BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060512-EU

In the Matter of:

PROPOSED ADOPTION OF NEW RULE 25-6.0343, F.A.C., STANDARDS OF CONSTRUCTION - MUNICIPAL ELECTRIC UTILITIES AND RURAL ELECTRIC COOPERATIVES.
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PROCEEDINGS:	HEARING
BEFORE:	CHAIRMAN LISA POLAK EDGAR COMMISSIONER J. TERRY DEASON COMMISSIONER ISILIO ARRIAGA COMMISSIONER MATTHEW M. CARTER, II COMMISSIONER KATRINA J. TEW
DATE:	Wednesday, October 4, 2006
TIME:	Commenced at 9:30 a.m. Concluded at 10:38 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

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SUSAN S. MASTERTON, ESQUIRE, 1313 Blair Stone Rd., Tallahassee, Florida 32301, appearing on behalf of Embarq Florida, Inc.

MICHAEL A. GROSS, Florida Cable Telecommunications Association, Inc., 246 E. 6th Avenue, Suite 100, Tallahassee, Florida 32303, appearing on behalf of Florida Cable Telecommunications Association, Inc.

FREDERICK M. BRYANT, ESQUIRE, Post Office Box 3209, Tallahassee, Florida 32315-3209, appearing on behalf of Florida Municipal Electric Association, Inc.

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CHARLES A. GUYTON, ESQUIRE, Squire Sanders & Dempsey, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301, appearing on behalf of the Florida Electric Cooperatives Association.

PARTICIPANTS (Continued):

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I N D E X

PRESENTERS:

EXHIBITS

NUMBER:		ID.	ADMTD.
1	Staff Composite	7	7
2	Type and Strike Alternative Rule Language	8	8

P R O C E E D I N G S

CHAIRMAN EDGAR: Good morning. I will call this hearing to order.

And Commissioner Deason is joining us by phone. Commissioner Deason, are you with us?

COMMISSIONER DEASON: Yes, I am, Madam Chairman. Can you hear me okay?

CHAIRMAN EDGAR: I can; thank you.

COMMISSIONER DEASON: Very good.

CHAIRMAN EDGAR: I will begin by asking our counsel to read the notice.

MR. HARRIS: Pursuant to notice issued July 28th, 2006, this time and place has been set for a hearing in Docket No. 060512, Proposed New Rule 25-6.0343.

CHAIRMAN EDGAR: Thank you. And we'll go to the next step, which is to take appearances.

MR. GUYTON: Commissioners, my name is Charles Guyton, I'm with the law firm of Squire, Sanders and Dempsey, and I represent the Florida Electric Cooperatives Association, Inc.

CHAIRMAN EDGAR: Thank you.

MR. NOLAND: Commissioner, my name is John Noland, I'm General Counsel for Lee County Electric Cooperative, Inc.

CHAIRMAN EDGAR: Thank you.

MR. BRYANT: Fred Bryant, General Counsel for the

Florida Municipal Electric Association, representing the Municipal Electric Utilities.

CHAIRMAN EDGAR: Thank you.

MR. ADAMS: Gene Adams of the Pennington Law Firm. I'm here representing Time Warner Telecom.

MR. MEZA: Jim Meza representing BellSouth.

MR. O'ROARK: De O'Roark representing Verizon Florida, Inc.

MS. MASTERTON: Susan Masterton representing Embarq Florida, Inc.

CHAIRMAN EDGAR: Thank you. Are there others? No. Okay.

MR. HARRIS: Lawrence Harris and Christiana Moore for the Commission.

CHAIRMAN EDGAR: Thank you. As I hope you're all aware, this is a rule hearing. It will be conducted according to the provisions of Section 120.54, Florida Statutes, and Rule 28-103.004, Florida Administrative Code. We are here today to allow the Commission to inform ourselves of matters related to the proposed new rule, to give the affected persons and any other interested persons an opportunity to present statements and to answer questions. We will proceed informally as we do with rule hearings without swearing witnesses, and I will ask our Commission Staff to make a presentation first. We'll have the opportunity for discussion and questions from

Commissioners, and then we will move to presentations from those of you who are here to make presentations to us. Okay.

We'll move right into it. And, Mr. Harris, I think that takes us to the exhibits.

MR. HARRIS: Yes, ma'am. The first exhibit we would ask to be placed into the record is staff's composite. It's the binder. I think interested persons have been provided copies. The Commissioners should have copies. We do have a few extras over here. We would ask that it be marked as Staff Exhibit Number 1, the Staff Composite Exhibit, and it's essentially the rulemaking record up to this point with the notices, the comments that have been filed and orders.

CHAIRMAN EDGAR: Thank you, Mr. Harris. The staff composite exhibit will be numbered Exhibit 1 and will be entered into the record.

(Exhibit 1 marked for identification and admitted into the record.)

MR. HARRIS: Thank you.

We've also handed out a separate sheet of paper, it's a type and strike version of the alternative rule language proposed by the Florida Electrical Cooperative Association. Staff has placed it in the legislative format with type and strike and numbers. It does have three editorial changes that staff has made to the language proposed by the Electrical Cooperative Association. We have spoken with the Association,

and they are in agreement with them. They are editorial changes, one, as a result of JAPC; the first one is to add sub to the word section, and one to change the term storm-hardening to something a little bit more rule legalistic.

CHAIRMAN EDGAR: The type and strike alternative proposed rule language will be numbered Exhibit 2, and will be entered into the record.

(Exhibit 2 marked for identification and admitted into the record.)

CHAIRMAN EDGAR: Mr. Harris, any other exhibits to be offered by Staff?

MR. HARRIS: No, ma'am.

CHAIRMAN EDGAR: And if there are other exhibits to be offered, we'll take those as we come to them as individuals are given the opportunity to make a presentation.

Do we have an additional appearance? That's okay, I wasn't trying to catch you off guard.

MR. GROSS: No. Thank you.

Madam Chair, Michael Gross, FCTA. Good morning. Thank you.

CHAIRMAN EDGAR: Thank you. Okay.

Mr. Harris, any other matters that we should address at this time before I ask for the staff presentation?

MR. HARRIS: No, ma'am.

CHAIRMAN EDGAR: Okay. Then we'll move right into

it.

MR. TRAPP: Good morning, Chairman Edgar. Good morning, Commissioners. I'm Bob Trapp of the technical staff, and I have a brief statement.

By way of some background, at the June 20th, 2006, agenda in Docket Numbers 060172 and 173-EU, the Commission proposed new rules addressing storm-hardened construction standards for all Florida electric utilities. On July 24th, the Florida Electric Cooperatives Association filed a motion for bifurcation of proceeding requesting that a separate rulemaking docket be opened to address circumstances unique to the municipals and cooperatives. The Florida Electric Cooperatives also stated that it had developed an alternate rule that they would like to enter into discussions with staff on. In response to the motion, the Commission opened a new docket, Docket No. 060512-EU, and instructed the staff to meet with the municipals and cooperatives to negotiate alternative language for consideration by the Commission.

I am very happy to report that the meetings between the staff, the municipals, and the cooperatives were very productive. I would be remiss if I didn't acknowledge the very active participation and the willingness to both give and to take of Mr. Bill Willingham and Michelle Hershel, representing the cooperatives, Mr. Barry Moline and Fred Bryant representing the municipals in these discussions. I would also like to

thank Mr. Bill McNulty and Mr. Jim Breman of the staff for their participation. And, finally, and in particular, and probably most importantly, I would like to thank the attorneys involved. Mr. Charlie Guyton representing FECA, and Larry Harris representing the staff, whose collective calm and focused attention to what was going on in the meetings kept the staff and the parties on task. I have to tell you, at times the discussions were heated, animated, active, and Mr. Guyton and Mr. Harris kept us on the path.

Before going further, I do need to make one point perfectly clear. Staff is prepared today to support either the original rule proposed by the Commission at the June 20th agenda or the alternative rule which was collectively wordsmithed by the municipals, cooperatives, and the staff. Staff believes that either rule will get the Commission to its ultimate goal of ensuring that electrical facilities in Florida, regardless of ownership, are designed, constructed, and maintained to reasonably, prudently, and affordably enhance the safety and reliability of Florida's electric grid in the face of extreme and increasing weather events.

Staff does, however, believe that the alternative rule offers certain advantages over the original proposed rule, and I'm going to try to touch on that a little bit. The original June 20th proposed rule would accomplish the Commission's goals by a direct assertion of jurisdiction over

the municipals and cooperatives. The June 20th proposed rule would set requirements for standards of construction, location of facilities, pole attachment standards and procedures for municipals and cooperatives. The municipals and cooperatives contend that if adopted, the prescriptive nature of the June 20th proposed rule would force them to enter into a rule challenge regarding the Commission's jurisdiction or lack of jurisdiction over the reliability of municipal and cooperative distribution facilities.

While staff has strong and compelling arguments to the contrary, and our lawyers are prepared to advance those arguments in court, if necessary, such litigation will be time-consuming and will significantly delay the implementation of needed cost-effective storm hardening measures in a large segment of the state. On the other hand, one significant advantage of adopting the alternate rule is that, according to the municipals and cooperatives, it will avoid that rule challenge.

There are other advantages to adopting the alternative rule. The alternative rule is a reporting rule. Municipals and cooperatives will be required to report annually by March 1st of each year the extent to which their construction standards, policies, practices, and procedures are designed to storm-harden their transmission and distribution facilities.

The reporting requirements closely, very closely follow the areas of concern addressed in the original rule and they include compliance with the National Electric Safety Code, extreme windloading, flooding and storm surge, placement of facilities, and pole attachments. But in addition to that, the municipals and cooperatives have also agreed to report on their pole inspections and vegetation management programs and share those results with us. These are other areas that the Commission has pursued in dockets with investor-owned utilities that have now been pulled into the municipal and cooperative alternate rule.

Finally, the municipals and cooperatives have agreed to share overall distribution reliability data with the Commission staff so that the impacts of storm hardening on overall system reliability can be validated and evaluated.

Staff believes that the reporting requirements of the alternative rule reflect the basic differences between Florida's investor-owned utilities, municipals, and cooperatives. The Florida legislature has granted the Commission full regulatory authority over investor-owned utilities, including the setting of rates and service quality. However, our regulation of municipals and cooperatives is more limited.

In terms of corporate governance, the management of an investor-owned utility reports to the board of directors

whose primary concern and focus are shareholder earnings. Profit is a very important motivation for an IOU board. Regulation acts as a substitute for competition to strike a balance between the shareholder's desire for increased dividends and the ratepayer's desire for quality service and affordable rates.

Ultimately investor-owned utilities are accountable to this Commission. On the other hand, municipals are managed by and are accountable to an elected body of local commissioners, either directly or through a utility board. Cooperatives are managed by and accountable to a board of directors selected and elected by members of and owners of the cooperative. In both cases profit is not a direct motivator.

While it is important to recognize that the reporting requirements of the alternative rule do preserve the cooperative relationship that exists between the Commission and the municipals and cooperatives, it by no means is business as usual. I want to make that clear. Staff will be scrutinizing the information provided by the municipals and cooperatives with as much energy and enthusiasm as the information we receive from the investor-owned utilities.

While the rule itself is less prescriptive, staff's request for needed clarification and data analysis will be unwavering. Where problem areas are thought to exist, staff will work with the municipals and the cooperatives to seek

voluntary resolution of any problems that we perceive. Where such mutual problem-solving cannot be obtained, staff will recommend appropriate Commission action, including, if necessary, that jurisdictional litigation that we're trying to avoid.

In closing, staff does not -- excuse me, in closing staff does believe that the alternative rule is preferable at this time to the original June 20th rule. Staff would suggest that the majority of the time spent at today's hearing be spent on discussing that alternative rule for your consideration.

That concludes my remarks. Thank you very much.

CHAIRMAN EDGAR: Thank you, Mr. Trapp.

Commissioners, any questions of our staff at this time on the presentation you have just heard? Seeing none.

Okay. Then we have a couple of options as to how to proceed. I think it will be most useful, educational, and efficient altogether if we kind of make a decision as to what it is that is before us for discussion. As Mr. Trapp has explained, procedurally, the Commission did put out draft proposed rule language. And as we always do, we gave the opportunity for alternative rule language to be submitted and to become a part of the process. And I appreciate that effort. I personally think that often consensus and suggestions as to language helps us get to a better product.

So, Commissioners, do you have thoughts as to how you

would like to proceed? Are you comfortable with hearing presentations on the alternative rule language as Mr. Trapp has described it, or do you need further discussion at this time as to the original language?

COMMISSIONER DEASON: Madam Chairman?

CHAIRMAN EDGAR: Just a moment, Commissioner Deason.

Commissioner Carter.

COMMISSIONER CARTER: I would recommend we proceed with the supplemental language, the revised language.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: I was unable to hear Commissioner Carter at that point, but I'm supportive of trying to concentrate our discussions at this point on the alternative that has been presented by Staff.

CHAIRMAN EDGAR: Thank you, Commissioner Deason. And that is in line with the comments of Commissioner Carter, as well. Commissioners, comfortable? I'm seeing nods. Okay. Good.

Then what we will do is have presentations and the opportunity for question and discussion on the alternative rule language as contained in Exhibit Number 2. Before we move to presentations, Commissioners, any other comments or questions? No. Okay.

Mr. Guyton, you are first on my list.

MR. GUYTON: Thank you, Madam Chairman.

Commissioners, I want to begin by thanking you not just for the opportunity to negotiate, but for the opportunity to separate out consideration of a rule for cooperatives and municipalities separate from the IOUs. There was wisdom in your decision to create a separate hearing, and we appreciate not being swallowed up in that larger issue.

We also appreciate the opportunity of having a separate docket, which further allowed us to explore policy differences between IOUs and cooperatives and municipalities. And, finally, we are very appreciative of the opportunity and your encouragement to negotiate with your Staff to try to come up with a rule that we think avoids jurisdictional issues that might arise, but we think also resulted in a rule that is superior and has broader scope to the one that was originally proposed by the Commission. We appreciate having that opportunity and we want to thank you for that. As we would return in kind the kind remarks that staff has made this morning, they were very diligent and difficult to negotiate with, as you would have them to be, but we got to where we think everybody benefits from the results. So thank you for that opportunity.

