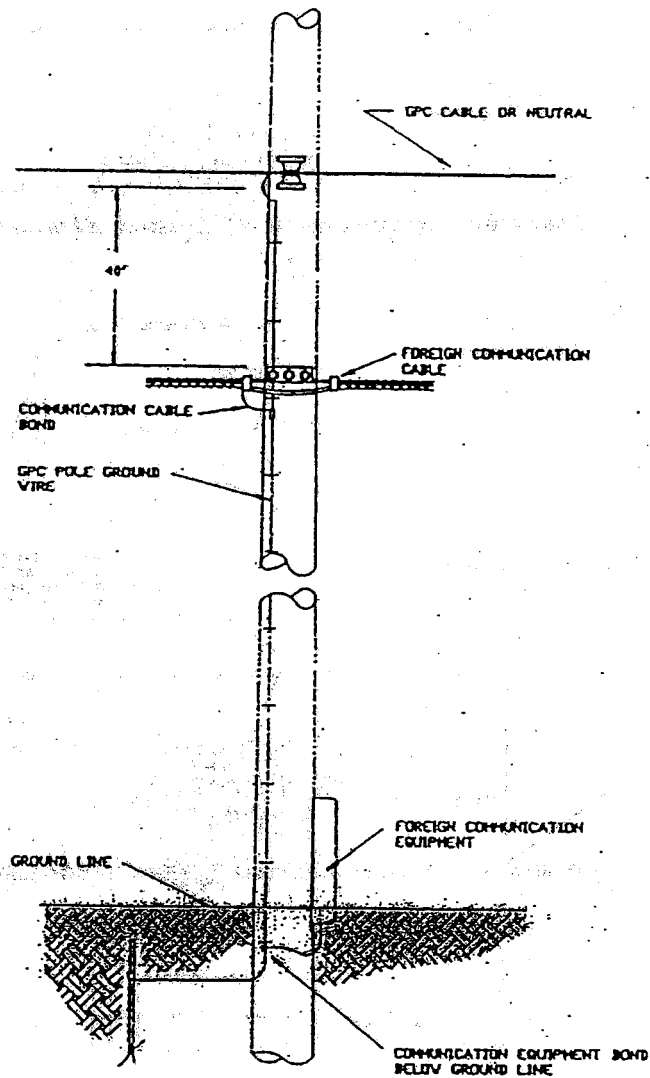
Confidential-Business Proprietary  
Information POC EB Docket No. 04-381

002331 COM

- NOTE:
- (1) CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE.
  - (2) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

|                             |                    |         |         |  |       |
|-----------------------------|--------------------|---------|---------|--|-------|
| DATE 11/24/81               | GULF POWER COMPANY |         |         |  | PLATE |
| ENG J. M. E. L. W.          | 8/30/88            | 5/25/88 | 5/11/92 |  | C-4   |
| APPROVED <i>[Signature]</i> | 3/28/84            | 10/6/88 | 8/23/94 |  |       |

# GROUNDING CONNECTIONS



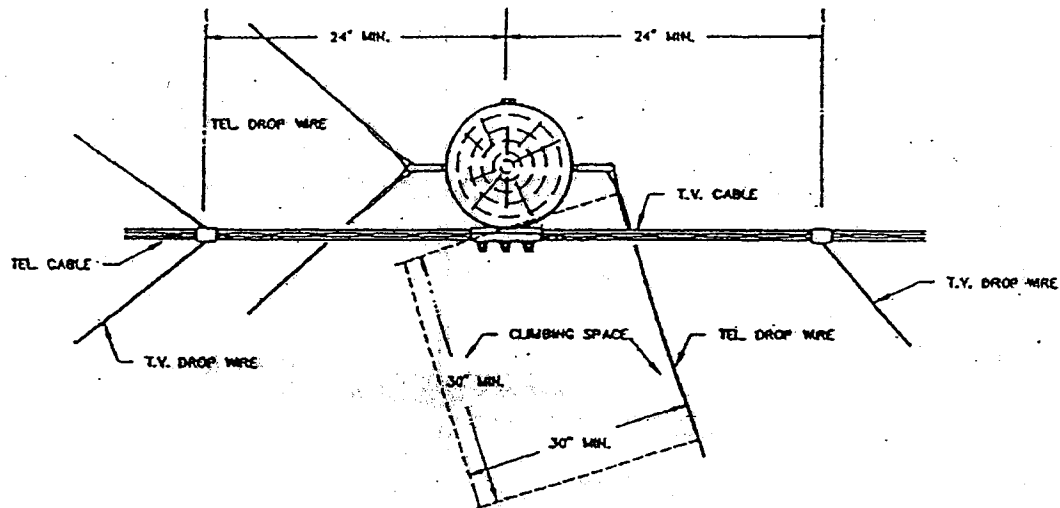
Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

002332 COM

|                             |                    |       |
|-----------------------------|--------------------|-------|
| DATE 06/16/82               | GULF POWER COMPANY | PLATE |
| ENG R.E. E.L.W.             |                    | C-5   |
| APPROVED <i>[Signature]</i> |                    |       |

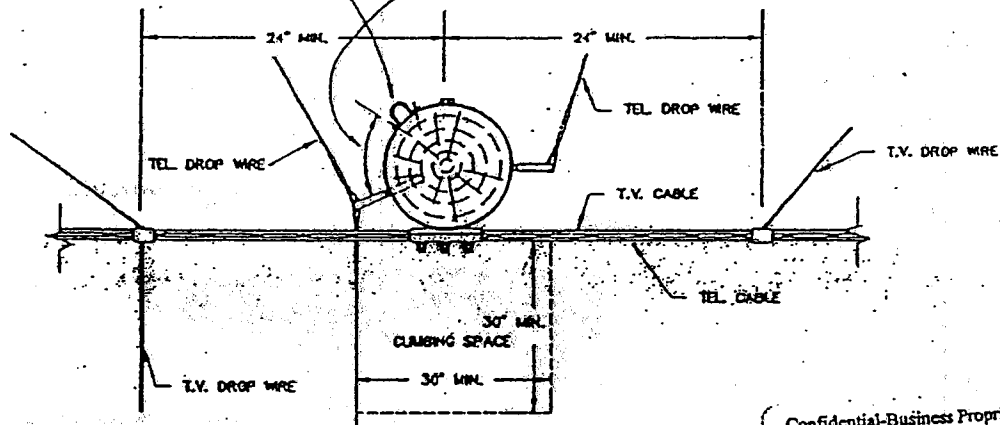
# JOINT USE CONSTRUCTION

## MINIMUM CLIMBING SPACE THROUGH COMMUNICATION CIRCUITS



POWER SYSTEM VERTICAL RUN OR GROUND WIRE

SEPARATION BETWEEN VERTICAL RUN, INCLUDING STAPLES OR OTHER DEVICES USED IN FASTENING IT TO THE POLE AND COMMUNICATION DRIVE HOOK SHALL BE AT LEAST 2 INCHES MEASURED IN ANY DIRECTION.



ALL COMMUNITY ANTENNA T.V. SERVICE DROPS TO BE MADE NO LESS THAN 24" EITHER DIRECTION FROM CENTER LINE OF POLE.

Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

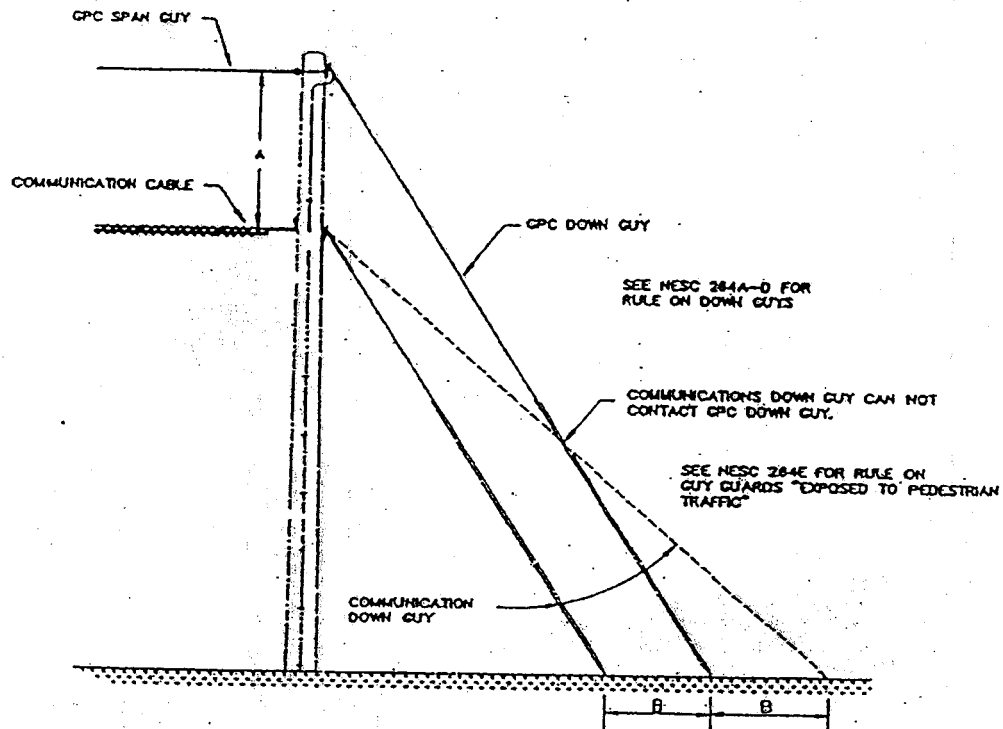
002333 COM

NOTE: (1.) THE DIMENSIONS OF THIS PLATE DO NOT SUPERSEDE ANY NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.

(2.) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

|                             |                    |  |       |
|-----------------------------|--------------------|--|-------|
| DATE 03/28/81               | GULF POWER COMPANY |  | PLATE |
| ENG JLL                     | 11/24/81           |  | C-6   |
| APPROVED <i>[Signature]</i> | 06/17/82           |  |       |

## SEPARATION OF DOWN GUYS



| DIMENSION<br>(LETTER) | REQUIRED<br>CLEARANCE | NESC APPLICABLE<br>REFERENCE SECTION |
|-----------------------|-----------------------|--------------------------------------|
| A                     | 40 INCHES             | TABLE 238-1, 238-B                   |
| B                     | 4 FEET                | GPC REQUIREMENT                      |

DIMENSION B BASED ON ANCHOR HOLDING POWER AND CONE OF INFLUENCE OF ADJACENT ANCHORS.

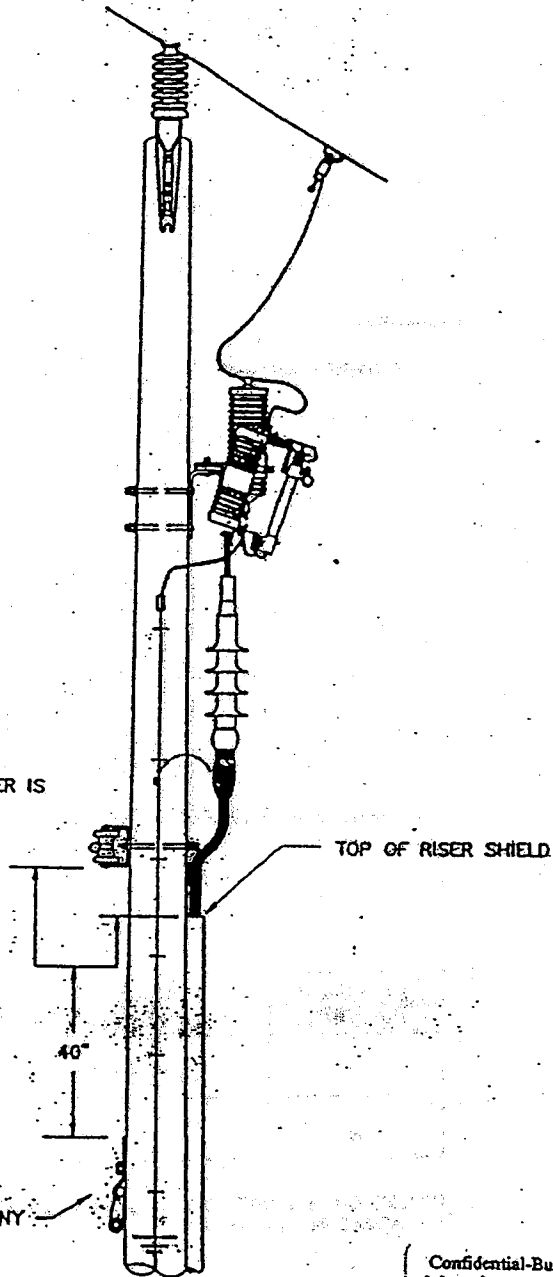
Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

002334 COM

|  |                           |                     |
|--|---------------------------|---------------------|
| DATE <u>6/3/82</u><br>ENG <u>R.S.</u> <u>DRG E.L.K.</u><br>1000/1000 | <b>GULF POWER COMPANY</b> | PLATE<br><b>C-7</b> |
|--|---------------------------|---------------------|

# SEPARATION AT POLE UNDERGROUND RISERS

NOTE:  
COMMUNICATION CLEARANCE TO  
BE 40" FROM TOP OF RISER SHIELD  
AND GPC CONDUCTOR BRACKET, WHICHEVER IS  
LOWEST.



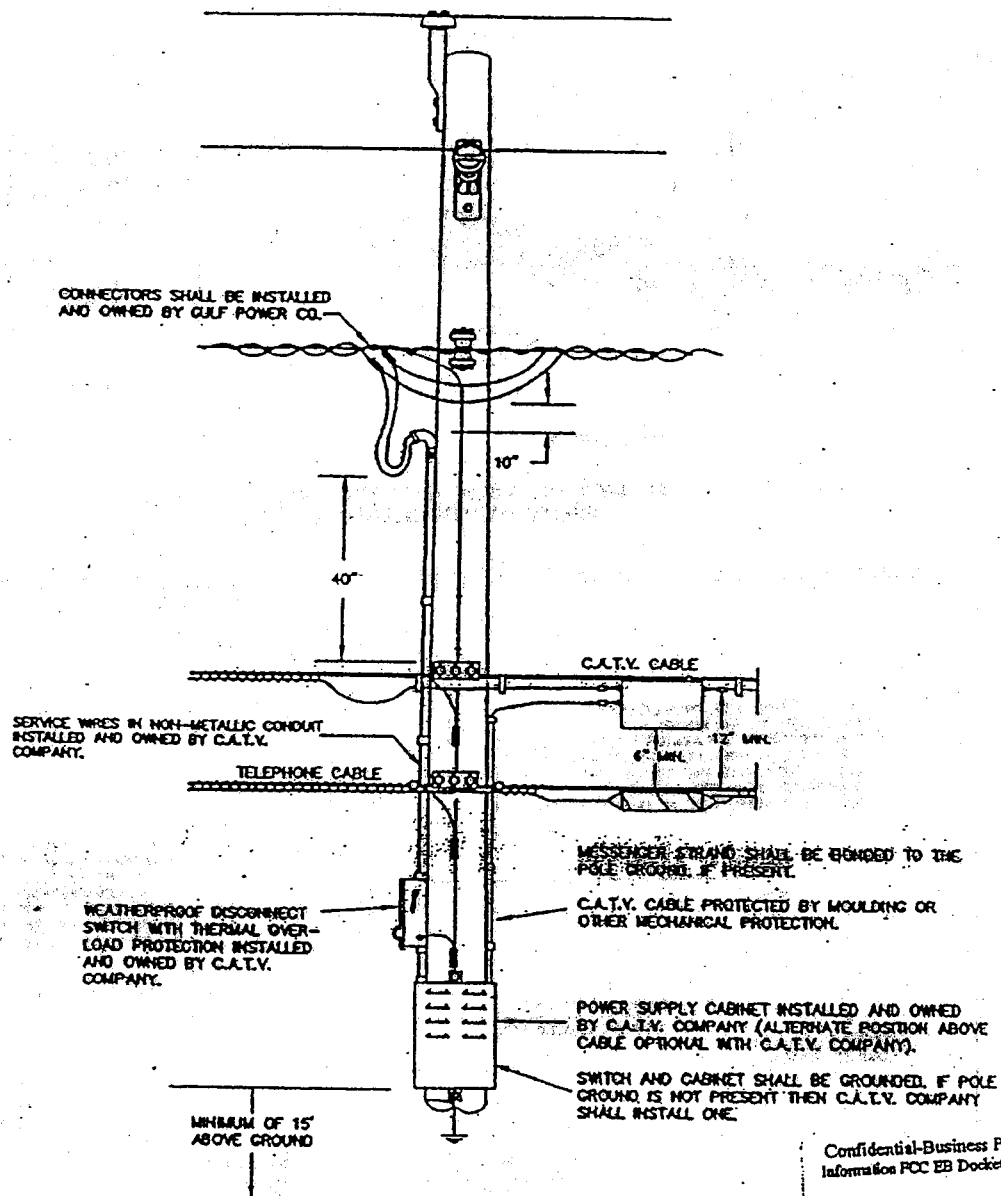
Confidential-Business Proprietary  
Information PCC EB Docket No. 04-311

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO  
OBJECTS MEASURED SURFACE-TO-SURFACE.

002335 COM

|                             |                    |              |
|-----------------------------|--------------------|--------------|
| DATE 2/11/92                | GULF POWER COMPANY | PLATE<br>C-8 |
| ENG. R.B. A.D.M. E.L.K.     |                    |              |
| APPROVED <i>[Signature]</i> |                    |              |

# COMMUNICATION/SIGNAL TYPE ATTACHMENT C.A.T.V. POWER SUPPLY INSTALLATION



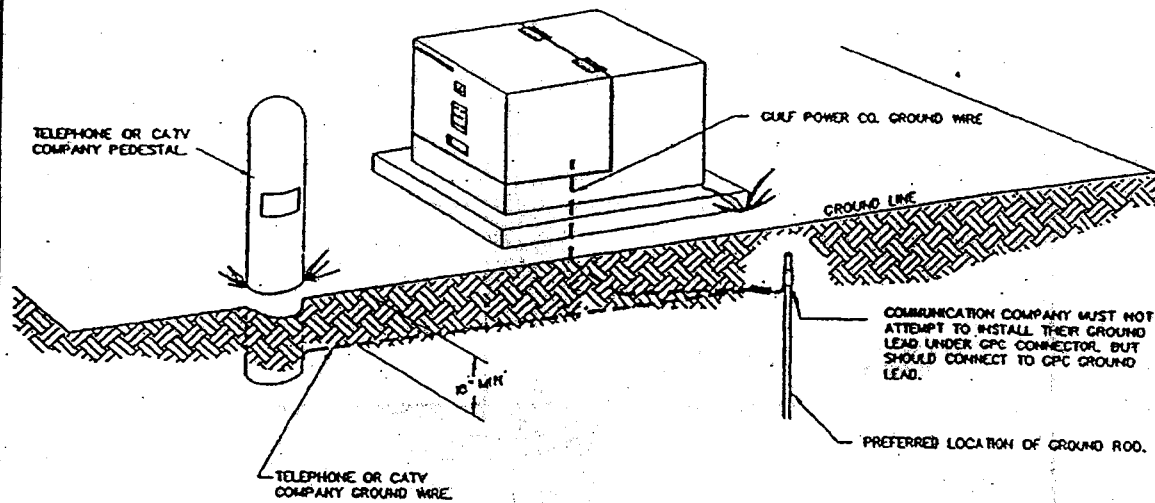
Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

002336 COM

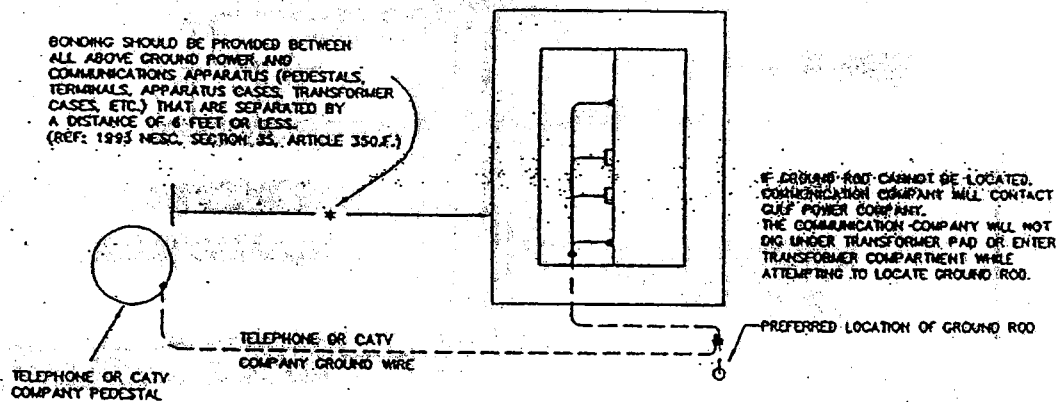
|                              |                    |        |
|------------------------------|--------------------|--------|
| DATE 5/19/92                 | GULF POWER COMPANY | PLATE- |
| ENG. <i>R.E.</i>             | 9/23/94            | C-9    |
| APPROVAL <i>DR. F. L. W.</i> |                    |        |



# BONDING OF PADMOUNT TRANSFORMER TO COMMUNICATION COMPANY FACILITIES



ISOMETRIC VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL



TOP VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL

Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

002337 COM

|                             |                    |  |       |
|-----------------------------|--------------------|--|-------|
| DATE 4/19/93                | GULF POWER COMPANY |  | PLATE |
| ENG R.B. DRW E.L.W.         | REV 11-13-94       |  | C-10  |
| APPROVED <i>[Signature]</i> |                    |  |       |

# JOINT USE CONSTRUCTION

SEPARATION OF COMMUNICATION CABLES  
AND  
GULF POWER CO. FACILITIES

**DO NOT ATTACH  
COMMUNICATION CABLES  
ABOVE THIS LABEL**

NOTE —

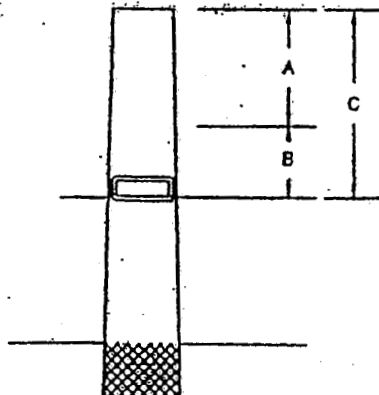
STORE CODE # 09-5550-4

THIS POLE MARKING LABEL SHOULD BE INSTALLED ON ANY POLE WHERE COMMUNICATION CABLES COULD ATTACH. REFER TO SPEC PLATES #C-1, C-2, C-3, C-4, C-5, C-7, C-8, AND C-9 FOR POINT OF ATTACHMENT.

- NOTE 1. BOTTOM LINE OF POLE MARKING LABEL SHOULD BE ON THE 40' MARK AND SHOULD BE INSTALLED WHERE IT WILL BE VISIBLE FROM THE STREET.  
2. SEE ENGINEER CONCERNING ANY REQUEST OF ADDITIONAL POLE HEIGHT ON 45' AND ABOVE POLES.

Confidential-Business Proprietary  
Information FCC EB Docket No. 04-381

002338 COM



| POLE SIZE | A    | B   | C       |
|-----------|------|-----|---------|
| 35'       | 6'   | 40" | 9'-4"   |
| 40'       | 8.5' | 40" | 11'-10" |
| 45'       | 13'  | 40' | 16'-4"  |

DATE 4/5/83

ENG JDM J. D. M. C. L. K.

GULF POWER COMPANY

PLATE

C-11

**EXHIBIT 2**

**DOCKET NO. 060173-EU**

**AFFIDAVITS**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.

DOCKET NO. 060173-EU

**FILED: August 18, 2006**

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

**AFFIDAVIT OF Robert A. Shireling III**

**BEFORE ME**, the undersigned authority, personally appeared Robert A. Shireling III who, being first duly sworn, deposes and says:

1. My name is Robert A. Shireling III. I am currently employed by Tampa Electric Company ("TECO") as Manager, Distribution Engineering & Standards. My business address is 702 N. Franklin St, Tampa, FL, 33602. My responsibilities include Distribution Engineering and Standards. I have personal knowledge of the matters stated in this affidavit.

2. I received a Bachelor of Science degree in Engineering from the University of South Florida in 1981. I am a registered professional engineer in the State of Florida (license no. 41207). I have been employed by TECO in positions of increasing responsibility for the past 25 years. I have experience in all aspects of TECO's distribution system including distribution engineering and design, operations and management, and staff support.

3. TECO owns approximately 300,000 distribution poles, approximately 202,000 of which bear third-party attachments. With respect to the Joint Reply Comments of the Investor-Owned Utilities ("Joint Reply Comments"), I have reviewed the information and graphs included in Section III of the Joint Reply Comments and attest that the analysis presented therein is true and correct. The wind loading effect of third-party pole attachments creates stress on utility poles. Third-party pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Up to 40% of the pole loading on a typical pole line can be caused by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed and not just extra space that may happen to be available on a pole.

4. Affiant says nothing further.

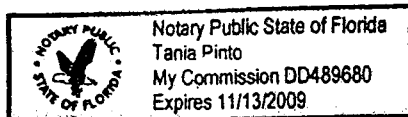
Robert A. Shireling III  
Robert A. Shireling III

Robert A. Shireling III

SWORN TO AND SUBSCRIBED before me this 17<sup>th</sup> day of August 2006, by Robert A. Shireling III, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification and who did take an oath.

Tania Pinto  
Notary Public, State of Florida

My Commission Expires:



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules  
regarding overhead electric facilities  
to allow more stringent construction  
standards than required by National  
Electric Safety Code.

DOCKET NO. 060173-EU  
FILED: August 18, 2006

STATE OF FLORIDA

COUNTY OF Palm Beach

AFFIDAVIT OF MICHAEL G. SPOOR

BEFORE ME, the undersigned authority, personally appeared Michael G. Spoor who, being first duly sworn, deposes and says:

1. My name is Michael G. Spoor. I am currently employed by Florida Power & Light Company ("FPL") as Director, Distribution System Performance. My business address is 9250 W. Flagler Street, Miami, Florida 33174. My responsibilities include Product Engineering, Distribution Standards, and Reliability Engineering. I have personal knowledge of the matters stated in this affidavit.

2. I received a Bachelor of Industrial Engineering degree from Auburn University in 1989. Additionally, I received a Master of Business Administration degree from Nova Southeastern University in 1998. I am a registered professional engineer in the State of Florida (license no. 51547). I have been employed by FPL in positions of increasing responsibility for the past 17 years. I have experience in all aspects of FPL's distribution system including distribution engineering and design, operations and management, and staff support.

3. FPL owns approximately 1.1 million distribution poles, approximately 750,000 of which bear third-party attachments. With respect to the Joint Reply Comments of the Investor-Owned Utilities ("Joint Reply Comments"), I have reviewed the information and graphs included in Section III of the Joint Reply Comments and attest that the analysis presented therein is true and correct and was prepared under my supervision and control. The wind loading effect of third-party pole attachments creates stress on utility poles. Third-party pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Up to 40% of the pole loading on a typical pole line can be caused by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed and not just extra space that may happen to be available on a pole.

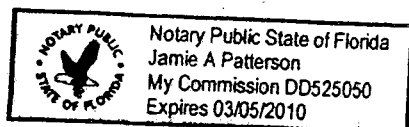
4. Affiant says nothing further.

  
Michael G. Spoor

SWORN TO AND SUBSCRIBED before me this 17 day of August 2006, by Michael G. Spoor, who is personally known to me or who has produced (type of identification) as identification and who did take an oath.

Jamie A Patterson  
Notary Public, State of Florida

My Commission Expires:



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules )  
regarding overhead electric facilities ) DOCKET NO. 060173-EU  
to allow more stringent construction ) FILED: August 18, 2006  
standards than required by National )  
Electric Safety Code. )  
\_\_\_\_\_ )

STATE OF FLORIDA )  
COUNTY OF ESCAMBIA ) AFFIDAVIT OF ALAN G. MCDANIEL

BEFORE ME, the undersigned authority, personally appeared Alan G. McDaniel who, being first duly sworn, deposes and says:

1. My name is Alan McDaniel. I am currently employed by Gulf Power Company as Project Services Manager. My business address is One Energy Place; Pensacola, FL 32520-0302. My responsibilities include the Corporate Emergency Management Center, distribution, engineering and construction skills development, and joint use matters. I have personal knowledge of the matters stated in this affidavit.

2. I received an Electrical Engineering degree from the University of Florida in 1981. Additionally, I received a Masters in Business Administration degree from Colorado State University in 2006. I have been employed by Gulf Power Company in positions of increasing responsibility for the past 26 years. I have experience in all aspects of Gulf's distribution system including distribution engineering and design, operations and management, and staff support.

3. Gulf Power owns approximately 250,000 distribution poles, approximately 170,000 of which bear attachments owned by entities other than Gulf Power. With respect to the Joint Reply Comments of the Investor-Owned Utilities ("Joint Reply Comments"), the wind loading effect of third-party pole attachments creates stress on utility poles. Third-party pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Pole loading on a typical pole line is contributed to by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed and not just extra space that may happen to be available on a pole.

4. Affiant says nothing further.

*Alan G. McDaniel*  
Alan G. McDaniel

SWORN TO AND SUBSCRIBED before me this 18<sup>th</sup> day of August 2006, by Alan G. McDaniel, who is personally known to me or who has produced GULF POWER ID BADGE (type of identification) as identification and who did take an oath.

*Bram Tye Halsinger*  
Notary Public, State of Florida

My Commission Expires: 04/10/2009





ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules )  
regarding overhead electric facilities ) DOCKET NO. 060173-EU  
to allow more stringent construction ) FILED: July 28, 2006  
standards than required by National )  
Electric Safety Code. )  
\_\_\_\_\_ )

**JOINT POST WORKSHOP COMMENTS**

Florida Power and Light Company ("FPL"), Progress Energy Florida ("PEF"), Tampa Electric Company ("Tampa Electric") and Gulf Power Company ("Gulf Power") file these Joint Post Workshop Comments. These comments are not intended to be a request for hearing but are filed in support of the proposed rules and in response to Staff's invitation to comment on the presentations made at the July 13, 2006 workshop.

**Basis for the Proposed Rules**

As a result of the extraordinary storm seasons of 2004 and 2005, the Commission has undertaken a multi-pronged approach to improve the electric infrastructure of this state in order to minimize future storm damage and customer outages.

