



Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA ELECTRONIC DELIVERY

September 22, 2006

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

**RE: Docket Nos. 060512-EU – FCTA’s Reply Comments and Proposed Changes to
FECA’s Alternative Rule**

Dear Ms. Bayo:

Attached for filing are the Florida Cable Telecommunications Association, Inc.’s Reply
Comments and Proposed Changes to FECA’s Alternative Rule.

Copies have been served upon the parties of record by electronic and U.S. Mail delivery.

Thank you for your assistance in this matter. Please contact me with any questions.

Sincerely,

s/ Michael A. Gross

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosure

cc: All Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed adoption of new Rule 25-6.0343, F.A.C., Standards of Construction - Municipal electric utilities and rural electric cooperatives

DOCKET NO. 060512-EU

Filed: September 22, 2006

**REPLY COMMENTS OF THE FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION, INC. AND
PROPOSED CHANGES TO FECA'S ALTERNATIVE RULE**

The Florida Cable Telecommunications Association, Inc. (FCTA), pursuant to section 120.54(3)(c)1., Florida Statutes, Rule 28-103.004, Florida Administrative Code, and Order No. PSC-06-0646-PCO-EU, Second Order Establishing Procedures to be Followed at Rulemaking Hearing, issued on August 2, 2006, and Order No. PSC-06-0632-PCO-EU, Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing New Docket, issued on July 27, 2006, submits its Reply Comments and suggested rule changes for Rule 25-6.-0343, to be considered at the public hearing scheduled for October 4, 2006.

I. INTRODUCTION

The FCTA filed Initial Comments and Requested Changes to Rule 25-6.0343, Florida Administrative Code, on September 8, 2006, in accordance with the Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing New Docket, issued on July 27, 2006. The FCTA's Initial Comments addressed proposed Rule 25-6.0343, approved by the Commission by vote at its Agenda Conference on June 20, 2006. The FCTA adopts and incorporates herein its written Comments filed on May 26, 2006, July 13, 2006, July 26, 2006, July 27, 2006, August 4, 2006, August 11, 2006, August 18, 2006, written Argument and Comments and Exhibits filed at the Public Hearing on August 31, 2006, filed in Docket Nos. 060172 and 060173, and written Comments filed on September 8, 2006, in the current docket

and oral Comments and Argument given on May 19, 2006, June 20, 2006, July 13, 2006, and August 31, 2006, in Docket Nos. 060172 and 060173.

The Florida Electric Cooperatives Association, Inc. (FECA) filed its Initial Comments on September 8, 2006. As part of its Initial Comments, FECA suggested an alternative proposed rule which it attached as Attachment A to its Initial Comments. On September 15, 2006, FECA filed a Motion for Leave to File Supplemental Comments to proposed Rule 25-6.0343, and indicated that, subsequent to filing its Initial Comments, FECA, Florida Municipal Electric Association, Inc. ("FMEA"), and Staff came to an agreement on alterative rule language other than that posed by FECA in its Initial Comments (Supplemental Alternative Rule). FECA also requests that its Supplemental Alternative Rule be substituted for the alternative proposed Rule 25-6.0343, advanced by FECA in its September 8, 2006, Initial Comments. Further, FECA suggests that all parties to this proceeding should be given an opportunity to review and file replies to its Supplemental Comments and encourages the Commission to add the date of September 29, 2006, to its schedule allowing parties sufficient time to file comments responsive to FECA's Supplemental Comments.

Although the FCTA is endeavoring to file its Reply Comments to FECA's Supplemental Alternative Rule on the scheduled deadline of September 22, 2006, for filing such reply comments, the FCTA requests an opportunity to avail itself of additional time to review and supplement its Reply Comments on September 29, 2006, in the event that the Commission grants FECA's request and add that date to its comment schedule.

II. SUPPLEMENTAL ALTERNATIVE RULE 25-6.0343, FLORIDA ADMINISTRATIVE CODE

The FCTA generally does not oppose the new direction taken in the Supplemental

Alternative Rule, in which the municipal electric utilities (Munis) and rural electric cooperatives (Coops) are required to report the extent to which they are addressing pole hardening, facility placement, and vegetation management rather than imposing an affirmative directive to take action and/or make changes. FCTA agrees that differences exist between Munis and Coops and IOUs that justify different regulatory treatment in this circumstance. Moreover, FCTA believes that the Proposed Alternative Rule, which requires Munis and Coops to report the extent to which their standards require compliance with NESC and are guided by NESC extreme wind loading requirements, will further the statutory objective of ensuring the reliable provision of services.

