



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: October 02, 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  
FILED: October 02, 2006

**POST HEARING 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 docket:

**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 proposed rules on pole attachments at the staff workshops held on April 17, May 19, and July

DOCUMENT NUMBER - DATE

09082 OCT-28

FPSC-COMMISSION CLERK

13, 2006. Subsequent to these workshops, the P.S.C. held a rule-making hearing on August 31, 2006 to allow the interested parties and the public to offer testimony and comments on rulemaking regarding pole attachment and National Electric Safety Code standards. These post hearing comments are offered to supplement the record and further amplify Time Warner's previous comments.

4. At the rule-making hearing held on August 31, 2006, BellSouth suggested an advisory committee be formed to reach resolution on proposed rules to be presented as an alternative to those currently under consideration.

5. Time Warner Telecom requested a seat on the advisory committee to participate in negotiations of alternative rules. Time Warner Telecom was denied participation; excluded by the price regulated telecommunications companies by unilateral agreement.

6. These exclusive negotiations, absent the participation of competitive telecommunications carriers, does not comport with the instructions of the Commission and staff to the parties to discuss a possible agreement.

7. Time Warner Telecom asserts that its exclusion from the discussions is clear evidence of the intent of the utilities and the incumbent telecommunications carriers – the pole owners - to circumvent the issues of the competitive carriers by way of a systematic denial of access to the to the process prescribed by the Commission. This type of misconduct demonstrates the type of discriminatory behavior and heavy handed dealings the rule should seek to prevent. The rule must address concerns of competitive carriers and alternatives to current telecommunications technology. For example, cable providers must also be given an opportunity to provide input regarding third-party pole attachments. As Time Warner Telecom has expressed to the Commission, the business practices of the pole owners are

being utilized to attempt to craft a rule adverse to the interests of competitive telecommunications carriers and, as a result, adverse to the interests of the consumers of the State of Florida. Time Warner Telecom asserts that any proposed rule alleged to be a product of the agreement of the industry is a misrepresentation.

8. Time Warner Telecom reiterates that additional language must be inserted in the rule, as is shown in the annotated rule attached hereto as Exhibit 1, to require utilities to bear any increased costs in the relocation, expansion, rebuilding or relocation of electric distribution facilities.

9. Time Warner Telecom is seriously concerned with the proposition in the rule that delegates the authority to the electric companies to establish written safety, reliability, capacity, engineering standards, and procedures for attachments to utility electric distribution poles. This proposal provides for attachment of third party facilities to electric distribution poles only to the extent the attachment does not “impair electric system safety or reliability, do{es} not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility service territory.” Such a broad grant of authority to the utility will obviously result in enhancing the ability of the utility to engage in anti-competitive practices the pre-disposition to which is clearly demonstrated by current behavioral patterns of the pole owners.

10. A broad grant of implementation authority to the electric utilities will result in a systematic practice to discourage or prohibit third parties from utilizing electric distribution poles. Such a practice fails to comport with recognized federal law granting usage of utility poles.

11. The proposed rule also provides that no attachments could be made to any electric utility distribution poles except in compliance with the owner's attachment standards and procedures. Mandated compliance will permit a utility to deny pole attachment rights under the guise of safety standards. The standards developed by the pole owners may be specifically calculated to provide a competitive disadvantage to Time Warner Telecom or against any other competing party.

12. Time Warner Telecom states that the Commission should only adopt standards suggested by the utilities regarding pole attachments that are consistent with federal law, including any standards for attachments regarding capacity issues and associated pole attachment fees.