This rulemaking together with the eight-year Pole Inspection Order No. PSC-06-0144-PAA-EI and the Storm Plan Order No. PSC-06-0351-PAA-EI have specified initiatives that the Commission has determined to be reasonable and necessary to storm harden the system. In each of these proceedings, the Commission has specifically determined that pole attachments affect the safety and reliability of the system and that action is necessary to reduce that effect.

DOCUMENT NUMBER-DATE

06730 JUL 28 8

FPSC-COMMISSION CLERK

## The Basic Theme of the Rules

The Commission has reasonably determined that nothing should be attached to a pole that is not engineered to be there in advance. It reached this conclusion after finding that pole attachments can have significant wind loading and stress effect on a pole and can cause overloading and that some attachments are made without notice or prior engineering.

The Commission consequently concluded that steps should be taken to assess pole attachment effect on poles to prevent overloading.

Comments at the workshop made by Florida Cable Television Association's (FCTA) consulting engineer confirmed the Commission's wind loading and stress concerns by presenting a photograph of an overloaded pole and observing:

Multiple cables which are attached lower than the power facilities on the poles do account for more wind load than the very basic power lines. . . . So there are poles out there where the cables are a very big factor of the wind loading but that normally is not the case. (Tr. 87) (Emphasis supplied.)

## Florida Public Service Commission Jurisdiction

The Commission has very broad and exclusive jurisdiction over the safety and reliability of electric utility distribution facilities.<sup>1</sup> Further this jurisdiction has not been preempted by federal law which defers matters of reliability and safety related to pole attachments to the states.

---

<sup>1</sup> See, e.g., §§ 366.04(2), Fla. Stat. (2006) (granting the Commission jurisdiction over all electric utilities "[t]o require ... reliability within a coordinated grid, for operational as well as emergency purposes"); 366.04(5), Fla. Stat. (2006) (providing the Commission "... jurisdiction over the planning, development, and maintenance of a coordinated electric grid throughout Florida to assure an adequate and reliable source of energy ..."); 366.04(6), Fla. Stat. (2006) ("The Commission shall have exclusive jurisdiction to prescribe and enforce safety standards for ... distribution facilities of all public electric utilities ..."); 366.05(1), Fla. Stat. (2006) (granting the Commission authority to prescribe service rules and regulations and "... to require repairs, improvements and additions 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 ..."); 366.05(8), Fla. Stat. (2006) (providing that "[i]f the Commission determines that there is probable cause to believe that

The Federal Pole Attachment Act, which generally gives the Federal Communications Commission ("FCC") jurisdiction over pole attachments specifically states that the FCC does not have jurisdiction over pole access issues, including safety and reliability when such matters are regulated by the state. 47 USC §§ 224(c)(1) and (f)(2).

The Commission's very broad and exclusive jurisdiction over safety and reliability extends both to the utility and the facility itself. The proposed rules are an appropriate implementation of that jurisdiction.

There are two types of issues regarding third party attachments.

Issues of Access including the attachment's effect on safety and reliability.

Issues of Contract including rates, terms and conditions applicable to the attachment.

Each type of access is handled differently under federal law.

Issues of Access rest with the state to the extent it regulates such issues.

Issues of Contract rest with the FCC unless a state certifies it has jurisdiction.

### **BellSouth's Jurisdictional Argument**

During the workshop, BellSouth asserted that the proposed rules encroach on the FCC's pole attachment jurisdiction and that the Florida Supreme Court in Teleprompter v. Hawkins, 384 So.2d 648 (1980) held the Commission does not have jurisdiction over pole attachments. Both assertions are incorrect.

---

inadequacies exist with respect to energy grids developed by the electric utility industry, it shall have the power ... to require installation or repair of necessary facilities ..."). Subsection 366.04(6), conferring safety jurisdiction on the Commission, was enacted in 1986, six years after the Florida Supreme Court decision in Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980).

**FCC Pole Attachment Rate Jurisdiction Does Not  
Cover Charges Between ILECs and Electric Utilities**

BellSouth argues that by causing the utilities to buy more expensive poles, which in turn raises pole rental rates under its negotiated contracts with electric utilities encroaches on the FCC jurisdiction. This is totally incorrect. It is impossible to encroach on jurisdiction the FCC does not have at all.<sup>2</sup>

BellSouth first asserts that the proposed rules will require electric utilities to install more reliable but more expensive electric infrastructure which will increase pole attachment rental rates. While this may be true in some circumstances, the rules do not affect the FCC's jurisdiction.

The rates paid by Incumbent Local Exchange Carriers (ILECs) to electric utilities are established by negotiated contract and are specifically excluded from the Federal Pole Attachment Act. The FCC has no jurisdiction over adjustment rates charged between ILECs and electric utilities.

BellSouth also asserts that it is not the cost causer. While that point may be subject to some debate, it is of no significance here. First, the Commission has no role in assigning costs. Second, the cause of a cost increase is heightened storm activity and governmental action taken in response to this activity in order to improve the safety and reliability of the system. Finally, the adjustment rates in contracts are a product of negotiation and are not under the jurisdiction of the FCC. Consequently, who or what was the cost causer is irrelevant.

---

<sup>2</sup> 47 USC § 224 (a)(1) defines the term "utility" to mean "a local exchange carrier or an electric, gas, water, steam or other public utility which owns or controls poles." "Pole Attachment" is defined by § 224 (a)(4) as "... any attachment by a cable television system or provider of telecommunication service to a pole ... owned or controlled by a utility." The term "telecommunications carrier" "... does not include any incumbent local exchange carrier ...". See 47 USC § 224 (a)(5).

In all events, the FCC's jurisdiction has never extended to establishing the capital, operating and maintenance costs of utility poles; it extends only to the methodology under which such costs will be included in pole attachments rates.

### **Teleprompter v. Hawkins**

The Teleprompter case decided in 1980 held that the Commission's jurisdiction does not extend to rates, terms and conditions of pole attachments. There was no discussion in that case concerning the Commission's Grid Bill and safety jurisdiction which is the basis for the proposed rules. Indeed, subsection 366.04(6) conferring the Commission's safety jurisdiction was not enacted until 1986. See Chapter 86-173, Laws of Florida, 1986. The Teleprompter decision is simply inapplicable to this rulemaking that arises from the Commission's reliability and safety jurisdiction.

### **Proposed Rule 25-6.0432 Does Not Delegate the Commission's Regulatory Authority to Electric Utilities**

The rule does not effect unlawful delegation of Commission authority to the utilities. Instead it simply directs utilities to adopt construction standards that meet certain minimum safety and reliability criteria. The rule provides:

The attachment standards shall meet or exceed the [NESC] . . . and other applicable standards imposed by state or federal law so as to assure, as far as 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 and maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." (Emphasis supplied.)

This provision is a clear statement of standards the utilities must meet in developing the construction standard required by the rule.

As noted above, the Public Service Commission has very broad and exclusive jurisdiction over the safety and reliability of electric utility distribution facilities. Indeed, in 2006, the

Florida Legislature supplemented the Commission's existing safety and reliability jurisdiction by amending Section 366.05 to provide the Commission "the ability to adopt construction standards that exceed the National Electric Safety Code, for purposes of ensuring reliable provision of service." See Section 17, Ch. 2006-230, *Laws of Florida* (2006 Senate Bill 888).

Implementing its safety and reliability jurisdiction under the new statutory provision, as well as existing grants of authority, the Commission has proposed infrastructure hardening rules, including Rule 25-6.0342 related to third-party attachment standards and procedures. The proposed rule requires each utility to "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 [that] ... meet or exceed the applicable edition of the National Electrical Safety Code ... 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." See Proposed Rule 25-6.0432(1). According to the proposed rule, no attachment to a utility's electric transmission or distribution poles shall be made except in compliance with the utility's Attachment Standards and Procedures. See Proposed Rule 25-6.0432(2). Disputes arising from implementation of the rule would be resolved by the Commission. See Proposed Rule 25-6.0432(3).

The argument that the Commission is "sub-delegating" its regulatory authority to electric utilities is a red herring designed to distract the Commission from its goal of ensuring standards are in place to harden electric utility infrastructure in the wake of an increased threat of hurricane activity and to delay or derail the rulemaking process. The proposed rule does not delegate

regulatory authority to electric utilities. Consistent with its legislative grant of authority, the Commission retains power to decide whether the attachment standards established by electric utilities under the rule satisfy the parameters for attachment standards laid out in the statute and rule – i.e., that they are written for purposes of ensuring reliable provision of service and meet the criteria articulated in subsection (1) of the proposed rule. It is the Commission that: (1) has made the fundamental policy decision as to the guidelines that the standards must meet; (2) retains discretion to determine whether the utilities' attachment standards comply with the rule; and (3) will resolve complaints regarding the rule's implementation. Because the proposed rule would not delegate regulatory authority to electric utilities, there is no merit to an argument that the Commission lacks legislative authority to subdelegate powers to a private entity. See, e.g., *St. Johns County v. Northeast Florida Builders Assoc. Inc.*, 583 So. 2d 635, 642 (Fla. 1991) (finding ordinance did not create an unlawful delegation of power because the fundamental policy decisions were made by the county, and the discretion of the school board was sufficiently limited); *County Collection Services, Inc. v. Charnock*, 789 So. 2d 1109, 1112 (Fla. 4th DCA 2001) (finding there was no improper delegation of authority by a county that entered into a contract assigning code enforcement and lot clearing liens to a contractor where the county retained the power to decide which liens to assign; the power to decide what collection techniques are permissible and to prohibit the use of any technique it finds objectionable; the power to take back any assigned debt or lien; and the power to terminate the contract for any or no reason), compare *Florida Nutrition Counselors Assoc. v. Dept. of Business & Prof. Reg.*, 667 So. 2d 218, 221 (Fla. 1st DCA 1995) (holding, in part, that a proposed rule constituted an invalid delegation of authority to private individuals where no restrictions were imposed on the types of practices or standards such individuals may create); *City of Belleview v. Belleview Fire Fighters, Inc.*, 367 So. 2d 1086, 1088 (Fla. 1st DCA 1976) (finding improper delegation where, under the

contract between the city and a private entity, the city was powerless to direct the exercise of police power in the fire fighting area).

The utilities are the entities that must design, construct and maintain their systems – not the Commission. Consequently, the Commission rule, of necessity, must be a general statement of Commission policy with the specific implementation left to each utility, based on the particular facts and circumstances that each utility faces. As the Commission observed in Re: Aloha Utilities, Order No. PSC-04-0712-PAA-WS, issued in Docket Nos. 020896-WS and 010503-WU, on July 20, 2004:

Commission practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal. In keeping with this established practice, we decline to prescribe the specific treatment process to be used in this case. (Emphasis supplied.)

What is reasonably sufficient, adequate and efficient service may depend upon the facts and circumstances of that particular customer or territory or portion of a territory. Attempting to define what is reasonably sufficient, adequate and efficient service for every potential set of circumstances statewide could dictate endless volumes of administrative rules. Rather than doing this, the proposed rule relies upon the principle of management by exception whereby the Commission would entertain and resolve complaints of any interested party who believes that a particular utility has acted unreasonably in defining and adopting a particular construction standard.

The Commission properly relies on the principle of management by exception in numerous ways. The Commission does not pre-approve every contract entered into by a public utility but instead addresses and resolves any contention by a substantially affected person that a utility acted imprudently in entering into a particular contract. The Commission has often stated



that its role is to regulate utilities through continuing oversight as opposed to micromanaging day-to-day utility operations and decision making.

Here, in charging the utilities with the development of construction standards, the Commission has recognized that the development of those standards requires expertise and flexibility of the utility to deal with complex and fluid conditions.

It would be difficult, if not impossible, for the Commission to incorporate all of the construction standards for the various utilities in the rule per se.

#### **Timing of the Adoption of the Rules**

BellSouth asserts that the rules should not be adopted until data is obtained from the eight-year inspections required by the Commission's Pole Inspection orders.

While such information will be useful in the future to refine the rules, there is no reason to delay the implementation of the rules at this point.

The possibility of improving the rules at a later date is not a reasonable basis for a delay.

#### **Possibility of Differing Standards**

BellSouth expressed concern that the rules may result in differing construction standards in different areas.

The Commission has appropriately reasoned that some areas may have higher risk of damage and that stronger facilities are required in those areas.

Construction standards are not uniform today.

Uniform standards among all utilities would not be practicable or cost beneficial for customers. Because of the diverse nature of Florida's geography, utilities need the flexibility to address unique infrastructure needs within and among respective service areas. The Commission's proposed rule is sensitive to this need for flexibility.

### Appropriate Input in Developing the Standards

Comments were made urging a more collaborative process in developing the standards.

The rules appropriately balance a requirement of obtaining input without creating a situation where one party could effectively stall the process of finalization of the standards.

The rules provide full due process by allowing any affected party to file a complaint challenging the reasonableness of the standards developed by the utility after receiving input from the attachers.

### Competitive Issues

The Florida Cable Television Association's (FCTA) attorney asserted that the safety and reliability is not the real basis for the rules. (Tr. 76-77)

This assertion is incorrect and should be somewhat insulting to the Commission. This assertion anticipates that the standards developed under the rules will be used to gain a competitive advantage for electric utilities and that the Commission would allow that to occur.

The proposed rules provide that any affected party can file a complaint with the Commission if any particular provision is alleged to be abusive.

These assertions made by the FCTA attorney are inconsistent with the comments of the consulting engineer made on behalf of FCTA who asserted that "almost all power companies already have construction standards for power lines. . . ." (Tr. 88). "The attachment rules need to be improved in my opinion. Not just copied over and then ratified by a government agency." (Tr. 92). "The power companies have standards and procedures. . . . Hopefully these will be an overall improvement in these attachment rules and procedures that would be very welcomed." (Tr. 92). "The NESC does not dictate how to accomplish what it requires, so power companies and communications companies must have construction standards which specify how they will accomplish what the NESC requires." (Tr. 95) "So I am here to ask you don't just simply ratify

an existing set of rules from a power company because it is in an existing contract. If we could work together for the benefit of all of us, we would re-look at those rules and compare between different power companies, some of the better rules and say, hey, this would be great if everyone would realize the benefits of starting out with a higher standard on a brand new pole, and then going to the NESC ultimately before you trash can a good pole and put a taller one in." (Tr. 98)

The attachers asserted that the proposed rules do not have adequate standards and that the Commission's authority to adopt the rules will be unlawfully delegated to electric utilities which are required to develop construction standards. This assertion is incorrect.

### Conclusion

The Commission has recognized that pole attachments present a situation affecting the safety and reliability of electric service.

The rules provide a critical means for dealing with this threat to electric distribution facilities in a fair and reasonable way.

The objective is to make facilities more storm ready. These rules are an important part of the Commission's plan to meet this objective.

Respectfully submitted this 28th day of July, 2006.

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ON BEHALF OF TAMPA ELECTRIC  
COMPANY

By: \_\_\_\_\_

Lee L. Willis

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Post Workshop

Comments has been furnished by Hand Delivery\* or U. S. Mail this 28<sup>th</sup> day of July, 2006 to the following:

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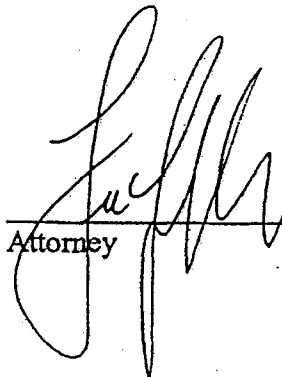
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

|  |   |                        |
|--|---|------------------------|
| In re: Proposed Rules Governing        | ) |                        |
| Placement of New Electric              | ) |                        |
| Distribution Facilities Underground,   | ) | DOCKET NO. 060172-EU   |
| and Conversion of Existing Overhead    | ) |                        |
| Distribution Facilities to             | ) |                        |
| Underground Facilities, to Address     | ) |                        |
| Effects of Extreme Weather Events.     | ) |                        |
| <br>                                   |   |                        |
| In re: Proposed amendments to rules    | ) |                        |
| regarding overhead electric facilities | ) | DOCKET NO. 060173-EU   |
| to allow more stringent construction   | ) |                        |
| standards than required by National    | ) | FILED: August 21, 2006 |
| Electrical Safety Code.                | ) |                        |
| <hr/>                                  |   |                        |

**JOINT REPLY COMMENTS  
ON PROPOSED RULES 25-6.034, 25-6.064, 25-6.078 AND 25-6.115**

**General**

Florida Power & Light Company, Gulf Power Company and Tampa Electric Company (collectively, the "IOUs") support the Commission's Proposed Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115. The past two hurricane seasons have underscored the importance of taking prompt and decisive action to improve the resilience of Florida's electric distribution system in storm events. While there are no doubt details in the Proposed Rules that could be debated and perhaps refined, this can only be done at the considerable cost of lost time and opportunity. The old adage that "the perfect is the enemy of the good" certainly applies to improving storm resilience. The IOUs applaud the Commission and its Staff for approaching this issue with the alacrity and determination that it deserves. The Proposed Rules are a good example of the Commission's prompt action, and the IOUs are hopeful that they can be finalized without unnecessary delay.

The IOUs believe that Proposed Rule 25-6.034 properly promotes the hardening of electric distribution systems while preserving to individual utilities the flexibility to implement hardening in the most cost-effective and appropriate form for their individual systems. Proposed Rules 25-6.064, 25-6.078 and 25-6.115 revise the contribution-in-aid-of-construction ("CIAC") formulas to provide price signals to customers that reflect the potential difference in maintenance and storm-restoration costs between overhead and underground distribution service. The IOUs believe that these price signals, in turn, will help encourage undergrounding of distribution facilities where it is appropriate and beneficial to do so. The IOUs attach and incorporate by reference the post-workshop comments that they have previously submitted to the Commission Staff on May 1 and 26, 2006.

#### **Proposed Rule 25-6.034**

The IOUs' principal reason for submitting comments on Proposed Rule 25-6.034 is to respond to comments that have been submitted by various attaching entities (the "Attachers"). Those comments have criticized the requirement in Proposed Rule 25-6.034(5) for construction of distribution facilities to be guided by the extreme wind loading standards specified in Figure 250-2(d) of the 2002 edition of the National Electrical Safety Code ("NESC").

At the outset, the IOUs observe that the Attachers' criticisms of Proposed Rule 25-6.034(5) seem to overlook the fact that its requirements only apply "to the extent reasonably practical, feasible and cost-effective." In essence, the criticisms constitute a critique of whether hardening distribution facilities to the NESC extreme wind standards are realistic and cost-justified. But the rule already provides that utilities need not harden

to the NESC extreme wind standards if it is not “reasonably practical, feasible and cost-effective” to do so. Thus, Rule Proposed 25-6.034(5) effectively anticipates and addresses the criticisms that have been raised.

In any event, the IOUs do not believe that the criticisms of Proposed Rule 25-6.034(5) are warranted or valid. The IOUs address those criticisms below.

The FCTA asserts that there is no factual support for hardening distribution facilities to NESC extreme wind standards as being the most effective means of reducing storm damage and outages; rather, the FCTA contends that it would be more effective to devote additional resources to inspecting and maintaining transmission poles and substations. However, the IOUs’ experience has been that a relatively small portion of the overall storm damage is to transmission lines and substations. The IOUs believe that one of the principal reasons why the transmission system has fared well in recent storm seasons is that it is already built to extreme wind standards. Of course, the IOUs’ favorable experience with their transmission system therefore suggests strongly that hardening distribution facilities to extreme wind standards on a targeted basis would be likewise beneficial. The FCTA is misguided in suggesting that hardening resources should be diverted from the distribution system to the transmission system.

Finally, the FCTA suggests that resources should be focused on increased pole inspections and vegetation management rather than on hardening the distribution facilities to extreme wind standards. But this is a false dichotomy. In reality, the Commission should focus – and is focusing – on both. The Commission has already directed utilities to adopt aggressive pole inspection and vegetation management programs. Those programs are likely to result in fewer poles failing due to deterioration



and/or impacts from falling trees and other vegetation. Adopting extreme wind standards could help reduce those wind-only failures.

Verizon's Dr. Slavin suggests that, because the NESC Committee has recently rejected proposals to extend extreme wind loading standards to distribution poles in its new (2007) version of the NESC, this Commission should consider that issue resolved for now and defer rulemaking on extreme wind loading standards until the NESC Committee formally revisits the issue for the 2012 version of the NESC. Because Dr. Slavin's proposal entails such a lengthy delay, it is tantamount to abandoning the concept of hardening Florida's distribution facilities to extreme wind standards. The IOUs believe that this would be a poor course of action, because it would deprive Florida electric consumers of the potential benefits of hardening for at least five years and would do so not because anyone has shown that hardening is inappropriate for Florida.

In contrast to Dr. Slavin's proposal to use the NESC review cycle as the pretext for a half-decade delay, BellSouth offers a potentially useful comment on the impact of that review cycle. Proposed Rule 25-6.034(4) currently incorporates by reference the 2002 edition of the NESC, because that is the edition that is currently in effect. However, the 2007 edition has already been finalized and that new edition will become effective in February 2007. BellSouth suggests that Proposed Rule 25-6.034 be revised to incorporate by reference the new, 2007 NESC edition. The IOUs have no objection to this proposal, because it will help make the rule as current as possible, and realistically no construction standards are likely to be implemented under the new rule until February 2007 in any event.

**Proposed Rules 25-6.064, 25-6.078 and 25-6.115**

The FCTA, BellSouth and Verizon all make essentially the same comment on Proposed Rules 25-6.064, 25-6.078 and 25-6.115: that those rules would be invalid if the construction standard requirements of Proposed Rule 25-6.034 were ultimately determined to be invalid. The IOUs believe that this comment misunderstands the purpose and effect of the cross reference to Proposed Rule 25-6.034 that appears in Proposed Rules 25-6.064, 25-6.078 and 25-6.115.

All three of those rules deal with the computation of CIAC applicable to the installation of underground distribution facilities. They all contain essentially the same cross-reference to Proposed Rule 25-6.034: for the purpose of calculating the CIAC, the cost of the hypothetical overhead facilities that would be built if the customer had not elected underground facilities is to be based on the construction standards contained in Proposed Rule 25-6.034. None of these cross-references says what those construction standards are to be; they simply call for the CIAC calculation to rely upon whatever standards are contained in Proposed Rule 25-6.034. Therefore, even if the Attachers' comments successfully called into question the validity of the construction standards set forth in Proposed Rule 25-6.034 (which they do not), the IOUs fail to see how this would cast doubt on the validity of Proposed Rules 25-6.064, 25-6.078 and 25-6.115. Proposed Rule 25-6.034 dealt with construction standards well before the Commission proposed to revise it to address hardening. Even if the Commission ultimately determined not to amend Proposed Rule 25-6.034, it would still address construction standards and thus the

cross-references in Proposed Rules 25-6.064, 25-6.078 and 25-6.115 would be valid and appropriate.

The IOUs consider it unfortunate that the Attachers have chosen to protest Proposed Rules 25-6.064, 25-6.078 and 25-6.115. Independent of the debate over the appropriate role of hardened construction standards in helping to ensure the resilience of Florida's overhead electric distribution system to storm impacts, the IOUs believe that there is an important role for undergrounding in appropriate settings. Proposed Rules 25-6.064, 25-6.078 and 25-6.115 are the Commission's mechanism providing for undergrounding in appropriate settings, but their status has been thrown unnecessarily into doubt by the Attachers' unsupported assertions that their validity depends upon the validity of Proposed Rule 25-6.034. The IOUs urge the Attachers to withdraw their objections to Proposed Rules 25-6.064, 25-6.078 and 25-6.115 so that they can be put into effect as quickly as possible.

Finally, with respect to Proposed Rule 25-6.064, BellSouth asserts that it should receive a credit or reduction against the historical average pole cost used in calculating the joint use pole rental charge, to reflect the amount of CIAC contributions and payments by other attachers which the electric utility receives for the poles in question. This is simply not a relevant topic to the debate over Proposed Rule 25-6.064. Joint use agreements are negotiated contracts between electric and telephone companies. These agreements clearly identify how attachment rates are calculated and the components to be included in that calculation. Any changes to that calculation would need to be mutually agreed upon by the parties to the agreements. This Commission does not regulate the

terms and conditions of joint use agreements, so Proposed Rule 25-6.064 cannot properly be the vehicle for debating possible modifications to those agreements.

Respectfully submitted this 21<sup>st</sup> day of August, 2006.

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By: 

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Reply  
Comments on Proposed Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115 have been furnished  
by Electronic Delivery (\*) or U. S. Mail this 21<sup>st</sup> day of August, 2006 to the following:

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# **ATTACHMENTS**

**PRIOR COMMENTS  
SUBMITTED INDIVIDUALLY BY  
FLORIDA POWER & LIGHT COMPANY,  
GULF POWER COMPANY AND  
TAMPA ELECTRIC COMPANY**



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May 3, 2006

**VIA ELECTRONIC DELIVERY**

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

Dear Ms. Bayo:

At the April 17, 2006 rule development workshop in the above dockets, Staff requested comments on how Rules 25-6.034, 25-6.035, 25-6.064, 25-6.078 and 25-6.115, R.A.C. should be amended to facilitate and encourage "storm hardening" of electric utility transmission and distribution facilities. Pursuant to that request, I am enclosing for filing in the above dockets the comments of Florida Power & Light Company, which are in the form of proposed rule amendments. For convenient reference, both redlined and clean versions of the proposed rule amendments are enclosed.

Please note that the redlined version shows proposed changes from the existing rules rather than from the preliminary rule amendment proposals that Staff circulated at the April 17 workshop. FPL's proposed amendments incorporate many of Staff's preliminary proposals, but also address the issues and concerns that FPL expressed at the workshop.


Proposed subsections (8) through (11) of Rule 25-6.034 address attachments by others to electric poles, which FPL briefly discussed at the workshop and which is the subject of FPL's petition for emergency rule or, alternatively, declaratory statement in Docket No. 060355-EL. These amendments are also addressed in separate supplemental rule comments being filed jointly by Tampa Electric Company, FPL, Gulf Power Company and Progress Energy Florida.



Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
May 3, 2006  
Page 2

FPL looks forward to the opportunity to discuss its proposed rule amendments with Staff and interested persons at the May 19 rule development workshop.

Sincerely,



John T. Butler

Enclosure

Cc:

Lawrence Harris, Esq. (w/encl.)  
Interested persons (w/encl.)

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\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH APRIL 7, 2006 \*\*\*

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 all customers, as well as emergency purposes. 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. This rule applies to all electric utilities, including municipal electric utilities and rural electric cooperative utilities unless otherwise noted.

(2) The Commission adopts and incorporates by reference the 2002 Edition of the National Electrical Safety Code (NESC) (ANSI C 2) published August 1, 2002, as the basis of all utility overhead and underground standards for safe construction of transmission and distribution facilities. Except as otherwise provided for in this rule, the standards shall be applicable to the extent reasonably practical and feasible to specific portions of the infrastructure.

(a) New construction.

(i) When planned work, including expansion, results in relocation of existing facilities, assistance on or after the effective date of this rule is required.

(ii) Where critical infrastructure facilities and underground facilities crossing into account political and geographical boundaries and other applicable operational considerations.

A copy of the 2002 NESC, ISBN number 0-7317-7732-7, may be obtained from the Institute of Electrical and Electronic Engineers, Inc. (IEEE). A utility may exceed the minimum standards of the NESC to enhance reliability and to meet other operational and engineering needs.

(3) All transmission and distribution facilities constructed after the effective date of this rule shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(4) For additional construction, a utility shall exceed the normal requirements of NESC by adopting the extreme wind loading standards, which are reasonably practical and feasible, to meet the normal requirements of the infrastructure for:

(a) New construction.

(i) When planned work, including expansion, results in relocation of existing facilities, assistance on or after the effective date of this rule is required.

(ii) Where critical infrastructure facilities and underground facilities crossing into account political and geographical boundaries and other applicable operational considerations.

(5) Each utility shall establish construction standards, to the extent reasonably practical and feasible, for underground electrical facilities to enhance reliability and reduce restoration time and outage times associated with extreme weather events.

(6) Location for the utility's electric facilities shall be as follows:

(i) When initial installation, expansion, relocation or relocation of any overhead facilities, utilities may not encroach public streets, roads and highways where the utility has no legal right to occupy and public lands and private property areas which many of any easements have been provided by the applicant.

(ii) For overhead installation, expansion, relocation or relocation of any overhead facilities, the applicant shall provide easements along the front edge of the property unless the utility determines that there is an operational or economic benefit to use another location.

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(c) For conversions of existing overhead facilities to underground, the utility may, if the applicant is a local government which provides all necessary permits and meets the utility's legal, financial and operational requirements, place facilities in a right-of-way in lieu of requiring easements.

If all cases, the locations must be provided by the applicant in a reasonable time to meet construction requirements, meet all requirements of Rule 25-6.0145, be satisfactory to the utility, and comply with all applicable federal, state and local laws, regulations and ordinances.

(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 C-57.1, 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) Each electric utility shall establish and maintain written safety, reliability, capacity, and engineering standards and procedures for attachments by others to the utility's electric distribution poles. Attachment Standards and Procedures shall meet or exceed NESC and other applicable standards imposed by law or to ensure system reliability and capacity. Third party facilities attached to electric distribution poles in any manner shall be safe, reliable, and not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(4) Following the effective date of this rule, no electric utility shall permit third parties to use the distribution and delivery of electric power shall be made in a way that the Communications Worker Safety Zone of Utility's distribution poles.

(5) No later than 30 days after the adoption of this rule, each utility shall file a copy of its Attachment Standards and Procedures with the Commission. In the event a utility modifies its Attachment Standards and Procedures, the utility shall file its new Attachment Standards and Procedures, accompanied by labels to indicate the effective date of the new version. Each label shall include a copy of the previous version showing each modification.

(6) No attachment to or on electric utility's distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures as filed with the Commission.

(7) The Commission shall review the Attachment Standards and Procedures filed by each utility and may at any time require a utility to demonstrate, through appropriate proceedings, that its Attachment Standards and Procedures comply with the requirements of Section (c). The Commission also may investigate each attaching party's compliance with the same.

(8) A copy of the utility's Attachment Standards and Procedures as filed with the Commission shall be made available by the utility for public inspection. Any person shall upon request, be furnished a copy of the utility's Attachment Standards and Procedures in full at the time.

**AUTHORITY:** Specific Authority §50.127(2), 366.09(1) FS.  
Dea Implemented 366.04(2)(c), 366.05(1) FS.

#### **HISTORY:**

Amended 7-19-99, 12-20-02; Formerly 25-6.34.

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\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH APRIL 7, 2006.\*\*\*

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

(1) In compliance with Section 366.03(5)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (NESC-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each public electric utility, rural electric cooperative, and municipal electric system shall comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Nothing in this rule is intended to conflict with the provisions of Rule 25-6.034.

