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Sent: Friday, September 22, 2006 11:24 AM
To: Filings@psc.state.fl.us
Subject: 060512-EU BellSouth's Reply Comments for Rule 25-6.0343
Attachments: 060598.pdf; LEGAL-#650253-v1-060172__Comments_to_Comments_Testimony_filed_by_Electric_Munis_and_Co-ops.DOC

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- B. In re: Docket No. 060512-EU - Proposed adoption of new Rule 25-6.0343, F.A.C.,
 Standards of Construction – Municipal Electric Utilities and Rural Electric
- C. BellSouth Telecommunications, Inc.
 on behalf of James Meza III
- D. 14 pages total (.pdf) (includes letter, certificate of service and pleading)
 10 pages total (word doc.)
- E. BellSouth Telecommunications, Inc.'s Reply Comments for Rule 25-6.0343

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September 22, 2006

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**In re: Docket No. 060512-EU - Proposed adoption of new Rule 25-6.0343,
F.A.C., Standards of Construction – Municipal Electric Utilities and Rural
Electric**

Dear Ms. Bayo:

Enclosed is BellSouth Telecommunications, Inc.'s Reply Comments for Rule 25-6.0343, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



James Meza III

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.

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**CERTIFICATE OF SERVICE
DOCKET NO. 060512-EU**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and/or Electronic Mail and (*) facsimile (where applicable) this 22nd day of September, 2006 to the following Interested Persons:

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FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Adoption of New)	Docket No. 060512-EU
Rule 25-6.0343, F.A.C., Standards of)	
Construction – Municipal Electric Utilities)	
and Rural Electric Cooperatives)	Filed September 22, 2006
_____)	

BELLSOUTH TELECOMMUNICATIONS, INC.'s
REPLY COMMENTS FOR RULE 25-6.0343

Pursuant to the *Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing New Docket* (the "Bifurcation Order") dated July 27, 2006 (see Docket Numbers 060172-EU and 060173-EU, Order No. PSC-06-0632-PCO-EU), BellSouth Telecommunications, Inc. ("BellSouth") files its Reply Comments to the comments and testimony filed by the Florida Municipal Electric Association, Inc. ("FMEA") and the Florida Electric Cooperative Association, Inc. ("FECA") in Docket No. 060512-EU regarding proposed Rule 25-6.0343.

I. INTRODUCTION

Throughout the comments and testimony filed by FMEA and FECA in these rulemaking proceedings, FMEA and FECA repeatedly challenge the Florida Public Service Commission's (the "Commission") jurisdiction to adopt proposed Rule 25-6.0343. FMEA's and FECA's concerns regarding jurisdiction, together with the jurisdictional concerns raised by both ILECs and CATV companies, should be a red flag to this Commission regarding its authority to adopt proposed Rule 25-6.0343, and the other amendments and rules proposed in Docket Numbers 060172-EU and 060173-EU (the "IOU Dockets").

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Even if the Commission is prepared to reject all jurisdictional challenges, the Commission cannot ignore the significant inconsistency highlighted by the comments and testimony filed by FMEA and FECA in this proceeding. Contrary to the position taken by the IOUs in the IOU Dockets, FMEA and FECA dispute the fundamental premise of the proposed rules, and assert that the “hardening” measures contemplated by the rules, including the requirement to build to extreme wind loading standards, will not improve the ability of the electric systems to withstand severe weather conditions or improve storm restoration times. Indeed, in his Direct Testimony, William Willingham of FECA asserted that a requirement to use extreme wind loading standards would greatly increase the cost of construction, “possibly without any measurable benefit.” (*See Direct Testimony of William B. Willingham*, page 4.) BellSouth agrees.

The fact that FMEA and FECA – electric pole owners – disagree with the IOUs, and agree with the position advanced by the ILECs and CATV companies in the IOU Dockets should give the Commission pause about adopting similar rules in this Docket.

Finally, to the extent the Commission intends to continue with these rulemaking proceedings, BellSouth respectfully requests that it be included in workshops and informal negotiations regarding all of the proposed amendments and rules, as they have great potential to impact BellSouth’s operations and expenses.

II. PROCEDURAL BACKGROUND

Following workshops held on April 17, 2006 and May 19, 2006, FMEA and FECA filed comments and testimony in the IOU Dockets, addressing the proposed amendments to Rule 25-6.034.¹ Specifically, FMEA filed *Post-Staff Rule Development Workshop Comments* on May 3, 2006 ("FMEA's 5/3 Comments"), and its *Second Post-Staff Rule Workshop Comments* on May 26, 2006 ("FMEA's 5/26 Comments"). FECA filed *Post-Workshop Comments on May 3, 2006* ("FECA's 5/3 Comments"), and its *Second Post-Workshop Comments* on May 26, 2006 (FECA's 5/26 Comments").