13. Time Warner Telecom contends the Florida Public Service Commission is, in essence, delegating the rule-making process regarding third-party attachment and safety standards to the utility companies. Such a delegation is impermissible under Florida law and has the potential to threaten third-parties with engineering or safety standards which could "regulate off the poles" any third-party attachments. Time Warner Telecom suggests language in portions of the rules to provide for the adoption of the National Electric Safety Code safety standards as the standard for compliance. The Florida Public Service Commission would then review the plan of each utility for consistency with that standard instead of allowing this important regulatory function to become a vehicle for the utilities to control the competitive market. By not allowing each utility to dictate its particular standards, the Florida Public Service Commission can maintain a uniform standard to be applied to all third-party attachments. A uniform standard will ensure no utility will exceed the minimum requirements to an extent that would prevent pole attachments pursuant to

reasonable terms and conditions. A uniform standard will also prevent discriminatory practices and the imposition of additional and unreasonable costs. Time Warner Telecom would be at a distinct disadvantage if pole owners utilized arbitrary standards to transfer costs or to “regulate” attachments on poles so that no additional attachments would be permitted due to wind loading concerns. Time Warner Telecom, as a competitive carrier, would be economically unable to compete if these costs were imposed on its attachments.

14. Time Warner Telecom has a significant number of pole attachments in the Tampa Bay region and the Orlando service regions. For competitive reasons, Time Warner Telecom previously filed a confidential attachment listing the exact number of pole attachments and approximate mileage of fiber optic cable it currently uses to provide service to its customers. Should the Commission or the Legislature mandate all services be placed underground, Time Warner Telecom emphatically would state that such a mandate would impose a significant economic burden on Time Warner Telecom and any other competitive communications carrier utilizing the poles of the electric utilities. The current estimated price for undergrounding each mile of fiber optic cable is \$65,000 per mile. Time Warner Telecom and other competitive carriers have no rate base recovery mechanism or the ability to apply for storm surcharge reconstruction costs to recoup the huge impact of such capital construction costs. These costs could place a competitive carrier at a severe disadvantage by virtue of a capital outlay, literally an outlay costing tens if not hundreds of millions of dollars which could not be recovered in the competitive market place.

15. With the entry of power companies into broadband competition and the concentrated efforts of incumbent telephone companies which own poles, an anti-competitive effort will directly result from a utility suddenly deciding to bury large amounts of its distribution

network or convert large amounts of its overhead to underground distribution. This move would put competitive carriers at a significant competitive disadvantage by forcing the current pole attachments to move underground and spend mass amounts of capital without the ability to recover these capital costs unless the Commission requires the cost of undergrounding to be borne by the pole owners.

16. In addition to these capital costs, Time Warner estimates there will be a significant burden in the increase of the numbers of One Call inquiries. Company employees or contracted service employees will be required to respond to an inordinate number of public requests for location markings of underground utility facilities. While anecdotal evidence suggests underground utility maintenance may be less, Time Warner Telecom believes, based on previous experiences, that maintenance costs are approximately the same for underground versus overhead facilities.

17. Time Warner Telecom is also concerned there may be additional costs for right of way fees for the use of underground of utilities; other costs for right of way crossings such as now currently charged by railroads; or other costs for use of rights of way. These rights of way fees, however, could be offset by a reduction in pole attachment fees paid to other utilities.

18. Time Warner Telecom acknowledges that placing utilities underground should provide for a more secure and more stable environment for cable and other utilities; however, the capital costs to convert and move facilities underground potentially has significant anti-competitive effects upon competitive carriers such as Time Warner Telecom.

19. Rule 25-6.0341, as originally proposed, for instance, requires each utility to begin using public rights of way, including any rebuild or relocation of facilities, whether

underground or overhead. This could result in a large construction expense for competitive carriers who currently attached to facilities running along the back edge or alleyway of lots. The only requirement is that utilities seek input from third party attachers and coordinate the construction of these facilities with those third parties. Any cost implications are potentially left for the third parties to absorb. It is critical that this rule specifically require the electric utilities, the pole owners, to absorb the costs of converting to underground or moving existing facilities.