(3) Each public electric utility, rural electric cooperative and municipal electric utility shall report all completed electrical 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 Auditing and Safety no later than the 30th working day after the last day of the reporting quarter, and shall contain, in a minimum, the following information for each work order:

- (a) Work order number/project title;
- (b) Brief title; and
- (c) Estimated cost in dollars, rounded to nearest thousand.

(4) The quarterly report shall be filed in standard database or compatible format: DOS ASCII text, or hard copy, as follows:

| (a) Database Format: |            |        |
|----------------------|------------|--------|
| Field Name           | Field Type | Digits |
| 1. Work order        | Character  | 20     |
| 2. Brief title       | Character  | 30     |
| 3. Cost              | Numeric    | 9      |
| 4. Location          | Character  | 50     |
| 5. Kv                | Numeric    | 5      |
| 6. Contiguous        | Character  | 1      |

(b) DOS ASCII Text:

- 1. Columns shall be the same type and in the same order as listed under Field Names above.
- 2. A comma (,) shall be placed between data fields.
- 3. Character data fields shall be placed between quotation marks (" ").
- 4. Numeric data fields shall be right justified.
- 5. Blank spaces shall be used to fill the data fields to the indicated number of digits.

(c) Hard Copy:

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) |
|------------|-------------|----------------|----------|-----------|------------------|
|------------|-------------|----------------|----------|-----------|------------------|

(5) In its quarterly report, each utility shall identify all transmission and distribution facilities subject to the Commission's safety jurisdiction, and shall certify to the Commission that they meet or exceed the applicable standards. Compliance inspections by the Commission shall be made on a random basis or as appropriate.

(6) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each 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:

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(a) Involves death or injury requiring hospitalization of non-utility persons; or

(b) Is significant from a safety standpoint in the judgment of the utility even though it is not required by paragraph

(a).

(7) Each 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:

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(a) Involves damage to the property of others in an amount in excess of \$ 5000; or

(b) Causes significant damage in the judgment of the utility to the utility's facilities.

(8) Unless required by the Commission, reports are not required with respect to personal injury, death, or property damage resulting from vehicles striking poles or other utility property.

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**AUTHORITY:** See the Authority 3.012(2) IS.  
Law implemented 3.06.01(2)(a) IS.

#### **HISTORY**

New F.A.C. 25-6.0345, 11-10-93, 8-3-97, 7-18-02

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\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH APRIL 7, 2006 \*\*\*

25-6.064 Contribution in Aid of Construction for Installation of New or Upgraded Facilities

(1) Purpose and Applicability: The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities will calculate amounts due as Contribution in Aid of Construction (CIAC) from customers who require new distribution facilities, in order to receive electric service, or for upgrades to existing facilities. This rule is not applicable to any facilities otherwise covered in Rule 25-6.078.

(2) CIAC for overhead distribution facilities shall be calculated as set forth below:

$$CIAC_{OH} = \left\{ \begin{array}{l} \text{Estimated total overhead facilities (including service drops and meters)} \\ \times \left\{ \begin{array}{l} \text{Base energy charge per kWh} \times \text{expected incremental annual kWh sales over the new facilities} \\ + \\ \text{If applicable, base demand charge per kW} \times \text{expected incremental average monthly kW over the new facilities} \times 12 \end{array} \right\} \end{array} \right\}$$

(3) CIAC for underground distribution facilities shall be calculated as set forth below:

$$CIAC_{UG} = \left\{ \begin{array}{l} \text{Estimated Total Cost of Underground Facilities (including services and meters)} \\ \times \text{Estimated Total Cost of Overhead Facilities (including service drops and meters)} \end{array} \right\} + CIAC_{OH}$$

634

(4) 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.

(5) Each utility shall apply the above formula uniformly to residential, commercial and industrial customers.

(6) 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 estimated cost of providing the extension less an appropriate credit.

(7) The utility shall use its best judgment in estimating the total amount of base revenues which the new or upgraded facilities are expected to produce in the near future.

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| Deleted: A customer's actual or estimated load must be 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. |
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| Deleted: to customer. The following formula shall be used to determine the contribution in aid of construction for each customer:  |
| (1) For customers in voltage levels that pay fully charged charges, the base demand charge, the CIAC   |
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(5) The utility may elect to waive the customer's CIAC, even when CIAC is found to be applicable. However, if the utility waives the CIAC, the utility shall adjust net plant in service accordingly. Each utility shall maintain records of amounts waived and any subsequent adjustments. (2) In cases where, in the judgment of the utility, multiple customers could reasonably be expected to be served in the near term by the new or expanded installation, the utility may elect to make full payment from all affected customers, elect to prorate the total CIAC over these multiple customers.

(7) A detailed statement of its standard policies pursuant to this rule shall be filed by each utility as part of its tariffs. The tariffs shall have uniform application be nondiscriminatory.

(8) If a utility and applicant are unable to agree on the CIAC amount, either party may appeal to the Commission for a review.

(9) Nothing in this rule shall be construed to prevent the utility from collecting the full cost differential associated with providing a comparable level of service vs. a standard level of service.

**AUTHORITY:** Specific Authority: 366.05(1), 350.12(2) FS.  
Law Implemented: 366.01, 366.05(1), 366.06(1) FS.

**HISTORY:**  
New 7-29-99; amended 7-25-98; Formerly 25-6.64.

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25-6.078 Schedule of Charges.

(1) Each investor-owned electric utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations for 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 services are 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 and such cost shall reflect the requirements of Rule 25-6.073.

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(2) On or before October 15th 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 is greater than 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), (3) and (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 three years.

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(3) Differences in operating and maintenance costs between underground and overhead systems, if any, may be taken into consideration in determining the overall Estimated Average Cost Differential.

(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 (10/07), Form PSC/ECR 13-E, entitled "Overhead/Underground Residential Differential Cost Data," which is incorporated by reference into this rule and may be obtained from the Division of Economic Regulation, 2540 Shinnard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6900.

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

(6) The recovery of the cost differential as filed by the utility and approved by the Commission may not be waived or reduced unless it is mutually agreed by the applicant and the utility that the applicant will perform certain work as defined in the utility's tariff. In such case, the applicant shall receive a credit. Provisions for the credit shall be set forth in the utility's tariff rules and regulations, and shall be no more in amount than the total charges applicable.

(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 utility or the applicant may refer the matter to the Commission for a special ruling as provided under Rule 25-6.081, F.A.C.

(8) The 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 utility by written agreement. A standard agreement form shall be filed with the company's tariff.

(9) Nothing herein contained shall be construed to prevent any utility from assuming all cost differential of providing underground 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.

AUTHORITY: 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 10-29-87.

## ANNOTATIONS

## Damages

Doctrine of "supervening government activity" did not apply in breach of contract suit brought by subdivision developers against Florida Power Company; developers would be entitled to recover damages only as to underground service that Company should have installed prior to Public Service Commission's approval of its underground service charge, which was action power company claimed as "supervening governmental activity." Winter Springs Development Corporation v. Florida Power Corporation, App. 5th D02 88, 2d D225 (1981).

Court reversed summary judgment for subdivision developers in breach of contract suit against Florida Power Corporation where genuine issues of fact existed, but held that power company could not assert defense of developers' failure to exhaust administrative remedies since Public Service Commission could not have awarded money damages; remedy would have been inadequate, and developers were not obliged to take controversy before Commission id.

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17) The CIAC shall be adjudicated as set forth below minus the non-refundable deposit amount, if applicable. The applicant shall not be required to pay any additional amount which exceeds 10 percent of the binding cost estimate.

$$CIA\text{ Cost} = \left\{ \left[ \begin{array}{c} \text{Cost of} \\ \text{Misdesigned} \\ \text{Facilities} \end{array} \right] + \left[ \begin{array}{c} \text{Existing Overhead} \\ \text{Facilities} \\ \text{Net Book Value} \end{array} \right] + \left[ \begin{array}{c} \text{Overhead} \\ \text{Account} \\ \text{Cost} \end{array} \right] + \left[ \begin{array}{c} \text{Overhead} \\ \text{Salvage} \\ \text{Value} \end{array} \right] \right\} \times \left[ \begin{array}{c} \text{Cost of} \\ \text{New Overhead} \\ \text{Facilities} \end{array} \right] \times \left[ \begin{array}{c} 1 \\ \text{Government} \\ \text{Adjustment} \\ \text{Factor} \end{array} \right]$$

(f) Government Administration Factor (GAF) is applicable in those instances where the applicant is a local government or other public entity. The GAF is based on the entity's assets and has met the entity's requirements as specified in the rule. The GAF amount is based on the GAF amount in the entity's year-end audit or the entity's financial statement. The GAF amount must include the requested project and related facilities and services, including all services, within

the area designated for conversion. The GAT shall not be applicable to any road construction or improvement projects for which state or federal funds are available.

(8) An applicant to a utility for construction of underground distribution facilities may petition the Commission pursuant to Rule 25-22.032.

(9) Nothing in this rule shall be construed to grant any electric utility any new title or interest in any property owned by a local government.

**AUTHORITY:** Specific Authority 366.04, 366.05(1)FS.  
Law Implemented 366.02, 366.04, 366.05 FS.

**HISTORY:**  
New 9-21-92

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| Deleted: (1) For the purpose of this rule, the change for the proposed underground facilities shall include:  |
| (a) The estimated cost of construction of the underground distribution facilities, including the estimated cost of the underground facilities located at the meter (1) of the customer (2).               |
| (b) The construction, the estimated remaining useful life of the existing facilities to be removed and the estimated cost of the facilities to be removed.  |
| (c) For the purpose of this rule, the change for the proposed facilities shall be the estimated cost of the facilities to be removed and the estimated cost of the facilities to be constructed.          |
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CIACoh = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters) - (4 X nonfuel energy charge per KWH x 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:

CIACoh = Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters - (4 X nonfuel energy charge per KWH x expected annual KWH sales over the new line) - (4 x expected annual demand charge revenues from sales over the new line)

(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:

CIACug = (Estimated difference between 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) + CIACoh (as above)

(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.

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25-6.034 Standard of Construction.

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

(2) The Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (NESC) (ANSI C-2), published August 1, 2001, as the basis for each utility developing minimum standards for safe construction of transmission and distribution facilities. Except as otherwise provided for in this rule, the standards shall be applicable, to the extent reasonably practical and feasible, to specific portions of the infrastructure for:

(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.

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). A utility may exceed the minimum standards of the NESC to enhance reliability and reduce restoration costs and outage times.

(3) Distribution and transmission facilities constructed prior to the effective date of this rule shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(4) For distribution construction, a utility shall exceed the normal requirements of NESC by adopting the extreme wind loading standards, to the extent reasonably practical and feasible, for specific portions of the infrastructure for:

(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.

(5) Each utility shall establish construction standards, to the extent reasonably practical and feasible, for underground electrical facilities to enhance reliability and reduce restoration costs and outage times associated with extreme weather events.

(6) Location for the utility's electric facilities shall be as follows:

(a) For initial installation, expansion, rebuild, or relocation of any overhead facilities, utilities may use easements, public streets, roads and highways which the utility has the legal right to occupy, and public lands and private property across which rights-of-way or easements have been provided by the applicant.

(b) For initial installation, expansion, rebuild, or relocation of any underground facilities, the applicant shall provide easements along the front edge of the property unless the utility determines that there is an operational or economic benefit to use another location.

(c) For conversions of existing overhead facilities to underground, the utility may, if the applicant is a local government who 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.

In all cases, the locations must be provided by the applicant in a reasonable time to meet construction requirements, meet all requirements of Rule 25-6.076, be satisfactory to the utility, and comply with all applicable federal, state and local laws, regulations and ordinances.

(72) 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-S7.13, 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.

(8) Each electric utility shall establish and maintain written safety, reliability, capacity, and engineering standards and procedures for attachments by others to the utility's electric distribution poles ("Attachment Standards and Procedures"). Such Attachment Standards and Procedures shall meet or exceed NESC and other applicable standards imposed by law so as to assure, as far as is reasonably practicable, that third-party facilities attached to electric distribution poles do not impair electric system safety or reliability, do not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(9) Following the effective date of this rule, no non-electric utility attachment, unless necessary for the distribution and delivery of electric power, shall be made in or above the Communications Worker Safety Zone of a utility's distribution poles.

(10) No later than 30 days after the enactment of this rule, each utility shall file a copy of its Attachment Standards and Procedures with the Commission. In the event a utility modifies its Attachment Standards and Procedures, the utility shall file its new Attachment Standards and Procedures, appropriately labeled to indicate the effective date of the new version, together with an annotated copy of the previous version showing each modification.

(11) No attachment to an electric utility's distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures as filed with the Commission.

(12) The Commission shall review the Attachment Standards and Procedures filed by each utility and may at any time require a utility to demonstrate, through appropriate proceedings, that its Attachment Standards and Procedures comply with the requirements of Section (8). The Commission also may investigate each attaching party's compliance with the same.

(13) A copy of the utility's Attachment Standards and Procedures as filed with the Commission shall be made available by the utility for public inspection. Any person shall, upon request, be furnished a copy of the utility's Attachment Standards and Procedures in effect at the time.

**AUTHORITY:** Specific Authority 350.127(2), 366.05(1) FS.  
Law Implemented 366.04(2)(c), (5), 366.05(1) FS.

**HISTORY**

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

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\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH APRIL 7, 2006 \*\*\*

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 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each public electric utility, rural electric cooperative, and municipal electric system shall comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Nothing in this rule is intended to conflict with the provisions of Rule 25-6.034.

(3) Each 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 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; and
- (c) Estimated cost in dollars, rounded to nearest thousand.

(4) The quarterly report shall be filed in standard DBase or compatible format, DOS 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. Columns shall be the same type and in the same order as listed under Field Names above.
- 2. A comma (,) shall be placed between data fields.
- 3. Character data fields shall be placed between quotation marks ("...").
- 4. Numeric data fields shall be right justified.
- 5. Blank spaces shall be used to fill the data fields to the indicated number of digits.

(c) Hard Copy.

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) |
|------------|-------------|----------------|----------|-----------|------------------|

(5) In its quarterly report, each utility shall identify all transmission and distribution facilities subject to the Commission's safety jurisdiction, and shall certify to the Commission that they meet or exceed the applicable standards. Compliance inspections by the Commission shall be made on a random basis or as appropriate.

(6) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each 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) Involves death or injury requiring hospitalization of non-utility persons; or
- (b) Is significant from a safety standpoint in the judgment of the utility even though it is not required by paragraph (a).

(7) Each 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) Involves damage to the property of others in an amount in excess of \$ 5000; or
- (b) Causes significant damage in the judgment of the utility to the utility's facilities.

(8) Unless requested by the Commission, reports are not required with respect to personal injury, death, or property damage resulting from vehicles striking poles or other utility property.

**AUTHORITY:** Specific Authority 350.127(2) FS.  
Law Implemented 366.04(2)(f), (6) FS.

**HISTORY**

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



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\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH APRIL 7, 2006 \*\*\*

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

(1) Purpose and Applicability: The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities will calculate amounts due as Contribution-in-Aid-of-Construction (CIAC) from customers who require new distribution facilities, in order to receive electric service, or for upgrades to existing facilities. This Rule is not applicable to any facilities otherwise covered in Rule 25-6.078.

(2) CIAC for overhead distribution facilities shall be calculated as set forth below:

$$CIAC_{OH} = \left\{ \begin{array}{l} \text{Estimated} \\ \text{cost of} \\ \text{overhead} \\ \text{facilities} \\ \text{(excluding} \\ \text{service} \\ \text{drops and} \\ \text{meters)} \end{array} \right\} - 4 \times \left\{ \begin{array}{l} \left\{ \begin{array}{l} \text{Base energy charge per kWh x} \\ \text{expected incremental annual kWh} \\ \text{sales over the new facilities} \end{array} \right\} \\ + \\ \left\{ \begin{array}{l} \text{If applicable, base demand charge per kW x} \\ \text{expected incremental average monthly kW} \\ \text{over the new facilities x 12} \end{array} \right\} \end{array} \right\}$$

(3) CIAC for underground distribution facilities shall be calculated as set forth below:

$$CIAC_{UG} = \left\{ \begin{array}{l} \text{Estimated Total Cost of} \\ \text{Underground Facilities} \\ \text{(including services} \\ \text{and meters)} \end{array} \right\} - \left\{ \begin{array}{l} \text{Estimated Total Cost of} \\ \text{Overhead Facilities} \\ \text{(including service drops} \\ \text{and meters)} \end{array} \right\} + CIAC_{OH}$$

low:

(4) 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.

(5) Each utility shall apply the above formulas uniformly to residential, commercial and industrial customers.

(6) 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 estimated cost of providing the extension less an appropriate credit.

(7) The utility shall use its best judgment in estimating the total amount of base revenues which the new or upgraded facilities are expected to produce in the near future.

(8) The utility may elect to waive the customer's CIAC, even when CIAC is found to be applicable. However, if the utility waives the CIAC, the utility shall adjust net plant-in-service accordingly. Each utility shall maintain records of

amounts waived and any subsequent adjustments.(9) In cases where, in the judgment of the utility, multiple customers could reasonably be expected to be served in the near term by the new or upgraded facilities, the utility may upon mutual agreement from all affected customers, elect to prorate the total CIAC over those multiple customers.

(10) A detailed statement of its standard policies pursuant to this rule shall be filed by each utility as part of its tariffs. The tariffs shall have uniform application be nondiscriminatory.

(11) If a utility and applicant are unable to agree on the CIAC amount, either party may appeal to the Commission for a review.

(12) Nothing in this rule shall be construed to prevent the utility from collecting the full cost differential associated with providing a non-standard level of service vs. a standard level of service.

**AUTHORITY:** 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.

25-6.078, F.A.C.

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25-6.078 Schedule of Charges.

(1) Each investor-owned electric utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations for 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 and such costs shall reflect the requirements of Rule 25-6.034.

(2) On or before October 15th 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), (3) and (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 three years.

(3) Differences in operating and maintenance costs between underground and overhead systems, if any, may be taken into consideration in determining the overall Estimated Average Cost Differential.

(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) 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 utility at no charge to the applicant, provided the utility is free to construct its service extension or extensions in the most economical manner.

(6) The of recovery of the cost differential as filed by the utility and approved by the Commission may not be waived or refunded unless it is mutually agreed by the applicant and the utility that the applicant will perform certain work as defined in the utility's tariff, in which case the applicant shall receive a credit. Provision for the credit shall be set forth in the utility's tariff rules and regulations, and shall be no more in amount than the total charges applicable.

(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 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.

(8) The 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 utility by written agreement. A standard agreement form shall be filed with the company's tariff.

(9) Nothing herein contained shall be construed to prevent any utility from assuming all cost differential of providing underground 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.

**AUTHORITY:** 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.

#### ANNOTATIONS

##### Damages

Doctrine of "supervening government activity" did not apply in breach of contract suit brought by subdivision developers against Florida Power Company; developers would be entitled to recover damages only as to underground service that Company should have installed prior to Public Service Commission's approval of its underground service charge, which was action power company claimed as "supervening governmental activity." *Winter Springs Development Corporation v. Florida Power Corporation*, App., (5th)402 So. 2d 1225 (1981).

Court reversed summary judgment for subdivision developers in breach of contract suit against Florida Power Corporation where genuine issues of fact existed, but held that power company could not assert defense of developers' failure to exhaust administrative remedies. Since Public Service Commission could not have awarded money damages, remedy would have been inadequate, and developers were not obliged to take controversy before Commission.Id.

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25-6.115 Contribution-in-Aid-of Construction (CIAC) for Conversion of Existing Overhead Distribution Facilities to Underground.

(1) Each investor-owned electric utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing the conversion of existing overhead distribution facilities to underground (this Rule does not apply to those facilities otherwise covered by Rule 25-6.078). The tariff shall include the general provisions and terms under which the utility and applicant may enter into a contract for the purpose of conversion.

(2) For the purpose of this rule, the applicant is the person or entity seeking the undergrounding of existing overhead electric distribution facilities. In the instance when a developer requests local government development approval, the local government shall not be deemed the applicant for purposes of this rule.

(3) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

- (a) Such work meets the utility's construction standards;
- (b) The utility will own and maintain the completed distribution facilities; and
- (c) Such agreement is not expected to cause the general body of ratepayers to incur greater costs.

(4) Nothing in the tariff shall prevent the applicant from requesting a non-binding cost estimate which shall be provided to the applicant free of any charge or fee.

(5) Upon an applicant's request and payment of the deposit amount, the 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 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 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) The CIAC shall be calculated as set forth below minus the non-refundable deposit amount, if applicable. The applicant shall not be required to pay any additional amount which exceeds 10 percent of the binding cost estimate.

$$CIAC_{UCC} = \left\{ \left( \begin{array}{c} \text{Cost of} \\ \text{Underground} \\ \text{Facilities} \end{array} + \left( \begin{array}{c} \text{Existing Overhead} \\ \text{Facilities} \\ \text{Net Book Value} \end{array} + \begin{array}{c} \text{Overhead} \\ \text{Removal} \\ \text{Cost} \end{array} - \begin{array}{c} \text{Overhead} \\ \text{Salvage} \\ \text{Value} \end{array} \right) - \begin{array}{c} \text{Cost of} \\ \text{New Overhead} \\ \text{Facilities} \end{array} \right\} \times \left( \begin{array}{c} \text{Government} \\ \text{Adjustment} \\ \text{Factor} \end{array} \right)$$

(a) Costs of Underground and New Overhead Facilities shall include all distribution components (e.g., transformers, services, meters, and any other necessary facilities, etc.)

(b) Existing Overhead Facilities Net Book Value is plant-in-service less accumulated depreciation of the facilities to be removed.

(c) Cost of New Overhead Facilities shall be the estimated cost to install new overhead.

(d) Government Adjustment Factor (GAF) is applicable in those instances where the applicant is a local government subject to the utility's tariff and has met the utility's requirements as specified in the tariff. The GAF amount, based on the GAF specified in the utility's tariff, shall be added to the utility's plant-in-service. The applicant must include in the requested project all overhead facilities, up to and including all services, within

the area designated for conversion. The GAF shall not be applicable to any road construction or improvement projects for which state or federal funds are available.

(8) An applicant to a utility for construction of underground distribution facilities may petition the Commission pursuant to Rule 25-22.032.

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

**AUTHORITY:** Specific Authority 366.04, 366.05(1) FS.  
Law Implemented 366.03, 366.04, 366.05 FS.

**HISTORY**  
New 9-21-92.



Florida Power & Light Company, P.O. Box 729100, Miami, FL 33102-9100

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May 3, 2006

- VIA ELECTRONIC DELIVERY -

Mr. Craig B. Hewitt  
Division of Economic Regulation  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

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

Dear Mr. Hewitt:

At the April 17, 2006 rule development workshop in the above dockets, Staff made three data requests to the investor-owned utilities concerning the economic impacts of "storm hardening" amendments to Rules 25-6.034, 25-6.035, 25-6.064, 25-6.078 and 25-6.115, F.A.C. I am enclosing Florida Power & Light Company's response to those data requests, which specifically addresses the proposed amendments that FPL is submitting to Staff today under separate cover. Please note that FPL's proposed amendments incorporate many of Staff's preliminary proposals, but also address the issues and concerns that FPL expressed at the workshop.

FPL has quantified the costs and benefits of its proposed rule amendments to the extent presently possible. Considerable uncertainty remains as to many of the costs and benefits, however, so FPL has presented most of its estimates as ranges rather than single values. Moreover, because the construction standards contemplated by FPL's proposed rule amendments are currently under development, FPL simply does not have enough information available at this time to provide meaningful quantitative estimates of some of the costs and benefits. FPL is continuing to evaluate the economic impacts of infrastructure hardening and will provide Staff additional information on those impacts as it becomes available.

FPL is proposing to add a subsection (7)(d) to Rule 25-6.115, which would provide for a Government Adjustment Factor ("GAF") to be applied in certain circumstances to the calculation of the Contribution In Aid of Construction ("CIAC") for conversion of existing overhead distribution facilities to underground. A utility would use the GAF when the applicant is a local government that is subject to the utility's tariff and meets applicability requirements specified in the utility's tariff. The GAF represents the percentage of an applicant's total CIAC that is to be invested by the utility and added to Plant In Service rather than collected from the applicant. FPL's proposal contemplates that each utility would specify the GAF percentage in its utility's tariff. Of course, this means that the cost, and hence the cost-effectiveness, of the GAF

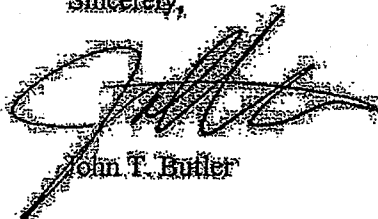
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proposal will vary among utilities depending upon the GAF percentage that each one specifies in its tariff.

FPL has previously filed a petition for approval of a 25% GAF, which is being considered in Docket No. 060150-EL. The Commission suspended FPL's tariff filing to allow for careful review and to coordinate with the Commission's consideration of amendments to Rule 25-6.115. If the Commission approves a GAF mechanism for this rule, FPL expects the Commission then to address FPL's 25% GAF tariff filing. FPL's experience in the 2004 and 2005 storm seasons was that underground facilities experienced fewer interruptions than overhead facilities and that, therefore, conversion to underground facilities can be an effective mitigation strategy for severe weather events. In spite of these benefits, FPL heard from community leaders that the up-front cost of conversion has been and remains a significant obstacle. These comments are corroborated by FPL's experience with a tariff provision filed in 2003 that facilitated a local government's collection of underground conversion costs from customers within its boundaries through the FPL electric bills; to date, not a single local government has availed itself of that tariff provision. The GAF is intended to reduce these obstacles for the type of contiguous areas where significant restoration cost savings can be expected. FPL believes that a 25% GAF will strike the right balance between providing a sufficient incentive to communities for underground conversion, while at the same time minimizing the potential impact to all customers from future storms. FPL's evaluation to date of the costs and benefits of implementing a 25% GAF suggests that it would be beneficial and cost-effective to the general body of customers under certain reasonable assumptions about future storm activity, the relative levels of storm damage to overhead and underground facilities, and the resulting differential in restoration costs.

FPL looks forward to the opportunity to discuss the economic impacts of its proposed rule amendments with Staff and interested persons at the May 19 rule development workshop.

Sincerely,



John T. Butler

Enclosure

Cc: Lawrence Harris, Esq. (w/enc.)  
Interested persons (w/enc.)



**Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115**  
**Costs and Benefits**

**Rule 25-6.034 (4) - Standard of Construction (Overhead)**

Consistent with FPL's Storm Secure proposal filed in January 30, 2006 with the FPSC, FPL proposes the following rule language:

"For distribution construction, a utility shall exceed the normal requirements of NESC by adopting the extreme wind loading standards, to the extent reasonably practical and feasible, for specific portions of the infrastructure for:

- (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 geo-graphical boundaries and other applicable operational considerations."

**Assumptions:**

FPL will harden the targeted distribution infrastructure according to the various wind-loading zones as defined in the NESC. Analysis is continuing, but is not yet finalized, as to how to adopt the NESC extreme wind criteria into FPL's construction and design practices taking into account standardization, operational and material considerations. Through this hardening effort, FPL is confident that new materials (e.g., stronger poles) will ultimately be introduced, which will allow different construction techniques to be used in the field. Although FPL has reached out to vendors for assistance in this area, it is still early in the alternative material evaluation process.

Another uncertainty is what the availability of personnel for engineering and construction, as well as the supply of materials needed for the hardening initiatives, will be as FPL ultimately implements its hardening plan. Lastly, to cost effectively implement the hardening plan, FPL is working aggressively at developing a detailed 10-year "hardening roadmap" that will provide the framework for determining what (and when) various parts of the overhead infrastructure will be made more resilient.

**Costs:**

Because of all of the outstanding issues and unknowns that still exist with the overhead hardening proposal, it is extremely difficult to estimate cost information

at this point. However, listed below are general ranges of estimated costs to provide an order of magnitude perspective on the costs involved.

#### New Construction

It is estimated that the approximate average incremental annual cost for new construction will range from \$10,000,000-\$60,000,000, factoring in all of the assumptions listed above.

#### Major Planned Work

It is estimated that the approximate average incremental annual cost of hardening the relocated infrastructure will range from \$5,000,000-\$25,000,000, factoring in all of the assumptions listed above.

#### Critical Infrastructure Facilities (CIF) and Major Thoroughfares

It is estimated that the approximate average incremental annual cost of hardening the CIF circuits will range from \$35,000,000 - \$165,000,000, factoring in all of the assumptions listed above. FPL's Storm Secure Proposal is, in the first five years, targeting circuits serving top CIF's and major thoroughfares.

#### Total Cost of Hardening

It is estimated that the approximate average incremental annual cost of hardening new construction, major planned work and targeted CIF circuits will range from \$50,000,000 - \$250,000,000, over the first five years and then is expected to decline once the initial hardening of CIF and major thoroughfares is completed.

#### **Benefits:**

FPL continues its analysis to quantify benefits associated with the overhead hardening proposal. Benefits are to be estimated by a simulation analysis based on the increased ability of more resilient construction to withstand winds associated with extreme weather events. FPL's analysis so far has shown that building distribution overhead facilities to the NESC extreme wind criteria will make a positive difference. This point is further supported by the following:

- KEMA's post-Hurricane Wilma study identified that 50% of FPL-owned pole failures were due to wind only. FPL is confident that pole breakage due to wind alone will not be as likely with a hardened overhead circuit.
- Currently, FPL's transmission system is built to the NESC extreme wind criteria and experienced extremely good performance with respect to wind

only failures during Hurricane Wilma. FPL believes a hardened distribution system will mirror this same higher performance.

- FPL's new overhead distribution feeders are currently being built to a higher standard than required by the NESC. Analyses conducted after both the 2004 and 2005 hurricane seasons have shown that these new circuits performed better than the older ones that were built before the current criteria were in effect. Increasing the construction criteria further to meet the NESC extreme wind requirement should yield additional resiliency improvements.

Therefore, hardening of FPL's distribution infrastructure to the extreme wind-loading criteria specified in the NESC is likely to help FPL achieve the following benefits:

- Increased ability to withstand damage caused by extreme wind events and the resulting mitigation of restoration time and cost.
- Assurance that CIF are more resilient to damage from extreme wind events and therefore able to provide service to the general public with minimal or no interruption.