I would be remiss if I didn't tell you what we have told you from the start, is that the Electric Cooperatives Association's fundamental position in this case still is you are better off without a rule regarding construction standards

than any rule. Just as staff would tell you they could support either position on either rule, we would tell you we think the better position is no rule. But having said that, we have negotiated in good faith to come up with the alternative rule, and we're prepared to support that.

I will not belabor why no rule is a relevant consideration. I would just point out that cooperatives are extensively regulated already as to construction standards by RUS regulations in the Code of Federal Regulations as well as bulletins, and they indeed have boards that are comprised of members, answerable to members that are very close to those local situations where they have to balance cost and reliability. And, as Mr. Trapp pointed out, they don't have to put in shareholder considerations. So we think there are compelling reasons for no rule. But we kind of moved beyond that, and I want to focus on today the advantages that the alternative rule that is before you have over the proposed rule.

It recognizes that there are differences between IOUs and cooperatives, both as to their relationship between the entity and the customers they serve and as to jurisdiction that the Commission has over such entities. The alternative rule recognizes that there are already extensive construction standards in place subject to review and application by the RUS, and they cover a wide variety of things, including safety

as well as construction. This alternative rule removes some of the mandates as to reliability -- distribution system reliability that were in your proposed rule, but they keep the focus on safety considerations where it is clear that the Commission has broad jurisdictions over cooperatives and municipalities as well as IOUs.

Mr. Trapp is correct, each and every area that was in your proposed rule is addressed in the alternative rule that's before you; compliance with the National Electric Safety Code, the extent to which cooperative standards exceed the extreme wind-loading standards of the National Electric Safety Code, the extent to which they address potential flooding of facilities, the location, the proper location of distribution facilities, and, indeed, standards for dealing with third-party attachers, all of those are part of the reporting requirements of the alternative rule.

But, importantly, the alternative rule goes beyond your original proposed rule in two important respects. We also file reporting requirements having to do with pole inspections, something that wasn't covered in your rule, and we also file requirements as to vegetation management practices, something else that was not in the original proposed rule.

So what we have done with this alternative rule is we have avoided a costly and delaying jurisdictional challenges, but, more importantly, we have preserved the cooperative,

collaborative relationship that has existed for 32 years, since the Commission was first vested with some limited jurisdiction over IOUs and cooperatives. From our perspective everybody wins. The Commission gets a broader rule that covers more topics than you originally invested in, we win in that we're not fighting a jurisdictional battle that probably would not be productive in terms of the relationships that it would, perhaps, damage; but, most importantly, cooperative members are well served by focussing on getting a rule in place. And we have the potential to have the first rule that comes out of your rulemaking approved as early as today.

There have been a number of parties, third-party attachers that have filed comments in this proceeding, they filed very extensive comments as regards your original proposed rule. They filed much more limited comments as regards the alternative rule. Several of the attachers have said they have -- they either endorse the alternative rule or have no opposition with it. There are two attachers that have filed comments asking that you supplement it in some fashion. I'm prepared to address those written comments now, or I can wait and hear what those parties may have to say to you and defer those comments to a later point. I'm inclined to do the latter, but I will do whichever suits the Commission's preference.

CHAIRMAN EDGAR: Commissioners, do you have a

preference? Okay, then we're going to move on and we're going to come back to you.

MR. GUYTON: Okay. Very good. Thank you, Commissioners.

CHAIRMAN EDGAR: Actually, I wasn't stopping you there. Are you finished with your comments for now?

MR. GUYTON: I am finished, other than the responsive comments, other than to say, once again, thank you for your consideration.

CHAIRMAN EDGAR: Thank you.

Commissioners, any questions for Mr. Guyton? No.

Mr. Noland.

MR. NOLAND: Thank you, Madam Chairman.

Again, I'm John Noland representing Lee County Electric. Lee County Electric is not a member of the statewide organization. It has followed these proceedings closely, albeit from afar, although we had some employees and officers of the company appear here. We have followed the proceedings very carefully. We filed our own comments. But we thought, as we are not a member of the statewide organization it was important that we appear here this morning to show our full support and agreement with the proposed alternate rule. It appears to me and to the people of Lee County Electric there has been a lot of give and take, there has been a lot of negotiations, and it appears that we are exactly in the right

place. And I, too, would like to show our appreciation and thank you, the Commission, the staff, the municipals, and the statewide organization. That's all I have this morning. Thank you.

CHAIRMAN EDGAR: Mr. Noland, thank you for appearing here so we do know formally what the position of Lee County is. I thank you for that.

Commissioners, any questions for Mr. Noland. Staff? No?

Okay. Mr. Bryant.

MR. BRYANT: Thank you, Madam Chairman. I wish to express our appreciation to the Florida's thirty-four municipal electric utilities, certainly to the Commission, most importantly to the staff who really did exercise a great deal of wisdom in arriving at, we believe, a just solution for the organizations involved as well as the customers of our organizations. Certainly our appreciation to the Florida Electric Cooperatives Association, Mr. Willingham and Mr. Guyton, for carrying the load and the lion's share of these negotiations and arriving at a substitute rule that we believe will achieve the overall purposes and goals of the Commission.

The municipal electric utilities of the state of Florida really have a dual purpose. We are very unique among the electric utility industry in that we are certainly constantly trying to provide low-cost, reliable service. But

also the municipal electric utilities serve an equally important, if not a higher purpose, and that is we are a governmental entity. And as a governmental entity, we cannot separate from the electric utility service the overall governmental purpose of being responsible for the health, safety, and welfare of our citizens who are our customers. So when we look at this rule, we look at it with wearing two hats, not only will this help us achieve the goals that we have as electric utilities, but it must also achieve the goals we have as a governmental entity.

We believe that this proposed rule that we are supporting today achieves both goals, which I think is what the State of Florida in the legislation it passed and the jurisdictions given to the Commission and the exercise of that jurisdiction over the past 30-some years is evidenced in this compromise amongst the cooperatives, the municipals and the staff.

The municipal utilities are very diverse. We are diverse in geography from Blountstown in the panhandle to the Keys, the Key West utility in the Keys. We range from 1,000 customers to over 400,000 customers. Many of our smaller utilities, the call centers at night are the police departments or the fire departments. So in order to take this diversity in geography, this diversity in size, and this diversity in operations and to come together today with a proposed rule that

meets the objectives of the Commission, indeed the objectives of our customers and the citizens of the state of Florida, is a difficult task. And I think that we have been very successful in achieving that goal today, recognizing the diversities, the differences in job descriptions, if you will, for our electric utilities.

So I would say to you as the representative of the thirty-four municipal electric utilities, we are happy with the proposed substitute rule, and we are in full support of it, and we are thankful for the attention that all have given to us. Thank you so much.

CHAIRMAN EDGAR: Thank you, Mr. Bryant. Any questions? No. Okay.

Mr. Gross.

MR. GROSS: Good morning, Madam Chair, members of the Commission. Michael Gross, I'm here on behalf of the FCTA and the Florida cable industry, and in particular our interests as third-party attachers. We filed initial comments that addressed our concerns about the original proposed rule, and we will just stand on those. They're in the record. I don't intend to comment on those orally this morning.

We also filed reply comments in response to the supplemental alternative rule, and we expressed some concerns that we had about that rule. But I'm here to say that we don't intend to oppose the rule this morning. But, if I may, I would

like to take the opportunity, if you will indulge me, just to explain what our concerns were and why we made some suggested changes, because I think these are issues that are going to come to the forefront in the near future. And, in fact, in some states there has been legislation to regulate pole attachments of municipalities and electric cooperatives.

And we are particularly concerned with the reporting requirements of Paragraph (3)(e), which addresses third-party attachments and standards. And we realize that this was a voluntary negotiated settlement that neither acknowledges that the Commission has jurisdiction over the munis and the electrics, and the FCTA doesn't intend to get involved in or weigh in on that jurisdictional issue this morning. But our concern was that if there's going to be a reporting requirement, if that was an agreement, whether it was by compromise -- excuse me, I've had laryngitis for a few months now -- compromise or otherwise, that there should be some reporting to the extent to which there has been input from third-party attachers in developing those safety, reliability, capacity, engineering standards and procedures.

And it's not an imposition of some new compliance obligation, it would just enhance that part of the reporting requirement, and also that the third-party attachers are treated in a nondiscriminatory manner. We are just asking that that be reported.

There was one other one that we suggested, a third change that would have been an affirmative obligation, and I think that would fall in a different category, and even had we urged the Commission to adopt our suggested changes, this is one we would have withdrawn in any event, and that the munies and co-ops do not impose a disproportionate share of the cost of complying with this alternative rule on the third-party attachers. I think the third-party attachers would acknowledge that some part of those costs, a proportionate part of those costs would be imposed on the third-party attachers.

In fact, I have just heard that Lee County Electric joins in and supports this rule. And in their comments they did expressly state that they would pass the cost of developing construction standards or imposing these types of compliance costs on to third-party attachers.

I would like to point out what you probably already know, but just to remind you that munis and co-ops are specifically exempted from the pole attachment regulations of the FCC, so that third-party attachers deal strictly on a negotiated contractual basis with the munis and co-ops. There is no recourse to the FCC in terms of mandatory nondiscriminatory access or being able to go to the FCC to resolve disputes over pole attachments.

And, finally, I would like to point out that munis and co-ops pole rates have been increasing over recent years.

And our members have reported to us in an increasing number grievances about, or unhappiness about the fact that the rates are increasing, sometimes several times higher than the rates that the IOUs charge. And this is something that has not reached a level where it has become one of our top legislative issues, but it's something that has in other states and may very well in the next year or two become an issue in the state of Florida.

And thank you for letting me just express those concerns. We don't oppose the rule, and we think it's going in a positive direction, and we support the direction that the Commission is going if it adopts this rule. Thank you.

CHAIRMAN EDGAR: Thank you, Mr. Gross.

Commissioner Arriaga has a question.

COMMISSIONER ARRIAGA: Good morning, Mr. Gross. How are you?

MR. GROSS: Thank you. Good morning. I'm fine, thank you.

COMMISSIONER ARRIAGA: You stated twice something that caught my attention. You would not oppose this rule this morning. What does that mean?

MR. GROSS: Well, maybe that was misleading. We're not opposing the rule. If this rule evolved into a situation where it started to look more like -- for example, one of our concerns was that if the munis and co-ops find when they are

preparing their reports that they are not in compliance, and this is speculation, but that they are uncomfortable reporting that so they want to bring themselves into compliance, then there will be changes in their third-party attachment rules, for example, or they may report that they are not in compliance. And I'm not certain how the Commission staff and the Commission would react to that if these reports show noncompliance with wind-loading requirements and NESC requirements, or that there are no adequate pole attachment standards and procedures, would the Commission take action to try to enforce that.

And I surmise that the munies and co-ops would stand on their jurisdictional argument and resist that at that point in time. So I think what I was referring to is that there are some uncertainties in the future as to how this rule will play out. And maybe I'm looking at a doomsday scenario that will never materialize, I hope it doesn't.

COMMISSIONER ARRIAGA: And thank you. But you are leaving the door open for a potential challenge eventually?

MR. GROSS: Let me clarify that. Since munies and co-ops are unregulated right now in terms of pole attachments by the states or the FCC, that the two options are to go to Congress to try to amend the FCC laws to include munies and co-ops to some extent, or do what some states have done, and that is go to their legislatures and get some type of

regulation, to some degree, over munies and co-ops. That is something that FCTA cannot rule out down the road sometime. It could be two or five years down the road.

COMMISSIONER ARRIAGA: And I appreciate if you would do that, because that would clarify and make life easier for everybody. Go to the legislature and get clarification. All we do here is enforce legislative action.

A question for staff. Mr. Gross just brought two important points about staff's reaction in the eventuality of. One would be let us assume that there is a reporting that finds noncompliance to a specific action that involves pole attachers, and let us assume that you also find that some actions need to be taken whereby costs will be involved. How would staff react?

MR. TRAPP: From a technical perspective, it's my intent to try to work out those problems in a cooperative informal, you know, way with the municipal or co-op involved. That would involve dialogue. To the extent that those issues affected other parties, those other parties should be brought into that dialogue it would seem to me. We will make every attempt to do that.

To the extent that we come to loggerheads on an issue, you're our boss, we come to you. Where voluntary agreement can't be reached, a decision may have to be forced, and in that instance it would come to you. And, of course,

Florida being a sunshine state, everything we bring to you is noticed and out there for public participation.

COMMISSIONER ARRIAGA: Mr. Gross, did I assume correctly then that your goodwill, there is goodwill to negotiate in the eventuality of a potential disagreement, and also is there goodwill to -- as you said, you are willing to share some costs as long as they are not discriminatory or disproportionate. So am I assuming correctly that FCTA would be willing to discuss potential costs?

MR. GROSS: That is correct. And we concur with Mr. Trapp that we would be willing to negotiate in good faith if there are any conflicts that arise in the future. And I think, to a large extent, in all fairness I should say that the reports that I get from the field from our members are that we have a pretty good working relationship with the munis and co-ops as far as negotiating our pole attachment agreements.

There are in some areas, increasing rates and some other costs that seem to be imposed on us that are causing some concern, but not at a level yet where we would take any kind of action. So I would say overall we have a good working relationship with the munis and co-ops and we would continue that in the event that there are any conflicts that are generated by this particular rule.

COMMISSIONER ARRIAGA: Could we extend that to the IOUs? I'm only kidding. Thank you so much.

CHAIRMAN EDGAR: Commissioners, any other questions or comments? All right. Thank you, Mr. Gross.

Mr. Adams.

MR. ADAMS: Thank you, Madam Chairman.

Time Warner Telecom, of course, has participated both in the opportunity to make comments on the rule, and also we have filed supplemental comments then with regard to the rule that was developed in conjunction with staff and with the co-ops and the municipalities. We do not oppose or object to the rule. We continue, though, to be concerned about one issue that I want to continue to bring up with you, and that is the use of the words at a minimum and the implications for cost. We certainly appreciate that the Commission has a difficult job here trying to balance the need to harden our infrastructure so that storm events and other issues hold disruption of communications and electric utilities to a minimum.

But when we continue to use this word establish using the National Electric Safety Code as a minimum, we believe the potential continues to exist that by establishing overengineering standards or standards in the guise of safety that could be extremely costly to third-party pole attachers that you could, in essence, make us noncompetitive in the telecommunications field. So we have continued to urge that you adopt the National Electric Safety Code Standard, I think of 2007, I believe, is the one that we are looking at now, and

that that become the standard not just the minimum standard.

