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September 22, 2006

VIA HAND DELIVERY

Blanca S. Bayó, Director Division of the Commission Clerk & Administrative Services Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850

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Re: Docket No.: 060512-EU

Dear Ms. Bayó:

Enclosed for filing are the original and seven (7) copies of the Reply Comments of the Florida Electric Cooperatives Association, Inc. to Proposed Rule 25-6.0343.

CMP If you or your Staff have any questions regarding this transmittal, please contact me at 222-2300.

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Very truly yours,

SQUIRE, SANDERS & DEMPSEY L.L.P.

Charles A. Guyton (signature)

Charles A. Guyton Partner

CAG:gcm Enclosure Copy to: Lawrence Harris Interested Persons of Record kimp

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

**REPLY 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,<sup>1</sup> by and through its counsel, files the following reply comments to proposed Rule 25-6.0343, Municipal Electric Utilities and Rural Electric Cooperatives, that was issued on June 28, 2006 in Order No. PSC-06-0556-NOR-EU. While proposed Rule 25-6.0343 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.

On September 15, 2006, FECA filed its motion to file supplemental comments and its supplemental comments, which included its revised alternative rule. FECA's revised alternative rule satisfies the Commission's goals in this proceeding, and if adopted by the Commission, it will render moot most of the issues raised in the comments filed by the cable and telecommunications providers in this proceeding. However, FECA wishes to respond to several issues raised in their comments regarding: the Federal Communications Commission's ("FCC")

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<sup>1</sup>Alabama 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., Okefenokee 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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jurisdiction over cooperative pole attachments; this Commission's jurisdiction over the use of extreme wind loading standards for cooperatives pursuant to Section 366.05(1), Florida Statutes; and alleged sub-delegation of this Commission's jurisdiction under its proposed rule.

### **Pole Attachments**

In their initial comments, Embarq, BellSouth and Time Warner refer to the jurisdiction of the FCC over pole attachment rates, terms and conditions. While this jurisdictional assessment may be correct for an investor-owned electric utility ("IOU"), it is incorrect for an electric cooperative. Pursuant to 47 U.S.C. Section 224(a)(1) of the Telecommunications Act of 1996, electric cooperatives are expressly exempted from the FCC's pole attachment jurisdiction.<sup>2</sup>

Over the years electric cooperatives have entered into attachment contracts with telecommunication and cable providers without any supervision from this Commission. These agreements are private contracts that provide the manner of attachment and provide for cost-sharing of the expenses associated with construction and attachments. FECA agrees with Embarq that if the Commission's proposed rule is adopted, it could constitute an impairment of private contracts in violation of the Florida and Federal Constitutions.

Several commenters argued that the Commission's proposed rule 25-6.0434(3), which required cooperatives to adopt attachment standards, was infirm for a variety of reasons: (a) it is anti-competitive; (b) it is unfair to attachers; (c) it will shift inappropriate costs to attachers; (d) it

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<sup>2</sup> 'Sec. 224. Pole attachments, (a) Definitions, As used in this section: (1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.' Emphasis added.

will adversely affect existing pole attachment agreements; and (e) it will divert resources. Without addressing whether any of the arguments have or lack merit, it should be noted that FECA's alternative revised rule submitted on September 15, 2006 suffers from none of these alleged infirmities. It merely calls for cooperatives to report the extent to which their standards include attachment standards. It does not require cooperatives to adopt standards. It does not address costs. It is merely a reporting requirement that leaves undisturbed the existing pole attachment agreements between cooperatives and those entities that attach to their poles.

**Section 366.05(1), F.S.**

In their comments, Embarq, FCTA and Time Warner refer to the language added to Section 366.05(1), F.S., during the 2006 Legislative Session which authorizes the Commission to adopt standards for IOUs that exceed the National Electrical Safety Code ("NESC") for purposes of assuring the reliable provision of service. Once again there is a failure to recognize the difference between jurisdiction over an electric cooperative and an IOU. This new provision in Section 366.05(1)<sup>3</sup> applies only to "public utilities." Public utilities are defined in Section

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<sup>3</sup>"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. Emphasis added.

366.02(1), Florida Statutes, to include IOUs, and they expressly exclude electric cooperatives. This new provision does not provide any authority for the Commission to adopt construction standards for electric cooperatives that exceed the NESC. FECA respectfully submits that this revision to Section 366.05(1), Florida Statutes, makes it even clearer that the Commission does not have such distribution system reliability jurisdiction over cooperatives.

### **Sub-delegation Issue**

Several of the cable and telecommunications entities filing comments argue that the Commission's proposed Rule 25-6.0343 is an unlawful sub-delegation of authority, because it authorizes utilities to adopt construction and attachment standards. FECA takes no position on whether proposed Rule 25-6.0343 is an unlawful sub-delegation. FECA notes, however, that FECA's revised alternative rule does not require cooperatives and municipal electric utilities to adopt construction and attachment standards. Therefore, the sub-delegation arguments made regarding proposed Rule 25-6.0343 are not applicable to FECA's revised alternative rule. All FECA's rule requires is for cooperatives to report their standards and practices. Of course, their practice is to contract with entities that attach to their poles, and such contracts require compliance with the NESC. Thus, FECA's revised alternative rule avoids all the adverse arguments raised by pole attaching entities as well as their sub-delegation arguments.

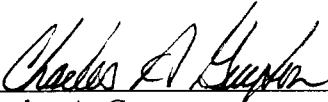
### **Conclusion**

If the Commission adopts FECA's revised alternative rule, the primary arguments raised in the initial comments of other the telecommunication and cable providers become moot. This is yet another reason to adopt FECA revised alternative rule.

Respectfully submitted,

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By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Reply 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 22nd day of September, 2006, upon:

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