#### **Rule 25-6.034(5) - Standard of Construction (Underground)**

FPL has proposed the following rule amendment concerning hardening underground construction: "Each utility shall establish construction standards, to the extent reasonably practical and feasible, for underground electrical facilities to enhance reliability and reduce restoration costs and outage times associated with extreme weather events."

Presently, underground pad mounted equipment is installed on a six inch thick pad within an easement that is required to be brought to within 6 inches of final grade by the developer of an underground subdivision. This final grade is usually determined by local building and zoning flooding ordinances as recommended in the Florida Building Code. These local building and zoning flooding ordinances are usually based on FEMA 100 year flood criteria.

Although FPL recognizes the need for any underground system to be resilient to extreme weather events, this has not been a significant issue in recent hurricane events that FPL has experienced. As a result, no analysis has been done to date by FPL regarding hardening of underground, and therefore, no estimate of costs or benefits is available at this time.

#### **Rule No. 25-6.034(8)-(13) - Standard of Construction (Attachments by Others)**

FPL proposes changes which would require establishing and maintaining safety, reliability, capacity and engineering standards and procedures for attachments by others to electric distribution poles.

Costs associated with these proposed changes would be minimal. For utilities, the costs would be primarily administrative in nature. Attaching parties will continue to have access to appropriate portions of poles to make reasonable attachments, so there should be only limited impact on their attachment costs. Benefits have not yet been quantified but could be substantial, as a result of avoided hardening requirements and/or improved overhead distribution system resilience.

**Rules 25-6.064 and 25-6.115 – Impact of Hardened Overhead Construction Standard on CIAC Calculations**

FPL does not foresee significant costs or benefits directly from its proposed revisions to these rules. However, if a new hardened overhead construction standard is established as FPL proposes in Rule 25-6.034, CIAC calculations for overhead versus underground service will be impacted in these rules. As stated previously, there are several unknowns related to adopting a new hardened overhead standard at FPL, and therefore current cost estimates can only provide an order of magnitude.

The approximate impact to CIAC collected pursuant to Rules 25-6.064 and 25-6.115 is not yet determinable due to the unique nature, wide variability in size of these projects, and the application of the proposed standards. For example, current construction standards may already be adequate to meet the NESC extreme wind criteria in the north part of FPL's service territory, and therefore the resulting CIAC would not change. As the analysis is finalized regarding the impact on FPL's system of adopting NESC extreme wind criteria, these differences in the CIAC calculations will be better understood.

**Rule 25-6.078 – Impact of Hardened Overhead Construction Standard on CIAC Calculation in Schedule of URD Charges**

FPL does not foresee significant costs or benefits directly from its proposed revisions to these rules. However, various "Estimated Average Cost Differential" figures in Rule 25-6.078 could be affected by the impact on CIAC calculations identified above if a new hardened overhead construction standard is established as FPL proposes in rule 25-6.034. As stated previously, there are several unknowns related to adopting a new hardened overhead standard at FPL, and therefore current cost estimates can only provide an order of magnitude.

The approximate reduction in funds collected based on the existing "Underground Distribution Facilities for Residential Subdivisions and

Developments" tariff could range from 0 – 10%. The reason for the range is that subdivisions built in different parts of FPL's service territory may have different overhead construction standards in effect today. For example, a new subdivision in the north part of FPL's service territory may already meet the NESC extreme wind criteria, and therefore the tariff values would not change. As stated above, as the analysis is finalized regarding how to adopt the NESC extreme wind criteria to FPL's system, these differences in the calculations will be better understood.

DOCKETS 060172-EU AND 060173-EU  
INFRASTRUCTURE HARDENING RULEMAKING  
COMPARISON OF FPL PROPOSAL TO STAFF'S MAY 19 PROPOSAL

25-6.034

Standard of Construction.

Subsection (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 electric utilities, including municipal electric utilities and rural electric cooperative utilities, unless otherwise specified.*

FPL Comment:      None

Subsection (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 90 180 days after the effective date of this rule, each utility shall file five copies of its construction standards with the Director of Economic Regulation. This filing shall be deemed proprietary confidential business information pursuant to Section 366.093, Florida Statutes. 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 and identifying all revisions from the prior 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 or attaching entity to the utility's filed construction standards shall be handled pursuant to Rule 25-22.032.*

FPL Comment:      FPL will need at least 180 days from approval of new rules to develop and finalize its new construction standards. Providing public access to complete sets of FPL's transmission and distribution construction standards raises security and trade secret concerns. The standards should be protected as proprietary confidential business information and access provided only on a case-by-case, as-needed basis subject to appropriate protective orders. FPL will continue to provide open access (including on-line access) to those construction standards governing connections to customer premises. The nature of the standards does not lend itself to identifying changes in type-and-strike format, but a transmittal letter will be provided with the new versions outlining all changes from the previous version.

Subsection (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.

FPL Comment: None

Subsection (4) Each utility shall, at a minimum, comply with 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 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.

FPL Comment: None

Subsection (5) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, ~~and feasible~~ and cost-effective, adopt 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 taking into account political and geographical boundaries and other applicable operational considerations.

FPL Comment: Consistent with the discussion at the May 19 workshop, FPL has clarified that the extreme wind loading standards need not be applied to the construction of distribution facilities where it would not be practical, feasible or cost-effective to build to those standards.

Subsection (6) For the construction of underground facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, ~~and feasible~~ and cost-effective, 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.~~

FPL Comment: Consistent with the discussion at the May 19 workshop, FPL has clarified that guidelines and procedures for deterring damage to underground facilities from flooding and storm surge should take into account the cost-effectiveness of the

protective measures. In addition, FPL recommends striking references to DCA-designated flood zones and instead using local flooding ordinances as a basis in order to avoid discrepancies between the elevations and other construction requirements applicable to buildings and the electrical facilities serving them.

Subsection (7)      *Location of the utility's electric distribution facilities.*

(a) For initial installation, expansion, rebuild, or relocation of overhead distribution facilities, utilities shall use easements, areas covered by franchise agreements and permits, 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 or such other locations where the utility has a legal right to place its facilities. To the extent practical, ~~and~~ feasible and cost-effective, 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.

(c) 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.

In all cases, the locations must be provided by the applicant in a reasonable time to meet construction requirements, meet all requirements of Rule 25-6.076, be satisfactory to the utility, and comply with all applicable federal, state and local laws, regulations and ordinances.

**FPL Comment:**      FPL recommends adding the word "distribution" to the title of this subsection, to clarify the type of facilities to which it applies. In view of Staff's stated preference to have Subsection (7)(a) be mandatory rather than permissive, FPL has added references to all types of locations where it may need to place its facilities. FPL has also added "cost-effective" to Subsection (7)(a) consistent with the language used in Subsections (5) and (6). FPL has added a paragraph at the end of Subsection (7) to clarify that applicants are to provide access promptly and in compliance with Rule 25-6.076 (Rights of Way and Easements) and all applicable legal requirements.

Subsection (8)      *As part of its construction standards, each utility shall establish and maintain written safety, reliability, capacity and engineering 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.*

**FPL Comment:** FPL recommends wording as suggested and agreed upon in the May 19 workshop clarifying the nature of the written standards that each utility is to establish and maintain. Please see the joint comments of FPL, PEF, TECO and Gulf Power on pole attachment issues for a full discussion of this issue.

Subsection (9)      *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.*

**FPL Comment:** FPL continues to recommend against deletion of existing Subsection (2). Clarification of the metering standards that constitute generally accepted engineering practice helps avoid customer misunderstandings or disputes over metering issues. FPL has not identified any other rule in Chapter 25 that is comparable to, or overlapping or inconsistent with, existing Subsection (2).

**25-6.0345**

**Safety Standards for Construction of New Transmission and  
Distribution Facilities**

**FPL has no comments or suggested revisions for Staff's proposed Rule 25-6.0345.**

25-6.064

**Contribution-in-Aid-of-Construction: Installation of New or Upgraded Facilities**

**Overall:**

As an alternative to the proposed edits and comments that follow, leaving the rule "as is" would be acceptable. Changes to this rule are not required to enable the infrastructure "hardening" measures. In fact, Staff's proposed revisions raise a host of complicated issues that could delay the rule-making central to hardening. If it is deemed that revisions to this rule would still be desirable, then this could be considered in a future proceeding.

Subsection (1)      *Application and scope: The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities calculate amounts due as contribution-in-aid-of-construction (CIAC) from customers who require new facilities, other than standard installations, or for upgrades to existing facilities resulting from changes in the customer's demand on the system, in order to receive electric service, except as provided in Rule 25-6.078.*

**FPL Comments:**      FPL recommends deleting Staff's inserted clause "other than standard installations." The implication is that only atypical or non-standard installations should be subjected to the revenue test or other provisions of this rule. FPL does not currently apply this rule in a selective manner and does not believe the application should be narrowed going forward as this might shift costs onto the general body of customers.

Subsection (2) *Contribution-in-aid-of-construction shall be calculated as set forth below:*

$$CIAC_{OH} = \left\{ \begin{array}{l} \text{Estimated} \\ \text{cost of} \\ \text{overhead} \\ \text{facilities} \\ \text{(excluding} \\ \text{service} \\ \text{drops and} \\ \text{meters)} \end{array} \right\} - 4 \times \left\{ \begin{array}{l} \text{Base energy charge per kWh x} \\ \text{expected incremental annual kWh} \\ \text{sales over the new facilities} \\ + \\ \text{If applicable, base demand charge per kW x} \\ \text{expected incremental average monthly kW} \\ \text{over the new facilities x 12} \end{array} \right\}$$

Subsection (3) *CIAC for underground distribution facilities shall be calculated as set forth below:*

$$CIAC_{UG} = \left\{ \begin{array}{l} \text{Estimated Total Cost of} \\ \text{Underground Facilities} \\ \text{(including services} \\ \text{and meters)} \end{array} \right\} - \left\{ \begin{array}{l} \text{Estimated Total Cost of} \\ \text{Overhead Facilities} \\ \text{(including service drops} \\ \text{and meters)} \end{array} \right\} + CIAC_{OH}$$

|        |     |  |     |   |     |   |
|--------|-----|--|-----|---|-----|---|
| $CIAC$ | $=$ | $\left\{ \begin{array}{l} \text{Cost of} \\ \text{installing the} \\ \text{facilities} \end{array} \right\}$ | $-$ | $4 \times \left\{ \begin{array}{l} \text{nonfuel energy charge} \\ \text{per kWh x expected} \\ \text{incremental annual kWh} \\ \text{sales over the new facilities} \end{array} \right\}$ | $-$ | $4 \times \left\{ \begin{array}{l} \text{expected annual} \\ \text{demand charge revenues} \\ \text{from incremental sales} \\ \text{over the new facilities} \end{array} \right\}$ |
|--------|-----|--|-----|---|-----|---|

For the purposes of the above formula, costs are defined as follows:

(a) The cost of all new overhead and underground line extensions shall be the total estimated work order job cost.

(b) There shall be no charge for the overhead transformer, service drop and meter for new standard overhead installations.

(c) The total cost of installing new underground service shall be reduced by the cost of a standard overhead service installation.

(d) The cost of upgrades to existing facilities shall be the estimated work order job cost including any costs of removal less any salvage.

(e) For customers in rate classes that pay only energy charges, demand charge revenues shall be zero.

(f) Expected demand charge revenues and energy sales shall be based on an annual period ending not more than 5 years after the extension is placed in service.

FPL Comments: Staff has attempted to combine the rule's current two formulas into one. The stated intent was to "simplify" the rule, not

change its effect. Unfortunately, this has not been successful. Under the best of circumstances, a large number of convoluted "definitions" for each element in the formula would be required. Most importantly, the utilities' implementation costs appear certain to outweigh any possible benefits that could accrue. Some examples of these significant costs are: retraining of personnel (hundreds of personnel in FPL's case) on how to interpret the new language; rewriting, publishing and distributing designer's operational procedures, and; programming revisions to major computer systems. Therefore insufficient value is derived if the true bottom line effect on customer's CIAC is unchanged.

FPL has proposed two minor adjustments to the existing CIAC<sub>OH</sub> formula. The first, as agreed to during the May 19 workshop, is a clarification – changing the word "nonfuel" to "base." This properly labels the true charge all utilities use in practice. The types of costs being subjected to the CIAC "revenue test" are always recovered through base rates, not through other "nonfuel" rate structure components such as; conservation, environmental and capacity clauses. The second is removal of the exclusion for transformers from the estimated costs component. The cost of transformers is also recovered through base rates. This differs from the cost for services and meters which are recovered through a separate rate component – the customer charge – which is not included in the CIAC revenue test. As the revenue test stands, the revenues reflect the underlying transformer costs, but the estimated overhead facilities' cost does not. The effect of this inconsistency is an under-collection of CIAC which would be passed on to the general body of customers.

Subsection (4)      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 or a non-standard vs. standard level of service to that customer.

FPL Comments:      Reinstitute subsection (6) from the existing rule. Staff struck it in their proposal. Also, added a clarifying clause for collection of above-standard service costs.

Subsection (53)      Each utility shall apply the 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.

FPL Comments:      Reflects FPL's recommended reinstatement of the two formulas instead of Staff's proposed single one.

Subsection (64)      *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.*

**FPL Comments:**      As in Subsection (6), reflects FPL's recommended reinstatement of the two formulas instead of Staff's proposed single one. Note that there is no subsection (5) in the numbering of Staff's proposal.

Subsection (76)      *Each utility shall use its best judgment in estimating the total amount of revenues and sales which new or upgraded facilities are expected to produce in a 4-year time frame commencing with the in-service date of the new or upgraded facilities. At the end of the 4-year period over which the revenues were estimated, a customer may request that the utility true-up the CIAC using actual revenues. Any resulting payments to the customer, or from the customer to the utility, shall not include interest. Any amount to be refunded to the customer shall not exceed the original CIAC. If the amount of the estimated credit to the CIAC is disputed, at the customer's request, the utility shall true-up the CIAC collected using actual revenues at the end of the 4-year period over which the CIAC was estimated.*

**FPL Comment:**      FPL's proposed alternative language preserves the customer's ability to request a true-up, but does not impose the administratively burdensome – and potentially logistically impossible – task of keeping track of individual customers. For example, under Staff's proposal, a customer could request a true-up on day 1 and FPL would be required to track the revenues and locate the customer once the 4 years had elapsed – even if they were no longer an FPL customer. It is FPL's understanding that this settlement process is not unilateral (i.e., whichever party is found to be owing is obligated to compensate the other in a timely manner).

Subsection (87)      *The utility may elect to waive all or any portion of the CIAC for customers, even when a CIAC is found to be applicable. However, if the utility waives the CIAC, the utility shall reduce net plant in service as though the CIAC had been collected. Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.*

**FPL Comments:**      None.

Subsection (98)      *In cases where more customers than the initial applicant are expected to be served in the near term by the new or upgraded facilities, the utility shall, may, upon mutual agreement from all affected customers, elect to prorate the total CIACs, over those multiple the number of customers at the time of initial connection.*

~~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 an advance equal to the full amount of the CIAC from the initial customer. As additional customers connect to the facilities subject to the CIAC, the utility shall collect from those customers a pro-rated CIAC, and credit that amount to the initial customer who paid the CIAC. In the event the projected growth in customers or usage does not materialize by the end of the 3 year period, the remaining CIAC shall be retained by the utility to offset the cost of the construction. The utility shall file a tariff outlining its policy for the proration of CIAC.~~

**FPL Comments:** Staff's suggestion presents many logistical challenges. This would present the same initial-customer tracking problems described in the comments on subsection (7) plus the requirement to track as each new customer requests connection, which would at a minimum require some significant computer systems and process changes to try to ensure consistent execution. Additionally, the pro-ration itself is at best complex, if not impossible to execute. For example, if a single new customer is served off the facilities in each of the subsequent years, the pro-ration amounts required from each in order to connect would need to be recalculated & redistributed amongst those already connected. This scenario is illustrated below:

|                  | <u>Day 1</u> | <u>Pro-Rata Adjustments</u> |               |               | <u>Net</u> |
|------------------|--------------|-----------------------------|---------------|---------------|------------|
|                  |              | <u>Year 1</u>               | <u>Year 2</u> | <u>Year 3</u> |            |
| Initial Customer | \$120        | (\$60)                      | (\$20)        | (\$10)        | \$30       |
| Customer 2       |              | \$60                        | (\$20)        | (\$10)        | \$30       |
| Customer 3       |              |                             | \$40          | (\$10)        | \$30       |
| Customer 4       |              |                             |               | \$30          | \$30       |

Additionally, Staff puts the utility in the position of requiring additional payment from these customers for connection which is likely to generate customer complaints. This pro-ration calculations could be further complicated if any differences occur between the actual and initially estimated revenues.

FPL's proposal instead relies on establishing any possible CIAC sharing at the outset of construction when there's a higher degree of certainty, rather at some variable time in the future. Additionally, it benefits from the mutual agreement of customers. Finally, the requirement for filing a tariff outlining the pro-ration policy is covered in subsection (10).

Subsection (109) *A detailed statement of its policies pursuant to this rule standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs shall have uniform application and shall be nondiscriminatory.*

**FPL Comments:** FPL's language simplifies and better reflects the revised titling of this rule

Subsection (1140) *If a utility and applicant are unable to agree on the CLAC amount, either party may appeal to the Commission for a review.*

**FPL Comments:** None.



Rule 25-6.078

Schedule of Charges.

Overall:

As an alternative to the proposed edits and comments that follow, leaving the rule "as is" would be acceptable. Changes to this rule are not required to enable the infrastructure "hardening" measures. In fact, Staff's proposed revisions raise a host of complicated issues that could delay the rule-making central to hardening. If it is deemed that revisions to this rule would still be desirable, then this could be considered in a future proceeding.

Subsection (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.

FPL Comment: None.

Subsection (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.

FPL Comment: None.

Subsection (3) On or before October 15 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) and (5) 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 years.

FPL Comment: None.

Subsection (4) Differences in operational operating and maintenance costs, which can include both expense and capital components, 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 utility shall establish sufficient record keeping and accounting measures, which may be on a sampling basis, to separately identify storm related operational ~~operating and maintenance~~ costs for underground and overhead facilities.

**FPL Comment:**

For the reasons discussed below, FPL does not support requiring differences in operational costs to be taken into account when calculating the Estimated Average Cost Differential.

First, as discussed at the May 19 workshop, producing a reasonably accurate operational cost differential between overhead and underground facilities will be very difficult to accomplish. A likely outcome is that instead of "getting the pot right," the result – due to the various assumptions and/or simplifications – ends up distorting the true cost picture to the detriment of either the customers paying CIAC or the general body of customers. A couple examples of the challenges with developing such estimates are:

- (i) Similar operational activities receive different accounting treatments (i.e., expensed v. capitalized) depending on whether they are performed for underground or overhead facilities making direct comparisons of their respective total costs difficult.
- (ii) Each cost element cannot be appropriately forecasted as a single value. To do so would require oversimplifying what are inherently dynamic, complex and interdependent costs to basic average values. This clearly could introduce large errors and misleading results. To effectively portray the differential impacts, modeling – with probability distributions for each cost component that also reflect the relationships between them – would be required. It would take a substantial amount of time and resources to ensure reasonably accurate approximations – which are also likely different between the utilities.
- (iii) Because these are new subdivisions, they are a product of today's overhead and underground technologies, as well as, current construction and operational work methods. As a result, historical costs – which reflect the existing infrastructure – are typically not good proxies for potential future costs.
- (iv) External factors can cause operational costs to vary substantially from year to year.

Second, if one were to assume that one could quantify an operational cost differential between overhead and underground service, that the differential would favor underground service, and that adjusting CIAC to reflect this differential could provide an inducement for customers to take underground service, there is no compelling hardening-related reason to provide financial inducements for underground facilities in new subdivisions. Today, over ¾ of new service accounts in FPL's service territory are installed with

underground facilities, so there is little potential for influencing behavior by offering financial inducements to those developers to install underground facilities in lieu of overhead facilities.

FPL does not object, per se, to Staff's proposed requirement that utilities adopt recordkeeping and accounting measures to facilitate separately identifying storm-related operational costs for underground and overhead facilities – provided that this can be met with an appropriately designed sampling program. FPL understood that Staff, and other participants in the May 19 workshop, concurred with the use of sampling, which is likely to yield better and more consistent data while being less disruptive and more cost-effective than trying to collect data on 100% of the facilities. Such a "census" approach would be logistically impossible since the forensic determination of causes naturally proceeds at a slower pace than the actual restoration, or worse yet, could alternatively impede the restoration progress by burdening it with the data collection activities. Also, resources to perform this data collection (both internal and external) continue to be in short supply during storm restoration.

Subsection (5)      *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.*

FPL Comment:      None.

Subsection (6)      *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 utility at no charge to the applicant, provided the utility is free to construct its service extension or extensions in the most economical manner.*

FPL Comment:      None.

Subsection (7)      *The recovery of the cost differential as filed by the utility and approved by the Commission may not be waived or refunded unless it is mutually agreed by the applicant and the utility that the applicant will perform certain work as defined in the utility's tariff, in which case the applicant shall receive a credit. Provision for the credit shall be set forth in the utility's tariff rules and regulations, and shall be no more in amount than the total charges applicable.*

FPL Comment:      None.

Subsection (8)      *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 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.*

**FPL Comment:**      None.

Subsection (9)      *The 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 utility by written agreement. A standard agreement form shall be filed with the company's tariff.*

**FPL Comment:**      None.

Subsection (10)      *Nothing herein contained shall be construed to prevent any utility from absorbing all or any portion of the costs of providing underground distribution systems, provided, however, that such costs in excess of a comparable overhead system 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.*

**FPL Comment:**      None.

25-6.115

**Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities.**

Subsection (1) Each investor-owned utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing the conversion of existing overhead electric distribution facilities to underground facilities. 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 converting existing overhead facilities to underground facilities. The non-refundable deposit amounts shall be calculated in the same manner as 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.

**FPL Comment:** None

Subsection (2) For purposes of this rule, the applicant is the person or entity seeking the undergrounding of existing overhead electric distribution 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 deemed the applicant for purposes of this rule.

**FPL Comment:** None.

Subsection (3) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

- (a) such work meets the investor-owned utility's construction standards;
- (b) the investor-owned utility will own and maintain the completed distribution facilities; and
- (c) such agreement is not expected to cause the general body of ratepayers to incur costs in excess of the costs the utility would incur for the installation.

**FPL Comment:** None.

Subsection (4) Nothing in the tariff shall prevent the applicant from requesting a non-binding cost estimate which shall be provided to the applicant free of any charge or fee.

**FPL Comment:**      None.

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

**FPL Comment:**      None.

Subsection (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.*

**FPL Comment:**      None.

Subsection (7)      *The charge paid by the applicant shall be the charge for the proposed underground facilities as indicated in subsection (8) minus the charge for overhead facilities as indicated in subsection (9) minus the non-refundable deposit amount. The applicant shall not be required to pay an additional amount which exceeds 10 percent of the binding cost estimate.*

**FPL Comment:**      None.

Subsection (8)      *For the purpose of this rule, the charge for the proposed underground facilities shall include:*

*(a) the estimated cost of construction of the underground distribution facilities including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and*

*(b) 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.*

**FPL Comment:**      None.

Subsection (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.*

**FPL Comment:**      None.

Subsection (10)      *An applicant requesting construction of underground distribution*

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

FPL Comment: None.

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

(a) The utility shall include the net present value of operating and maintenance costs and the average historical storm restoration costs for comparable facilities over the expected life of the facilities. A utility may establish by tariff a Government Adjustment Factor (GAF) for the purpose of encouraging conversion of overhead facilities to underground in circumstances where such conversions are well suited to reducing potential storm restoration and other costs associated with the facilities. Specifically, the GAF will operate to reduce the charges required under subsections (8) and (9) in those instances where the applicant is a local government subject to the utility's tariff and has met the utility's requirements as specified in the tariff. The reduction in charges calculated on the basis of the GAF specified in a utility's tariff shall be added to the utility's plant in service. The applicant must include in any project qualifying for the GAF all overhead facilities, up to and including all services, within the area designated for conversion. The GAF shall not be applicable to any road construction or improvement projects for which state or federal funds are available.

FPL Comment: FPL recommends revising Subsection (11)(a) as shown above, in order to target reductions in conversion charges to those circumstances where the conversions involve substantial, contiguous areas and are thus most likely to be beneficial to the general body of customers. Isolated conversions involving only one or a small number of customers would not meaningfully affect the level of restoration work after extreme weather in the area where the conversions are made, because overhead restoration crews would still have to investigate and repair overhead equipment for the interspersed customers who did not convert.

FPL's GAF proposal is designed to focus on specifically the type of conversion "footprint" that most benefits the general body of customers. Those targeted conversions could then receive the full conversion benefits that they justify, without dilution by the averaging inherent in Staff's proposal. FPL's GAF proposal also requires that the applicant for qualifying conversion projects be a local government, or sponsored by a local government, because they are in the best position to deliver the sort of conversion projects that fit the desired profile. Moreover, local governments can ensure 100% participation by affected customers and eliminate the barriers (e.g., property access, permitting, coordination of road closures, etc.) that otherwise could interfere with implementation of conversion projects.

FPL's GAF proposal is also preferable to Staff's Subsection (11)(a) because it is tariff-based. Whereas Staff's proposal provides no guidance as to how overhead-to-underground cost differentials are to be determined and no mechanism for review and approval of those differentials, the GAF proposal requires a utility to file for Commission review and approval of both the level of the GAF percentage and the specific applicability terms that a conversion project would have to meet to qualify for the GAF reduction. This will facilitate Commission monitoring of the GAF both in its original form and as it may be modified from time to time based on accumulated information and experience. Another advantage of FPL's tariff-based approach is that it has flexibility to accommodate differences that may exist among utilities as to the applicability terms and GAF percentage that best suit their respective electric systems. In this regard, FPL notes that it is not necessary or appropriate to quantify as part of this rulemaking a size threshold for qualifying conversion projects or the appropriate level of the GAF percentage. Rather, those issues are properly the subject of utility-specific tariff filings.

Staff's subsection (11)(a) contemplates that, in addition to the storm recovery cost differential associated with conversion, utilities must take into account the net present value of the difference in operating and maintenance costs for underground and overhead facilities. FPL's GAF proposal would not either require or forbid utilities to take this difference into account. For the reasons discussed above, FPL believes that the GAF proposal is preferable to Staff's Subsection (11)(a) and should be substituted for it. If, however, Staff does not adopt the GAF proposal, FPL recommends that Subsection (11)(a) be revised so that utilities are not required to take the operating and maintenance cost differential into account. The problems and uncertainties involved in calculating such a differential are outlined in the comments on Rule 25-6.078 above and apply equally here.

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

**FPL Comment:** FPL has no objection in principle to Staff's proposed Subsection (11)(b) and proposes no changes to it at this time. However, FPL would like to clarify that, its calculations of credits to applicants that construct all of part of their own facilities are already done in accordance with the procedure



described in Subsection (11)(b). This specifically includes any avoided overhead assignments.

Subsection (12)      *Nothing herein contained shall be construed to prevent any utility from absorbing all or any portion of the cost of providing underground distribution systems an underground conversion charge calculated pursuant to Subsections (7) through (11) above; provided, however, that such costs in excess of a comparable overhead system the portion of an underground conversion charge that is absorbed by a utility 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.*

**FPL Comment:**      FPL's proposed revision is to clarify that Subsection (12) does not apply to a reduction in the underground conversion charge resulting from the application of FPL's proposed Subsection (11)(a).

Subsection (13)      *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 366.04, 366.05(1) FS.*

**FPL Comment:**      None.

## **Gulf Power Company**

### **Post-Workshop Comments to Staff's May 19, 2006 Rule Development Workshop on Electric Utility Transmission and Distribution Facility Storm-Hardening (Docket Nos. 060172-EU and 060173-EU)**

**May 26, 2006**

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#### **Purpose of Memorandum**

The purpose of this Memorandum is to summarize Gulf Power Company's comments to Staff's May 19, 2006 Rule Development Workshop (Docket Nos. 060172-EU and 060173-EU).

#### **Section 25-6.034**

Gulf Power Company agrees with Staff that each utility's construction standards for new Transmission facilities should conform to the requirements of the National Electrical Safety Code (NESC) and that existing T&D facilities are covered by the version of the NESC at the time of construction. Gulf also agrees with the concept of adopting extreme wind loading for Distribution facilities in specific areas determined by the utility that would enhance reliability and reduce outages. The Commission should have access to review those standards.

**25-6.034(2)** - Due to the proprietary nature of a utility's standards, Gulf proposes that each utility certify to the Commission annually that its standards are in compliance with this rule. Transmission standards are prepared by voltage class and are contained in many volumes. It would be less of an administrative burden on the utility and the Commission to certify annually and make available any or all parts upon request. Suggested rule changes in 25-6.034(2) to facilitate this proposal include:

- Page 1, Line 15 of the May 19<sup>th</sup> draft rule – Add the words, "and by January 1 each year thereafter," between the words "rule" and "each".
- Page 1, Line 15 of the May 19<sup>th</sup> draft rule – Add the words, "certify to the Director of Economic Regulation that its construction standards are in compliance with this rule" between the words "shall" and "file".
- Page 1, Line 15 of the May 19<sup>th</sup> draft rule – Delete all language starting with the word, "file" on Line 15 to the end of Section 25-6.034(2).

In the event the Commission desires to require the utilities to file their standards there are some concerns that need to be addressed. Transmission and Distribution standards are proprietary and must be kept confidential. Another area of concern is filing revisions as they occur. Standards by their nature are continually revised by page to incorporate code changes and improved construction techniques. Filing every change may become administratively burdensome to Staff and the utility. Gulf recommends that standards be re-filed in total on annual basis to eliminate this problem. Suggested rule changes in 25-6.034(2) to facilitate this proposal include:

- Page 1, Line 16 of the May 19<sup>th</sup> draft rule – Following the word, “Regulation.”, add the words, “By January 15 each year, the utility shall file new copies of its construction standards with the Director of Economic Regulation together with a summary of all changes from the previous filing. All filings shall be considered proprietary and confidential and may only be reviewed at the Commission’s offices”.
- Page 1, Line 16 of the May 19<sup>th</sup> draft rule – Delete all language starting with the words, “In the event” to the end of Section 25-6.034(2).

Gulf also recommends that the requirement to provide copies to any person upon request and the ability to challenge the standards be removed.

**25-6.034(7)** - Add the word “distribution” between the words “utility’s” and “electric” in the title on Line 9, Page 3 of the May 19<sup>th</sup> draft rule.

