

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of new rule 25-6.0343, F.A.C.,) Docket No. 060512-EU
standards of construction -municipal electric)
utilities and rural electric cooperatives) Filed: September 15, 2006

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

The Florida Electric Cooperatives Association, Inc. ("FECA"), on behalf of its member cooperatives,¹ by and through its counsel, files the following supplemental comments to proposed Rule 25-6.0343, Municipal Electric Utilities and Rural Electric Cooperatives, ("Proposed Rule") that was issued on June 28, 2006 in Order No. PSC-06-0556-NOR-EU. While the Proposed Rule was proposed in Docket Nos. 060172-EU and 060173-EU, the Commission has created a separate docket for consideration of the Proposed Rule, Docket No. 060512-EU. See, Order PSC-06-0632-PCO-EU. FECA filed on September 8, 2006 comments as well as the testimony of Mr. John Martz and Mr. William B. Willingham, all of which addressed the proposed Rule. These comments are supplemental to FECA's previously filed September 8, 2006 comments. In these comments FECA proposes an alternative Rule 25-6.0343, F.A.C. ("Alternative Rule") that it requests be substituted for the alternative proposed Rule 25-6.0343 advanced by FECA in its September 8, 2006 comments (See Attachment E to

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

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those comments). In an abundance of caution, contemporaneous with the filing of these supplemental comments, FECA is filing a Motion for Leave to File Supplemental Comments.

BACKGROUND

In Order PSC-06-0632-PCO-EU, the Commission granted a motion by FECA to bifurcate the hearings in Docket Nos. 060172-EU and 060173-EU and create a separate procedural schedule for the Proposed Rule. Indeed, the Commission even created a separate docket for consideration of the Proposed Rule.

In Order PSC-06-0632-PCO-EU, the Commission noted that one ground for FECA's motion to bifurcate was to allow time and opportunity for FECA and the Commission Staff to work cooperatively to develop alternative rule language for the Commission's consideration. It was hoped that the alternative rule language which might be negotiated might avoid a rule challenge by FECA of the Proposed Rule. Commissioner Arriaga noted that, "[p]roviding the opportunity for Staff and the Municipals and Cooperatives the opportunity to negotiate language for our consideration is a reasonable use of Commission resources, and the dates proposed by FECA will allow progress on negotiations, while not adding needless delay in adopting these important new rules."

FECA, the Florida Municipal Electric Association ("FMEA") and the Commission staff proceeded to negotiate alternative rule language. Those meetings have led to an alternative version of rule 25-6.0343, F.A.C. which FECA believes achieves the legitimate Commission goals underlying Proposed Rule 25-6.0343 and offers numerous advantages over the Proposed Rule.

Thus, FECA has filed for leave to file these supplemental comments that include FECA's Alternative Rule. This Alternative Rule should be substituted in its entirety for the alternative rule proposed by FECA in its September 8, 2006 comments.

FECA'S ALTERNATIVE RULE

While FECA'S preference still would be for the Commission to decline to adopt any rule for cooperatives, as an alternative, FECA is proposing a less prescriptive rule. FECA's Alternative Rule is set forth in Attachment A. FECA's Alternative Rule provides many advantages over the Proposed Rule: (1) The Alternative Rule is a less costly alternative to the Proposed Rule, but it accomplishes the same purposes. (2) The Alternative Rule is less prescriptive than the Proposed Rule, recognizing the Commission's less extensive jurisdiction over cooperatives and municipal electric utilities than over investor owned public utilities ("IOUs"). (3) The Alternative Rule addresses each of the areas addressed in the Proposed Rule (construction standards, compliance with the National Electrical Safety Code ("NESC") and generally accepted engineering practices, consideration of NESC extreme wind loading standards, deterrence of damage from flooding and storm surges, location of facilities to facilitate access, and pole attachment compliance with the NESC). (4) The Alternative Rule does not raise any reasonable sub-delegation issues; it simply calls on cooperatives and municipal electric utilities to report how pole attachments are handled. (5) The Alternative Rule is a rule which FECA can accept without filing a rule challenge regarding the Commission's lack of jurisdiction over the reliability of cooperatives facilities that are not part of the "coordinated grid" – distribution facilities.

FECA's Alternative Rule abandons language in the Commission's Proposed Rule that requires cooperatives to adopt various standards, recognizing that such standards are already in

place. Instead, it creates a requirement for cooperatives to report the extent to which its transmission and distribution facilities are hardened for severe storms. That report is to address construction standards. In addition, the rule contemplates an annual report to be submitted by each cooperative and municipal electric utility that outlines its pole inspection policies and the results of the year's inspections and replacements. The Alternative Rule also calls for an annual report regarding vegetation management, a matter that was not addressed in the Proposed Rule. A section by section analysis follows.

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

Section (2) of FECA's proposed rule requires each municipal electric utility and rural electric cooperative serving end use customers to file annual reports with the Commission as set forth in subsection (3), (4) and (5).

Section (3) of FECA's Alternative Rule requires the filing of an annual construction standards report with the Commission by March 1 of each year that addresses: (a) whether the utility's construction standards comply with the NESC (which by statutory terms means compliance with generally accepted engineering practices), (b) the extent to which the construction standards are guided by extreme wind loading standards, (c) the extent to which construction standards address damages from flooding and storm surges, (d) how the standards

provide for placement of new and replacement distribution facilities to facilitate safe and efficient access, and (e) how the construction standards address attachments by others to transmission and distribution poles.

Section (4) of FECA's Alternative Rule requires an annual report regarding pole inspection policies and the results of pole inspections and remediation efforts as a result of pole inspections during the prior year.

Section (5) of FECA's Alternative Rule addresses vegetation management, a matter that was not even addressed in the proposed Rule. It requires a report outlining the utility's vegetation management policies and the vegetation management efforts planned and completed in the prior year.