Because, again, we feel the potential is there that you could say for safety purposes we are going to recommend a $200 attachment for every pole, or whatever. And considering the thousands and thousands of poles that we are attached to, that could become an anticompetitive burden. So with that, we will stand on our written comments. We also believe that any time you can negotiate a rule and work through a rule with staff and others and not have to litigate, it's a good outcome. And we will stand on our other written comments as to the other concepts that we would have liked to have seen regarding discriminatory practices and other issues there.

Thank you.

CHAIRMAN EDGAR: Thank you, Mr. Adams.

Commissioner Arriaga.

COMMISSIONER ARRIAGA: I think I understand your point about at a minimum, and you have a point because of costs. Would you be willing to consider the fact that in the state of Florida there are different areas where wind has different strengths? There are some curves that show that, for example, hurricanes in south Florida come at a very stronger wind than probably here in Tallahassee. Would that be a consideration in the application of the code? In other words, is it fair to say that in South Florida, Tampa, Orlando, we could apply at a minimum, depending on what the wind curves

are?

MR. ADAMS: Well, yes, sir, I think your point is you may have a different engineering standard for the coast as opposed to Lakeland, which is 60 miles from the coast or something?

COMMISSIONER ARRIAGA: Yes. Yes.

MR. ADAMS: Sure. Sure. I mean, I can understand that. And I guess we'll get a chance to look at that as they report the standards that they develop, the rules, procedures, and standards that they develop under, what is it, (3)(e), I think, and that may very well be appropriate. I know that the building code, for instance, there are differing standards, I guess for wind-loading, depending on how close you are to the coast, that sort of thing. So, yes, I can see that that is possible.

COMMISSIONER ARRIAGA: Thank you.

Mr. Trapp, how do feel about that comment?

MR. TRAPP: Well, I guess I have two observations. First, staff has always interpreted the safety jurisdiction of this Commission to hold that as a minimum standard, the National Electric Safety Code, and we are aware of numerous instances where utilities have prudently elected to go beyond the requirements of the National Electric Safety Code, and have received cost-recovery by this Commission for taking that prudent action.

Second of all, and perhaps more importantly, is the Florida Legislature this past session amended our statute on safety jurisdiction referencing the National Electric Safety Code and put the words at a minimum in the statute. And I have a real hesitation not to follow the lead of the Florida legislature in making that amendment.

CHAIRMAN EDGAR: Commissioner Tew.

COMMISSIONER TEW: Thank you.

Mr. Adams, I just wanted to try to get my arms around exactly what your concern is. And I know it's not necessarily a present concern, but are you worried that utilities, and I guess in this case munis and co-ops, will apply different requirements of you than they would of your telecom competitors? Or is it more about whether they might get into the telecom business themselves?

MR. ADAMS: I think as technological evolves that both are a concern. Because, again, it never starts out that way. And I don't ascribe any ill motives to them, but certainly the potential is always there if they get into broad band by wire or other things, then the potential is there, well, what we need to do is require X, Y, or Z, and then we become anticompetitive just from the simple sheer numbers of poles and attachments that could cost us X number of dollars.

COMMISSIONER TEW: Thank you. That's all.

CHAIRMAN EDGAR: Seeing no other questions at this

time, Mr. Meza.

MR. MEZA: Thank you, Madam Chair. Jim Meza on behalf of BellSouth. And I want to thank you for the opportunity to appear before you today.

BellSouth, as a pole owner and an attacher to over 700,000 poles in this state, is deeply interested in these electric rules. And as we previously stated in our IOU comments, our comments in the IOU docket, we understand and support your goal of reducing power outages following extreme weather events. It's a laudable goal, and we support it. It's just a matter of how you get there.

And I will not repeat our concerns and our comments which, for the most part, adopted our concerns in the IOU docket, because at the time we filed the comments the rules were essentially the same. However, I think we provide a unique perspective, because not only are we a pole owner, we are also a common link between these two types of considerably different electric utilities. And there are a couple of observations that I think that you should consider and be aware of as you evaluate these rules and specifically this alternative rule, and compare it to the rule that you are considering in the other docket.

Because what you are embarking on now, potentially, is a path where there will be two different types of rules for the two different types of utilities. And as a pole attacher,

that really doesn't make sense. Because a pole is a pole. And one of the things that I would like to bring to your attention is that when this docket established, the rules that you were looking at were substantially similar to the rules in the IOU dockets, and the municipalities and the cooperatives raised the exact concerns regarding cost and potential benefits of those rules that the LECs, the cable companies, and CLECs raised in the IOU docket. And staff negotiated a rule with them that they believe will get the Commission to its same goal.

BellSouth's position on this rule is that we have no objection. We believe that the alternative rule is a good compromise. It addresses, for the most part, our cost-shifting concerns; it addresses, for the most part, our jurisdictional concerns; and it addresses, for the most part, our subdelegation concerns. Our concern, primarily, as an attacher to the municipalities, cooperatives, and the IOUs is there needs to be one rule. And there has to be a rule that is the least costly alternative, and we believe that is this alternative rule.

Thank you.

CHAIRMAN EDGAR: Commissioners, any questions for Mr. Meza?

Commissioner Arriaga.

COMMISSIONER ARRIAGA: I got confused, Mr. Meza. I'm sorry, I got confused.

MR. MEZA: Yes, sir.

COMMISSIONER ARRIAGA: To me this rule, the one we are considering right now was drafted basically addressing, trying to reach the goal we want to reach, but addressing the issue of jurisdiction. We are avoiding going to court, which is always good. Okay. I have told staff that there is a potential of going to court eventually, and that eventually is if we find that a municipal or a co-op is not complying with safety in the distribution system, and we try to impose a decision, we are going to go to court. But the fact is that we are negotiating in good faith.

What to you is the difference -- the electric IOUs are very different to the municipalities and co-ops, so we have to draft two different rules. Why one? What to you is the basic difference in the process? To me it's a jurisdictional issue. What is it to you?

MR. MEZA: Yes, sir, I recognize the jurisdictional differences. But as an attaching entity, it doesn't change our view. And the difference is that with these rules you are not mandating or requiring that something exceed the NESC or has to comply with extreme wind-loading guidelines. And that distinction is very important to BellSouth, because it addresses our cost-shifting concerns in our joint use agreements, and it addresses our jurisdictional concerns. Because you are not telling the municipalities and cooperatives

go establish standards that will exceed X. Once you say that, all the other things that we have raised in the other docket come to fruition here. And if it's true that this rule achieves your goal, then it should achieve your goal in the other docket as well.

COMMISSIONER ARRIAGA: But I think I understood from Mr. Trapp in his opening statement that staff is reserving diligently the right to eventually have to apply the standards if they see that the safety and reliability of our citizens are not in place. So we have not conceded. Am I correct, Mr. Trapp?

MR. TRAPP: Yes, sir.

COMMISSIONER ARRIAGA: So it applies the same. It applies the same. We are just postponing in time that decision until we see and until the municipalities and co-ops prove that their system is safe and reliable, which we believe it is. But the end result is the same. We are reserving the right to apply the standards. Am I making myself clear?

MR. MEZA: Yes, sir. I understand your point and I think it is a good one. And my response would be, is that this alternative rule addresses our concerns. And if the Commission believes that this alternative rule gets it ultimately to the place where it wants to be, then we avoid the litigation in the other docket as well, potentially. And BellSouth doesn't want to litigate. BellSouth wants to resolve this issue in a

business perspective, and we believe that this alternative rule is a step in the right direction. There just should not be, from our practical experience, two different sets of rules that have wide-ranging consequences to achieve the same result.

COMMISSIONER ARRIAGA: A good point. But I would say the following: In this alternative rule that we are discussing today, there was will to negotiate and to understand each other. Is that occurring in your negotiating process with the IOUs? Is there a will to negotiate, and are you advancing to an understanding so we can come up with an alternative?

MR. MEZA: Yes, sir, we are. We have diligently worked, and I would say almost constant negotiations since the termination of the hearing in August 31st with the IOUs. Right now we are taking a break to be here today, and to also file our comments in that docket which we did on Monday. Our goal is to continue to negotiate a resolution. But as it stands today, there isn't one.

COMMISSIONER ARRIAGA: That's the difference, the willingness and the possibility of arriving at a compromise. See, once you don't arrive at a compromise, we have to do our job.

Thank you, Madam Chair.

CHAIRMAN EDGAR: Commissioners, any other questions for Mr. Meza at this time? Seeing none. Thank you, Mr. Meza.

Mr. O'Roark.

MR. O'ROARK: Thank you, Madam Chairman. De O'Roark representing Verizon.

Verizon filed comments and two affidavits in this docket along the same lines as we filed in the IOU docket. Our comments reflected our serious concerns about the original version of Rule 25-6.0343. There is a big difference between this docket and the IOU docket. I think Mr. Meza has already alluded to this.

Here in this docket the attachers and utilities agree on some key things, most importantly that the rule as originally drafted or proposed should not be adopted, among other reasons, because they would do more harm than good. Obviously in the IOU docket, the attachers and utilities are not in agreement on that point.

I would agree with Mr. Meza that it is difficult to see why public policy on this issue should be radically different for IOUs than for the utilities in this docket. The laws of nature and basic engineering principles do not vary from utility to utility. Verizon is not opposed to the rules agreed upon by Staff and the municipal utilities and electric cooperatives here. We believe the compromise is on the right track, and it represents a vast improvement over the originally proposed rules in this docket and the rules proposed in the IOU docket. Thank you.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chairman.

Mr. O'Roark, are you saying that you support the proposal or you disagree with it? I didn't get that part.

MR. O'ROARK: No, we don't oppose the compromise reached between the utilities here and Staff.

COMMISSIONER CARTER: Thank you.

CHAIRMAN EDGAR: Ms. Masterton.

MS. MASTERTON: Thank you, Madam Chairman. Commissioners, Susan Masterton representing Embarq.

And I would just like to reiterate what Embarq said in the reply comments that we previously filed in response to the alternative rule, and that is that Embarq does not oppose the alternative rule so long as the rule is not construed in any way as a mandate to municipal electric utilities or to rural electric cooperatives that they implement any specific construction or attachment standards.

And that's all. Thank you.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Just maybe a couple of general statements.

CHAIRMAN EDGAR: You're recognized.

COMMISSIONER CARTER: Thank you, Madam Chairman.

First of all, I want to say thank you to our staff for their hard work, to Mr. Guyton with the co-ops, Mr. Noland with Lee County Electric, Mr. Bryant, always, with the munies,

Mr. Adams with Time Warner, Mr. O'Roark with Verizon, Mr. Gross with FCTA, Ms. Masterton, thank you all. It seems to me that when you get this number of disparate groups on the same page, I think that something good is coming from that. And I think that based upon the alternative which has been presented by Staff, and having read it a couple of times, it seems to make sense based upon what we are trying to do in our original docket.

And is it perfect? No, we don't live in a perfect world, but it is the best thing going when you have got people that have an interest and a commitment to work in a cooperative effort, I think it's the best possible alternative for us. And, Madam Chairman, at the appropriate time I will be prepared to do what we need to do in terms of moving this issue forward. Thank you.

CHAIRMAN EDGAR: Thank you, Commissioner Carter.

Mr. Guyton, you had asked for an opportunity to -- what I'm going to loosely refer to as rebuttal, so I'm going to recognize you in a moment to see if you would like to do that.

But, first, Commissioner Arriaga.

COMMISSIONER ARRIAGA: Thank you.

Ms. Masterton, just a brief question. Would you clarify for me your statement.

MS. MASTERTON: What I mean is we interpret this rule as requiring the municipal and rural co-ops to report to the

Commission on the actions they have taken in response to the storms and to make sure their facilities are sufficient for safety and reliability purposes, but we don't interpret the rule as mandating that they do anything in particular. And on that basis we do not oppose the rule.

COMMISSIONER ARRIAGA: Do you recognize that eventually it may happen? I'm trying to foresee the future. I'm not too good at that, but eventually -- let me finish, please -- the Commission would, staff would find the Commission would recommend or mandate that certain actions be taken because it's found that safety and reliability are at stake. What would you do?

MS. MASTERTON: Let me say that to the extent that the Commission would mandate something in the future, we would intend to fully participate in the proceeding where that occurs, and we would address that at that time.

COMMISSIONER ARRIAGA: Okay. Thank you.

CHAIRMAN EDGAR: Mr. Guyton.

MR. GUYTON: Thank you, Madam Chairman. I don't know that there is much need for me to comment, because as I understand, I don't see anyone that is objecting to the proposed alternative rule. A couple of commenters have suggested that they would rest on their comments, and a couple of those commenters proposed some additional or supplemental language. I would suggest to you that you need to be careful

about embracing that additional language, because it effectively is an attempt at back-handed regulation of pole attachment agreements. And as several of the attachers have pointed out in their comments, the Supreme Court of Florida in the Teleprompter v. Hawkins case 26 years ago ruled very clearly that the Commission doesn't have pole attachment jurisdiction. I have copies of that decision if it would be helpful to you.

So I think you need to be careful about going there or inviting additional language that might cause us to have to raise the jurisdictional issue again. But as I understand the comments, they're not there yet and they are not advancing those to you. So with that, I would just like to close where I began and say thank you for giving us the opportunity to work this out with your Staff and to hear us out today.

CHAIRMAN EDGAR: Thank you, Mr. Guyton.

I made a very brief comment as we started out thanking all of the parties for their participation. I would like to do that again. I do believe that our Chapter 120 administrative processes work best when we have full, active, and diverse participation, and I think that this is an example of that. And I also do believe that rule language often is clearest and most effective when we have a collaborative process, and so my thanks again to all who participated in that collaboration.

Commissioners, I think at this time we have a couple of options. One would be for me to look for a motion and for us to move forward with a bench decision at this time. We can also, of course, have more discussion. We can have a short recess if we need to and then come back and have more discussion, or we can direct our staff to bring this item to us at a future agenda.

So, Commissioner Carter, my sense is that you may be comfortable to move on. I am comfortable moving on at this point. However, if there is any Commissioner who needs additional time, I'm comfortable with allowing that, of course.

Commissioner Tew.

COMMISSIONER TEW: I just had a question for Mr. Guyton, if that's okay. One follow up.

CHAIRMAN EDGAR: Of course.