**25-6.034(7)(a)** - Facilitating the re-wiring of customers service entrance and the resulting costs has not been addressed by the rule. There are significant costs to the customer and how or who will be responsible for them should be determined.

**25-6.034(7)(a)** - Add the words, “or public right-of-ways” after the word “easements” in Line 14, Page 3 of the May 19<sup>th</sup> draft rule.

#### **Cost Estimates – Transmission & Distribution**

Gulf estimated that Staff’s original proposal to replace all wood transmission poles with concrete or steel would take approximately \$300 million in today’s dollars. Assuming resources are available to complete the transmission upgrade work over a 10-year period, the annual incremental revenue requirement would be approximately \$4 million for each of the 10 years. The requirement to upgrade the entire distribution system to extreme wind loading criteria was estimated to take approximately \$487 million and a 30% increase in distribution capital budgets going forward. Assuming resources are available to complete the distribution upgrade work over a 10-year period, the annual incremental revenue requirement would be approximately \$7 million for each of the 10 years. The impact on revenue requirements related to the 30% increase in distribution capital budgets going forward is approximately \$2 million per year. Staff’s current proposed rule would result in minimal cost increases to transmission. There will be increased distribution costs associated with the upgrade of targeted areas but at this time no estimates have been prepared. As stated before, in general there will be a 30% increase in distribution capital costs for those projects.

#### **Section 25-6.0345**

Gulf Power has no comments on the suggested changes in Section 25-6.0345 at this time.

#### **Section 25-6.064**

Gulf Power reiterates its comments provided on May 3<sup>rd</sup>, as well as those made at the May 19<sup>th</sup> workshop, that revisions to the CIAC rule (Rule 25-6.064) and underground differential rules (Rule 25-6.078 and Rule 25-6.115) are not necessary parts of the proposed rule amendments. There is no specific relationship between proposed changes to the construction standards, placement of electric distribution facilities, safety standards, and third-party attachments rules (Rules 25-6.034 and 25-6.0345); and the CIAC/underground differential rules that result in the need to address the CIAC and underground differential rules at this time. The current CIAC and underground differential rules are not broken. Since

the FPSC Staff's stated objective with respect to CIAC and underground differential rules is merely to simplify (and not to change) those rules, there is no need to amend those rules at the same time that the "storm hardening" issues are addressed through this rulemaking process.

If it is determined that the CIAC rules and underground differential rules must be addressed now, then several specific modifications need to be made to the May 15<sup>th</sup> draft rule version which was the subject of the May 19<sup>th</sup> workshop. These include:

**25-6.064(2)** - The CIAC formula shown on page 8 of Attachment 1 handed out in the May 19<sup>th</sup> workshop, as modified by (2)(c) on page 9 and as explained in Attachment 2, leads to very different results than would the current rule. This is in conflict with the objective of "merely simplifying". This was discussed at length in the May 19<sup>th</sup> workshop, with "patches" suggested. Inconsistencies with the current rule center on (a) the "crediting" of revenues against underground costs, and (b) the exclusion of costs for transformer, service drop, and meter in determining cost of underground facilities.

**25-6.064(2)** - The revenue amounts used in the CIAC formula should describe base-rate revenue rather than "Non-fuel energy charge."

**25-6.064(2)(a)** - For (2) (a) on page 8 of the May 19<sup>th</sup> draft rule, the term "line extensions" should be replaced with the word "facilities." This change is consistent with changes proposed in paragraph (1) of that same draft version.

**25-6.064(2)(b)** - For (2) (b) on page 8 of the May 19<sup>th</sup> draft rule, change to "Costs for transformer, service drop and meter for new standard overhead installations shall be excluded."

**25-6.064(2)(c)** - For (2) (c) on page 9 of the May 19<sup>th</sup> draft rule, delete (c) entirely.

**25-6.064(3)** - For (3) on page 11 of the May 19<sup>th</sup> draft rule, retain the word "requiring" rather than change to "requesting" in order to be consistent with terminology used in (1) on page 8.

**25-6.064(6)** - For (6), on page 11 of the May 19<sup>th</sup> draft rule, end the first sentence with a period after the word "produce", and delete the remainder of the draft new language. The new proposed additions to this section are confusing since there is no relevant "4 year time frame" nor "estimated credit to the CIAC." Also, both utility and customer can appeal a disputed CIAC amount to the Commission under paragraph (10) on page 12.

#### **Section 25-6.078**

Gulf Power has no comments on the suggested changes in Section 25-6.078 at this time.

#### **Section 25-6.115**

**25-6.115(11)(b)** - For paragraph (11) (b) on page 18 of the May 19<sup>th</sup> draft rule, make the reference to the customer consistent using either the term "applicant" or "customer", but not both.

**MAY 19, 2006 RULE DEVELOPMENT WORKSHOP  
POST-WORKSHOP COMMENTS OF TAMPA ELECTRIC RELATED TO  
DRAFT RULES IN DOCKET NO. 060172-EU AND DOCKET NO. 060173-EU  
DATED MAY 26, 2006**

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Tampa Electric submits the comments below for consideration in the development of Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115.

**Rule 25-6.034**

- Tampa Electric would strongly urge the deadline for submitting construction standards to the Director of Economic Regulation be 180 days. Also, security issues arise if these construction standards become public documents. Therefore, the company believes a process of confidentiality is necessary to assure that no part of the submitted construction standards become public information.
- Subsection (5), line 19; Subsection (6), line 5; and Subsection (7)(a), line 13 contain the phrase "reasonably practical and feasible." Tampa Electric would suggest "cost-effective" be inserted such that the phrase would state "reasonably practical, cost-effective and feasible."
- Subsection (6) should end with the word "surges" on line 6.
- Line 9 would be more descriptive by adding the word "distribution" such that it would read "Location of the utility's distribution facilities."
- Subsection (7)(a), line 14 should include the phrase "or in rights-of-way" after the word "easements." Likewise, Subsection (7)(b), line 18 should be stated "easements or access to rights-of-way."
- Tampa Electric's comments on Subsection (8) are expressed in the joint post-workshop comments submitted by the investor-owned utilities.

**Rule 25-6-0345**

- Tampa Electric has no comments on the proposed changes to this rule.

**Rule 25-6.064**

- Much discussion, confusion and misunderstanding has surrounded the proposed changes to this rule during the April 17, 2006 and the May 19, 2006 workshops. Tampa Electric would strongly urge the only change to Subsection (2) of the current rule be a simplification of the contribution-in-aid-of-construction (CIAC) calculation to two formulas – one for overhead facilities and one for underground facilities. The company provided a workable, easy to understand proposal in its comments submitted on May 3, 2006. That proposal could simplify the calculation to a certain extent and be adopted by field personnel with relative ease of understanding. By incorporating these proposed two formulas into the rule, the amount of CIAC currently being calculated for overhead or underground facilities will not change and therefore subsidies will not occur. In the alternative, if one CIAC formula must be a final result, Tampa Electric has developed a new proposal and would urge consideration of the formula found and explained on page 3 of these comments.

- Tampa Electric is supportive of the balance of proposed changes to this rule.

**Rule 25-6.078**

- Tampa Electric has no comments on the proposed changes to this rule.

**Rule 25-6.115**

- Tampa Electric has no comments on the proposed changes to this rule.

$$\text{CIAC} = \text{A} - \text{B} - \text{C}$$

**A = Either:**

For OH installations:

Total cost of the overhead facilities installation  
including transformer, service and meter

For UG installations:

Total cost of underground installation  
including transformer, service and meter

**B = Lesser of:**

4 x the annual demand and energy base revenue

or

Total cost of overhead installation  
excluding transformer, service, and meter

**C = Cost of OH transformer, service and meter**

**Cost Impact to Tampa Electric of Proposed Changes to  
Rule 25-6.034 Standard of Construction  
Revised May 26, 2006**

**(5)(a) New Overhead construction cost impact for a 120 mph wind zone**

**Assumptions:**

- 50% of the poles have equipment (i.e., transformers, capacitors etc)
- 150 foot spans or 35 poles per mile (50% more poles)
- Two joint users
- Hardening pole replacements
  - 45H2 wood poles w/equipment
  - 45H1 wood poles w/o equipment

**Impacts:**

The incremental new 3 phase wood pole construction to annually build 19 miles to extreme wind-loading criteria is estimated to be \$354,445.

**(b) Expansion, rebuild, or relocation of existing facilities for a 120 mph wind zone**

**Assumptions:**

- 75% of the poles have equipment (i.e., transformers, capacitors etc)
- 150 foot spans or 35 poles per mile (50% more poles)
- Two joint users
- Hardening pole replacements
  - 45H2 wood poles w/equipment
  - 45H1 wood poles w/o equipment
- Includes Additional poles + incremental stronger pole cost + road widening

**Impacts:**

Annual cost to build to extreme wind for expansion, rebuild and relocation including road widenings of 3 phase wood pole lines is estimated to be \$5,334,313.

**(c) Targeted critical infrastructure facilities and major thoroughfares<sup>1</sup>**

|                 |                 |
|-----------------|-----------------|
| Hillsborough Co | 521 miles       |
| Polk Co         | 127 miles       |
| Pasco           | <u>48 miles</u> |
| Total           | 696 miles       |

**Assumptions:**

- Assume a ten year hardening plan @ approximately 70 miles/year
- 75% of the poles have equipment (i.e., transformers, capacitors etc)
- 150 foot spans or 35 poles per mile
- Two joint users
- Hardening pole replacements
  - 45H2 wood poles w/equipment
  - 45H1 wood poles w/o equipment

**Impacts:**

The annual cost to build targeted critical infrastructure facilities and major thoroughfares to extreme wind is \$6,396,950. A ten year plans is unrealistic but is used here for normalization and comparison purposes.

<sup>1</sup>From "FDOT's Public Road mileage and Miles Traveled, 2004" report using *Other Principle Arterials* and *Minor Arterials* Categories. Further assumptions were made pertaining to partial service territories in counties.



**(6)(a)(b)&(c) New construction cost impact for Cat 3 Flood Zone**

**Assumption:**

|   |               |
|---|---------------|
| Based on 2005 UG New Construction                         | \$ 30,407,527 |
| 25% of \$ is in Cat 3 Surge Zone                          | \$ 7,601,881  |
| Annual 30% adder to harden the UG facilities <sup>3</sup> | \$ 2,280,564  |

**Impacts:**

The annual minimum incremental new UG construction cost to build in Cat 3 Surge Zone is estimated to be \$2,280,584. This high level estimate was based on dollars spent with an assumed hardening adder. The company is unable to provide an accurate estimate for parts b and c of the proposed rule. The extent and characteristics of facilities located in the Cat 3 Flood Zone is unknown at this time.

**(8) Expansion, rebuild, relocation & OH to UG conversions to front edge of property**

**OH to OH conversions to front edge of property**

**Expansion, rebuild, relocation**

**Assumptions**

- 10% of OH system is rear lot = 700 miles
- Single phase OH line
- 40% of the poles have equipment (i.e., transformers, capacitors, etc.)
- 150 foot spans or 35 poles per mile
- Two joint users
- Hardening pole replacements
  - 45H2 wood poles w/equipment
  - 45H1 wood poles w/o equipment
- 2.5 difficulty factor is included for rear lot work

**Impacts:**

The annual relocation cost of an overhead single phase wood pole line from a rear lot location to the front of property using 70 miles per year is estimated to be \$6,274,800.

**OH to UG conversions to front edge of property**

**Assumptions**

- Davis Islands conversion cost was used in the cost per mile average of \$571,428.
- 1% of the rear lot communities request underground facilities to be placed to the front of the property = 70 miles
- 10 year plan to complete = 7 miles per year

**Impacts:**

The annual relocation cost of an overhead single phase wood pole line from a rear lot location to relocate and underground to the front of property is \$5,250,000.

**Combined conversion annual cost is \$11,524,800.**

<sup>3</sup> Hardening of the Underground facilities consist of water proof switchgear (Vistagear), strand-filled cable and submersible secondary TX connectors). All equipment will be bolted to pad.

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EU

NO. 060173EU Exhibit No. 2  
Company/FPSC Staff - Revised Statement  
Witness: of Estimated Regulatory Costs  
Date: 08/31/06

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** August 29, 2006  
**TO:** Office of General Counsel (Moore)  
**FROM:** Division of Economic Regulation (Hewitt) *[Signature]*  
**RE:** Revised Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.034, F.A.C., Standard of Construction; Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities, Rule 25-6.064, F.A.C., Extension of Facilities; Contributions-in-Aid-of-Construction, Rule 25-6.078, F.A.C., Schedule of Charges, and proposed new Rule 25-6.0341, F.A.C., Location of Utility Facilities, Rule 25-6.0342, F.A.C., Third-Party Attachments Standards and Procedures, and Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060172-EU and 060173-EU

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### SUMMARY OF THE RULE

The above rules contain the requirements for electric utilities to construct their electrical systems to a minimum standard which is installed, maintained, and operated in accordance with generally accepted engineering practices. The rules require that utilities comply with applicable safety standards for transmission and distribution facilities by the National Electric Safety Code (NESC). The rules also contain the procedures for the calculation of contributions-in-aid-of-construction (CIAC) by customers requesting extension of distribution facilities. The rules contain the schedule for charging a differential cost for providing underground service. Finally, the rules contain the requirement that investor-owned utilities (IOUs) file a tariff for deposit amounts for the conversion of overhead electric to underground facilities.

The proposed rule amendments would add specificity to the broad policy of construction standards and require each IOU to establish its own construction standard for overhead and underground electrical transmission and distribution facilities. Each IOU would also have to establish guidelines and procedures for the application of the extreme wind loading standards to (1) new construction, (2) major planned upgrades and relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the proposed changes would adopt the NESC as the minimum applicable safety standards for transmission and distribution facilities. Rule changes would establish a uniform procedure to calculate amounts due as CIAC. Clarification is made in the rule concerning facility charges on the conversion of underground

electrical distribution facilities requested by applicants. Also a requirement is included that the net present value of operational and storm restoration costs must be used when calculating the cost of construction of underground distribution facilities and new overhead facilities.

A new proposed rule would facilitate and encourage the placement of electric distribution facilities in readily accessible locations such as adjacent to public roads and along front edges of properties. Another proposed rule would require IOUs to establish written procedures for attachments by others to the utility's poles. An additional new proposed rule would require municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities to ensure adequate, reliable, and safe electric service.

Other minor changes are also proposed to clarify CIAC calculations, expand the costs included in determining overhead/underground cost differences, and allow waiver of CIAC in certain circumstances.

#### ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs), 18 electric cooperatives, and 34 municipally operated companies would be affected by the proposed rule changes. The electric companies sell electricity to industrial, commercial, and residential customers throughout the state. In addition, cable television companies, incumbent local exchange telephone companies (LECs), as well as any other telecom carriers owning electric utility pole-attached equipment, could be possibly be affected by some of the proposed rule changes. As of June 30, 2006 there were 10 ILECs, 394 competitive LECs, 654 Interexchange Telephone Companies (IXCs), 24 Alternative Access Vendor Services (AAVs), 13 AAVs with CLEC authority, and an unknown number of non-PSC regulated companies which have pole attachments.

#### RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some implementation and enforcement costs for the Commission as it monitors compliance with the proposed rule changes. The Commission would benefit by the proposed rule amendments from fewer petitions for storm damage relief. There should be no impact on agency revenues and the costs of administering the rules would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from the improved electrical transmission and distribution systems.

## ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

### *Electric Utilities' Costs*

IOUs would have significant transactional costs from the proposed rule changes. The four major IOUs reported estimated costs to implement storm hardening programs for their systems to range between \$63 million and \$193 million. The cost estimates are based on capital additions to pre-2006 capital budget levels and do not include ongoing operation and maintenance costs. However, the additional costs are relatively minor compared to the hundreds of million dollars in damage caused by storms in the past few years. Other rule changes would have additional costs but estimates are not available at this time.

Municipal (Munis) and cooperative (Co-ops) electrical utilities could also have significant costs that would be similar to the IOUs' costs if they hardened some of their systems to the same standards.

### *Benefits*

The IOUs and others including any utility or resources provider attaching to the poles would benefit from strengthening of their facilities if less damage is incurred and service interruptions are decreased thus lessening lost revenues.

Electric company customers could benefit significantly from the proposed rule changes because the electrical service system should better withstand storms and hurricanes, although the ratepayers may eventually pay for all or some of the additional costs for the upgrades.

### *Other Affected Parties*

Moving the placement of IOU electric distribution facilities to readily accessible locations could possibly impact non-electric companies that attach their equipment on utility poles to the extent the attaching entities must move their facilities as well. These parties fear some combination of higher pole rates, costs to move pole locations with the electricians, the cost if they go underground and possible increases in costs to maintain abandoned poles.

Entities with pole attachment interests also filed comments and cost estimates on the proposed rule changes. Although the comments were mainly concerned with the additional costs to implement hardening of the infrastructure, these entities and their customers would also benefit substantially from fewer and shorter outages from downed poles and lines.

### *Telecommunication Companies' Costs*

BellSouth states that it owns approximately 307,459 poles in the state of Florida bearing attachments (lines, transformers, etc.) by electric utilities. BellSouth's lines and facilities are also attached to approximately 756,000 electric utility poles, including those of IOUs, Munis, and Co-ops throughout Florida. BellSouth is concerned that it and other equipment attachers to electric utility poles may have to bear some or all of the costs of hardening or maintain the poles.

by itself, moving the aerial lines, or of placing its lines underground if the electric utility removes its facilities. BellSouth indicates that it may face higher pole rental rates with the installation of new, improved poles.

If the electricians installed non-wood poles, such as steel, fiberglass, or concrete, BellSouth estimates that it could spend approximately \$55 additionally per attachment. If an electric utility chooses to replace existing poles with taller, stronger poles, the cost to BellSouth to transfer its facilities would range from \$95 for a simple transfer to \$470 for a complex transfer, per pole. A 10% change-out of existing facilities would cost at least an estimated \$7,182,000.

If the electric utility moved its facilities from the back of a property to the front, and maybe go underground, BellSouth would have to decide whether to stay on the old pole or move to the front of the property, with the attendant costs of the move. If BellSouth assumed ownership of the abandoned pole, it would cost an estimated \$250-\$300 per pole along with resulting administrative costs. It would also increase inspection costs by about \$30 per pole. Assuming that 10% of the poles were abandoned, it would cost BellSouth between \$18,900,000 and \$22,680,000, plus any payments made to property owners to secure easements, resources to negotiate easements and new pole attachment agreements, and associated administrative costs.

If BellSouth chose to relocate to a new pole at the front of the property, the estimated cost would be between \$25-\$40 per foot. For relocating 10% of its aerial cable in a given year, or 18,900,000 feet, it would cost from \$472,500,000 to \$850,500,000.

BellSouth assumes that there would be some combination of the possible scenarios which would cost at least \$500,000,000 at a 10% rate of change per period to achieve.

Embarq estimates that to move its facilities overhead-to-overhead on new electric poles would cost between \$110,000 to \$170,000 per mile. Embarq asserts that rear-lot lines can serve twice as many homes as front-lot lines. However, in most instances, homes on both sides of the street can be served by one line of poles on either side of the street. In an electric system overhead-to-underground situation, where Embarq also buries its facilities, the construction cost to retire aerial facilities and rebuild with buried facilities is estimated to cost between \$190,000 to \$260,000 per mile if Embarq has to pay for the trench and \$90,000 to \$120,000 per mile if the trench is provided by other parties. As far as the proposal to move line from the back of properties to the front, Embarq points out the added complexities of sharing the rights-of-way with water, gas, and sewer lines and the possibility for pole degradation in this area.

Embarq also offered a proposal for lower cost alternatives. First, it calls for the Commission to adopt the National Electrical Safety Code (NESC) but not exceed those construction standards. The NESC is currently followed by pole attachers and maintaining that minimum would not increase costs. Additionally, if the PSC allowed the electric utilities to exceed those standards, they would have the discretion to choose the degree of additional hardening. Embarq says that because the Commission cannot know what the standards will ultimately be, it cannot know the added value of the additional costs any new standards exceeding the NESC may engender.

Embarq also suggests that the Proposed Rule 25-6.0341, F.A.C., concerning the location of electric facilities, would have a lower cost if only applied to the installation of new facilities. However, these lower cost alternatives would not meet the objective of increasing the reliability of the existing electrical distribution system.

Verizon estimates that if it had to place attachments on 10% more poles, its costs would increase by some \$20 million, most of which would be one-time engineering and transfer costs, in addition to increased attachment fees. Verizon conducted a feasibility study on Davis Island to convert to underground (UG) and determined the cost to be \$4,000 per household.

Time Warner Telecom submitted comments and said that the proposed rule amendments would likely substantially affect its costs but did not provide cost estimates.

The Florida Cable Telecommunications Association (FCTA) filed comments on the proposed rules and pointed out that the electric distribution system is vital to its members' plant and their feed to their customers. FCTA estimates that relocating existing lines cost 1.5 to 2 times the cost of new lines. FCTA estimates it would cost approximately \$20,000 per mile for overhead (OH) and \$125 to \$150 per service drop. UG costs approximately \$35,000 to \$40,000 per mile for new construction before development. Costs can be \$100,000 to \$150,000 per mile for established subdivisions because boring under roads and other obstacles costs \$9 to \$18 per foot.

#### *City and Town Comments*

The towns of Palm Beach and Jupiter Island (Towns) filed comments on the proposed rule changes concerning the value of Operation and Maintenance cost savings and storm restoration cost savings in(OH to UG conversions of the electrical system. The City of Fort Lauderdale indicated that its representatives would be presenting testimony at the hearing also. The Towns' comments refer to a study in progress of the life-cycle cost-effectiveness of UG compared to OH distribution facilities. While there are no quantitative cost estimates provided, preliminary results indicate qualitative improvements from an UG conversion of approximately 88 miles by the Brunswick Electric Membership Corporation in North Carolina on a barrier island.

In addition to the studies discussed by the Towns, a recent July 2006 quantitative study by the Edison Electric Institute, "Out of Sight, Out of Mind? A Study on the costs and benefits of undergrounding overhead power lines", addresses the historical performance data for OH/UG lines to evaluate the benefits and costs of placing more of the electric distribution infrastructure underground. The study found that it costs about \$1 million per mile on average for undergrounding, or about 10 times the cost to install overhead power lines. The study also found that when compared to overhead power systems, underground systems tend to have fewer power outages, but the outage durations tend to be much longer. It found that UG power systems are not immune from outages due to storms and on net, reliability benefits from UG lines are uncertain and in most instances do not appear to be sufficient to outweigh the high price of installing UG. The report does recognize that there are other substantial benefits from UG lines,

aesthetics being the most significant. When confronted with the high up-front cost of OH/UG conversion, about 75% of the relatively wealthy electricity customers in a Lake Tahoe community in California refused to vote for UG lines. In a small survey of Virginia homeowners, the Virginia State Corporation Commission found that the willingness to pay for UG conversion was about \$410 per customer on average. The study concludes that, "The challenge for decision makers is determining who will pay for these projects and who will benefit from them."

#### IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties with improved storm hardened electrical system facilities. The cost of the improvements may be born by ratepayers, stockholders, or some combination along with other pole attachers, depending on the funding means chosen. These costs should be more than offset by the positive economic impact from fewer and shorter electric power outages.

CH:kb

cc: Mary Andrews Bane  
Chuck Hill  
Bob Trapp  
Jim Bremen  
Hurd Reeves



# Florida Public Service Commission Electric Rules Hearing

August 31, 2006

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EU+  
NO. 060173-EU Exhibit No. 3  
Company/ Bell South  
Witness: Bell South Presentation  
Date: 08/31/06

 **BELLSOUTH®**

# BellSouth's Costs

# \$4 Billion +

# Summary of Proposed Rules

- Each Electric Company will ultimately develop its own construction standards that meet or exceed 2002 NESC guidelines.
- Each Electric Company will develop construction standards that will incorporate (if applicable) extreme wind load conditions for:
  - New builds construction
  - Major planned work
  - Targeted critical infrastructure and major thoroughfares
- Each Electric Company will develop construction standards that will deter damage resulting from flooding and storm surge
- Each Electric Company shall seek input, but not be required to accept input, from other entities regarding the development of these standards

# Financial Impact

- Electric Company abandons rear lot construction and replaces facilities with new, street side aerial/buried facilities. BellSouth elects to remain on existing pole line.
  - Abandoned poles – Estimated Cost of \$250-\$300/pole
  - Acquisition of new easements
  - Pole inspections increase - Estimated Cost of \$25-\$30/pole
  - Administration of records change
- ✓ ***Range of anticipated cost \$18,900,000 - \$90,720,000***
- Electric Company abandons rear lot construction and replaces facilities with new, street side aerial/buried facilities. BellSouth elects to replace rear lot facility and replace on new street side route.
  - BellSouth projected cost of replacement - Estimated Cost of \$25-\$50/foot
- ✓ ***Range of anticipated cost \$472,500,000 - \$3,780,000,000***

# Financial Impact

- Pole Transfers Initiated by Pole Replacements
  - Construction standards may include replacing poles for additional height or strength, as defined by each electric company standards

✓ ***Range of anticipated cost \$7,182,000 - \$142,128,000***

## **The Proposed Rules:**

- Will result in conversion of existing facilities
- Will result in pole replacements

***Range of anticipated cost to BellSouth:  
\$500 Million - \$4 Billion***

# (+) Additional Costs

- Increase in pole rental fees
- Facility damages
  - 75% of buried damages occur in street side ROW or utility easements
- Damage prevention
- Renegotiations of Joint Use, CATV and CLEC agreements
  - Cost shifting via Joint Use Agreements
- Updates or changes to standards
- Additional manpower requirements
- Use of non-wood poles
- Replacing good facilities
- Pole Inspection process
- Training on standards

**These are real considerations...**

**But quantifying these costs is difficult  
due to uncertainty in the standards**

# Proposed Rules: Premature and Over Reaching

- Pole Inspection Program delivers data to support subsequent remediation
  - Compliance reporting requirements include
    - Number of poles failing inspection
    - Number of poles requiring minor follow-up
    - Number of poles that were overloaded
    - Number of poles with an estimated pole life of less than 10 years
- Definition of construction standards could invalidate inspection process

# Premature and Over Reaching

- Proposed rulemaking uses 2002 version of NESC as a baseline
  - NESC is updated every five years
  - NESC will provide update in 2007
- Proposed rulemaking indicates the revised construction standards would be applicable to:
  - New Builds
  - Conversions
  - Critical Infrastructures
  - Major Thoroughfares



# Premature and Over Reaching

Experience from Wilma-

- Poles that snapped were made of concrete as well as various strengths of wood. Some were new....
- Damage to substations contributed significantly to extended, widespread power outages
- Distribution poles damaged or destroyed represented a miniscule portion of the overall network damaged by Wilma

# Summary

The questions we must ask are.....

- ✓ Are the right resources being directed to the right remedy?
- ✓ Is the price worth the potential benefit?
- ✓ Have we collectively analyzed the problem to address the right things?
- ✓ Are there alternatives that can positively impact the problem – and thus drive the desired consumer benefit – faster, and in a less costly manner?

# Summary

- **Yes**, BellSouth suggests there are more efficient solutions that may result in an even more favorable outcome
- We propose a 3-step collaborative approach

# Infrastructure Hardening Proposal

## Establish Infrastructure Advisory Committee (IAC)

- Purpose – Multi-industry committee dedicated to evaluation and application of overall network hardening
  - Step 1: Priority issues to address
    - Evaluation of existing and proposed Construction and Attachment standards
    - Increasing efficiency of hurricane restoration efforts
    - Identification of specific geographic areas to assess all critical infrastructures and necessary hardening efforts

Timeline – Within 30 days\*

\* From industry-agreed start date

# Infrastructure Hardening Proposal

## Infrastructure Advisory Committee (IAC)

- Step 2: Priority issues to address
  - Evaluation of target areas
  - Coordination of pole inspections as ‘first strike’ data gathering process
  - Communication of hardening projects to provide for consolidated industry coordination
  - How to coordinate longer term hardening efforts

Timeline – Within 60 days\*

\* From industry-agreed start date

# Infrastructure Hardening Proposal

## Infrastructure Advisory Committee (IAC)

### – Step 3: Priority issues to address

- Develop construction standards with all industry participants
- Develop attachment standards with all industry participants
- Develop Joint Trench standards for all new construction in a buried facility environment
- Continuous monitoring of pole inspection data to determine further actions

Timeline – Within 180 days\*

\* From industry-agreed start date – and within the same timeframe as proposed rules 

Outside Plant Consulting Services, Inc.



**National Electrical Safety Code  
&  
Extreme Wind Loads Applied to  
Distribution Poles**

**Florida PSC Hearing  
August 31, 2006**

Dr. Lawrence M. (Larry) Slavin  
lslavin@ieee.org  
973-983-0813 (voice/fax)

1

***Florida PSC Proposed  
Rule 25-6.034(5)***

***(Extreme Wind Loading)***



2

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-E47

NO. 060173-E4 Exhibit No. 4

Company/ Verizon

Witness: Verizon's Presentation

Date: 08/31/06

1

## **PSC Proposed Rule 25-6.034(5)**

Situation likely would be made worse

- Delayed restoration (more downed poles) following typical storms
- Errors in implementation
- Significantly increased vehicular fatalities and injuries
- Unknown unintended consequences



3

## **PSC Proposed Rule 25-6.034(5)**

Increased costs

- Typical joint-usage distribution application poles required to be 1½ - 4 times present required strength (3 - 8 pole Class sizes)
- Alternatively, correspondingly shorter span lengths -- requiring 1½ - 4 times more poles



4



## ***Change Proposal CP2766 (NESC 2007 Preprint)***

---

- Extends Extreme Wind Loading to structures  $\leq 60$  ft.
- Much less radical than proposed PSC Rule 25-6.034(5)
- Limits wind pressure\* for such structures

---

\* corresponding to wind speeds causing wind-blown debris, branches



5

## ***Change Proposal CP2766 (NESC Subcommittee Decision)***

---

- Rejected by vote of 17 to 7 (1 abstention)
- "CP's 2766, 2673, and 2798 are rejected based on information obtained from public comments. Utility experience has demonstrated that electrical distribution and communication line structures, under 60 ft in height, are damaged during extreme wind events by trees, tree limbs, and other flying debris. Designing structures with heights less than 60 ft for extreme winds will increase pole strengths for distribution systems resulting in large increases in cost and design complexity without commensurate increase in safety. Safety of employees and the public is provided using the current NESC loading requirements."