In the Bifurcation Order issued on July 27, 2006, the Commission ordered that a new docket be established for new proposed Rule 25-6.0343. Thereafter, the instant docket (Docket No. 060512-EU) was opened. On September 8, 2006, FMEA filed its comments on proposed Rule 25-6.0343 ("FMEA's 9/8 Comments"). On the same date, FECA filed its comments on the proposed Rule ("FECA's 9/8 Comments"), along with the Direct Testimony of John Martz and William B. Willingham. On September 15, 2006, FECA filed a *Motion for Leave to file Supplemental Comments to Proposed Rule 25-6.0343* and *Supplemental Comments* to the proposed Rule ("FECA's Supplemental Comments"). FECA filed its Supplemental Comments to address alternative language for proposed Rule 25-6.0343 that Staff, FECA and FMEA discussed after the September 8th

¹ During this time period, the proposed amendments to Rule 25-6.034 (1) included a statement that the rule applied to all municipal electric utilities and rural electric cooperative utilities. On June 20, 2006, the Commission voted to propose new Rule 25-6.0343 to address construction standards of municipal electrics and electric cooperatives, specifically. In the Notice of Rulemaking issued on June 28, 2006 (Docket No. 060172-EU and Docket No. 060173-EU, Order No. PSC-06-0556-NOR-EU), the Commission struck the reference to municipal electrics and rural electric cooperatives from the proposed amendment to Rule 25-6.034, and published new proposed Rule 25-6.0343.

filings. BellSouth has not been privy to the discussions between Staff, FMEA and FECA, and is not sure whether the proposed alternative language for Rule 25-6.0343 contained in Attachment A to FECA's Supplemental Comments (the "Alternative Rule") reflects an agreement between FECA, FMEA and the Commission Staff.

In accordance with the Bifurcation Order, BellSouth files its Reply Comments to FMEA's 9/8 Comments; FECA's 9/8 Comments, Direct Testimony of Martz and Willingham, and FECA's Supplemental Comments, and; to the extent they are incorporated by reference in the aforementioned filings, to the comments filed by FMEA and FECA in the IOU Dockets.

III. LACK OF JURISDICTION

Both FMEA and FECA question the Commission's jurisdiction to adopt rules imposing construction standards on municipal electrics and electric cooperatives. In FMEA's 5/3 Comments, which are incorporated by reference in FMEA's 9/8 Comments, FMEA states that "[t]here is no statutory grant of jurisdiction to the PSC that permits it to adopt construction standards for municipal electric utility distribution systems" and further proffers that "[s]uch an extra-jurisdictional exercise by the Commission unlawfully abridges municipalities' home rule powers and is unconstitutional." (See FMEA's 5/3 Comments, pages 1-2.) FECA asserts that "the comprehensive jurisdictional grant of authority to the Commission over IOUs and the limited jurisdictional grant of authority to the Commission relative to cooperatives, all warrant either no rule

for cooperatives or at most, a less prescriptive rule for cooperatives than the rule proposed for the IOUs.” (See FECA’s 9/8 Comments, page 3.)

FMEA and FECA also both question the Commission’s authority to resolve disputes by customers or attaching entities. Section (4) of proposed Rule 25-6.0343 provides that “[a]ny dispute or challenge to a utility’s construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission.” FMEA calls for the Commission to strike the language, arguing that customer disputes are best resolved by the individual municipal electrics, and that disputes with attaching entities are contractual in nature and can be resolved in the courts. See FMEA’s 9/8 Comments, pages 2-3. Similarly, FECA asserts through the Direct Testimony of William B. Willingham that the Commission lacks the jurisdiction to interfere with a cooperative’s dispute resolution process with its members, or to resolve a contract dispute between a cooperative and an attaching entity. See *Willingham Direct Testimony* at page 8. Mr. Willingham further states that even if the Commission had jurisdiction to resolve private contract disputes, proposed Rule 25-6.0343 could result in the impairment of existing contracts between the cooperatives and attaching entities. See *id.*

BellSouth, other ILECs, and CATV companies have also raised jurisdictional arguments. While the jurisdictional analysis may differ for each industry impacted by the proposed rules, the fact that the Commission’s jurisdiction has been called into question by numerous entities from different

industries highlights the need for the Commission to reconsider adopting the proposed amendments and new rules.

IV. PREMATURE RULE-MAKING

While neither FMEA nor FECA object to the goal of enhancing the reliability of the electric system, both entities question whether the proposed rules will help achieve that goal. In FMEA's 5/3 Comments, FMEA concluded that "applying extreme wind loading standards to municipal distribution systems will likely not improve the storm-hardiness of those distribution systems." (See FMEA's 5/3 Comments, page 13). FMEA indicated that fallen poles were caused by trees and debris falling on conductors, or vehicles hitting poles. See *id.* FECA also cited debris as the primary cause of pole failures and provided that "[m]any of the poles that failed due to wind were in fact built to meet the extreme wind loading." (See FECA's 5/3 Comments, pages 4-5.) Moreover, FECA concluded that adoption of extreme wind loading standards would frustrate, rather than improve, storm reliability and storm restoration:

Compliance with extreme wind loading standards significantly decreases the span lengths, requiring more poles and more spans exposed to the same amount of flying debris. If cooperatives complying with extreme wind loading standards suffered the same amount of line mileage repair due to tornadic winds, trees and flying debris, the number one cause of distribution system loss, restoration time would necessarily increase, because more poles and more spans would have to be replaced.