COMMISSIONER TEW: Mr. Guyton, on the authority that is quoted after the rule, at the end, the specific authority that references 350.127(2) and 366.05(1), do you have any concerns about those references there?

MR. GUYTON: I do not, but let me very clearly understand what those references are. Those references are to the Commission's rulemaking authority; 350.127 is the general rulemaking authority, and then 366.051 is the Commission's rulemaking authority under Chapter 366. We think those are appropriate references.

That is not a reference to the first clause of 366.051 that authorizes the Commission to adopt construction standards for public utilities. That is not our position. Our position is that phrase is limited solely to public utilities and doesn't reach to cooperatives and municipalities. And I think staff is in accord with that. That is not their intent in listing that statute there, it's solely to your rulemaking authority.

Commissioner Tew, thank you for that important question.

COMMISSIONER TEW: Thank you. And I see head nodding from --

MR. HARRIS: Yes. Staff supports Mr. Guyton's interpretation there. That's correct.

COMMISSIONER TEW: Thank you.

CHAIRMAN EDGAR: Commissioner Deason, since I can't see you, do you have any questions or comments at this time?

COMMISSIONER DEASON: I have no questions, but I am inclined to move forward with a motion if one is forthcoming.

CHAIRMAN EDGAR: Okay. Thank you, Commissioner Deason.

Commissioners, any questions or discussion?

Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chair. I move the adoption of the proposed rule by Staff this morning, the

revised -- what are we calling it?

MR. HARRIS: We're calling it the alternative rule.

COMMISSIONER CARTER: The alternative rule.

CHAIRMAN EDGAR: As presented in Exhibit 2.

COMMISSIONER CARTER: As presented in Exhibit 2.

CHAIRMAN EDGAR: Thank you, Commissioner Carter.

Commissioners, is there a second?

COMMISSIONER TEW: Second.

CHAIRMAN EDGAR: Thank you. We have a motion and a second. Is there further discussion? Okay.

All in favor of the motion say aye.

(Unanimous affirmative vote.)

CHAIRMAN EDGAR: Opposed?

Show the motion adopted.

And we will direct our staff to publish a notice of change in the Florida Administrative Weekly and to file the rule with the Secretary of State for adoption.

Mr. Harris, are there other matters at this time?

MR. HARRIS: No, ma'am.

CHAIRMAN EDGAR: Okay. Is there further comment any of the presenters or anybody in the audience would like to take advantage of the opportunity to make? And I'm not seeing any takers.

COMMISSIONER DEASON: Madam Chairman.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: I just want to thank you for allowing me to participate by telephone this morning.

CHAIRMAN EDGAR: You are most welcome. Thank you for joining us.

And, Commissioners, I believe that concludes our business. This hearing is adjourned.

(The hearing concluded at 10:38 a.m.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th day of October, 2006.

JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

COMPREHENSIVE STAFF EXHIBIT
DOCKET NUMBER 060512-EU

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 060512-EU Exhibit No. 1
Company/ FPSC Staff
Witness: Staff Composite Exhibit
Date: 10-04-06

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.	DOCKET NO. 060172-EU
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 ORDER NO. PSC-06-0556-NOR-EU ISSUED: June 28, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to adopt Rules 25-6.0341, 25-6.0342, 25-6.0343 and amend Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115, Florida Administrative Code, relating to electric infrastructure standards of construction; location of facilities; third party attachments; application to municipally owned systems and rural electric cooperatives; safety standards of construction; contributions-in-aid-of-construction; charges for underground construction; and charges for conversion of existing overhead to underground facilities.

The attached Notice of Rulemaking will appear in the July 7, 2006, edition of the Florida Administrative Weekly. If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., Tuesday, August 22, 2006
Betty Easley Conference Center
Room 148, 4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rules must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than July 28, 2006.

By ORDER of the Florida Public Service Commission this 28th day of June, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

LDH

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE TITLE:	RULE NO.:
Standard of Construction	25-6.034
Location of the Utility's Electric Distribution Facilities	25-6.0341
Third-Party Attachment Standards and Procedures	25-6.0342
Municipal Electric Utilities and Rural Electric Cooperatives	25-6.0343
Safety Standards for Construction of New Transmission and Distribution Facilities	25-6.0345
~~Extension of Facilities;~~ Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities.	25-6.064
Schedule of Charges.	25-6.078
Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~.	25-6.115

PURPOSE AND EFFECT: To increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and underground electric infrastructure.

SUMMARY: The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and

electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Florida's five Investor Owned Utilities, 18 electric cooperatives, and 35 municipally operated companies will be affected by these rules. Additionally, telecommunications and cable companies that own or lease space on electric facilities may be indirectly affected. Preliminary data provided by the IOUs indicates estimated costs for increased electric infrastructure reliability will range from $63 Million to $193 Million. No data is available from municipally operated systems, electric cooperatives, telecommunications and cable companies.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.04, 366.04(2)(f), 366.05(1) FS

LAW IMPLEMENTED: 366.03, 366.04, 366.04(1), 366.04(2)(c), 366.04(2)(f), ~~366.04(4),~~ 366.04(5), 366.04(6), 366.05, 366.05(1), 366.05(7), 366.05(8), 366.06, 366.06(1) F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD ON RULES 25-6.0341, 25-6.0342, AND 25-6.0343 AT THE TIME, DATE, AND PLACE SHOWN BELOW. FOR RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115, A HEARING WILL BE HELD THE TIME, DATE, AND PLACE SHOWN BELOW ONLY IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS

NOTICE (IF NOT REQUESTED, A HEARING WILL NOT BE HELD ON RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115).

TIME AND DATE: 9:30 a.m., Tuesday, August 22, 2006.

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE PROPOSED RULES ARE: Larry Harris, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6076.

THE FULL TEXT OF THESE PROPOSED RULES ARE:

PART III

GENERAL MANAGEMENT REQUIREMENTS

25-6.034 Standard of Construction.

(1) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all investor-owned electric utilities. ~~The facilities of the utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.~~

(2) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent

updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. ~~The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard Requirements, Terminology and Test Code for Instrument Transformers, ANSI 57.13, and has found them to contain reasonable standards of good practice. A utility that is in compliance with the applicable provisions of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices.~~

(3) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(4) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(b) Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(5) For the construction of distribution facilities, each utility shall, to the extent

reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) new construction;

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

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

(6) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(7) In establishing the construction standards, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission.

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

Law Implemented 366.04(2)(c)(f), (5)(6), 366.05(1)(7)(8) FS.

History–Amended 7-29-69, 12-20-82, Formerly 25-6.34, Amended _____.

25-6.0341 Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and

cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(1) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(2) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(3) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(4) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History– New.

25-6.0342 Third-Party Attachment Standards and Procedures.

(1) As part of its construction standards adopted pursuant to Rule 25-6.034, F.A.C., each utility shall establish and maintain written safety, reliability, pole loading capacity, and

engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection 25-6.034(4) and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(2) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(3) In establishing the Attachment Standards and Procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute arising from the implementation of this rule shall be resolved by the Commission.

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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History New _____.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the

applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party

attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

History New _____.

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall, at a minimum, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by the utility or one of its contractors, at the end of each quarter of the year. The report shall be filed with the Director of the Commission's Division of Regulatory Compliance and Consumer Assistance

~~Auditing and Safety~~ no later than the 30th working day after the last day of the reporting quarter, and shall contain, at a minimum, the following information for each work order:

(a) Work order number/project/job;

(b) Brief title outlining the general nature of the work; ~~and~~

(c) Estimated cost in dollars, rounded to nearest thousand and; ~~.~~

(d) Location of project.

(3) The quarterly report shall be filed in standard DBase or compatible format, DOS ASCII text, or hard copy, as follows:

(a) DBase Format

Field Name	Field Type	Digits
1. Work orders	Character	20
2. Brief title	Character	30
3. Cost	Numeric	8
4. Location	Character	50
~~5. Kv~~	~~Numeric~~	~~5~~
~~6. Contiguous~~	~~Character~~	~~1~~

(b) DOS ASCII Text.

1. – 5.(c) No change.

The following format is preferred, but not required:

Completed Electrical Work Orders For PSC Inspection

Work Order	Brief Title	Estimated Cost	Location	~~KV Rating~~	~~Contiguous (y/n)~~

(4) No change.

(5) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report to the Commission any accident occurring in connection with any part of its transmission or distribution facilities which:

(a) – (b) No change.

(6) Each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report each accident or malfunction, occurring in connection with any part of its transmission or distribution facilities, to the Commission within 30 days after it learns of the occurrence, provided the accident or malfunction:

(a) – (7) No change.

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

Law Implemented 366.04(2)(f), (6), 366.05(7) FS.

History–New 8-13-87, Amended 2-18-90, 11-10-93, 8-17-97, 7-16-02,_____.

PART IV

GENERAL SERVICE PROVISIONS

25-6.064 ~~Extension of Facilities;~~ Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities.

(1) Application and scope ~~Purpose~~. The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities ~~subject to this rule will~~ calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities ~~require extensions of distribution facilities~~ in order to receive electric service, except as provided in Rule 25-6.078, F.A.C..

(2) ~~Applicability. This rule applies to all investor-owned electric utilities in Florida as defined in Section 366.02, F.S.~~ Contributions-in-aid-of-construction for new or upgraded overhead facilities ($CIAC_{OH}$) shall be calculated as follows:

$CIAC_{OH}$	=	Total estimated work order job cost of installing the facilities	-	Four years expected incremental base energy revenue	-	Four years expected incremental base demand revenue, if applicable

(a) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.

(b) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.

(c) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.

(d) In no instance shall the $CIAC_{OH}$ be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities ($CIAC_{UG}$) shall be calculated as follows:

$CIAC_{UG}$	=	$CIAC_{OH}$	±	Estimated difference between cost of providing the service underground and overhead

~~(3) Definitions. Actual or estimated job cost means the actual cost of providing the specified line extension facilities, calculated after the extension is completed, or the estimated cost of providing the specified facilities before the extension is completed.~~

~~(4) In developing the policy for extending overhead distribution facilities to customers, the following formulas shall be used to determine the contribution in aid of construction owed by the customer.~~

~~(a) For customers in rate classes that pay only energy charges, i.e., those that do not pay demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters) − (4 × nonfuel energy charge per KWH × expected annual KWH sales over the new line)~~

~~(b) For customers in rate classes that pay both energy charges and demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters) − (4 × nonfuel energy charge per KWH × expected annual KWH sales over the new line) − (4 × expected annual demand charge revenues from sales over the new line)~~

~~(c) Expected demand charge revenues and energy sales shall be based on an annual period ending not more than five years after the extension is placed in service.~~

~~(5) In developing the policy for extending underground distribution facilities to customers, the following formula shall be used to determine the contribution in aid of construction.~~

~~$CIAC_{ug}$ = (Estimated difference between the cost of providing the distribution line extension including not only the distribution line extension itself but also the transformer, the service drop, and other necessary fixtures, with underground facilities vs. the cost of providing service using overhead facilities) + $CIAC_{oh}$ (as above)~~

~~(6) Nothing in this rule shall be construed as prohibiting a utility from collecting from a customer the total difference in cost for providing underground service instead of overhead service to that customer.~~

~~(7) In the event that amounts are collected for certain distribution facilities via the URD differential tariff as permitted by Rule 25-6.078, F.A.C., that would also be collected pursuant to this rule, the utility shall give an appropriate credit for such amounts collected via the URD differential tariff when calculating the line extension CIAC due pursuant to this rule.~~

(4)~~(8)~~ Each utility shall apply the ~~above~~ formulas in subsections (2) and (3) of this rule uniformly to residential, commercial and industrial customers requesting new or upgraded facilities at any voltage level. ~~requiring line extensions.~~

(5) The costs applied to the formula in subsections (2) and (3) shall be based on the requirements of Rule 25-6.034, Standards of Construction.

~~(9) Each utility shall calculate an appropriate CIAC for line extensions constructed to serve customers who receive service at the primary distribution voltage level and the transmission voltage level. This CIAC shall be based on the actual or estimated cost of providing the extension less an appropriate credit.~~

(6)~~(10)~~ All CIAC calculations under this rule shall be based on estimated work order job costs. In addition, each ~~The~~ utility shall use its best judgment in estimating the total amount of annual revenues ~~and sales~~ which the new or upgraded facilities are ~~each line extension is~~ expected to produce ~~in the near future~~.

(a) A customer may request a review of any CIAC charge within 12 months following the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the CIAC to reflect the actual costs of construction and actual base revenues received at the time the request is made.

(b) In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(7)~~(11)~~ The utility may elect to waive all or any portion of the ~~line extension~~ CIAC for

customers, even when a CIAC is found to be applicable ~~owing~~. If h~~H~~owever, ~~if~~ the utility waives a ~~the~~ CIAC, the utility shall reduce net plant in service as though the CIAC had been collected, unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived CIAC. ~~Commission will reduce the utility's net plant in service by an equal amount for ratemaking purposes, as though the CIAC had been collected, except when the company's annual revenues from a customer are sufficient to offset the unpaid line extension CIAC under subsection (4) or (5).~~ Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.

~~(12) In cases where larger developments are expected to be served by line extensions, the utility may elect to prorate the total line extension costs and CIAC's owed over the number of customers expected to connect to the new line.~~

(8)~~(13)~~ A detailed statement of its standard facilities extension and upgrade policies~~y~~ shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform application and shall be nondiscriminatory.

(9)~~(14)~~ If a utility and applicant are unable to agree on the CIAC amount, ~~in regard to an extension,~~ either party may appeal to the Commission for a review.

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

Law Implemented 366.03, 366.05(1), 366.06(1) FS.

History–New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended ____.

PART V

RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

25-6.078 Schedule of Charges.

(1) Each utility shall file with the Commission a written policy that shall become a part of

the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.034, Standards of Construction.

(3)~~(2)~~ On or before October 15~~th~~ of each year each utility shall file with the Commission's Division of Economic Regulation Form PSC/ECR 13-E, Schedule 1, using current material and labor costs. If the cost differential as calculated in Schedule 1 varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (4~~3~~) and (5~~4~~) of this rule on or before April 1 of the following year; however, each utility shall file a written policy and supporting data and analyses at least once every 3 ~~three~~ years.