6

# ***National Electrical Safety Code***

***(Accredited Standards  
Committee C2)***



7

## ***National Electrical Safety Code (NESC)***

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- Electrical Supply and Communications Lines
- Outdoor Delivery Lines, Hardware and Equipment (vs. NEC: Indoor/Utilization Wiring)
- Overhead and Underground
- Performance/Safety Code (not Design Code) -- "Basic Provisions for Safety"



8

## ***National Electrical Safety Code (NESC)***

---

### **Section**

- 9     **SC 2**    Grounding Methods
- 10-19   **SC 3**    Electric Supply Stations
- 20-23   **SC 4**    Overhead Lines - Clearances
- 24-27   **SC 5**    Overhead Lines - Strength & Loading
- 30-39   **SC 7**    Underground Lines
- 40-44   **SC 8**    Work Rules



9

## ***NESC Strength & Loading Review***

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- NESC 2002
- NESC 2007
  - Accepted Changes
  - Rejected Changes
- PSC Proposed Rule 25-6.034
- Recommendations



10

# ***NESC 2002***



11

## **Section 25**

### **“Loadings for Grades B and C”**

- Rule 250B (Combined Ice and Wind Loading)
- Rule 250C (Extreme Wind Loading)

## **Section 26**

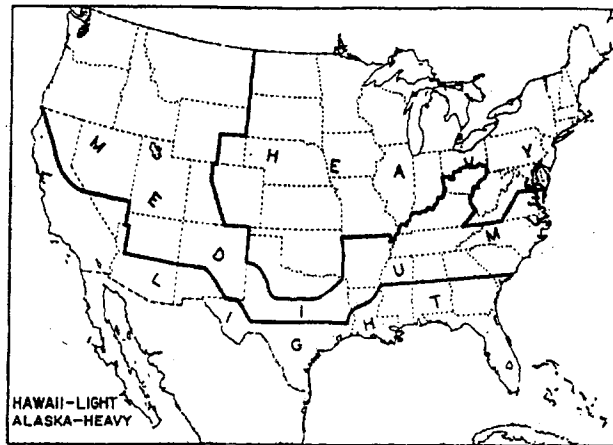
### **“Strength Requirements”**

- Rule 261 (“Grades B and C Construction”)
- Rule 263 (“Grade N Construction”)



12

## Storm Loading Map Rule 250B Combined Ice and Wind



Loading  
Districts

Fig 250-1  
General Loading Map of United States  
with Respect to Loading of Overhead Lines



## NESC "Winter" Storm (Rule 250B)

### Combined Ice and Wind Loading

- Heavy (0.5-in. radial ice, 40 mph wind, 0°F)  
– 4 lbs. per sq. ft. wind pressure load (projected area)
- Medium (0.25-in. radial ice, 40 mph wind, 15°F)  
– 4 lbs. per sq. ft. wind pressure load (projected area)
- "Light" (0-in. radial ice, 60 mph wind, 30°F)  
– 9 lbs. per sq. ft. wind pressure load\* (projected area)

\* Wind pressure is proportional to square of wind speed



## 2002 Extreme Wind Map (Rule 250C)

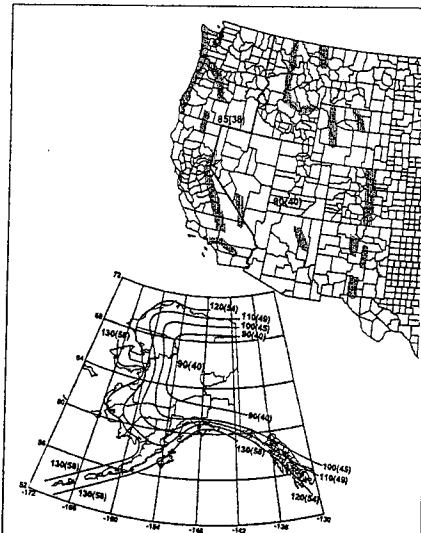


Fig 250-2(a)  
Basic Wind Speeds

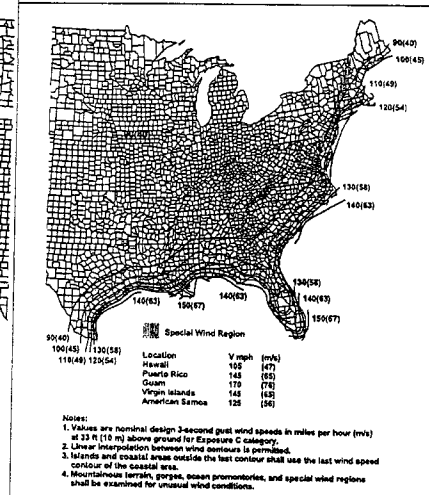


Fig 250-2(b)  
Basic Wind Speeds

(Note: Not required for structures  $\leq 60$  ft. height)



## 2002 Extreme Wind Map (Rule 250C)

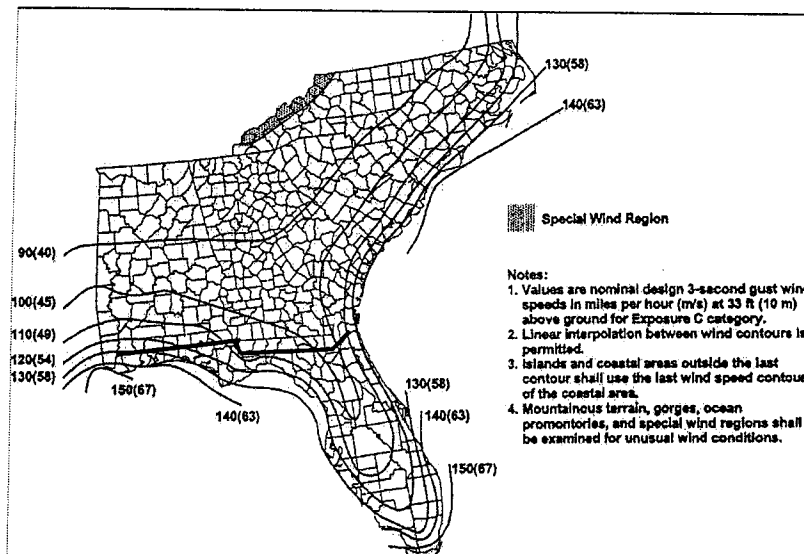


Fig 250-2(d)  
Eastern Gulf of Mexico and Southeastern US Hurricane Coastline

- Notes:
1. Values are nominal design 3-second gust wind speeds in miles per hour (mph) at 33 ft (10 m) above ground for Exposure C category.
  2. Linear interpolation between wind contours is permitted.
  3. Islands and coastal areas outside the last contour shall use the last wind speed contour of the coastal area.
  4. Mountainous terrain, gorges, ocean promontories, and special wind regions shall be examined for unusual wind conditions.



## ***NESC 2002 “Summer” Storm (Rule 250C)***

---

- ASCE 7-98 Extreme Wind Map
  - 50 year recurrence (0.02 annual probability)
  - Gusts (3-second average)\*
  - Open terrain (ASCE Exposure C)
  - 33 ft. elevation
- Includes Gust Response Factors
  - Height
  - Span length
- Not required for structures  $\leq 60$  ft. height

\* approx. 20% greater than 1-minute averages for categorizing hurricane levels (Saffir Simpson Hurricane Scale)



17

## ***Conductor Loading***

---

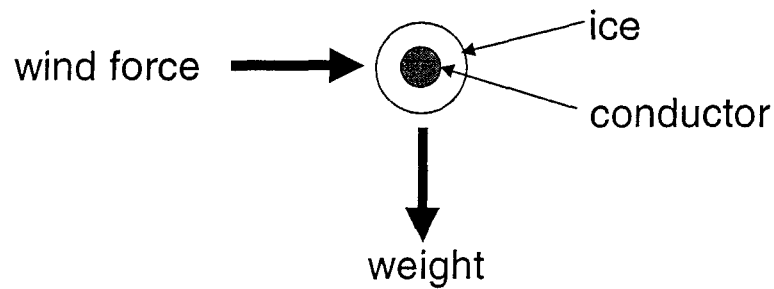
Combined Ice and Wind, or Extreme Wind

- Vertical weight of bare conductor plus ice
- Horizontal force of wind on conductor plus ice
- “Additive constant” to resultant (for tension)
- Corresponding temperature (0°F, 15°F, 30°F; 60°F)



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## ***Conductor Loading***



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## ***Loads on Line Supports***

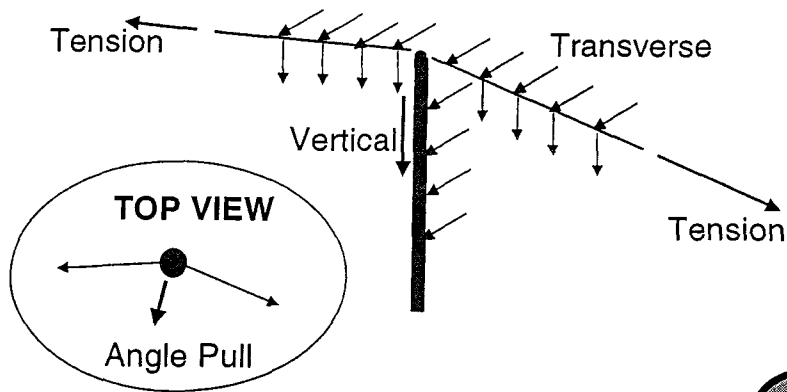
- Vertical Loads
  - Dead weight of bare supports and conductors
  - Ice load on conductors and wires (not supports)
- Transverse Loads
  - Wind force on bare structures (without ice)
  - Wind force on ice-covered conductors and wires



20



## ***Loads on Line Supports***



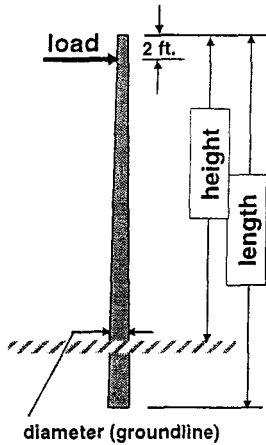
21

## ***Wood Pole Strength & "Class"***



22

## ANSI-O5.1 Wood Pole Standard



| Pole Class<br>(Size*) | Strength/Capacity<br>(lbs) |
|-----------------------|----------------------------|
| 10                    | 370                        |
| 9                     | 740                        |
| 7                     | 1,200                      |
| 6                     | 1,500                      |
| 5                     | 1,900                      |
| 4                     | 2,400                      |
| 3                     | 3,000                      |
| 2                     | 3,700                      |
| 1                     | 4,500                      |
| H1                    | 5,400                      |
| H2                    | 6,400                      |
| H3                    | 7,500                      |
| H4                    | 8,700                      |
| H5                    | 10,000                     |
| H6                    | 11,400                     |

\* Stronger pole (Class Size)  $\Rightarrow$  larger diameter

\*\* Longer pole, same Class  $\Rightarrow$  larger diameter



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## Strength & Overload Factors Supports (Structures, Guys, ...)

Strength x **Strength Factor**  $\geq$  Load x **Overload Factor**  
or

Strength  $\geq$  Load x **Overload Factor**  $\div$  **Strength Factor**

Thus, effective "Design/Safety Factor" =

**Overload Factor**  $\div$  **Strength Factor**



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## **Strength & Overload Factors Supports (Structures, Guys, ...)**

$\text{Strength} \geq \text{Load} \times \text{"Design/Safety Factor"}$



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## **Conductor/Messenger (NESC Rule 261)**

- Combined Ice-Wind  
(60% rated strength)
- Extreme Wind  
(80% rated strength)
- Tension increased by "additive constant"



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## ***Grade of Construction (NESC Section 24)***

---

- Grade B
  - Highest - most “reliable” grade
  - Crossings (railroad, limited-access highways)
  - Details (voltage levels, type cables, area, ...)
- Grade C
  - > 750 volts (primary power)
  - Details (voltage levels, type cables, area, ...)
  - Typical distribution design (joint-usage, power, ...)



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## ***Grade of Construction (NESC Section 24)***

---

- Grade N
  - Lowest grade
  - e.g.,  $\leq 750$  volts (telecommunications, secondary power, “rural” area\*, ...)
  - No detailed requirements (NESC Rule 263)
    - “need not be equal to or greater than Grade C”
    - “initial size or guyed or braced to withstand expected loads, including line personnel working on them”

---

\* deleted in NESC-2007



28

## ***Strength & Overload Factors (Wood Poles, Transverse Wind Load)***

|                         | Grade of Construction | Rule 250B<br>(Combined Ice & Wind) | Rule 250C<br>(Extreme Wind) |
|-------------------------|-----------------------|------------------------------------|-----------------------------|
| Overload Factor         | B                     | 2.50                               | 1.00                        |
|                         | C                     | 1.75                               | 1.00***                     |
| Strength Factor         | B                     | 0.65                               | 0.75                        |
|                         | C                     | 0.85                               | 0.75                        |
| Effective Design Factor | B                     | $2.50/0.65 = 3.85^*$               | $1.00/0.75 = 1.33$          |
|                         | C                     | $1.75/0.85 = 2.06^{**}$            | $1.00/0.75 = 1.33^{***}$    |

\* approx. "4"

\*\* approx. "2"

\*\*\* reduced in NESC-2007



29

# ***NESC 2007***



30

## Reduced Overload/Design Factor for Extreme Wind, Grade C



31

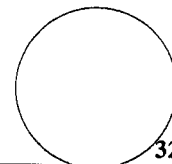
50-YEAR MEAN RECURRENCE INTERVAL ICE THICKNESSES DUE TO FREEZING RAIN  
WITH CONCURRENT 3-SECOND GUST SPEEDS: CONTIGUOUS 48 STATES.

Fig. 250-3(b)

Ice thickness zones ———  
Gust speed zones - - -

Figure 250-3(b) -- Uniform Ice Thickness with concurrent w

**Figure 250-3(b) -- Uniform Ice thickness with concurrent wind**



32

## ***Additional Extreme Winter Storm (Rule 250D)***

### **New Rule 250D (Extreme Ice with Concurrent Wind)**

- Based upon ASCE 7-02 map
- Negligible impact in Florida (mostly 0-in. ice, low wind speed, low overload/design factor)
- Retains 60 ft. exemption (distribution)



33

## ***Reduced Overload/Design Factor for Extreme Wind (Rule 250C)***

|                         | Grade of Construction | Rule 250B<br>(Combined Ice & Wind) | Rule 250C<br>(Extreme Wind)         |
|-------------------------|-----------------------|------------------------------------|-------------------------------------|
| Overload Factor         | B                     | 2.50                               | 1.00                                |
|                         | C                     | 1.75                               | 1.00 0.87*                          |
| Strength Factor         | B                     | 0.65                               | 0.75                                |
|                         | C                     | 0.85                               | 0.75                                |
| Effective Design Factor | B                     | $2.50/0.65 = 3.85^*$               | $1.00/0.75 = 1.33$                  |
|                         | C                     | $1.75/0.85 = 2.06^{**}$            | $1.00\ 0.87/0.75 = 1.33\ 1.16^{**}$ |

\* 0.75 if > 100 mph (except Alaska)

\*\* 1.00 if > 100 mph (except Alaska)



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## ***Reduced Overload/Design Factor for Extreme Wind (Rule 250C)***

Thus, contrary to extending Rule 250C to all structures (including poles  $\leq 60$  ft. tall), NESC 2007 reduces loads by a minimum of 13% (25% for most of Florida) for Grade C, where applicable ( $> 60$  ft. tall)

Rationale: Grade C should not be required to be at same level of reliability as Grade B



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## ***Rejected Change Proposals & Related Discussions***

***Extending Rule 250C  
(Extreme Wind)  
to Distribution Poles, ....***



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## ***Change Proposal CP2766*** ***(NESC 2007 Preprint - "Recommended")***

### **CP2766**

- Extends Rule 250C to structures  $\leq 60$  ft.
- Limits wind pressure for such Grade C structures ( $\leq 60$  ft. tall) to 15 psf\*
- No significant impact in Florida vs. present Rule 250B, requiring 18 psf

\* corresponds to wind speed causing wind-blown debris, branches, ...



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## ***Change Proposal CP2766*** ***(Industry Response)***

- Received most comments (79 of 633) of all CPs submitted by Subcommittee 5
- Overwhelming number of strong objections (90%) (for some: "lesser of evils" due to pressure limits)
- Next 3 runnerup CPs also related to extending Rule 250C to structures  $\leq 60$  ft.
- Typical: "almost all poles downed by flying debris, so no benefit from this change"



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## ***Change Proposal CP2766 (NESC Subcommittee Decision)***

---

- Rejected by vote of 17 to 7 (1 abstention)
- "CP's 2766, 2673, and 2798 are rejected based on information obtained from public comments. Utility experience has demonstrated that electrical distribution and communication line structures, under 60 ft in height, are damaged during extreme wind events by trees, tree limbs, and other flying debris. Designing structures with heights less than 60 ft for extreme winds will increase pole strengths for distribution systems resulting in large increases in cost and design complexity without commensurate increase in safety. Safety of employees and the public is provided using the current NESC loading requirements."



39

## ***General Comment***

---

NESC well-respected document, believed  
to have served the industry well

Therefore, significant changes to the NESC  
are introduced gradually

Such gradual changes minimize potential  
impact and unintended consequences



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# ***Florida PSC Proposed Rule 25-6.034(5)***

***(Extreme Wind Loading)***



41

- **Delays in Restoration**
- **Other Consequences**
- **Direct Effect (System Cost)**



42

## ***PSC Proposed Rule 25-6.034(5) (Direct Effect)***

- Consider reference Grade C application\*, Rule 250B (design factor  $\approx 2:1^*$ ): relative strength = 100%
- Design factor Grade B  $\approx 4:1$
- Assume (reasonable) design factor Grade N = 1:1
- Compare to Rule 250C (NESC 2002 edition)  
Extreme Wind loads (Grade B = Grade C;  
assume also applied to Grade N);  
wind speeds 95 mph - 150 mph

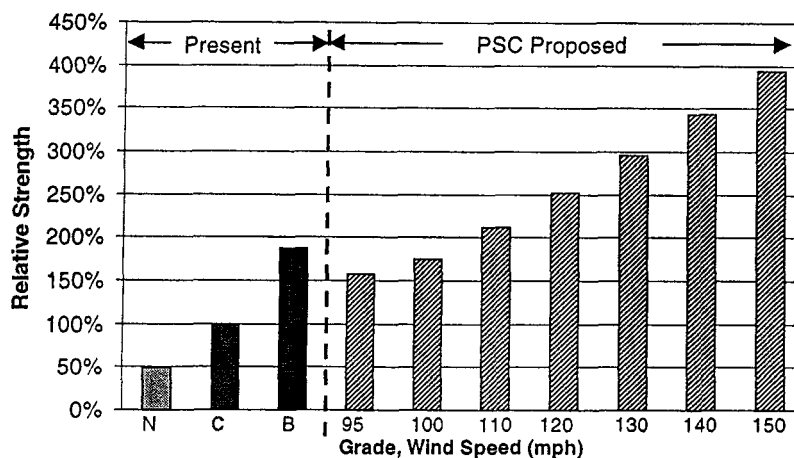
\* transverse wind, tangent structure



43

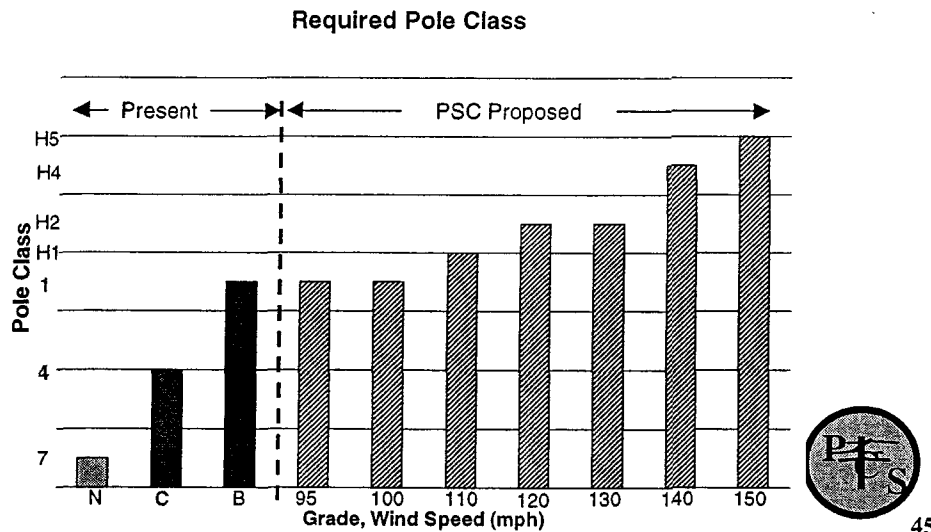
## ***PSC Proposed Rule 25-6.034 (Relative Pole Strength)***

Relative Pole Strength



44

## ***PSC Proposed Rule 25-6.034 (Required Pole Class)***



## ***PSC Proposed Rule 25-6.034(5) (Increased Costs)***

- Grade C applications required to be 1½ - 4 times present required strength (3 - 8 pole Class sizes)
- Alternatively, correspondingly shorter span lengths -- i.e., 1½ - 4 times more poles
- Grade B affected less ( $\leq 2$  times present strength)
- Grade N applications 3 - 8 times present (reasonable) required strength (6 - 11 Class sizes)
- More extensive use of non-wood (concrete, steel, ...) poles



46

## ***PSC Proposed Rule 25-6.034(5) (Other Consequences)***

- Delayed restoration (greater number of poles, or more massive poles, or delayed availability of appropriate non-wood poles) for “typical” case in which poles will be downed regardless of extreme wind design considerations
- Confusion, delays, and possible errors in implementation, due to relative complexity of Rule 250C extreme wind design rules
- Significant increase in fatalities and/or injuries due to vehicular accidents with pole(s)



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## ***Confusion, Delays, Errors***

### **Rule 250B (Combined Ice and Wind)**

load (lbs) = 4 - 9 psf x shape factor x projected area (sq ft)

### **Rule 250C (Extreme Wind) NESC 1997**

load (lbs) = 0.00256 ( $V_{mph}$ )<sup>2</sup> x shape factor x projected area (ft<sup>2</sup>)

where  $V_{mph}$  = fastest-mile (Figure 250-2, 1997)



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## **Confusion, Delays, Errors**

### **NESC 2002**

$$\text{load (lbs)} = 0.00256 (V_{\text{mph}})^2 \times \text{shape factor} \times \text{projected area (sq ft)} \\ \times k_z \times G_{\text{RF}} \times I$$

where  $V_{\text{mph}}$  = 3-sec. gust (2002 Extreme Wind Map),  
 $k_z$  = velocity pressure exposure coefficient,  
 $G_{\text{RF}}$  = gust response factor, and  
 $I$  = importance factor (=1.0)



49

## **Confusion, Delays, Errors**

**Structure:**  $k_z = 2.01 \times (0.67h/900)^{(2/9.5)}$ ,  $60 \text{ ft} \leq h \leq 900 \text{ ft}$   
 where  $h$  = height structure (ft)

**Wire:**  $k_z = 2.01 \times (h/900)^{(2/9.5)}$ ,  $33 \text{ ft} \leq h \leq 900 \text{ ft}$   
 where  $h$  = height attachment point (ft)

minimum  $k_z = 0.85$

| Height, h (ft) | $k_z$ (Structure) | $k_z$ (Wire) |
|----------------|-------------------|--------------|
| <33            | 0.92              | 1.00         |
| >33 to 50      | 1.00              | 1.10         |
| >50 to 80      | 1.10              | 1.20         |
| >80 to 115     | 1.20              | 1.30         |
| >115 to 165    | 1.30              | 1.40         |
| >165 to 250    | 1.40              | 1.50         |
| >250           | Use Formulas      | Use Formulas |



50

## Confusion, Delays, Errors

**Structure:**  $G_{RF} = [1 + 2.7E_s(B_s)^{0.5}]/k_v^2$

**Wire:**  $G_{RF} = [1 + 2.7E_w(B_w)^{0.5}]/k_v^2$

where

$$E_s = 0.346 \times [33/(0.67h)]^{1/7}$$

$$E_w = 0.346 \times [33/h]^{1/7}$$

$$B_s = 1/[1 + 0.375h/220]$$

$$B_w = 1/[1 + 0.8L/220]$$

$$k_v = 1.43$$

$$L = \text{Design Wind Span (ft)}$$



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## Confusion, Delays, Errors

Gust Response Factor,  $G_{RF}$   
Tabulated Values (Structure and Wire)

| Height<br>h (ft) | Structure<br>$G_{RF}$ | Wire $G_{RF}$ , Span Length<br>L (ft) |               |               |                |                 |                 |          |
|------------------|-----------------------|---------------------------------------|---------------|---------------|----------------|-----------------|-----------------|----------|
|                  |                       | ≤250                                  | 250 < L ≤ 500 | 500 < L ≤ 750 | 750 < L ≤ 1000 | 1000 < L ≤ 1500 | 1500 < L ≤ 2000 | L > 2000 |
| ≤33              | 1.02                  | 0.93                                  | 0.86          | 0.79          | 0.75           | 0.73            | 0.69            | Formulas |
| >33 to 50        | 0.97                  | 0.88                                  | 0.82          | 0.76          | 0.72           | 0.70            | 0.67            | Formulas |
| >50 to 80        | 0.93                  | 0.86                                  | 0.80          | 0.75          | 0.71           | 0.69            | 0.66            | Formulas |
| >80 to 115       | 0.89                  | 0.83                                  | 0.78          | 0.73          | 0.70           | 0.68            | 0.65            | Formulas |
| >115 to 165      | 0.86                  | 0.82                                  | 0.77          | 0.72          | 0.69           | 0.67            | 0.64            | Formulas |
| >165 to 250      | 0.83                  | 0.80                                  | 0.75          | 0.71          | 0.68           | 0.66            | 0.63            | Formulas |
| >250             | Formulas              | Formulas                              | Formulas      | Formulas      | Formulas       | Formulas        | Formulas        | Formulas |



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## **Confusion, Delays, Errors**

CP2718 (proposed by Subcommittee 5 transmission engineer)

- Attempts to simplify Rule 250C.
- Rejected by vote of 19 to 4 (2 abstentions)  
“... The current method is complete and consistent with industry standard practice. ....”
- Thus, Rule 250C is generally (*but not unanimously*) considered sufficiently clear for intended transmission applications



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## **Vehicular Accidents**

- US Department of Transportation:  
“Each year, 1200 to 2000 people are killed and an additional 60,000 to 110,000 people are injured due to collision between motor vehicles and timber utility poles.”
- US DOT objective is to reduce number of utility poles
- Immediate effect of PSC Rule 25-6.034(5) will be contrary to US DOT objectives (also Florida DOT)



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# ***Recommendations***



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## ***PSC Proposed Rule 25-6.034(5)*** ***(OPCS Recommendations)***

### **Primary Recommendation**

- Enforce present NESC rules (Rule 250B, ...)
- Continue to maintain NESC 60 ft. exemption for Rule 250C (Extreme Wind)
- Monitor development of 2012 edition of NESC, as available (e.g., 2007 - 2010)
- Contribute to development process of 2012 edition (e.g., NARUC representative to Subcommittee 5)



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## ***PSC Proposed Rule 25-6.034(5) (OPCS Recommendations)***

### **Alternate Recommendation**

- Explicitly exclude Grade N applications
- Explicitly cite NESC 2007 for appropriate overload/design factors (13% - 25% reduction for Grade C)
- Apply as pilot study, initially limited to specified geographic area and defined period (e.g., 1 - 2 years)



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## ***Future NESC Meetings (2012 Edition)***



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## ***NESC 2012 - Schedule***

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- |  |            |
|--|------------|
| • Public Proposals Due                     | July 2008  |
| • NESC Subcommittee Recommendations        | Oct. 2008  |
| • Preprint of Proposed Changes             | Sept. 2009 |
| • Public Comments Due                      | May 2010   |
| • NESC Subcommittee Resolution             | Oct. 2010  |
| • Submitted to NESC Committee and ANSI     | Jan. 2011  |
| • Re-Submitted to ANSI (Final Recognition) | May 2011   |
| • Published                                | Aug. 2011  |
| • Effective                                | Feb. 2012  |



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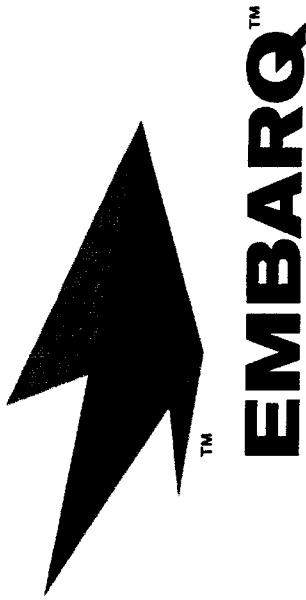
## ***NESC 2012 (Initial Anticipated Effort)***

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- January 2007 -- IEEE PES Towers, Poles & Conductors Subcommittee, Panel Session on NESC 2007 edition, Strength & Loading
- Will include presentation of (rejected) CP2766 regarding 60 ft exemption
- Anticipate comments from audience (e.g., regarding recent hurricane damage)
- Subcommittee 5 will probably begin to meet later in 2007 for initiating development of 2012 edition



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# Florida Electric Plant Hardening

George Finn - Director, National Policy  
Kent Dickerson - Director, Cost Support  
Susan Masterton - Counsel

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EU +  
NO. 060173-EU Exhibit No. 5  
Company/ Embarq  
Witness: Embarq's Presentation  
Date: 08/31/06

Voice | Data | Internet | Wireless | Entertainment



## Proposed Rules

- ▶ Embarq construction policies, methods, and procedures adhere to NESC, ANSI and Telcordia/Bellcore standards
- ▶ Any construction requirements beyond industry standards should reflect the collective and agreed upon input from all impacted industries and parties.
- ▶ Embarq supports utilizing underground facilities for new construction



## Proposed Rules

- ▶ Meaningful cost/benefit analysis is not possible until the following are more specifically set forth:
  - Construction standards (how stringent)
  - Scope of work (few miles or many)
  - Type of plant (underground or stronger aerial)
  
- ▶ Ultimate cost will be route and site specific



## Proposed Rules

### Moving Back-lot to Front-lot:

- ▶ Not a simple matter of moving the existing cable
- ▶ Requires new cable at the front, and retire and remove the cable at the rear
- ▶ The inconvenience and disruption of customer property should also be considered:
  - Torn up lawn, sidewalk, street, fences, driveways, etc.