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

matters within the Commission's safety jurisdiction.

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

THE COMMISSION CAN AND SHOULD RELY UPON
THESE SUPPLEMENTAL COMMENTS AND THE ALTERNATIVE RULE

Although the Commission has proposed a rule, under the Administrative Procedure Act ("APA"), the Commission can modify its proposed rule, for changes other than technical changes that do not affect the substance of the rule, if the changes are (a) "supported by the record of the public hearings held," or (b) "in response to written material received on or before the date for final hearing," or (c) "in response to a proposed objection by the committee." Section 120.54(3)(d)1., Florida Statutes. These comments and the Alternative Rule will become part of the record of the public hearing if permitted to be filed. So, they will be supported by the record of the public hearing. Moreover, FECA is filing these comments and its Alternative Rule with changes to the proposed Rule as written material received on or before the date for final hearing. In doing so, FECA is providing copies of these supplemental comments to all parties who have filed comments in this docket as well as dockets 060172-EU and 060173-EU. Thus, if the Commission finds these changes acceptable and desirable, they are permissible under the APA.

In negotiating this Alternative Rule, FECA, FMEA and Staff were following the directive of the Commission to negotiate. Because all parties who might be interested in this Alternative

Rule were not represented in those negotiations, FECA is filing these supplemental comments and its Alternative Rule well before the scheduled hearing date so that all interested parties will have notice of this alternative approach. Moreover, FECA is agreeable to other parties having additional time to file responsive comments prior to hearing so that they are not disadvantaged by the filing of these supplemental comments.

FECA'S CONTINUING COMMITMENT TO COOPERATE
WITH COMMISSION DATA REQUESTS AND TO VOLUNTARILY FILE
DISTRIBUTUION SYSTEM RELIABILITY DATA

Historically, FECA has taken the position that the Commission has both safety and reliability jurisdiction over cooperatives' jointly used transmission facilities. FECA has also taken the position that the Commission has safety jurisdiction over cooperatives' distribution systems. However, FECA has also taken the position that the Commission lacked jurisdiction over the reliability of cooperatives' distribution systems, because such systems are not part of the coordinated grid subject to regulation under the Grid Bill, and there is no statute that grants the Commission authority over cooperatives' distribution system reliability.

During more than thirty years since the adoption of the Grid Bill, the Commission has not asserted jurisdiction over the reliability of cooperatives' distribution systems. The Commission has asserted other jurisdiction over cooperatives under the Grid Bill, but it has not asserted jurisdiction over the reliability of cooperatives' distribution systems.

However, over those years the cooperatives have voluntarily agreed to respond to data requests by the Commission and its Staff regarding cooperative distribution system reliability. For instance, in the pole inspection and storm implementation plan dockets, dockets which did not even apply to cooperatives, each of FECA's members submitted numerous expedited data

responses to extensive Commission data requests. In addition, in this docket Staff requested extensive data,² and each cooperative responded to the requests. These responses took weeks of time of multiple people to prepare at significant cost. Some of the cooperatives responding have less than 70 total employees, and many of these requests were made during storm season. Nonetheless, the responses were compiled and forwarded to Staff.

In addition, FECA has stated to Staff in their negotiations a willingness of its members to voluntarily file annual, available³ reliability data regarding their distribution systems with the Staff. All but one⁴ of FECA's members has committed to such a voluntary filing of reasonable, annual, available data outside of a rule. The specific data to be filed has not been finalized with the Staff.

This cooperation between cooperatives and the Staff has worked well over the years, providing the Commission and its Staff with the information they needed without forcing cooperatives to make costly and disruptive jurisdictional challenges. FECA remains committed to preserving this cooperative relationship between the Commission and its members, and the Commission's adoption of this Alternative Rule would foster such a continued cooperative relationship.

CONCLUSION

FECA respectfully requests that if the Commission believes there is a need to adopt a rule regarding storm hardening efforts by cooperatives and municipal electric utilities, the attached

² The response to the most recent data request would have taken every cooperative more than 300 man hours to respond, and some more than 500 man hours (and we were asked to respond within three weeks providing three years of data). While every cooperative responded, we were not able to provide all of the data that Staff had requested due to manpower and time constraints.

³ For some of the smaller cooperatives who do not have automated outage systems, such data will be very limited.

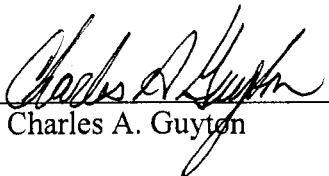
⁴ This member is among the smallest cooperatives in the state. It has no automated system for gathering reliability data and balks at committing to a report that will be labor intensive and costly. Even without this member, the remaining members of FECA serve 98% of the customers served by FECA members.

Alternative Rule, which (a) is the fruit of Commission-encouraged negotiation, (b) meets the Commission's goals underlying its proposed rules, (c) is a least cost alternative to the Proposed Rule, (d) covers a broader scope than the Proposed Rule, (e) satisfies the requirements of the APA, and (f) honors and preserves the long standing cooperative relationship between the Commission and municipal electric utilities and cooperatives, should be adopted.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Comments Of The Florida Electric Cooperatives Association, Inc. To Proposed Rule 25-6.0343 was served by Hand Delivery (*) or U.S. Mail, postage prepaid, on this 15th day of September, 2006, upon:

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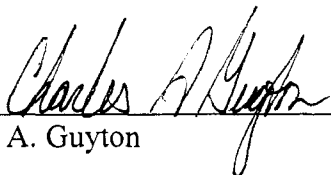
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ATTACHMENT A
FECA'S ALTERNATIVE RULE

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

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

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

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

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

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

1. new construction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History New_____.