(4)~~(3)~~ Differences in Net Present Value of operational ~~operating and maintenance~~ costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, shall ~~may~~ be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(5)~~(4)~~ Detailed supporting data and analyses used to determine the Estimated Average

Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period. The utility shall record these data and analyses on Form PSC/ECR 13-E (10/97). Form PSC/ECR 13-E, entitled "Overhead/Underground Residential Differential Cost Data" is incorporated by reference into this rule and may be obtained from the Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6900.

(6)~~(5)~~ Numbers (5) through (8) renumbered to (6) through (9) No change.

(10)~~(9)~~ Nothing in this rule ~~herein contained~~ shall be construed to prevent any utility from waiving ~~assuming~~ all or any portion of a cost differential for ~~of~~ providing underground facilities. ~~distribution systems, provided, however, that such assumed cost differential shall not be chargeable to the general body of rate payers, and any such policy adopted by a utility shall have uniform application throughout its service area.~~ If, however, the utility waives the differential, the utility shall reduce net plant in service as though the differential had been collected unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived differential.

Specific Authority 350.127(2), ~~366.04(2)(f),~~ 366.05(1) FS.

Law Implemented 366.03, 366.04(1), ~~(4),~~ 366.04(2)(f), 366.06(1) FS.

History–New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97,___.

PART VII

UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential~~

~~Subdivisions~~.

(1) Each investor-owned ~~public~~ utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing ~~new construction and~~ the conversion of existing overhead electric distribution facilities to underground facilities ~~excluding new residential subdivisions~~. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of ~~new construction or~~ convertingsion ~~of~~ existing overhead ~~electric~~ facilities to underground ~~electric~~ facilities. The non-refundable deposit amounts shall be calculated in the same manner as ~~approximate~~ the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

(2) For ~~the~~ purposes of this rule, the applicant is the person or entity requesting the conversion ~~seeking the undergrounding~~ of existing overhead electric distribution facilities to underground facilities. In the instance where a local ordinance requires developers to install underground facilities, the developer who actually requests the construction for a specific location is ~~when a developer requests local government development approval, the local government shall not be~~ deemed the applicant for purposes of this rule.

(3) No change:

(a) s~~S~~uch work meets the investor-owned ~~public~~ utility's construction standards;

(b) t~~T~~he investor-owned ~~public~~ utility will own and maintain the completed distribution facilities; and

(c) s~~S~~uch agreement is not expected to cause the general body of ratepayers to incur additional ~~greater~~ costs.

(4) No change.

(5) Upon an applicant's request and payment of the deposit amount, an investor-owned ~~public~~ utility shall provide a binding cost estimate for providing underground electric service.

(6) An applicant shall have at least 180 days from the date the estimate is received~~,~~ to enter into a contract with the public utility based on the binding cost estimate. The deposit amount shall be used to reduce the charge as indicated in subsection (7) only when the applicant enters into a contract with the public utility within 180 days from the date the estimate is received by the applicant, unless this period is extended by mutual agreement of the applicant and the utility.

(7) – (8) No change:

(a) t~~T~~he estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, Standards of Construction, including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and

(b) ~~For conversions,~~ the estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.

(9) For the purpose of this rule, the charge for overhead facilities shall be the estimated construction cost to build new overhead facilities, including the service drop(s) to the meter(s) of the customer(s). Estimated construction costs shall be based on the requirements of Rule 25-6.034, Standards of Construction.

(10) An applicant requesting ~~to a public utility for~~ construction of underground distribution facilities under this rule may ~~petition~~ challenge the utility's cost estimates ~~the Commission~~ pursuant to Rule 25-22.032, F.A.C.

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already been paid, credited to the customer. At no time will the costs to the customer be less than zero.

(12) Nothing in this rule shall be construed to prevent any utility from waiving all or any portion of the cost for providing underground facilities. If, however, the utility waives any charge, the utility shall reduce net plant in service as though those charges had been collected unless the Commission determines that there is quantifiable benefits to the general body of ratepayers commensurate with the waived charge.

(13~~1~~) Nothing in this rule shall be construed to grant any investor-owned electric utility any right, title or interest in real property owned by a local government.

Specific Authority 350.127(2) ~~366.04~~,366.05(1) FS.

Law Implemented 366.03, 366.04, 366.05 FS.

History–New 9-21-92, Amended ____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Robert Trapp

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULES: Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: June 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32,

Number 18, May 5, 2006.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

E PROPOSED RULE APPROVED BY AGENCY HEAD: May 1, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 2, 2006

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE NOS.:	RULE TITLES:
25-6.034	Standard of Construction
25-6.0341	Location of the Utility's Electric Distribution Facilities
25-6.0342	Third-Party Attachment Standards and Procedures
25-6.0343	Municipal Electric Utilities and Rural Electric Cooperatives
25-6.0345	Safety Standards for Construction of New Transmission and Distribution Facilities
.064	Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities
25-6.078	Schedule of Charges
25-6.115	Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities

PURPOSE AND EFFECT: To increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and underground electric infrastructure.

SUMMARY: The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Florida's five Investor Owned Utilities, 18 electric cooperatives, and 35 municipally operated companies will be affected by these rules. Additionally, telecommunications and cable companies that own or lease e on electric facilities may be indirectly affected. Preliminary data provided by the IOUs indicates estimated costs for increased electric infrastructure reliability will range from $63 Million to $193 Million. No data is available from municipally operated systems, electric cooperatives, telecommunications and cable companies.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.04, 366.04(2)(f), 366.05(1) FS.

LAW IMPLEMENTED: 366.03, 366.04, 366.04(1), 366.04(2)(c), 366.04(2)(f), 366.04(5), 366.04(6), 366.05, 366.05(1), 366.05(7), 366.05(8), 366.06, 366.06(1) FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD ON RULES 25-6.0341, 25-6.0342, AND 25-6.0343 AT THE DATE, TIME AND PLACE SHOWN BELOW. FOR RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115, A HEARING WILL BE HELD THE DATE, TIME AND PLACE SHOWN BELOW ONLY IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE (IF NOT REQUESTED, A HEARING WILL NOT BE HELD ON RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115).

DATE AND TIME: Tuesday, August 22, 2006, 9:30 a.m.

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Larry Harris, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6076

THE FULL TEXT OF THE PROPOSED RULES IS:

PART III GENERAL MANAGEMENT REQUIREMENTS

25-6.034 Standard of Construction.

(1) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all investor-owned electric utilities. ~~The facilities of the utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.~~

(2) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. ~~The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard Requirements, Terminology and Test Code for Instrument Transformers, ANSI-57.13, and has found them to contain reasonable standards of good practice. A utility that is in compliance with the applicable provisions of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices.~~

(3) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(4) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(b) Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(5) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) New construction;

(b) Major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and

(c) Targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

(6) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(7) In establishing the construction standards, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(c),(f), (5),(6), 366.05(1),(7),(8) FS. History–Amended 7-29-69, 12-20-82, Formerly 25-6.34, Amended_____.

25-6.0341 Location of the Utility's Electric Distribution Facilities.

In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(1) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(2) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(3) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(4) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(c), (5), (6), 366.05(1),(8) FS. History–New_____.

5-6.0342 Third-Party Attachment Standards and Procedures.

(1) As part of its construction standards adopted pursuant to Rule 25-6.034, F.A.C., each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection 25-6.034(4), F.A.C., and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(2) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(3) In establishing the Attachment Standards and Procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities.

ny dispute arising from the implementation of this rule shall olved by the Commission.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(c), (5), (6), 366.05(1),(8) FS. History–New_____.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to paragraph (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority 350.127, 366.05(1) FS. Law Implemented 366.04(2)(c), (f), (5), (6), 366.05(8) FS. History–New _____.

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall, at a minimum, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by the utility or one of its contractors, at the end of each quarter of the year. The report shall be filed with the Director of the Commission's Division of Regulatory Compliance and Consumer Assistance ~~Auditing and Safety~~ no later than the 30th working day after the last day of the reporting quarter, and shall contain, at a minimum, the following information for each work order:

(a) Work order number/project/job;

(b) Brief title outlining the general nature of the work; ~~and~~

(c) Estimated cost in dollars, rounded to nearest thousand and;~~.~~

(d) Location of project.

(3) The quarterly report shall be filed in standard DBase or compatible format, DOS ASCII text, or hard copy, as follows:

(a) DBase Format

Field Name	Field Type	Digits
1. Work orders	Character	20
2. Brief title	Character	30
3. Cost	Numeric	8
4. Location	Character	50
~~5. Kv~~	~~Numeric~~	~~5~~
~~6. Contiguous~~	~~Character~~	~~1~~

(b) DOS ASCII Text.

1. through 5.(c) No change.

The following format is preferred, but not required:

Completed Electrical Work Orders For PSC Inspection

Work Order	Brief Title	Estimated Cost	Location	~~KV Rating~~	~~Contiguous (y/n)~~

(4) No change.

(5) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each investor-owned electric ~~public~~ utility, rural electric

erative, and municipal electric utility shall (without admitting liability) report to the Commission any accident occurring in connection with any part of its transmission or distribution facilities which:

(a) through (b) No change.

(6) Each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report each accident or malfunction, occurring in connection with any part of its transmission or distribution facilities, to the Commission within 30 days after it learns of the occurrence, provided the accident or malfunction:

(a) through (7) No change.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(f), (6), 366.05(7) FS. History–New 8-13-87, Amended 2-18-90, 11-10-93, 8-17-97, 7-16-02, _____.

PART IV GENERAL SERVICE PROVISIONS

25-6.064 ~~Extension of Facilities;~~ Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities.

(1) Application and scope ~~Purpose~~. The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities ~~subject to this rule will~~ calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities ~~require extensions of distribution facilities~~ in order to receive electric service, except as provided in Rule 25-6.078, F.A.C.

(2) Contributions-in-aid-of-construction for new or upgraded overhead facilities ($CIAC_{OH}$) shall be calculated as follows: ~~Applicability. This rule applies to all investor owned electric utilities in Florida as defined in Section 366.02, F.S.~~

$$CIAC_{OH} = \text{Total estimated work order job cost of installing the facilities} - \text{Four years expected incremental base energy revenue} - \text{Four years expected incremental base demand revenue, if applicable}$$

(a) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.

(b) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.

(c) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.

(d) In no instance shall the $CIAC_{OH}$ be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities ($CIAC_{UG}$) shall be calculated as follows:

$$CIAC_{UG} = CIAC_{OH} \pm \text{Estimated difference between cost of providing the service underground and overhead}$$

~~(3) Definitions. Actual or estimated job cost means the actual cost of providing the specified line extension facilities, calculated after the extension is completed, or the estimated cost of providing the specified facilities before the extension is completed.~~

~~(4) In developing the policy for extending overhead distribution facilities to customers, the following formulas shall be used to determine the contribution in aid of construction owed by the customer.~~

~~(a) For customers in rate classes that pay only energy charges, i.e., those that do not pay demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters − (4 × nonfuel energy charge per KWH × expected annual KWH sales over the new line)~~

~~(b) For customers in rate classes that pay both energy charges and demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters) − (4 × nonfuel energy charge per KWH × expected annual KWH sales over the new line) − (4 × expected annual demand charge revenues from sales over the new line)~~

~~(c) Expected demand charge revenues and energy sales shall be based on an annual period ending not more than five years after the extension is placed in service.~~

~~(5) In developing the policy for extending underground distribution facilities to customers, the following formula shall be used to determine the contribution in aid of construction.~~

~~$CIAC_{ug}$ = (Estimated difference between the cost of providing the distribution line extension including not only the distribution line extension itself but also the transformer, the service drop, and other necessary fixtures, with underground facilities vs. the cost of providing service using overhead facilities) + $CIAC_{oh}$ (as above)~~

~~(6) Nothing in this rule shall be construed as prohibiting a utility from collecting from a customer the total difference in cost for providing underground service instead of overhead service to that customer.~~

~~(7) In the event that amounts are collected for certain distribution facilities via the URD differential tariff as permitted by Rule 25-6.078, F.A.C., that would also be collected pursuant to this rule, the utility shall give an appropriate credit for such amounts collected via the URD differential tariff when calculating the line extension CIAC due pursuant to this rule.~~

(4)~~(8)~~ Each utility shall apply the ~~above~~ formulas in subsections (2) and (3) of this rule uniformly to residential, commercial and industrial customers requesting new or upgraded facilities at any voltage level ~~requiring line extensions~~.

(5) The costs applied to the formula in subsections (2) and (3) shall be based on the requirements of Rule 25-6.034, Standards of Construction.

~~(9) Each utility shall calculate an appropriate CIAC for line extensions constructed to serve customers who receive service at the primary distribution voltage level and the transmission voltage level. This CIAC shall be based on the actual or estimated cost of providing the extension less an appropriate credit.~~

(6)~~(10)~~ All CIAC calculations under this rule shall be based on estimated work order job costs. In addition, each ~~The~~ utility shall use its best judgment in estimating the total amount of annual revenues ~~and sales~~ which the new or upgraded facilities are ~~each line extension is~~ expected to produce ~~in the near future~~.

(a) A customer may request a review of any CIAC charge within 12 months following the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the CIAC to reflect the actual costs of construction and actual base revenues received at the time the request is made.

(b) In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(7)~~(11)~~ The utility may elect to waive all or any portion of the ~~line extension~~ CIAC for customers, even when a CIAC is found to be applicable ~~owing~~. If h~~H~~owever, ~~if~~ the utility waives a ~~the~~ CIAC, the utility shall reduce net plant in service as though the CIAC had been collected, unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived CIAC. ~~Commission will reduce the utility's net plant in service by an equal amount for ratemaking purposes, as though the CIAC had been collected, except when the company's annual revenues from a customer are sufficient to offset the unpaid line extension CIAC under subsection (4) or (5).~~ Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.

~~(12) In cases where larger developments are expected to be served by line extensions, the utility may elect to prorate the total line extension costs and CIAC's owed over the number of customers expected to connect to the new line.~~

(8)~~(13)~~ A detailed statement of its standard facilities extension and upgrade policies~~y~~ shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform application and shall be nondiscriminatory.

(9)~~(14)~~ If a utility and applicant are unable to agree on the CIAC amount, ~~in regard to an extension,~~ either party may appeal to the Commission for a review.

Specific Authority 366.05(1), 350.127(2) FS. Law Implemented 366.03, 366.05(1), 366.06(1) FS. History–New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended _____.

PART V RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

25-6.078 Schedule of Charges.