## Who Pays?

- ▶ Electric companies have a funding plan - a combination of proposed local entity funding and the opportunity to request rate increases
- ▶ Attachers have no realistic recovery mechanism, therefore shouldn't be asked to bear cost that the electric companies have already deemed cost effective and recovered elsewhere

## Unlawful Delegation



- ▶ The rules improperly delegate the Commission's rulemaking authority to the electric companies
  - The rules require electric companies to unilaterally adopt construction and attachment standards that may exceed the National Electric Safety Code, without limitation.
  - The new standards will substantially affect third parties who lawfully attach to electric utility poles
  - Florida law prohibits an administrative agency from delegating its rulemaking authority to private entities.
    - Amara v. Town of Daytona Beach Shores, 181 So. 2d 722 (Fla. 1<sup>st</sup> DCA 1966)
    - Florida Attorney General Opinion 78-053, 1978 Op. Atty Gen. Fla. 1236
    - Florida Nutrition Counselors Assoc. v. DBPR, 667 So. 2d 218 (Fla. 1<sup>st</sup> DCA 1995)
  - Requiring administrative agencies to adopt rules that substantially affect third parties ensures that the procedural protections afforded by the Administrative Procedures Act, and the open records and open meetings laws, are followed.
    - News and Sun-Sentinel Co. v. Schwab et.al, 596 So. 2d 1029 (Fla. 1992)

# SERC Requirements



- ▶ The rules as proposed prevent the Commission from fulfilling the SERC requirements of chapter 120. F.S.
  - Section 120.541, F.S., requires agencies to prepare a statement of the estimated regulatory costs (SERC) of proposed rules and consider any lesser cost regulatory alternatives proposed by a substantially affected party.
  - Because the proposed rules result in standards that are unknowable at the time of adoption, the Commission is unable to fulfill the SERC requirements to ensure that it adopts the lesser cost alternatives that achieve its regulatory objectives.

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

**MEMORANDUM OF LAW IN SUPPORT OF THE FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION'S SUGGESTED RULE CHANGES**

**I. The Commission's Proposed Rules, Without the Amendments Advanced by  
FCTA, Exceed the Commission's Jurisdiction**

FCTA does not dispute that Florida Statutes confer jurisdiction to the Public Service 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). In fact, as FCTA has stated throughout this proceeding, FCTA applauds the Commission and the Florida legislature for taking positive steps to address the storm damage and protracted power outages that were experienced during the recent storms. Cable operators, which are now providing telephone and broadband services in addition to video, and more importantly their customers, which number more than 5 million in the State of Florida, have a genuine and fervent interest in assuring the integrity of the electric pole plant.<sup>1</sup>

<sup>1</sup> Cable subscribers often receive bundled services from cable operators and thus upon the cable plant attaching to the electric distribution infrastructure to receive broadband, telephone and video service. Moreover, cable's most significant competitor, satellite, does not rely on pole plant to distribute its services to customers, and acquired a number of subscribers in the wake of last season's hurricane related outages.

**FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EU**

NO. 060173-EU Exhibit No. 6

Company/ FCTA

Witness: Memo of Law in Support of FCTA

Date: 08-31-06 <sup>Sugges</sup> <sub>RW</sub>

However, while the Commission can adopt lawful construction standards pursuant to the authority delegated by the Florida legislature, the scope and design of these standards are limited by the boundaries of the Commission's jurisdiction. The Commission's proposed rules, without the amendments sought by FCTA, would exceed the Commission's jurisdiction and be unlawful because (a) they would enable pole owning utilities to deny access, or assign unreasonable and discriminatory requirements and costs, to cable television and telecommunications providers attached to the poles in direct conflict with Section 224 of the Communications Act and the regulations adopted by the Federal Communications Commission ("FCC"); and (b) would unlawfully delegate the Commission's regulatory authority to pole owning utilities that have a pecuniary interest in redistributing the costs attributable to upgrading its infrastructure to other entities attached to pole.

**A. The Commission's Jurisdiction Over Attachments To Electric Transmission and Utility Poles Is Limited By Federal Law**

Investor owned utilities are obligated under federal law to provide cable operators and telecommunications carriers 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 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 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).

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, jurisdiction over safety and reliability of cable television and telecommunications attachments and pole capacity is reserved exclusively to the state, regardless of whether it has certified pursuant to Section 224.<sup>2</sup> These same entities invite the Commission to approve proposed rules that would allow investor owned utilities to adopt construction standards, as well as standards and procedures for third party attachments, with only minimal “input” from attaching entities and without compulsory review and approval by the Commission.<sup>3</sup> In addition, the rules prohibit third-party attachments that do not comply with the utility imposed standards and make the Florida Commission the arbiter of disputes concerning pole access.

As the proposed rules would enable the utilities to dictate unilaterally the standards upon which cable operators and telecommunications carriers may access poles and upon which utilities may deny access to poles, and would have the Florida Commission, not the FCC, arbitrate disputes concerning such standards, they conflict with federal law, and are therefore unlawful.

**i. The utilities’ argument that the Commission need not satisfy the federal certification requirements to regulate denials of access simply is wrong.**

Unless the Commission certifies to regulate the rates, terms and conditions of pole attachments, or access to poles, it lacks jurisdiction to regulate access to utility poles by cable operators and telecommunications carriers, even where access is denied based upon issues related to safety, reliability and engineering standards. Only the FCC and certified States have

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<sup>2</sup> 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”).

<sup>3</sup> Rather, all the rules would require is that the utility make a copy of its construction standards available on request, and that the Commission may review disputes about the standards on an ad hoc basis. The Commission is not obligated to make 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.

jurisdiction over an investor owned utility's denial of access based upon capacity, safety, reliability and applicable engineering purposes. Section 224(b) grants regulatory jurisdiction to the FCC over such pole attachment matters except where such matters are regulated by a State and such State has satisfied the certification criteria set forth in Section 224(c)(2).

Florida investor owned utilities assert that the Florida Commission can regulate access without following the certification procedures laid out in the Section 224(c)(2) of the federal statute. *See 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). In support of this argument for bifurcated jurisdiction, the utilities cherry pick quotations from the decisive FCC Order addressing the issue, the Order on Reconsideration, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 14 FCC Rcd 18049, ¶¶114, 116 (1999). Tellingly, however, the utilities fail to cite the language, or even to the paragraph, which is directly on point. The pertinent paragraph states:

**[W]e clarify that...if 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). The utilities' failure to explain this language or cite to it or even the paragraph containing the language, notwithstanding the utilities' citation to the paragraphs preceding and following the paragraph, speaks volumes about the merit of their arguments. A copy of the pertinent excerpts of the Order on Reconsideration is attached as Exhibit MAG-1. A

complete copy of this Order will be made available upon request. Moreover, 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.<sup>4</sup>

The utilities' arguments that the Commission may regulate access issues as long as Florida thoroughly regulates issues of safety and reliability are equally flawed because they are also premised on the misquoted language from the FCC's Order on Reconsideration. The utilities would have the Commission believe that if a complaint is brought to the FCC concerning access issues, all a pole owner need do is tell the FCC that the State in which the relevant facilities are located "is regulating such matters" and the FCC will dismiss the complaint. (FP&L Reply Comments at 6-8 citing to the Order on Reconsideration at ¶116). As the FCC made clear in the preceding paragraph of that same Order, this only applies to states that have already certified pursuant to 224(c)(2). Florida has not so certified, and thus, it cannot arbitrate access disputes, or promulgate rules that impact access to poles by cable operators and telecommunications carriers.

**ii. The FCC has jurisdiction over pole safety to the extent it impacts non-discriminatory access to poles and the just and reasonable rates, terms and conditions of pole attachments by cable operators and telecommunications carriers.**

The utilities in this proceeding would have the Commission believe that "safety" issues can be easily segregated from issues relating to access to poles by cable and telecommunications carriers, and that only the state can regulate issues of pole safety. In reality, the FCC has jurisdiction over safety issues, including when they are raised as a pretext for denial of access to wireless carriers or other prospective attaching entities.

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<sup>4</sup> *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 FCC has expressly asserted its jurisdiction over complaints concerning utility companies' reservation of rights to deny access, including denials based on safety.<sup>5</sup> Indeed, 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," the FCC ruled it had jurisdiction, stating, "The Commission 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 noting that the FCC has authority to preempt state and local engineering standards that are inconsistent with its rules and policies.<sup>6</sup>

Moreover, the FCC has examined safety related issues on a case by case basis over the history of its regulation of pole attachments. *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

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<sup>5</sup> *See 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.

<sup>6</sup> *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, ¶¶ 8-11 and n. 37 (rel. March 2, 2006)(internal citations omitted).

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 Commission has also affirmatively considered specific safety requirements in rulemaking proceedings, such as the impact of overlashing by attaching entities and third parties, including the impact on wind and weight load burdens. *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).

Accordingly, the FCC has, and exercises, jurisdiction over pole safety issues.

The FCC has acknowledged that utilities can rely on the NESC in prescribing standards as well as other industry codes that are widely-accepted objective guides for the installation and maintenance of electrical and communications facilities.<sup>7</sup> The FCC also has said that a state requirement that is more restrictive than the corresponding NESC standard “may still apply.”<sup>8</sup> However, in the same order the FCC made it unequivocally clear that it will preempt state standards that are inconsistent with FCC rules and policies, and that a utility may not be the final arbiter of denials based on capacity, safety, reliability or engineering, nor should pole owners’ determinations be presumed reasonable. Accordingly, the utilities’ arguments that the Commission has jurisdiction over all pole safety and construction issues, regardless of whether

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<sup>7</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499 (1996) at ¶¶ 1151-1158.

<sup>8</sup> *Id.* at ¶ 1152.

they impact access to poles by cable operators and telecommunications carriers, are without foundation.

**iii. FCTA's proffered revisions to the proposed rules are not at odds with the Commission's jurisdiction.**

The utilities assert that FCTA's recommendations are at odds with the Commission's jurisdiction, *FPL Joint Reply Comments* at 10, and specifically complain that FCTA's proffered changes would enable third parties to "hold hostage" implementation of the standards, usurp the Commission's jurisdiction over safety and prematurely set access disputes at the FCC. These allegations are entirely without merit.

The Commission's delegated authority includes the adoption of standards to be observed by each public utility, including construction standards that exceed NESC where necessary to ensure the reliable provision of service. Fla. Stat. §366.04(6); §366.05(1). The Commission has interpreted this authority to include the adoption of rules governing third party attachments. *See* Proposed Rule 25-6.0342. As such, the interests and needs of third party attachments must be taken into account in developing the construction standards. Indeed, the law is clear that both the pole owner and a would be attacher must agree that a pole lacks capacity before a utility may deny access on such grounds. Specifically, the Commission's rule on access was challenged by a group of electric utilities in *Southern Company v. FCC*.<sup>9</sup> In *Southern Company*, the 11<sup>th</sup> Circuit held that the Commission'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.<sup>10</sup> However, the court also found that utilities may not make a unilateral determination that capacity is insufficient

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<sup>9</sup> *Southern Company, et. al. v. Federal Communications Commission*, 293 F.3d 1338, (11<sup>th</sup> Cir. 2002) ("*Southern Company*").

<sup>10</sup> *Southern Company*, 293 F.3d at 1347-49.

for third-party attachments.<sup>11</sup> 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.”<sup>12</sup> 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. Accordingly, FCTA has proffered amendments to the proposed rules that would enable third-party attachers to provide meaningful contributions to the development of the rules consistent with governing law.

FCTA’s other amendments would ensure that the Commission (and not private entities) has ultimate decision making authority over the standards, ensuring that these rules are “fair and reasonable” and also remedying what would otherwise be an unlawful exercise of delegated authority. *See infra*. Nor do FCTA’s proposed amendments have the effect of “setting” jurisdiction at the FCC. Rather FCTA has simply requested the Commission to acknowledge that 47 U.S.C. § 224 exists by including a provision that says that the rules do not interfere with that law. Accordingly, these arguments are without merit.

**B. The Commission’s Assignment In its Proposed Rules 25-6.034 and 25-6.0342 of Responsibility to Private Interested Entities Is an Unlawful Exercise of its Delegated Authority**

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.<sup>13</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1347 (emphasis added).

<sup>13</sup> 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, \_ (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, \_ (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).

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.<sup>14</sup> 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 entity.<sup>15</sup> This is especially true where the private entity has a stake in the project for which it is performing a technical function.<sup>16</sup>

Here, the proposed rules require the investor owned utilities to develop the standards that will govern third-party attachments. There is no 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 has included a provision for reviewing disputes on an ad hoc basis but that review is undermined by the FCC’s jurisdiction over pole attachment disputes. Thus, there is no effective control or final decision making authority in the Commission and the rules are therefore an unauthorized exercise of the Commission’s delegated authority.

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<sup>14</sup> *Brown v. Apalachee Regional Planning Council*, 560 So. 2d 782, \_ (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).

<sup>15</sup> *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) (citing *State of Florida v. State Road Department*, 173 So. 2d 693, \_ (Fla. 1965)).

<sup>16</sup> *Sierra Club v. Lynn*, 502 F. 2d 43, 59 (5th Cir. 1974) (Florida was part of the 5<sup>th</sup> Circuit until 1980, when the 11<sup>th</sup> 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.”).

## **II. The Proposed Rules Can Be Saved If FCTA's Proposed Amendments Are Adopted**

The Commission can adopt fair and reasonable construction standards and such standards can exceed NESC where doing so is necessary to ensure the reliable provision of electric service. However, in adopting these standards, the Commission cannot supplant FCC jurisdiction over access to poles by cable operators and telecommunications carriers and cannot make the utilities, or even the Commission, the arbiter of denials of access based on these construction standards.<sup>17</sup> Nor can the Commission allow utilities to adopt construction standards that impose discriminatory requirements or costs on attaching entities. Moreover, such standards will not be entitled to any deference by the FCC unless they are affirmatively 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. FCTA's proffered amendments to the proposed rules, which provide that the construction and third-party attachment standards shall be jointly developed with third party attaching entities, 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, save the proposed rules.

While the Commission must certify pursuant to Section 224(c)(2) if it wishes to regulate utility denials of access based upon capacity, safety, reliability and engineering purposes, FCTA does not dispute that construction standards lawfully adopted by the Commission would be entitled to deference by the FCC in any dispute concerning a denial of access. Nevertheless, while the FCC has stated that "it would not invalidate summarily all local [safety] requirements,"

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<sup>17</sup> The exception to this would be if the State of Florida were to satisfy the certification requirements in Section 224(c).

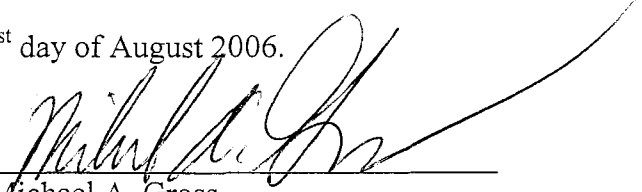
in the exact same paragraph the FCC made equally clear that state and local safety requirements apply only if there is no “direct conflict with federal policy. ... Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail.”<sup>18</sup> Moreover, the FCC also specifically rejected “the contention of some utilities that they are the primary arbiters of such concerns, or that their determinations should be presumed reasonable,” while noting that § 224(f)(1) “reflects Congress’ intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators.” Order on Reconsideration at ¶72.

Thus, the Commission’s jurisdiction over the safety and reliability of electric plant does not allow it to adopt rules, such as proposed rules 25-6.034 and 25-6.0432, that would give the electric utilities unfettered discretion to adopt construction and attachment standards, and deny attachment based upon those standards. Such rules clearly and directly conflict with the federal law and policy to grant non-discriminatory access to cable operators and telecommunications providers except for reasons based upon capacity, safety, reliability and applicable engineering purposes, which denials may be reviewed only by states that have certified pursuant to Section 224(c)(2) or the FCC. If the Commission wants broader regulatory authority over pole attachments, it must satisfy the certification requirements set forth in Section 224(c)(2).

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<sup>18</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Dkt Nos. 96-98, 95-185, 11 FCC Rcd 16073 ¶ 1154 (1996) (“Local Competition Order”).

Respectfully submitted this 31<sup>st</sup> day of August 2006.



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LEXSEE 14 FCC RCD 18049

In the Matter of Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and  
Commercial Mobile Radio Service Providers

CC Docket No. 96-98; CC Docket No. 95-185

FEDERAL COMMUNICATIONS COMMISSION

14 FCC Rcd 18049; 1999 FCC LEXIS 5303; 18 Comm. Reg. (P & F) 376

RELEASE-NUMBER: FCC 99-266

October 26, 1999 Released; Adopted October 20, 1999

ACTION: [\*\*1] ORDER ON RECONSIDERATION

**JUDGES:**

By the Commission: Commissioners Furchtgott-Roth and Powell concurring in part, and dissenting in part and  
issuing separate statements

**OPINION:**

[\*18049] **I. INTRODUCTION**

1. In this *Order on Reconsideration*, we address petitions for reconsideration or clarification of the *Local Competition Order* n1 regarding the rules implementing access provisions of the Communications Act of 1934 n2 ("the Act"), as amended by the Telecommunications Act of 1996 n3 ("1996 Act"). In the *Local Competition Order*, the Commission established a program for nondiscriminatory access to utilities' poles, ducts, conduits and rights-of-way, consistent with its obligation to institute a fair, efficient and expeditious regulatory regime for determining just and reasonable pole attachment rates with [\*18050] a minimum of administrative costs. n4 Herein we consider petitioners' requests for reconsideration or clarification of the access requirements of the *Local Competition Order*, including requirements pertaining to capacity expansion and reservation of space, utilities' access obligations, worker qualifications, the timing and manner of notification of modifications, allocation [\*\*2] of modification costs, and state certification of access regulation. n5

n1 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499, 15505 P1 (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom.* Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom.* Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part, and remanded sub nom.* AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999) (*Iowa Utilities Board*), *Order on Reconsideration*, 11 FCC Rcd. 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd. 19738 (1996), *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 12460 (1997), *appeals docketed*, *Second Further Notice of Proposed Rulemaking*, FCC 99-70 (rel. Apr. 16, 1999) (*UNE Further NPRM*). [\*\*3]

a state does preempt federal jurisdiction it should follow the federal lead with respect to access to poles, ducts, conduits, and rights-of-way. n257

n256 *Id.* at 8. *See also* AEP comments at 11-12. [\*\*100]

n257 AEP comments at 11-12.

### c. Discussion

114. 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). n258 When a telecommunications carrier seeks access to LEC facilities or property under section 251(b)(4), the reference in section 251(b)(4) to section 224 incorporates all aspects of the latter section, including the state reverse preemption authority of section 224(c)(1). n259 Thus, when a state has exercised its preemptive authority under section 224(c)(1), a LEC satisfies its duty under section 251(b)(4) to afford access by complying with the state's regulations. n260 If a state has not exercised such preemptive authority, the LEC must comply with the federal rules. n261 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). n262 Parties seeking reconsideration have provided no new facts or arguments to justify their requested rule changes. We note that, in a separate proceeding, [\*\*101] we seek comment on whether additional certification is needed to ascertain whether a State is regulating the rates, [\*18089] terms and conditions of access to facilities and rights-of-way on multiple unit premises. n263 The issue of State certification of such jurisdiction was not raised in this proceeding and is not decided herein.

n258 *Local Competition Order* at para. 1236.

n259 *Id.* at para. 1237.

n260 *Id.* at para. 1239.

n261 *Id.*

n262 *Id.* at para. 1240.

n263 *See Notice of Proposed Rulemaking, Notice of Inquiry, and Third Further Notice of Proposed Rulemaking*, FCC 99-141, WT Docket No. 99-217.

115. Rather than requiring states to undertake formal certification procedures that are not supported by the text of section 224(c)(2), we determined that the burden of informing this Commission when a state has exercised its reverse preemption authority should rest with the party seeking to rely upon such authority in defending an access complaint filed before us. Although we decline to reconsider this decision, we clarify that this applies to those states that have previously certified their regulation of rates, terms and conditions of [\*\*102] pole attachments. Our rule does not require such states to formally re-certify in order to assert their jurisdiction over access. However, if 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, as required under 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.

116. 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. n264 If so, pursuant to the *Local Competition Order*, we shall dismiss the complaint without prejudice to it being brought in the appropriate state forum. n265 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. n266 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.

n264 *Local Competition Order* at para. 240.

n265 *Id.*

n266 *Id.*

#### G. Other Issues

##### a. 45 DayTime Limit on Utility Evaluation of Attachment Request

117. The *Local Competition Order* stated that, because time is of the essence in access requests, a utility must respond to a written request for access within 45 days. n267 If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45th day. EEI and UTC request that we clarify that an entity requesting access to utility facilities must provide clear and sufficient information in order for the utility to evaluate the request, and the Commission should specify that 45-day time period to respond to request does not start until all the necessary information is provided. n268 The [\*18090] Joint Cable Parties and NCTA respond that giving more than 45 days would be unreasonable and contrary to industry practice. n269 According to the Joint Cable Parties [\*\*104] and NCTA, in the event a utility were to find that a particular request for access would take longer than 45 days to evaluate, the utility should apply for a waiver of the 45 day limit.

n267 *Id.* at para. 1224.

n268 EEI/UTC comments at 14.

n269 Joint Cable Parties comments at 13; NCTA comments at 30.

118. Based upon the record before us, we decline to reconsider the procedural rules under discussion. We expect that access requests would contain all pertinent and reasonably necessary information for the utility's consideration of the request, and would follow established industry practices. If the information in the request is incomplete, a utility may require a second access request. In such a case, we would also expect the utility to notify the applicant of all pertinent defects in its application promptly. It would not be acceptable to object, in a piecemeal fashion, to an access request containing multiple defects.

119. As we stated in the *Local Competition Order*, a telecommunications carrier or cable operator filing a complaint with the Commission must establish a prima facie case. n270 A petitioner's complaint, in addition to showing that it is timely filed, [\*\*105] must state the grounds given for the denial of access, the reasons those grounds are unjust or unreasonable, and the remedy sought. n271 The complaint must be supported by the written request for access, the utility's response, and information supporting its position. n272 We believe that an entity requesting access would provide the utility with sufficient information in its request, and this request will be part of the record in the Commission's evaluation of a complaint regarding a denial of access. We reiterate that, "time is of the essence," and that by implementing specific complaint procedures for denial of access cases, we have established swift and specific enforcement procedures that will allow for competition where access can be provided. n273

n270 *Local Competition Order*. at para 1223.

n271 *Id.*

n272 *Id.*

n273 *Id.* at para. 1224.

##### b. Identification of Attachments

120. Several commenters ask that the Commission require attaching entities to "tag" their attachments, in order to facilitate easy identification of attachers lines. n274 We believe that, on a prospective basis, reasonable tagging requirements may be included in agreements between [\*\*106] utilities and attachers. This would help prevent confusion during modifications, would aid safety measures, and would help insure that notice of modifications are sent to the correct parties. Thus, we will permit utilities to require tagging in their attachment agreements, as easy identification of attachers lines is in the best interests of the facility owner, the attaching entity, and the consumers of all of these services.

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

**COMMENTS BY MICHAEL T. HARRELSON ON BEHALF OF THE  
FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION**

I have previously stated that the relative effectiveness of storm preparedness initiatives should be a major consideration in allocating limited resources. I placed top priority on the initiative to inspect transmission structures and substations and to fund remediation of defects found.

In joint comments filed on August 26, 2006, by "the IOUs" they state "...the FCTA contends that it would be more effective to devote additional resources to inspecting and maintaining transmission poles and substations. However, the IOUs' experience has been that a relatively small portion of the overall storm damage is to transmission lines and substations. The IOUs believe that one of the principal reasons why the transmission system has fared well in recent storm seasons is that it is already built to extreme wind standards."

It was stated in the FPSC Order No. PSC-06-0351-PAA-EI, Case Background, issued April 25, 2006: "Failures of various FPL transmission lines during Hurricane

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EU +  
NO. 060173-EU Exhibit No. 7  
Company/ FCTA  
Witness: Comments By Michael T. Harrelson  
Date: 08-31-06

Wilma caused at least 94% of FPL's Hurricane Wilma substation outages." If they are correct that it was a small portion of the overall storm damage then I still contend that I am correct in stating that top priority on transmission line maintenance can do the most good in reducing widespread and frequently long lasting power outages, such as occurred in Wilma due to transmission line failures.

In Joint Reply Comments filed August 18, 2006, the IOUs criticize the definition of a pole at full capacity as one which can not be rearranged, strengthened or changed out as necessary to accommodate a request for access. This is exactly the definition which has been used as standard industry practice for make-ready work on poles to allow cable TV attachments. The cable operators pay for the changes. The power companies use the exact same definition to decide if a pole needs modifications or replacement to accommodate its own facilities. There are limited circumstances where a taller pole can not be placed due to conflicts with other lines, airport glide slopes and other field conditions.

#### **1. Rule 25-6.034(2) Standard of Construction**

Electric power companies must have construction standards which specify generally what materials and configurations of facilities (construction units) which they will normally use to achieve the performance standards contained in the National Electrical Safety Code (NESC). The NESC is not a Construction Standard but rather a performance standard which clearly and completely states what is to be accomplished for safety but not how to accomplish it. The NESC covers both Electric and Communications lines and work rules for electric and communications workers.

Construction Standards, though necessary, do not and can not contain all combinations of construction units which are placed on and added to poles in practice. Actual field conditions such as terrain, highways, other lines to cross over, or under, etc. require customizing generally applicable Construction Standards. Construction Standards must be used in conjunction with the NESC to assure that initial construction and facilities added later comply with the NESC. FCTA members do need access to power company Construction Standards.

The FCTA intends to review power company Construction Standards which might adversely affect efficient use of poles for joint use and offer input accordingly. I agree with the comments which Dr. Slavin has made about incorporating Extreme Wind design into distribution pole line standards.

**2. 25-6.034(4.a)**

The 2007 edition of the NESC was published on August 1, 2006. The 2007 edition should now be the code adopted.

**3. 25-6.034(4.b)**

This portion of the proposed rule as written only includes electric facilities to be grandfathered to previous editions of the code. It also misstates the NESC Rule. The proposed rule should be re-written to accurately state the requirements of NESC Rule 013.B. in the 2007 Code. The NESC rule applies to Electric and Communications facilities equally.

**4. Rule 25-6.0-342**

Each electric utility shall establish third party attachment standards and procedures. Attachment Standards should have flexibility for IOUs to:

1. Require standards and clearances greater than NESC requirements on poles with adequate height and strength; and
2. Accept compliance with the NESC as a final criteria before requiring that poles must be changed out to taller or stronger ones.

Such flexible attachment standards would allow for the efficient use of available pole space for future attachments by the electric company and communications companies. As the pole space and strength capacity is used up the pole would have to be replaced only when the safety requirements of the NESC can no longer be met. This is a win, win approach to developing attachment standards.

The attachment procedures must be reasonable and non-discriminatory.

Submitted by:

Michael T. (Mickey) Harrelson, Consultant  
Professional Engineer  
P. O. Box 432  
McRae, GA 31055

August 31, 2006

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

**DESCRIPTION OF PHOTOS BY MICHAEL T. HARRELSON  
ON BEHALF OF THE FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION**

**Photo #1** was taken on May 25, 2005, in Panama City, Florida, by M.T. Harrelson. It shows where the electric company added three transformers in violation of NESC rules. There are two existing cables. By visual inspection, the pole is not overloaded. Attached hereto as Exhibit MTH-1.

**Photo #2** was taken on February 6, 2006, in Pensacola, Florida, by M.T. Harrelson. This pole was inadequately guyed by the power company. The guying should be connected and the pole straightened up. It will not be overloaded. Attached hereto as Exhibit MTH-1.

**Photo #3** was taken on February 6, 2006, in Milton, Florida, by M.T. Harrelson. It shows much more load caused by two electric circuits. Attached hereto as Exhibit MTH-2.

**Photo #4** was taken on February 6, 2006, in Milton, Florida, by M.T. Harrelson. It shows electric triplex cable hanging down below cable in the span to the left, a code violation. Attached hereto as Exhibit MTH-2.

**Photo #5** was taken on February 7, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a pole with no high voltage power which by code only requires grade N strength. Attached hereto as Exhibit MTH-3.

**Photo #6** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a tall distribution pole with ample space for more attachments. A determination of loading should be done when and if future attachments are made. Attached hereto as Exhibit MTH-3.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET 060172-EU +

NO. 060173-EU Exhibit No. 8

Company/ FCTA

Witness: Description of Photos by M.T.

Date: 08-31-06 Harrelson



**Photo #7** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows two cables with ample space for more attachments. A determination of loading is appropriate for new attachments. Attached hereto as Exhibit MTH-4.

**Photo #8** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a new pole set after hurricane damage months earlier but the electric facilities remain to be transferred. The old pole in the background was partially broken above the ground line probably by tree limbs. Attached hereto as Exhibit MTH-4.

**Photo #9** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a pole with multiple NESC spacing violations. Electric facilities and cable facilities were added in violation of NESC spacing rules but the pole-strength is not in question. Electric and cable attachments help support the pole in four directions. Attached hereto as Exhibit MTH-5.

**Photo #10** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a pole with double electric circuits and two cables. There are NESC violations but no strength question. Attached hereto as Exhibit MTH-5.

**Photo #11** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a pole with two electric circuits and two cables. The flood light was installed in violation and later the second cable was installed in violation. Attached hereto as Exhibit MTH-6.

**Photo #12** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a pole with as many cables as electric wires but the electric line is tangent exposing the pole to wind force and the cables run in four directions making the pole resistant to wind force at that level rather than at the ground level for a purely tangent pole. Attached hereto as Exhibit MTH-6.

**Photo #13** was taken on February 6, 2006, in Pensacola, Florida by M.T. Harrelson. It shows a secondary lift pole. Construction grade N is required. The power cable sags excessively between poles causing a code violation but no strength issue. Attached hereto as Exhibit MTH-7.

**Photo #14** was taken on February 6, 2006, in Defuniak Spring, Florida by M.T. Harrelson. It shows a triplex power cable between poles hanging down to the TV cable causing a separation violation but no strength issue. Attached hereto as Exhibit MTH-7.

**Photo #15** was taken on February 6, 2006, in Milton, Florida by M.T. Harrelson. It shows a tangent pole with enough power lines and cables attached to merit a wind load assessment of pole strength. Attached hereto as Exhibit MTH-8.