20. Rule 25-6.0342, as proposed requires the utility to establish and maintain safety, reliability, pole loading capacity and engineering standards for third-party attachments. These attachment procedures are “to meet or exceed the applicable edition of the National Electric Safety Code.” Time Warner Telecom is concerned this delegates to each utility an opportunity to set “over engineering” standards and procedures which “exceed” the National Electric Safety Code. The utilities then have the ability under the guise of safety to regulate through costly required engineering standards the competitiveness of carriers such as Time Warner Telecom. As has recently been demonstrated by the behaviors of the pole owners, the input of the third party attachers is neither desired nor appreciated. So while the rule attempts to state that the utility shall seek input from other entities, it does not provide that such input shall be considered seriously, accepted, or utilized in establishing these standards. While the Commission has retained jurisdiction to resolve any disputes arising from the implementation of the rule, development of standards on a case by case and utility by utility basis could take years. The untimely resolution of disputes could favor a variety of utilities including co-ops, municipalities and investor-owned utilities, each having its own standards, which are set according to rule. Time Warner Telecom submits that in each place where the

words “or exceed” are used, they should be deleted and replaced with language to require standards and procedures to “meet” the applicable edition of the National Electric Safety Code and the Commission should review each plan for conformity with this accepted standard. To allow each utility to exceed the National Electric Safety Code, under its own terms, will result in an “over-engineering” standard being imposed upon third-parties effectively regulating third-parties off the poles.

21. Time Warner Telecom also asserts that the benefits to accrue from the proposed rule are potentially the reduction of restoration costs during and after storm and wind-related events. However, many of Time Warner Telecom outages occur when operable cable is severed during the clearing of downed poles and wires from an area during reconstruction after storm-related damage. Customers must then wait for restoration of telecommunications services even though electricity has already been restored. Time Warner Telecom had approximately \$400,000 total in storm-related costs in the past 3 years. These costs were absorbed by Time Warner Telecom. While there are clearly some benefits to placing utilities underground, consideration must also be given to the detriments – for example, troubleshooting underground utilities can be problematic from time to time; flooding during storms can cause outages and overall restoration times may in fact be similar whether utilities are underground or overhead and may not be lessened by undergrounding as is being touted in this proceeding.

#### **COMMENTS ON PROPOSED RULES**

22. Rule 25-6.034 – Time Warner Telecom proposes that the words in Paragraph 4, , “at a minimum”, be stricken. The standard should be the 2002 version of the National Electric Safety Code and not a standard developed by a utility.

23. 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.”

24. Rule 25-6.034 - Paragraph (7) should also contain 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.”

25. 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.”

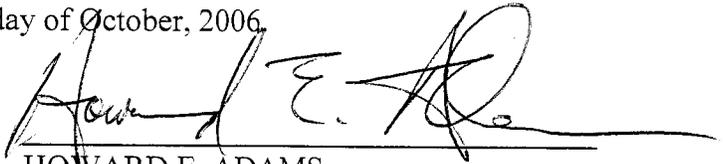
26. Rule 25-6.0342 – Changes to Paragraph (1) relating to third-party attachment standards and procedures. The words “or exceed” regarding the applicable addition of the National Electric Safety Code should be stricken. In addition, a new sentence should be added at the end of (1) to provide: “The provisions 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.”

27. Rule 25-6.0345 Construction Standards - In Paragraph (1), the words “at a minimum,” should 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 that it be allowed to participate fully in any hearing before the Commission as an affected party and to present further argument and oral statements on the proposed rules as may be necessary.

Respectfully submitted this 2<sup>nd</sup> day of October, 2006.

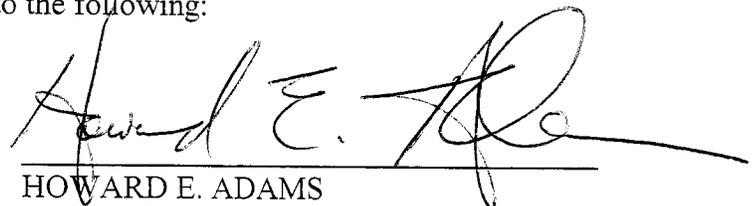


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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served by

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