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.034, F.A.C., Standards of Construction.

(3)~~(2)~~ On or before October 15th of each year each utility shall file with the Commission's Division of Economic Regulation Form PSC/ECR 13-E, Schedule 1, using current material and labor costs. If the cost differential as calculated in Schedule 1 varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (4)~~(3)~~ and (5)~~(4)~~ of this rule on or before

1 of the following year; however, each utility shall file a ...en policy and supporting data and analyses at least once every 3 ~~three~~ years.

(4)~~(3)~~ Differences in Net Present Value of operational ~~operating and maintenance~~ costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, shall ~~may~~ be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(5)~~(4)~~ Detailed supporting data and analyses used to determine the Estimated Average Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period. The utility shall record these data and analyses on Form PSC/ECR 13-E (10/97). Form PSC/ECR 13-E, entitled "Overhead/Underground Residential Differential Cost Data" is incorporated by reference into this rule and may be obtained from the Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850)413-6900.

(5) through (8) renumbered (6) through (9) No change.

(10)~~(9)~~ Nothing in this rule ~~herein contained~~ shall be ...rued to prevent any utility from waiving ~~assuming~~ all or ...portion of a cost differential for ~~of~~ providing underground facilities ~~distribution systems, provided, however, that such assumed cost differential shall not be chargeable to the general body of rate payers, and any such policy adopted by a utility shall have uniform application throughout its service area~~. If, however, the utility waives the differential, the utility shall reduce net plant in service as though the differential had been collected unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived differential.

Specific Authority 350.127(2), ~~366.04(2)(f),~~ 366.05(1) FS. Law Implemented 366.03, 366.04(1), ~~(4),~~ 366.04(2)(f), 366.06(1) FS. History–New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97, _____.

PART VII UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~.

(1) Each investor-owned ~~public~~ utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing ~~new construction and~~ the conversion of existing overhead electric distribution facilities to underground ...ities ~~excluding new residential subdivisions~~. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of ~~new construction or~~ convertingsion of existing overhead ~~electric~~ facilities to underground ~~electric~~ facilities. The non-refundable deposit amounts shall be calculated in the same manner as ~~approximate~~ the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

(2) For ~~the~~ purposes of this rule, the applicant is the person or entity requesting the conversion ~~seeking the undergrounding~~ of existing overhead electric distribution facilities to underground facilities. In the instance where a local ordinance requires developers to install underground facilities, the developer who actually requests the construction for a specific location is ~~when a developer requests local government development approval, the local government shall not be~~ deemed the applicant for purposes of this rule.

(3) No change.

(a) Such work meets the investor-owned ~~public~~ utility's construction standards;

(b) The investor-owned ~~public~~ utility will own and maintain the completed distribution facilities; and

(c) Such agreement is not expected to cause the general body of ratepayers to incur additional ~~greater~~ costs.

(4) No change.

(5) Upon an applicant's request and payment of the deposit amount, an investor-owned ~~public~~ utility shall provide a binding cost estimate for providing underground electric service.

(6) An applicant shall have at least 180 days from the date the estimate is received, to enter into a contract with the public utility based on the binding cost estimate. The deposit amount shall be used to reduce the charge as indicated in subsection (7) only when the applicant enters into a contract with the public utility within 180 days from the date the estimate is received by the applicant, unless this period is extended by mutual agreement of the applicant and the utility.

(7) through (8) No change.

(a) The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.034, F.A.C., Standards of Construction, including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and

(b) ~~For conversions,~~ The estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.

(9) For the purpose of this rule, the charge for overhead facilities shall be the estimated construction cost to build new overhead facilities, including the service drop(s) to the meter(s)

of the customer(s). Estimated construction costs shall be based on the requirements of Rule 25-6.034, F.A.C., Standards of Construction.

(10) An applicant requesting ~~to a public utility for~~ construction of underground distribution facilities under this rule may challenge the utility's cost estimates ~~petition the Commission~~ pursuant to Rule 25-22.032, F.A.C.

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already been paid, credited to the customer. At no time will the costs to the customer be less than zero.

(12) Nothing in this rule shall be construed to prevent any utility from waiving all or any portion of the cost for providing underground facilities. If, however, the utility waives any charge, the utility shall reduce net plant in service as though those charges had been collected unless the Commission determines that there is quantifiable benefits to the general body of ratepayers commensurate with the waived charge.

(13)~~(11)~~ Nothing in this rule shall be construed to grant any investor-owned electric utility any right, title or interest in real property owned by a local government.

Specific Authority 350.127(2) ~~366.04~~, 366.05(1) FS. Law Implemented 366.03, 366.04, 366.05 FS. History–New 9-21-92, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robert Trapp

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 32, No. 18, May 5, 2006

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-601.723 Visiting Check-In Procedures

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify means of obtaining approval for a minor's visit where the legal guardian is incarcerated, yet someone else is taking care of the minor.

SUMMARY: Amends the rule to allow an incarcerated parent or guardian retaining legal custody of a minor to provided a notarized statement authorizing the child of the incarcerated parent to visit. Provides that such authorization remains subject to relevant court orders or relevant departmental rules regarding the inmate's contact with the minor in question.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.23, 944.8031 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dorothy M. Ridgway, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-601.723 Visiting Check-In Procedures.

(1) through (4) No change.

(5) A visitor seventeen years old or younger who cannot furnish proof of emancipation must be accompanied during a visit by an approved parent, legal guardian, or authorized adult and must remain under the supervision of that adult at all times. An authorized non-parental adult accompanying a visiting minor must provide a notarized document of guardianship from the minor's parent or legal guardian (neither of which may be an inmate except as provided below ~~not an inmate~~) granting permission for the minor to visit a specifically identified inmate. The document shall be notarized by someone other than the non-parental adult accompanying the minor and shall be updated every six months from the date of issue. In cases where it can be determined that legal custody remains with the incarcerated parent or legal guardian and has not been given to another adult by the court, a notarized statement from

CF-FSP Form 5306 may be obtained on the Department of hildren and Family Services' website at www.myflorida. com/childcare.

b. A Director Credential renewal, as documented on CF-FSP Form 5252, is active for five (5) years from the date of issuance. The completed renewal application, including all required documentation, must be submitted to the Department of Children and Family Services for review and issuance of a Director Credential Renewal Certificate no earlier than one (1) year prior to the end of the active period of the Director Credential. The Director Credential renewal date is determined by the end date of the active period.

c. If a renewal application is received after the end of the active period for the Director Credential, the Director Credential Renewal Application will be reviewed and, if approved, a certificate will be issued with a renewal date of five (5) years from the date the completed renewal application was processed.

4. Director Credential Training Providers.

a. The Department of Children and Family Services is responsible for reviewing and approving "Overview of Child Care Management" courses offered through vocational-technical schools, community colleges and universities to determine if the requirements for the Director Credential coursework are met. Coursework will be reviewed and approved according to the guidelines found in "Florida Child Care and Education Program Director Credential irriculum Areas;" copies of which may be obtained from the Department of Children and Family Services.

(I) Vocational-technical schools, community colleges and universities seeking to offer the Director Credential training shall submit CF-FSP Form 5247, Florida Child Care and Education Program Director Credential Course Approval Application to the department for course review and approval. CF-FSP Form 5247 may be obtained on the Department of Children and Family Services' website at www.myflorida. com/childcare.

(II) A list of approved "Overview of Child Care Management" courses may be obtained on the Department of Children and Family Services' website at www.myflorida. com/childcare.

b. All college level coursework pertaining to the following content areas will be accepted as approved coursework towards the Advanced Level Director Credential requirements:

(I) Child Care and Education Organizational Leadership and Management

(II) Child Care and Education Financial and Legal Issues

(III) Child Care and Education Programming.

~~(g) All provisions as applicable under subsection 65C-22.003(8), F.A.C., must be met. A director holding a foundational or advanced Director Credential may supervise multiple sites as specified in paragraph 65C-22.003(8)(j), F.A.C.~~

Specific Authority 402.302, 402.305 FS. Law Implemented 402.302, 402.305 FS. History–New 9-12-04, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Carrie Pafford, Government Operations Consultant II

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don Winstead, Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 26, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 13, 2006

Section III
Notices of Changes, Corrections and Withdrawals

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to http://www.dep. state.fl.us/ under the link or button titled "Official Notices."

PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE NOS.:	RULE TITLES:
25-6.034	Standard of Construction
25-6.0341	Location of the Utility's Electric Distribution Facilities
25-6.0342	Third-Party Attachment Standards and Procedures
25-6.0343	Municipal Electric Utilities and Rural Electric Cooperatives
25-6.0345	Safety Standards for Construction of New Transmission and Distribution Facilities
25-6.064	Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities
25-6.078	Schedule of Charges
25-6.115	Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities

NOTICE OF CHANGE OF HEARING DATE

The Public Service Commission notifies all interested persons that the date of the hearing in the above dockets has been changed from August 22, 2006 to August 31, 2006, in order to accommodate the Commission's schedule. The notice of rulemaking was published in the July 7, 2006, Florida Administrative Weekly, Vol. 32, No. 27.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 19, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 21, 2006

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to http://www.dep. state.fl.us/ under the link or button titled "Official Notices."

Section III
Notices of Changes, Corrections and Withdrawals

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to http://www.dep. state.fl.us/ under the link or button titled "Official Notices."

PUBLIC SERVICE COMMISSION

DOCKET NO. 060512-EU

RULE NO.:	RULE TITLE:
25-6.0343	Municipal Electric Utilities and Rural Electric Cooperatives

NOTICE OF CHANGE OF HEARING DATE

The Public Service Commission notifies all interested persons that the date of the hearing on the above rule has been changed from August 31, 2006, to October 4, 2006, pursuant to Order No. PSC-06-0632-PCO-EU, issued July 27, 2006. The hearing will be held at the following date, time and place:

DATE AND TIME: Wednesday, October 4, 2006, 9:30 a.m.

PLACE: Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, FL

The notice of rulemaking was published in the July 7, 2006, Florida Administrative Weekly, Vol. 32, No. 27.

DEPARTMENT OF CORRECTIONS

RULE NO.:	RULE TITLE:
33-601.314	Rules of Prohibited Conduct and Penalties for Infractions

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 20, (May 19, 2006), issue of the Florida Administrative Weekly:

33-601.314 Rules of Prohibited Conduct and Penalties for Infractions.

The following table shows established maximum penalties for the indicated offenses. As used in the table, "DC" means the maximum number of days of disciplinary confinement that may be imposed and "GT" means the maximum number of days of gain time that may be taken. Any portion of either penalty may be applied.

		Maximum Disciplinary Actions
SECTION 1 ASSAULT, BATTERY, THREATS, AND DISRESPECT		
1-1 through 1-5 No change.		
1-6	1-6 Lewd or lascivious exhibition by intentionally masturbating, intentionally exposing genitals in a lewd or lascivious manner, or intentionally committing any other sexual act in the presence of a staff member, contracted staff member or visitor ~~the victim that does not involve physical or sexual contact with the victim~~	60 DC + 90 GT
SECTION 2 through SECTION 11 – No change.		

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.14, 944.279, 944.28 FS. History--New 3-12-84, Amended 1-10-85, Formerly 33-22.12, Amended 12-30-86, 9-7-89, 11-22-90, 6-2-94, 10-01-95, 3-24-97, 7-9-98, 8-13-98, Formerly 33-22.012, Amended 9-30-99, 6-7-00, 4-18-02, 10-10-04, 1-9-05, 4-17-05, 6-5-05, 10-27-05, _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Division of Health Quality Assurance

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
59A-9	Abortion Clinics

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 21, May 26, 2006, Florida Administrative Weekly.

Changes in this rule are as follows:

59A-9.018 – The word "Repromulgated" has been removed from the rule history;

COMMISSIONERS:
LISA POLAK EDGAR
I. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA

OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

July 28, 2006

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket Nos. 060172-EU and 060173-EU - Rule Nos. 25-6.034, 25-6.0341, 25-6.0342, 25-6.0343, 25-6.0345, 25-6.064, 25-6.078, 25-6.115, F.A.C.

Dear Mr. Boyd:

Enclosed are the following materials concerning the above referenced proposed rules:

1. A copy of the rules and materials incorporated by reference into the rules.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rules.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

Please return the copy of the National Electrical Safety Code once your review of the rules is concluded. If there are any questions with respect to this these rules, please do not hesitate to call me.

Sincerely,

Christiana T. Moore for

Larry D. Harris
Associate General Counsel

Electric infrastructure JAPC.ldh.doc
Enclosures
cc: Division of the Commission Clerk and Administrative Services

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History New _____.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and

easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the

use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), (8), 366.05(8)F.S.

History New _____.

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall, at a minimum, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

RULE TITLE:	RULE NO.:
Standard of Construction	25-6.034
Location of the Utility's Electric Distribution Facilities	25-6.0341
Third-Party Attachment Standards and Procedures	25-6.0342
Municipal Electric Utilities and Rural Electric Cooperatives	25-6.0343
Safety Standards for Construction of New Transmission and Distribution Facilities	25-6.0345
~~Extension of Facilities;~~ Contribution in Aid of Construction for Installation of New or Upgraded Facilities.	25-6.064
Schedule of Charges.	25-6.078
Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~.	25-6.115

PURPOSE AND EFFECT: To increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and underground electric infrastructure.

SUMMARY: The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Florida's five Investor Owned Utilities, 18 electric cooperatives, and 35 municipally operated companies will be affected by these rules. Additionally, telecommunications and cable companies that own or lease space on electric facilities may be indirectly affected. Preliminary data provided by the IOUs indicates estimated costs for increased electric infrastructure reliability will range from $63 Million to $193 Million. No data is available from municipally operated systems, electric cooperatives, telecommunications and cable companies.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.04, 366.04(2)(f), 366.05(1) FS

LAW IMPLEMENTED: 366.03, 366.04, 366.04(1), 366.04(2)(c), 366.04(2)(f), ~~366.04(4),~~ 366.04(5), 366.04(6), 366.05, 366.05(1), 366.05(7), 366.05(8), 366.06, 366.06(1) F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD ON RULES 25-6.0341, 25-6.0342, AND 25-6.0343 AT THE TIME, DATE, AND PLACE SHOWN BELOW. FOR RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115, A HEARING WILL BE HELD THE TIME, DATE, AND PLACE SHOWN BELOW ONLY IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE (IF NOT REQUESTED, A HEARING WILL NOT BE HELD ON RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078, AND 25-6.115).

facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(2) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(3) In establishing the Attachment Standards and Procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute arising from the implementation of this rule shall be resolved by the Commission.