Submitted by:

Michael T. (Mickey) Harrelson, Consultant  
Professional Engineer  
P. O. Box 432  
McRae, GA 31055

On behalf of the Florida Cable Telecommunications Association

August 31, 2006

Photo #1

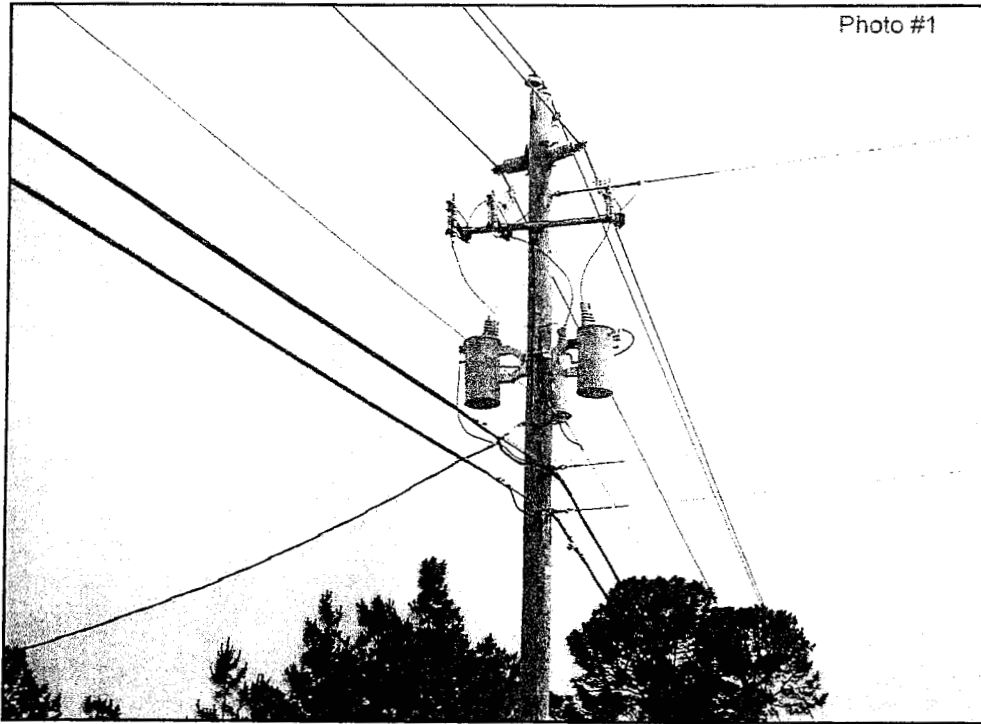
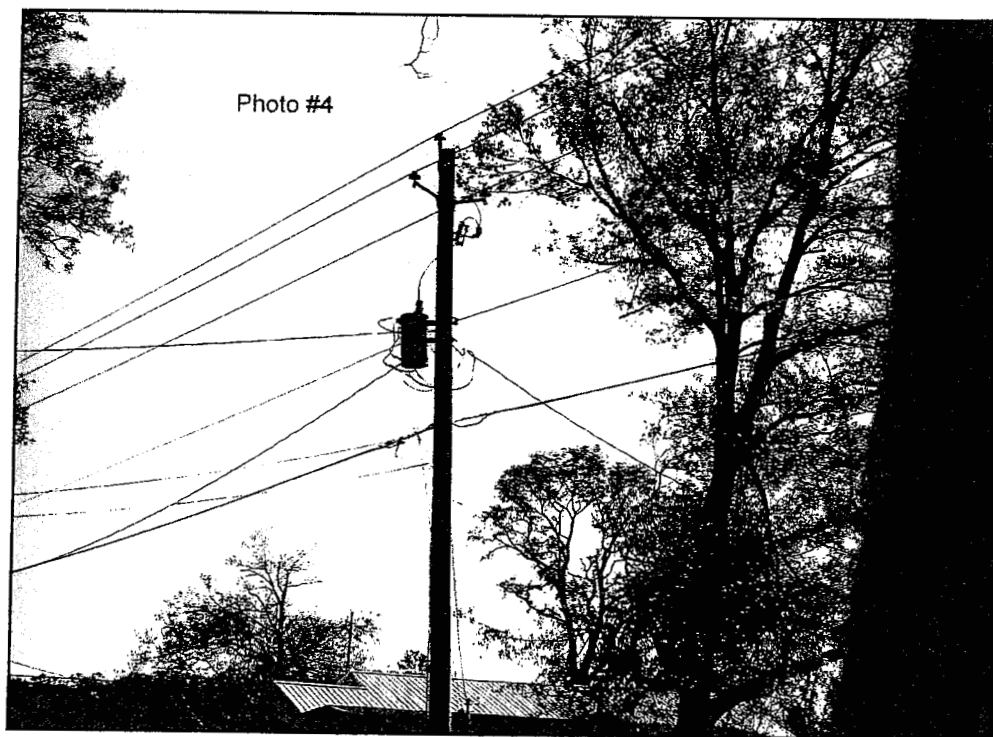
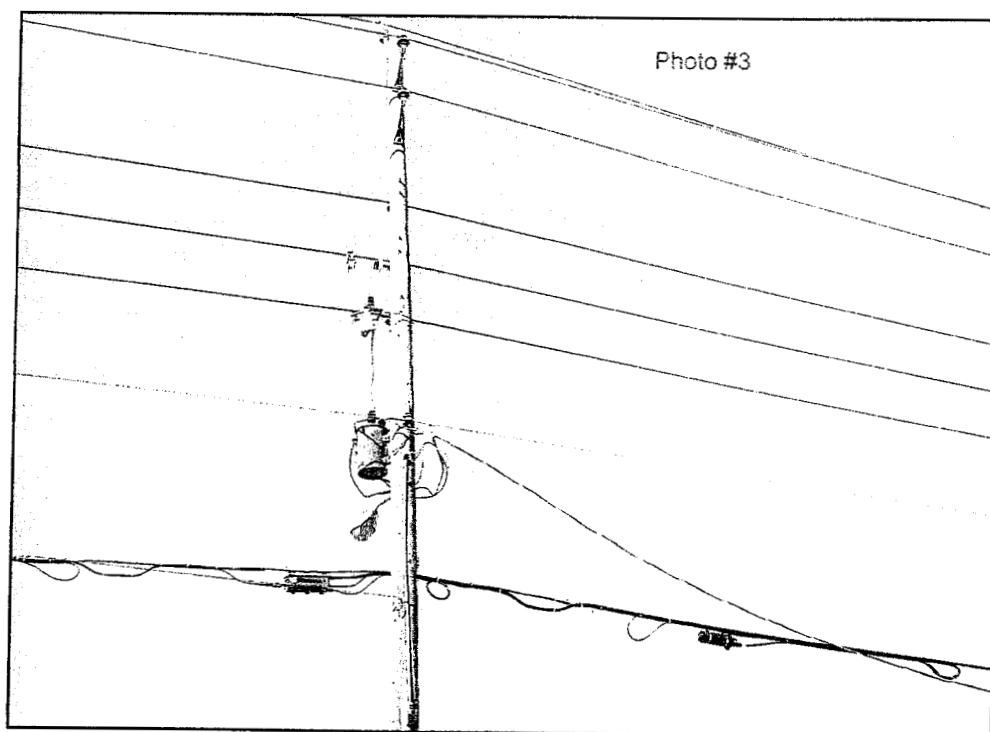
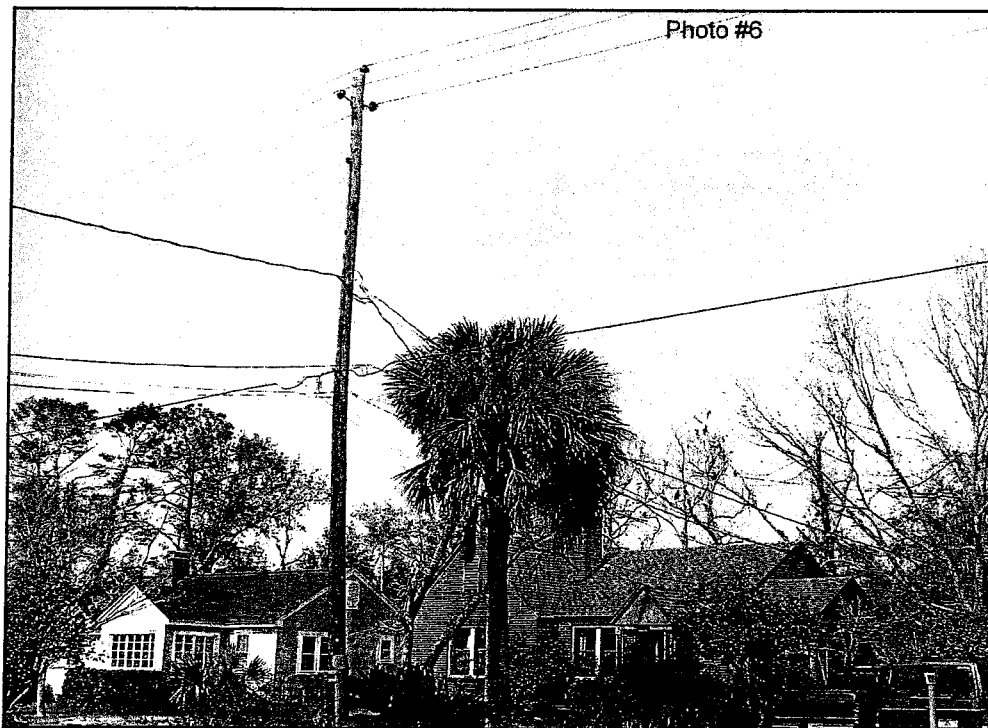
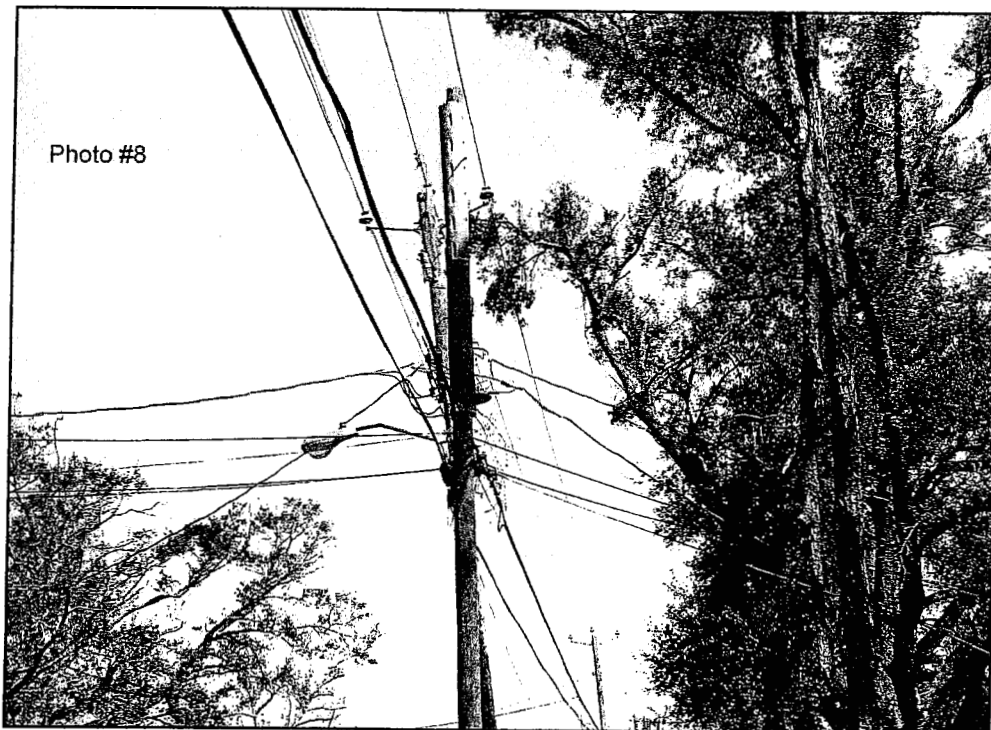
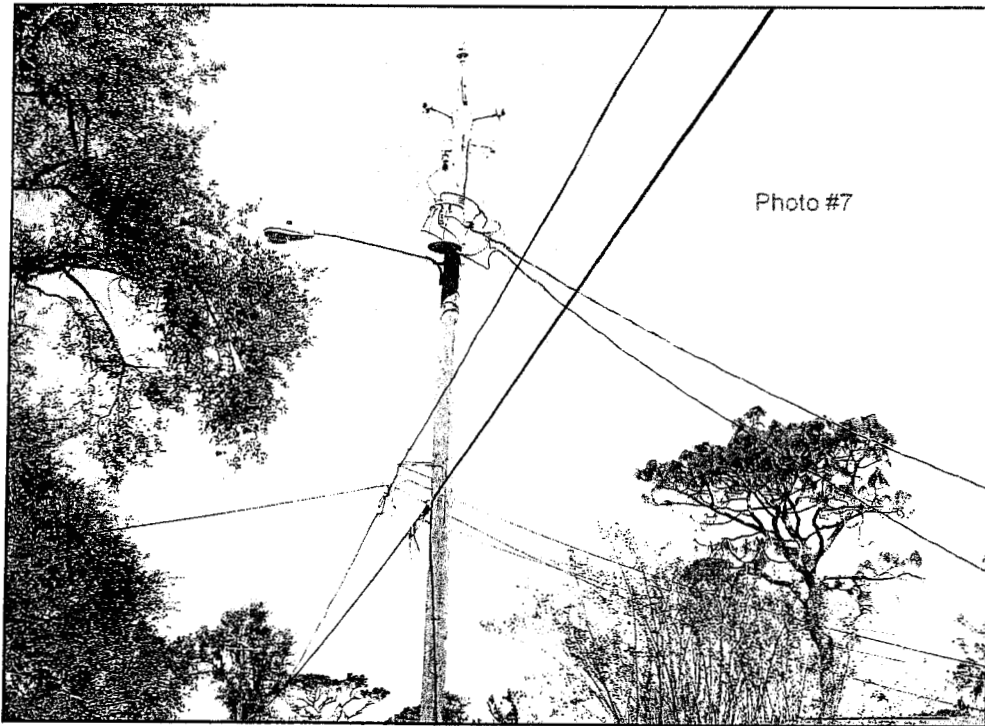


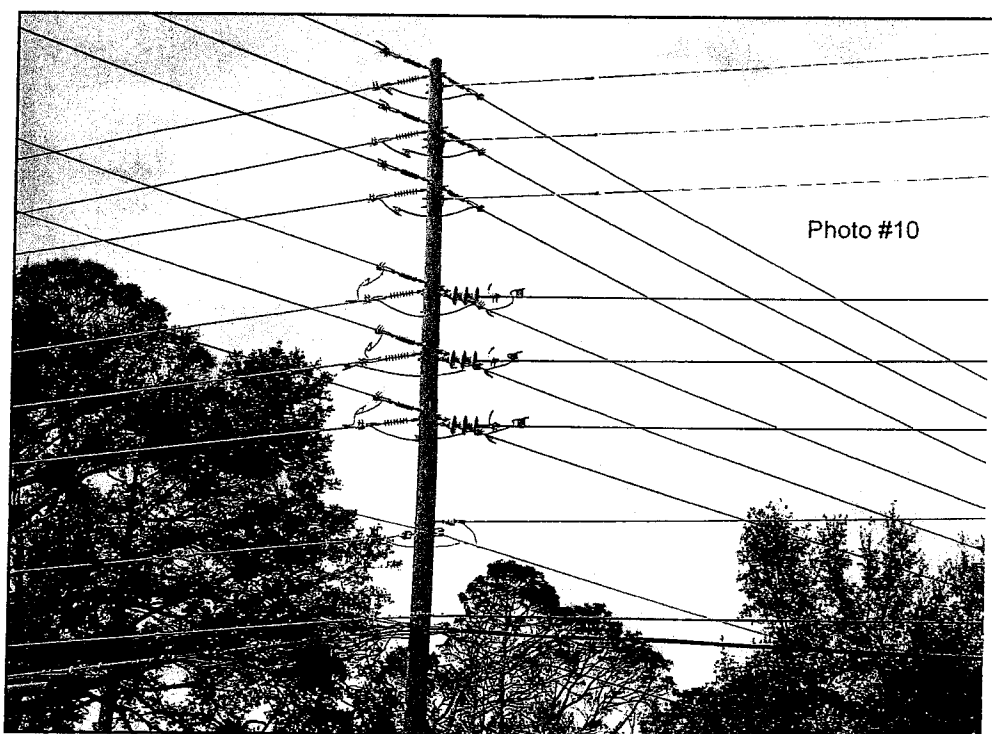
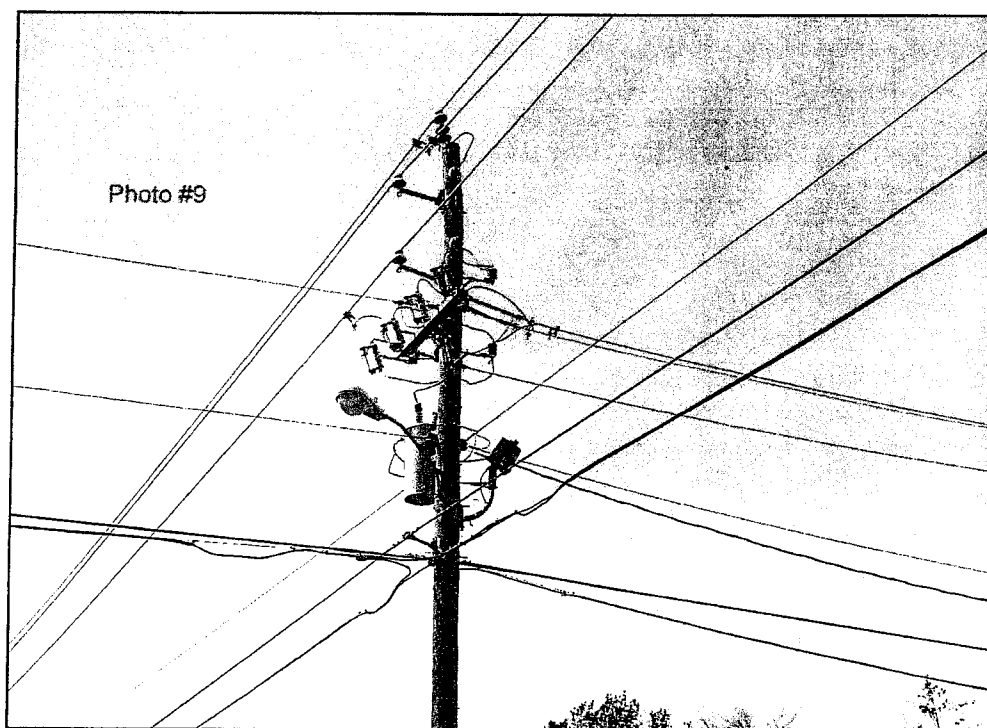
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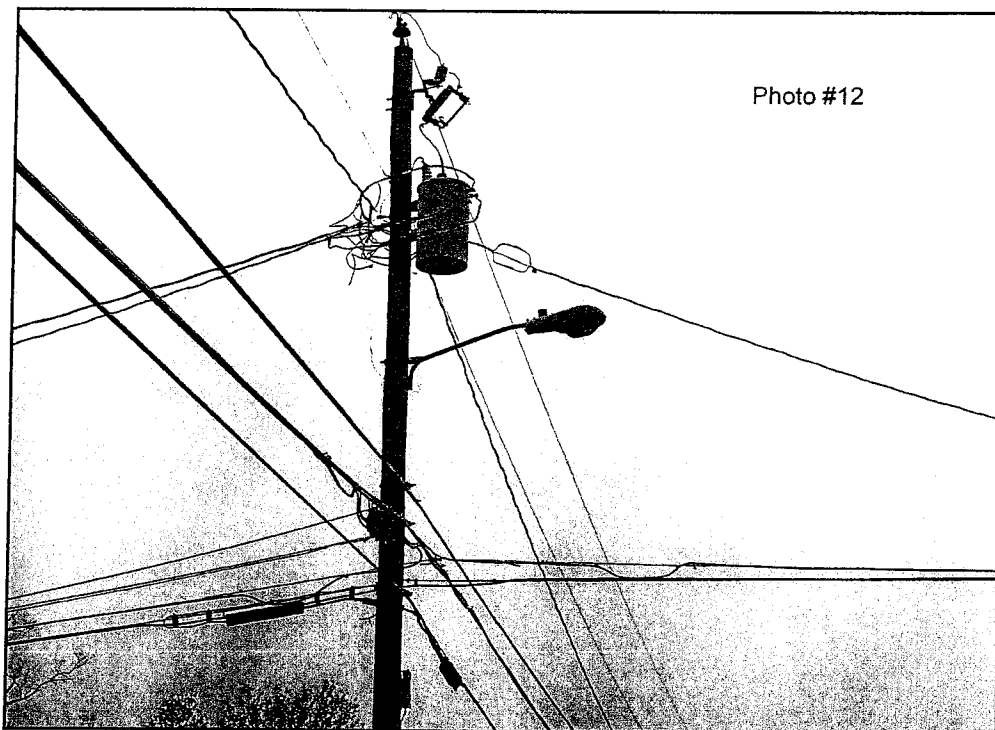
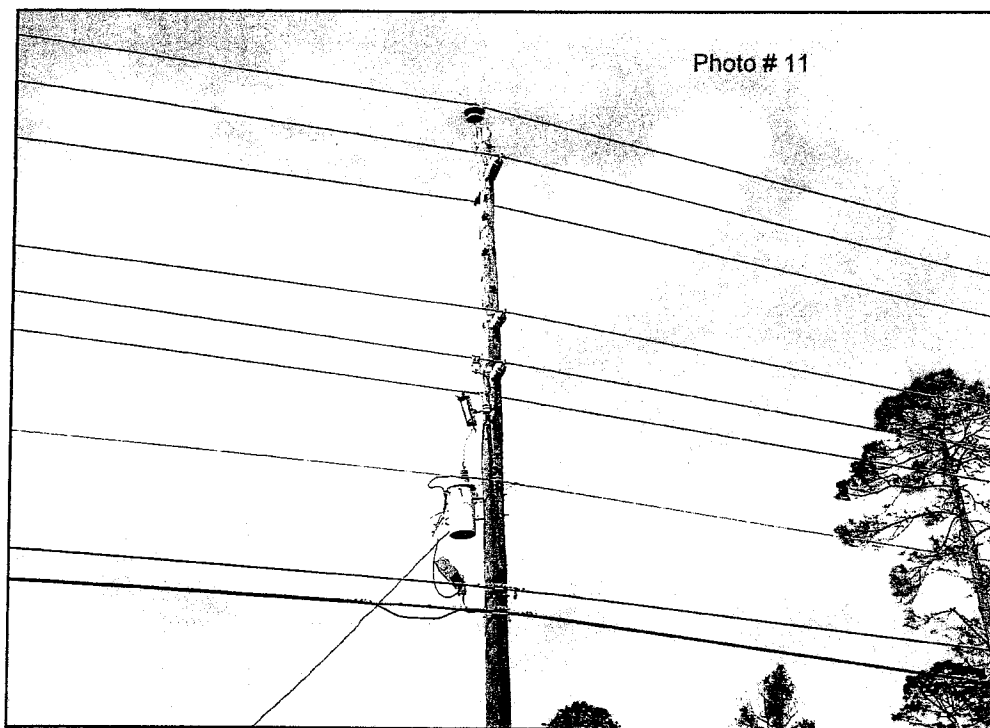




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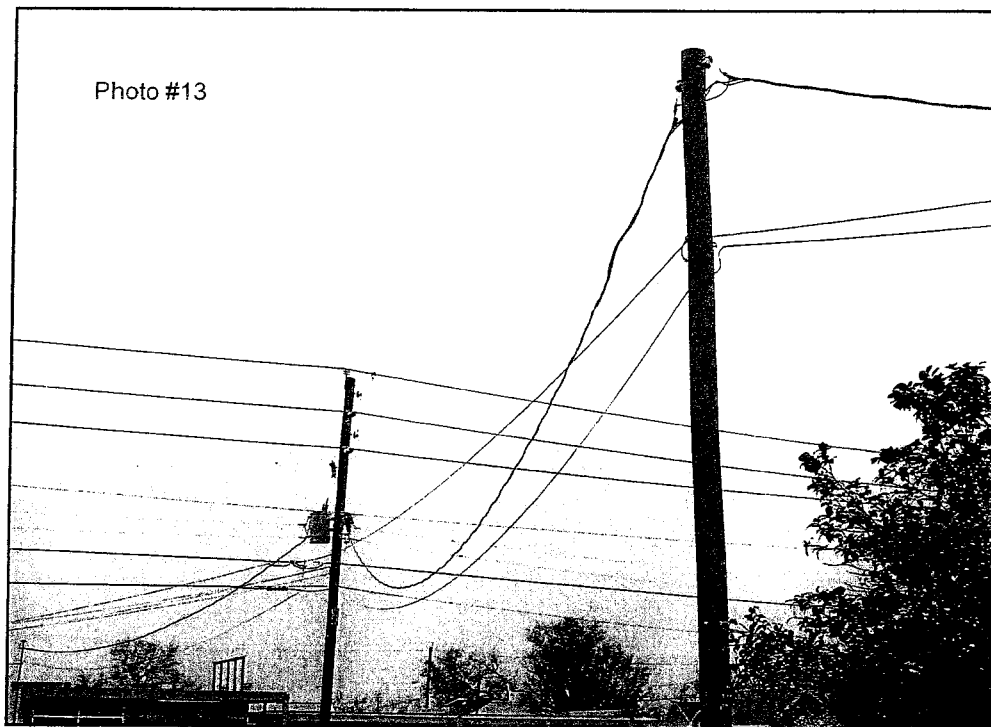
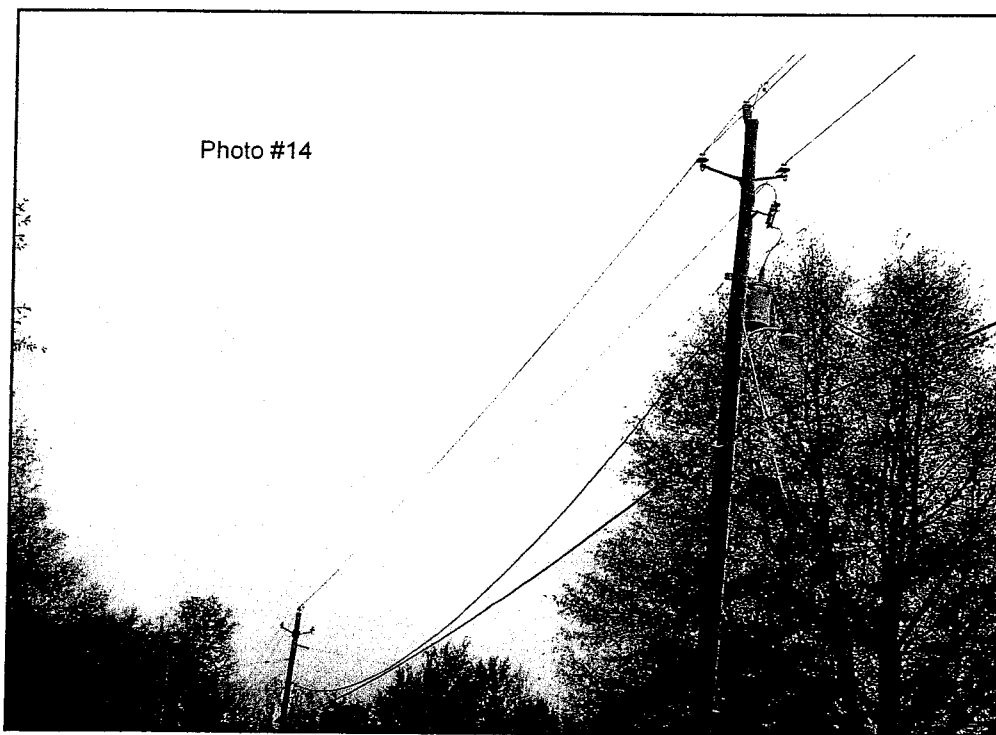


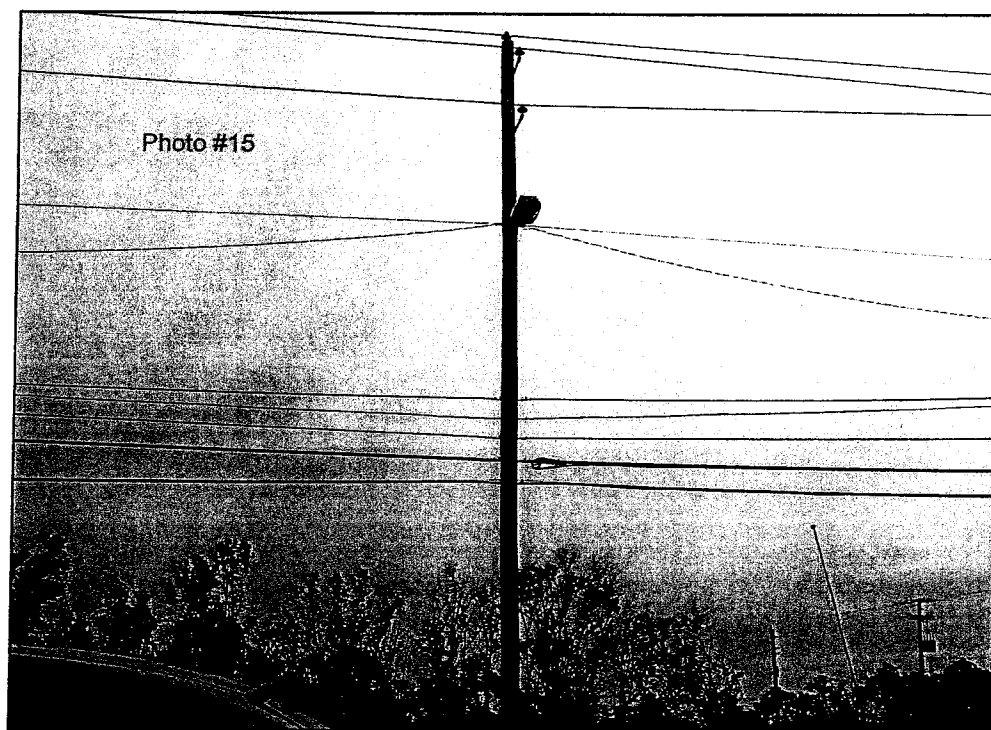
Photo #14



EXHIBIT

tabbles

MTH-8



See  
Example

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET 060172-EA7

NO. 060173-E Exhibit No. 9

Company/TECO

Witness: Example of over lasting

Date: 08/31/06

Dockets 060172 and 060173

TECO Exhibit No. 9 [Example of Overlapping] of 8/31/06  
Hearing was disposed of on 4/7/17 in accordance with Retention  
Schedule GS1-SL, Item 396.