Nevertheless, the FCTA is concerned that inherent in the reporting requirement process, the Munis and Coops may conclude that they are not meeting the applicable standards and procedures and may feel compelled to make changes to bring themselves into compliance. To the extent any such changes are undertaken, they should take into account the experiences and needs of all entities on the poles. Indeed, third party attachers, and their customers, have an equal interest in ensuring the reliability of the pole plant, and third party attachers have a unique knowledge of the facilities they have attached to the poles. Accordingly, there should be a provision added as Paragraph (3)(f) requiring the Munis and Coops to report the extent to which they incorporated meaningful input from third-party attachers in connection with the development of or any changes or modifications to their construction and attachment standards and procedures for third-party attachments.

In addition, there will be increased costs resulting from the significant reporting requirements of Supplemental Alternative Rule, as well as any changes to existing standards that are prompted by the reporting requirements. Munis and Coops have stated in their Comments

that they have an interest in increasing revenues and controlling costs to be recovered from members in the form of rate increases. At least one cooperative, Lee County Electric Cooperative, Inc., which is not a member of FECA, has said it will recover increased costs from third-party attachers. *See, e.g.*, Comments filed by Lee County Electric Cooperative, Inc. Docket 060512-EU Sept. 7, 2006 at 9-11 (stating “LCEC anticipates implementing a separate fee structure to recover the incremental costs of initial construction and modifications required by the new Attachment Standards and Procedures” and noting the “additional expense that will be passed on to third party attachers.”) Accordingly, a Paragraph (6) should be added requiring the Munis and Coops to report that their construction and pole attachment standards shall not discriminate against third-party attachers in the development of construction and third-party attachment standards, placement or relocation of facilities, inspection practices, and vegetation management. Additionally, a Paragraph (7) should be added to provide that third-party attachers should not bear a disproportionate share of the expense incurred by the Munis and Coops as a result of this rule, including the reporting obligation itself.

FCTA asked for similar changes to the proposed rules governing IOU construction and attachment standards. However, the requested changes are especially important here because Munis and Coops are exempt from section 224 of the Communications Act of 1934, 47 U.S.C. § 224, and therefore are not subject to section 224’s constraints on the imposition of unreasonable, unjust, and discriminatory practices in relation to third-party attachments.¹

Respectfully submitted this 22nd day of September 2006.

¹ Verizon is incorrect in its September 8, 2006, Comments wherein it asserts that third-party attachments to the poles of Munis and Coops are subject to the provision of 47 U.S.C. § 224. Munis and Coops are expressly exempted from the requirements of section 224.

s/ 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 has been served upon the following parties electronically and by U.S. Mail this 22nd day of September 2006.

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ATTACHMENT A

FCTA'S PROPOSED CHANGES TO 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)~~, and (6) 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.¹

(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 (2-2) WESC].

(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

¹ The requested change in this subsection is necessary to conform this subsection to the inclusion of the additional reporting requirement in subsection (6).

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.

(f) Incorporate meaningful input from third-party attachers in the development of construction standards and third-party attachment standards and procedures and placement and relocation of facilities.²

(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.

² Munis and Coops have stated in their Comments that they have an interest in increasing revenues and controlling costs to be recovered from members in the form of rate increases. Accordingly, the Munis and Coops have a pecuniary motive in connection with the development of construction and attachment standards and an incentive to pass the costs associated with those standards on to third-party attachers. Also, third-party attachers should have an opportunity for input which takes into account the construction and service requirements of third-party attachers and their unique knowledge of their facilities on the poles in developing the construction and attachment standards. FCTA Comments at page 3.

(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.

~~(6) Each municipal electric utility and rural electric cooperative shall report that they have not discriminated against third-party attachers in the development of construction and third-party attachment standards, placement or relocation of facilities, inspection practices, and vegetation management.³~~

³ The requested change by the addition of this subsection is to assure that third-party attachers are not discriminated against in the development of construction and attachment standards, since Munis and Coops have a pecuniary motive to increase revenues and to control rate increases to their customers. Moreover, third-party attachers do not have mandatory, nondiscriminatory access rights to attach to the poles of Munis and Coops under just and reasonable rates, terms and conditions under 47 USC § 224, since Munis and Coops are exempted from the provisions of section 224. FCTA Comments at page 3.

(7) Third-party attachers should not bear a disproportionate share of the expense incurred as the result of compliance with the requirements of this rule, including the reporting obligations created by the rule.⁴

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

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

History New

⁴ The requested change in this subsection is to assure that a disproportionate share of the expense of complying with this rule is not imposed on third-party attachers, since third-party attachers do not have the same recourse to the FCC to resolve cost disputes with Munis and Coops, as they do in the case of IOUs, since Munis and Coops are exempted from the provision of section 224. FCTA Comments at page 3.