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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History New _____.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be

identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and

distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

History New _____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Robert Trapp

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULES: Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: June 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32, Number 18, May 5, 2006.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

Rules 25-6.034, 25-6.0341,
25-6.0342, 25-6.0343, 25-6.0345,
25-6.064, 25-6.078, 25-6.115
Docket Nos. 060172-EU and 060173-EU

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE

As a result of the past two storm seasons, and the severe damage done to the State by hurricanes, the Commission determined that increased electrical infrastructure reliability is needed.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

National ELECTRICAL

C2-2002

Published by the Institute of Electrical and Electronics Engineers, Inc.

Accredited
Standards
Committee
C2-2002

National Electrical Safety Code®

Secretariat

Institute of Electrical and Electronics Engineers, Inc.

Approved 5 February 2001

Institute of Electrical and Electronics Engineers, Inc.

Approved 14 June 2001

American National Standards Institute

2002 Edition

2nd Printing
Corrected Edition
5 August 2002

Abstract: This standard covers basic provisions for safeguarding of persons from hazards arising from the installation, operation, or maintenance of 1) conductors and equipment in electric supply stations, and 2) overhead and underground electric supply and communication lines. It also includes work rules for the construction, maintenance, and operation of electric supply and communication lines and equipment.

The standard is applicable to the systems and equipment operated by utilities, or similar systems and equipment, of an industrial establishment or complex under the control of qualified persons.

This standard consists of the introduction, definitions, grounding rules, list of referenced and bibliographic documents, and Parts 1, 2, 3, and 4 of the 2002 Edition of the National Electrical Safety Code.

Keywords: communications industry safety; construction of communication lines; construction of electric supply lines; electrical safety; electric supply stations; electric utility stations; high-voltage safety; operation of communications systems; operation of electric supply systems; power station equipment; power station safety; public utility safety; safety work rules; underground communication line safety; underground electric line safety

The Institute of Electrical and Electronics Engineers, Inc.
3 Park Avenue, New York, NY 10016-5997, USA

ISBN 0-7381-2778-7

Foreword

(This foreword is not a part of Accredited Standards Committee C2-2002, National Electrical Safety Code®.)

This publication consists of the parts of the National Electrical Safety Code® (NESC®) currently in effect. The former practice of designating parts by editions has not been practical for some time. In the 1977 Edition, Parts 1 and 4 were 6th Editions; Part 2 was a 7th Edition; Part 3 was a revision of the 6th Edition; Part 2, Section 29, did not cover the same subject matter as the 5th Edition; and Part 3 was withdrawn in 1970. In the 1987 Edition, revisions were made in all parts, and revisions to all parts have been made in subsequent editions. It is therefore recommended that reference to the NESC be made solely by the year of the published volume and desired part number. Separate copies of the individual parts are not available.

Work on the NESC started in 1913 at the National Bureau of Standards (NBS), resulting in the publication of NBS Circular 49. The last complete edition of the Code (the 5th Edition, NBS Handbook H30) was issued in 1948, although separate portions had been available at various times starting in 1938. Part 2—Definitions, and the Grounding Rules, 6th Edition, was issued as NBS Handbook H81, ANSI C2.2-1960, in November 1961, but work on other parts was not actively in process again until 1970.

In 1970 the C2 Committee decided to delete the Rules for the Installation and Maintenance of Electric Utilization Equipment (Part 3 of the 5th Edition), now largely covered by the National Electrical Code (ANSI/NFPA 70), and the Rules for Radio Installations (Part 5 of the 5th Edition) from future editions. The Discussion of the NESC, issued as NBS Handbook H4 (1928 Edition) for the 4th Edition of the NESC and as NBS Handbook H39 for Part 2 of the Grounding Rules of the 5th Edition, was not published for the 6th Edition.

The 1981 Edition included major changes in Parts 1, 2, and 3, minor changes in Part 4, and the incorporation of the rules common to all parts into Section 1. The 1984 Edition was revised to update all references and to list those references in a new Section 3. Rounded metric values, for information only, were added. Gender-related terminology was deleted. Section 1—Introduction, Section 2—Definitions, Section 3—References, and Section 9— Grounding Methods, were made applicable to each of the Parts 1, 2, 3, and 4.

The 1987 Edition was revised extensively. Definitions were changed or added. Requirements affecting grounding methods, electric supply stations, overhead line clearances and loading, underground lines, and work rules were revised.

The 1990 Edition included several major changes. General rules were revised. A significant change to the method for specifying overhead line clearances was made and the rationale added as Appendix A. Requirements for clearances of overhead lines from grain bins and an alternate method for determining the strength requirements for wood structures was added. Rules covering grounding methods, electric supply stations, underground lines, and work rules were changed.

In the 1993 Edition, changes were made in the rules applicable to emergency and temporary installations. In Section 9 and Parts 1, 2, and 3, rules were extended or clarified to include HVDC systems. The requirements for random separation of direct-buried supply and communication systems were modified for consistency and clarity, as was the rule in Part 4 on tagging electric supply circuits.

In the 1997 edition, the most notable general change that took place is that numerical values in the metric (SI) system are shown in the preferred position, with customary inch-foot-pound values (inside parentheses) following. A bibliography, Appendix B, which consists of a list of resources identified in notes or recommendations, was added. Changes were made to rules affecting grounding, electric supply stations, and overhead lines, particularly with regard to clearance rules applicable to emergency and temporary installations. Strength requirements contained in Sections 24, 25, and 26 were revised completely. Underground line requirements for random separation for underground lines of direct-buried cables were modified. The requirement for cable identification marking by means of sequentially placed logos was introduced. Work rules added a requirement that warning signs and tags comply with applicable ANSI standards, tagging requirements were clarified with regard to SCADA, and extensive requirements for fall protection were added.

In the 2002 Edition, several changes were made that affected all or several parts of the Code. Particularly, this edition clarifies interfaces between the NEC and NESC with regard to Code jurisdiction in the area of street lights and area lights. Also included is clarification for situations between utility workers and their

Standards Committee Membership

At the time this Code was approved, Accredited Standards Committee C2 had the following membership:

O. Chuck Amrhyn, *Chair* **Frank A. Denbrock,** *Vice Chair*

Susan L. Vogel, *Secretary*

Organization Represented	*Name*
Alliance for Telephone Industry Solutions	Lawrence M. Slavin
American Insurance Services Group, Inc.	Vacant
American Public Power Association	Michael J. Hyland
	Ron Lunt *(Alt.)*
American Public Transit Association	George S. Pristach
Association of American Railroads	Vacant
Association of Edison Illuminating Companies	John J. Schlee, Jr.
Bonneville Power Administration, US Department of Energy	Jerry L. Reding
Edison Electric Institute	Stephen A. Olinick
	John W. Troglia *(Alt.)*
	David G. Komassa *(Alt.)*
Electronic Industries Association	Percy E. Pool
Institute of Electrical and Electronics Engineers, Inc.	Frank A. Denbrock
	Jerome G. Hanson *(Alt.)*
	Vernon R. Lawson *(Alt.)*
International Association of Government Labor Officials	Bernard O'Neill
International Brotherhood of Electrical Workers	James R. Tomaseski
International Municipal Signal Association	Warren Farrell
National Association of Regulatory Utility Commissioners	B. J. Washburn
National Cable Television Association	F. N. Wilkenloh
	Rex Bullinger *(Alt.)*
National Electrical Contractors Association	O. L. Davis
	Brooke H. Stauffer *(Alt.)*
National Electrical Manufacturers Association	Chris K. Durland
	Lawrence F. Miller (*Alt.*)
National Safety Council	P. Schmidt
National Society of Professional Engineers	William F. Fuller
Rural Utilities Service, US Department of Agriculture	G. J. Bagnall
Tennessee Valley Authority	Clayton L. Clem
	Nancy A. Knowles *(Alt.)*
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STATE OF FLORIDA

OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

BY FACSIMILE

July 31, 2006

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket Nos. 060172-EU and 060173-EU - Rule Nos. 25-6.034, 25-6.0341, 25-6.0342, 25-6.0343, 25-6.0345, 25-6.064, 25-6.078, 25-6.115, F.A.C.

Dear Mr. Boyd:

Enclosed is a supplement to the statement of facts and circumstances justifying the above proposed rules.

Sincerely,

Christiana T. Moore

Christiana T. Moore
Associate General Counsel

Electric infrastructure JAPC2.ctm.doc
Enclosure
cc: Division of the Commission Clerk and Administrative Services

Rules 25-6.034, 25-6.0341,
25-6.0342, 25-6.0343, 25-6.0345,
25-6.064, 25-6.078, 25-6.115
Docket Nos. 060172-EU and 060173-EU

SUPPLEMENT TO STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE

On January 23, 2006, the Commission held a staff workshop to discuss the damage to electric utility facilities incurred as a result of recent hurricanes and to explore ways of minimizing future storm damage to electric infrastructure and resulting outages to customers. State and local government officials, independent technical experts, and Florida's electric utilities participated in the workshop. On January 30, 2006, post-workshop comments were received from the participants. Based on the comments received at the January 23, 2006 workshop, at the February 27, 2006 Internal Affairs, the Commission approved a number of specific short-term and long-term actions to prepare Florida's electric infrastructure to better withstand severe storms in the future.

The Commission directed staff to begin rulemaking proceedings to:

(1) Address requiring distribution facility construction standards higher than the National Electrical Safety Code (NESC); and

(2) Look at the cost and reliability of installing underground electric facilities, with specific emphasis on identifying areas and circumstances where underground facilities may be appropriate.

Docket Nos. 060173-EU and 060172-EU, respectively, were opened to initiate rulemaking in these two areas.

A draft of proposed rule changes was discussed at a rule development workshop held on April 17, 2006. Post-workshop comments were received on May 3, 2006 from Florida Power & Light (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (GULF), the Florida Electric Cooperatives Association, Inc. (FECA), the Florida Municipal Electric Association, Inc. (FMEA), the Town of Palm Beach and the Town of Jupiter Island (the Towns), Time Warner Telecom of Florida, L.P. (Time Warner), and H.M. Rollins Company, Inc. (Rollins). On May 15, 2006, a revised draft of proposed rule changes was circulated and a second rule development workshop was held on May 19, 2006. Post-workshop comments were received on May 26, 2006, from FPL, PEF, TECO, GULF, FECA, FMEA, Lee County Electric Cooperative, Inc. (LCEC), the Towns, Florida Cable Telecommunications Association (FCTA), Time Warner, BellSouth Telecommunications, Inc. (BellSouth), Verizon Florida Inc. (Verizon), Embarq Corporation (Embarq), and TDS Telecom/Quincy (TDC). Electric utility cost data for the Statement of Estimated Regulatory Cost (SERC) was also provided on May 26, 2006.

Rule 25-6.034, F.A.C., pertaining to standards of construction: The current rule broadly requires investor-owned utilities to construct, install, maintain, and operate their facilities in accordance with generally accepted engineering practices. The proposed rule changes seek to add specificity to this broad policy statement, particularly with regard to impacts associated with extreme weather. The changes are needed to ensure the provision of adequate

and reliable electric service for operational and emergency purposes in Florida. The requirement for utilities to adopt construction standards that take into consideration the cost-effective targeting of essential overhead and underground distribution facilities for hardening will enhance the ability of utilities to reduce restoration costs and outage times resulting from extreme weather conditions.

Rule 25-6.0341, Florida Administrative Code, Location of the Utility's Electric Distribution Facilities: This rule is needed to encourage electric utilities to economically locate distribution facilities in accordance with the provision of adequate and reliable electric service for operational and emergency purposes in Florida. Utilities will be encouraged to place their facilities in readily accessible locations that take into consideration the cost-effective targeting of essential overhead and underground distribution facilities for hardening to enhance the ability of utilities to reduce restoration costs and outage times resulting from extreme weather conditions.

Rule 25-6.0342, Florida Administrative Code, Third-Party Attachment Standards and Procedures: This new rule is needed to encourage electric utilities to avoid premature pole failures due to pole attachments in accordance with the provision of adequate and reliable electric service for operational and emergency purposes in Florida. Utilities will be encouraged to pursue pole attachment agreements that enhance the ability of utilities to reduce restoration costs and outage times resulting from extreme weather conditions.

Rule 25-6.0343, Florida Administrative Code, Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives: This rule requiring municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities is needed to increase the reliability of the electrical grid to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. The rule is also written to allow utilities to make a showing that, in their particular situation, good reasons exist why higher construction standards should not be required. This would allow Municipals and Cooperatives to show, for example, that their current construction practices under the Rural Electric Standards are reasonable and adequate, or that for a given Municipal or Cooperative, the costs of complying with the standards would outweigh the safety and reliability impacts of failure during a severe weather event. As an example, the Municipals and Cooperatives have stated that their restoration times after previous years' storms were days, not weeks. Upon petition by a Cooperative or Municipal, the Commission could find this evidence satisfies the requirements of the Rule.

Due to the interconnection of Florida's electrical grid, establishing one set of standards for investor owned electric utilities but not for Municipals and Cooperatives may not achieve the goals of increased statewide reliability. For some areas of the state, it may be possible to isolate a Municipal or Cooperative system, and allow the surrounding areas to be energized without any adverse impacts. For other areas of the state, however, there may be interconnections where such isolation is not possible.

Rule 25-6.0345, Florida Administrative Code, Safety Standards for Construction of New Transmission and Distribution Facilities.

Rule 25-6.0345 sets the electric utility reporting requirements pursuant to the Commission's safety jurisdiction and adopts the 2002 edition of the National Electrical Safety Code as the minimum applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. A change to the rule is needed to incorporate the

words "at a minimum" consistent with 2006 legislative modification of Section 366.06, Florida Statutes. (Chapter 2006-230, Laws of Florida) Editorial changes to other subsections are made for clarity and subsection (3), which establishes the content and format of the utility's quarterly reports that list completed work orders, eliminates the requirement for utilities to provide the Kv rating and contiguous characteristics associated with each work order because these data are not needed to select and perform safety inspections.