See FECA's 9/8 Comments at page 13.

The fact that the municipal electric and electric cooperatives agree with BellSouth that the proposed "hardening" measures, including building to extreme

wind loading standards, will likely not enhance service reliability, undermines the position taken by the IOUs in the IOU Dockets. More critically, this significant inconsistency in the positions of the electric pole owners underscores the need for the Commission to first conduct a thorough evaluation of data from pole inspection reports and other relevant sources before adopting rules that will result in significant cost increases to pole owners, attaching entities and Florida consumers with potential for limited, measurable benefits.

V. RULE NEGOTIATIONS

Although FECA has worked with FMEA and the Commission Staff to attempt to revise proposed new Rule 25-6.0343, FECA's first preference is for the Commission to refrain from adopting any rules for cooperatives. See FECA's Supplemental Comments, page 3. BellSouth agrees with FECA's position and has asserted that the proposed amendments and new rules are unnecessary or, at a minimum, premature.

If the Commission is inclined to continue with these rulemaking proceedings, BellSouth respectfully requests, as it did at the workshop held on August 31, 2006, that the Commission consider the interests of all affected entities, not just the electricians, and that it be included in any discussions between FMEA, FECA and Staff regarding proposed Rule 25-6.0343.

VI. PROPOSED RULE 25-6.0343

FECA claims that the Alternative Rule filed as Attachment A to FECA's Supplemental Comments is the "fruit of negotiations" between FECA, FMEA and the Commission Staff following the September 8th filings. It is unclear whether

FMEA and the Commission Staff have agreed to the Alternative Rule *in toto*. Regardless, to the extent that the Alternative Rule, like the prior version of proposed Rule 25-6.0343, has the potential to impact BellSouth's attachments on poles owned by municipal electrics and electric cooperatives, or BellSouth's contracts with those entities, BellSouth reiterates the arguments advanced in its prior filings in the IOU Dockets, including the Direct Testimony of Pam Tipton and Kirk Smith. BellSouth also incorporates herein by reference its Comments filed in this Docket on September 8th, asserting that any rules or standards adopted by municipal electrics as a result of this rulemaking would be subject to scrutiny under applicable Florida statutes that address the powers of these entities.

That being said, the Alternative Rule appears to be a step in the right direction. Unlike the amendments and rules proposed in the IOU Dockets, the Alternative Rule does not require municipal electrics and rural electric cooperatives to establish construction standards guided by extreme wind loading standards, or third party attachment standards. Rather, the Alternative Rule only defines reporting requirements. It requires the municipal electrics and electric cooperatives to file annual reports with the Division of Economic Regulation regarding (1) construction standards, (2) facility inspections, and (3) vegetation management. In the construction standards report, the municipal electrics and electric cooperatives must address the extent to which their construction standards comply with the minimum requirements of the NESC, are guided by extreme wind loading standards, address the effects of flooding and storm surges on distribution facilities, and include written standards and procedures for

third party attachers. There is no requirement that the municipal electrics and electric cooperatives adopt any specific standards. Additionally, the Alternative Rule does not include any reference to the Commission resolving disputes between pole owners and customers or attaching entities.


Contrary to the amendments and rules proposed in the IOU Dockets, imposing annual reporting requirements on all electric entities ensures that proper attention is given to the issues that impact pole reliability and safety (construction, facility inspections and vegetation management), and facilitates the compilation of data that would be relevant in evaluating the cause of any future electric system failures. The Alternative Rule also minimizes the jurisdiction and sub-delegation concerns raised by numerous impacted industries in both the IOU Dockets and in this Docket.

The fact that the Commission would be willing to accept the language in the Alternative Rule to enhance the storm reliability and restoration times with regard to the municipal electrics and electric cooperatives undermines the IOUs position that the amendments and rules proposed in the IOU Dockets are necessary to advance storm hardening efforts. If adopted, the concepts outlined in the Alternative Rule should be applied uniformly to all electric entities in the State.

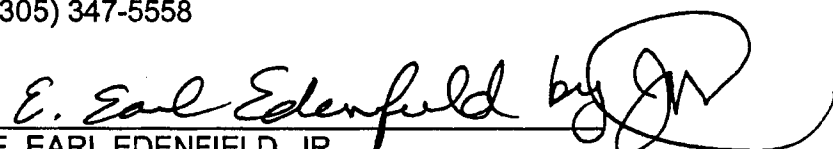
[Signature page follows]

Respectfully submitted this 22nd day of September, 2006.

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