Rule 25-6.064, Florida Administrative Code, Extension of Facilities:

Most of the recommended changes to the rule are for clarification and ease of application and do not represent changes in current policy. Rule 25-6.064 addresses the calculation of contributions-in-aid-of-construction (CIAC) for line extensions, excluding new subdivisions, which are covered in Rule 25-6.078, and conversions of existing overhead to underground facilities, which are covered in Rule 25-6.115. Changes to the rule are needed to include: (a) adding upgrades to existing facilities, (b) including transformer costs, (c) including system hardening costs, (d) requiring a true-up of the CIAC, and (e) requiring that the CIAC be prorated to future customers in certain cases.

Rule 25-6.078, Florida Administrative Code, Schedule of Charges: Changes are made to clarify existing language and make the rule consistent with the changes proposed in Rules 25-6.034, 25-6.064, and 25-6.115. Current cost differentials are based on initial installation costs and generally indicate that underground construction is more expensive than comparable overhead facilities. However, utilities have indicated that, while underground installation may be more expensive initially, there may be savings in maintenance or storm restoration activities over time, compared to overhead installations. Changes in the rule are intended to capture those longer term costs and benefits.

Today, utilities allege separate overhead and underground operational costs cannot be considered because they are not readily available. The proposed language would require utilities to establish and maintain adequate record keeping and accounting measures so these costs can be tracked.

Rule 25-6.115, Florida Administrative Code, Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities:

Rule 25-6.115 addresses conversion of existing overhead distribution facilities to underground facilities. This rule was originally adopted to codify what would be included in estimates for requested conversions. The changes to the rule are needed to clarify existing language and to make the rule consistent with the changes proposed in Rules 25-6.034, 25-6.064, and 25-6.078.

The 180-day deadline to accept an original estimate in subsection (6) was included in the rule because costs change over time, and the utility and its ratepayers should not be held to an estimate seriously out of date with current costs. However, the parties and the utilities agree that in some circumstances delays are unavoidable and should not require a new estimate or contract. Therefore, a provision has been included allowing the 180 days to be extended upon mutual agreement. Clarifications and additions are also included to make this rule consistent with 25-6.064 and 25-6.078. Life cycle costs and benefits for operational costs including storm restoration for conversions are added to subsection (11)(a) of this rule for consistency of treatment. This will better reflect the total costs of installing or converting overhead facilities to

underground facilities. Subsection (11)(b) recognizes that if a customer chooses to construct or install a portion of the requested facilities, the utility does not incur certain costs.

The proposed language in subsection (12) is identical to the language in subsection (7) of Rule 25-6.064 and subsection (10) of Rule 25-6.078, and allows the waiver of all or a portion of the CIAC if the Commission determines that commensurate benefits accrue to the general body of ratepayers. Investment in facilities that are not paid for through a customer-specific CIAC become part of rate base. A higher rate base can result in higher rates to all customers. Unless it can be shown that all customers benefit from the construction, these costs should be recovered from the customer requesting the construction. This change allows the Commission to consider a discount or credit mechanism such as the change proposed by FPL in Docket No. 060150-EI, if it deems it appropriate.

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 7, 2006

TO: Office of General Counsel (Moore)

FROM: Division of Economic Regulation (Hewitt)

RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.034, F.A.C., Standard of Construction; Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities, Rule 25-6.064, F.A.C., Extension of Facilities; Contributions-in-Aid-of-Construction, Rule 25-6.078, F.A.C., Schedule of Charges, and proposed new Rule 25-6.0341, F.A.C., Location of Utility Facilities, Rule 25-6.0342, F.A.C., Third-Party Attachments Standards and Procedures, and Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060172-EU and 060173-EU

SUMMARY OF THE RULE

The above rules contain the requirements for all electric utilities to construct their electrical systems to a minimum standard which is installed, maintained, and operated in accordance with generally accepted engineering practices. The rules require that utilities must comply with applicable safety standards for transmission and distribution facilities of the National Electrical Safety Code (NESC). The rules also contain the procedures for the calculation of contributions-in-aid-of-construction (CIAC) by customers requesting extension of distribution facilities. The rules contain the schedule for charging a differential cost for providing underground service. Finally, the rules contain the requirement that investor-owned utilities (IOUs) file a tariff for deposit amounts for the conversion of overhead electric to underground facilities.

The proposed rule amendments would add specificity to the broad policy of construction standards and require each IOU to establish its own construction standard for overhead and underground electrical transmission and distribution facilities. Each IOU would also have to establish guidelines and procedures for the application of the extreme wind loading standards to (1) new construction, (2) major planned upgrades and relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the proposed changes would adopt the NESC as the minimum applicable safety standards for transmission and distribution facilities. Rule changes would establish a uniform procedure to calculate amounts due as CIAC. IOUs would also have to establish a written policy as part of their tariff on the installation of underground electrical distribution facilities in new residential subdivisions and file a tariff for converting overhead to underground facilities.

A new proposed rule would facilitate and encourage the placement of electric distribution facilities in readily accessible locations such as adjacent to public roads and along front edges of properties. Another proposed rule would require IOUs to establish written procedures for attachments by others to the utility's poles. An additional new proposed rule would require municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities to ensure adequate, reliable, and safe electric service.

Other minor changes are also proposed to clarify CIAC calculations, expand the costs included in determining overhead/underground cost differences, and allow waiver of CIAC in certain circumstances.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs), 18 electric cooperatives, and 35 municipally operated companies, would be affected by the proposed rule changes. The electric companies sell electricity to industrial, commercial, and residential customers throughout the state. In addition, cable television companies, incumbent local exchange telephone companies (LECs), as well as any other telecom carriers owning electric utility pole attached equipment, could be indirectly affected by some of the proposed rule changes. As of 2005 there were 10 ILECs, 415 competitive LECs, and 681 Interexchange Telephone Companies (IXCs), and an unknown number of non-PSC regulated telecommunications companies, many of which may have pole attachments.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some implementation and enforcement costs for the Commission as it monitors compliance with the proposed rule changes. The Commission would benefit by the proposed rule amendments from fewer petitions for storm damage relief. There should be no impact on agency revenues and the costs of administering the rules would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from the improved electrical transmission and distribution system.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

The IOUs would have significant transactional costs from the proposed rule changes. The four major IOUs reported estimated costs to implement storm hardening programs for their systems to range between $63 million and $193 million. The cost estimates are based on capital additions to pre-2006 capital budget levels and do not include ongoing operation and maintenance costs. However, the additional costs are minor compared to the hundreds of million dollars in damage caused by storms. Other rule changes would have additional costs but estimates are not available at this time.

Municipal and cooperative electrical utilities could also have significant costs but they have not submitted any estimates to the Commission.

Requiring the placement of IOU electric distribution facilities in readily accessible locations would impact non-electric companies that attach their equipment on utility poles. There have been no estimates submitted that would indicate the magnitude of the impact.

The IOUs and others would benefit from strengthening of their facilities if less damage is incurred and service interruptions are decreased thus lessening lost revenues.

Electric company customers would benefit significantly from the proposed rule changes because the electrical service system should better withstand storms and hurricanes, although the ratepayers may eventually pay for all or some of the additional costs for the upgrades.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties with improved storm hardened electrical system facilities. The cost of the improvements may be born by ratepayers, stockholders, or some combination, depending on the funding means chosen but should be more than offset by the positive economic impact from fewer and less widespread outages.

CH:kb
cc: Mary Andrews Bane
Chuck Hill
Bob Trapp
Jim Bremen
Hurd Reeves

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 7, 2006

TO: Office of General Counsel (Moore)

FROM: Division of Economic Regulation (Hewitt)

RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.034, F.A.C., Standard of Construction; Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities, Rule 25-6.064, F.A.C., Extension of Facilities; Contributions-in-Aid-of-Construction, Rule 25-6.078, F.A.C., Schedule of Charges, and proposed new Rule 25-6.0341, F.A.C., Location of Utility Facilities, Rule 25-6.0342, F.A.C., Third-Party Attachments Standards and Procedures, and Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060172-EU and 060173-EU

SUMMARY OF THE RULE

The above rules contain the requirements for all electric utilities to construct their electrical systems to a minimum standard which is installed, maintained, and operated in accordance with generally accepted engineering practices. The rules require that utilities must comply with applicable safety standards for transmission and distribution facilities of the National Electrical Safety Code (NESC). The rules also contain the procedures for the calculation of contributions-in-aid-of-construction (CIAC) by customers requesting extension of distribution facilities. The rules contain the schedule for charging a differential cost for providing underground service. Finally, the rules contain the requirement that investor-owned utilities (IOUs) file a tariff for deposit amounts for the conversion of overhead electric to underground facilities.

The proposed rule amendments would add specificity to the broad policy of construction standards and require each IOU to establish its own construction standard for overhead and underground electrical transmission and distribution facilities. Each IOU would also have to establish guidelines and procedures for the application of the extreme wind loading standards to (1) new construction, (2) major planned upgrades and relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the proposed changes would adopt the NESC as the minimum applicable safety standards for transmission and distribution facilities. Rule changes would establish a uniform procedure to calculate amounts due as CIAC. IOUs would also have to establish a written policy as part of their tariff on the installation of underground electrical distribution facilities in new residential subdivisions and file a tariff for converting overhead to underground facilities.

A new proposed rule would facilitate and encourage the placement of electric distribution facilities in readily accessible locations such as adjacent to public roads and along front edges of properties. Another proposed rule would require IOUs to establish written procedures for attachments by others to the utility's poles. An additional new proposed rule would require municipal and cooperative electric utilities to establish standards of construction for all overhead and underground electrical transmission and distribution facilities to ensure adequate, reliable, and safe electric service.

Other minor changes are also proposed to clarify CIAC calculations, expand the costs included in determining overhead/underground cost differences, and allow waiver of CIAC in certain circumstances.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs), 18 electric cooperatives, and 35 municipally operated companies, would be affected by the proposed rule changes. The electric companies sell electricity to industrial, commercial, and residential customers throughout the state. In addition, cable television companies, incumbent local exchange telephone companies (LECs), as well as any other telecom carriers owning electric utility pole attached equipment, could be indirectly affected by some of the proposed rule changes. As of 2005 there were 10 ILECs, 415 competitive LECs, and 681 Interexchange Telephone Companies (IXCs), and an unknown number of non-PSC regulated telecommunications companies, many of which may have pole attachments.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some implementation and enforcement costs for the Commission as it monitors compliance with the proposed rule changes. The Commission would benefit by the proposed rule amendments from fewer petitions for storm damage relief. There should be no impact on agency revenues and the costs of administering the rules would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from the improved electrical transmission and distribution system.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

The IOUs would have significant transactional costs from the proposed rule changes. The four major IOUs reported estimated costs to implement storm hardening programs for their systems to be at least $63 million. The cost estimates are based on capital additions to pre-2006 capital budget levels and do not include ongoing operation and maintenance costs. However, the additional costs are minor compared to the hundreds of million dollars in damage caused by storms. Other rule changes would have additional costs but estimates are not available at this time.

Municipal and cooperative electrical utilities could also have significant costs but they have not submitted any estimates to the Commission.

Requiring the placement of IOU electric distribution facilities in readily accessible locations would impact non-electric companies that attach their equipment on utility poles. There have been no estimates submitted that would indicate the magnitude of the impact.

The IOUs and others would benefit from strengthening of their facilities if less damage is incurred and service interruptions are decreased thus lessening lost revenues.

Electric company customers would benefit significantly from the proposed rule changes because the electrical service system should better withstand storms and hurricanes, although the ratepayers may eventually pay for all or some of the additional costs for the upgrades.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties with improved storm hardened electrical system facilities. The cost of the improvements may be born by ratepayers, stockholders, or some combination, depending on the funding means chosen but should be more than offset by the positive economic impact from fewer and less widespread outages.

CH:kb
cc: Mary Andrews Bane
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State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 2, 2006

TO: Office of General Counsel (Harris)

FROM: Division of Economic Regulation (Hewitt)

RE: Statement of Estimated Regulatory Costs for Florida Electric Cooperatives Association (FECA) Alternative Proposed Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060512-EU

SUMMARY OF THE RULE

FECA's Alternative Proposed Rule 25-6.0343, F.A.C., Standards of Construction, contains the reporting requirements for municipal electric utilities (Munis) and rural electric cooperative utilities (Co-ops). Each Muni and Co-op would have to report the extent to which their construction standards, policies, practices, and procedures are designed to storm harden the transmission and distribution (T&D) facilities. The proposed rule would require that each utility's annual report should at a minimum address the extent the standards, policies, practices, and procedures comply with the National Electric Safety Code (NESC). Each report must also address the extent that the utility is guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 NESC for: (1) new construction, (2) major planned upgrades, rebuilds, or relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the report would address the effects of flooding and storm surges on underground distribution facilities, provide for placement of new and replacement distribution facilities to facilitate safe and efficient access, and include written safety, reliability, and engineering standards and procedures for attachments by others. Munis and Co-ops would also have to report information on their inspections of T&D facilities, including failures and vegetation management.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The 18 cooperatives and 34 municipally operated electric utilities would be affected by the proposed alternative rule. These utilities sell electricity to industrial, commercial, and residential customers throughout the state.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some minor implementation costs for the Commission for reviewing annual reports submitted because of the proposed rule. The Commission would benefit by the proposed rule from the improved information on the distribution grid and possibly fewer complaints about storm outages.

There should be no impact on agency revenues and the costs of administering the rule would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from future improvements of the electrical transmission and distribution systems.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

There were no cost data submitted concerning transactional costs to implement FECA's proposed rule. However, FECA states in its proposal that, "The Alternative Rule is a less costly alternative to the Proposed Rule, but it accomplishes the same purposes." There would be some relatively minor costs associated with gathering data and preparing an annual report due to the proposed rule.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties if electrical system facilities are improved. There should be no significant negative impact from the proposed alternative rule.

CH:kb
cc: Mary Andrews Bane
Chuck Hill
Jim Bremen
Hurd Reeves

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History New _____.

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and

easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the

use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), (8), 366.05(8)F.S.

History New_____.

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2002 edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2001, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall, at a minimum, comply with the standards in these provisions. Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.

(2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.	DOCKET NO. 060172-EU
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 ORDER NO. PSC-06-0632-PCO-EU ISSUED: July 27, 2006

ORDER GRANTING MOTION TO BIFURCATE PROCEEDINGS AND ESTABLISH CONTROLLING DATES AND ESTABLISHING NEW DOCKET

BY THE COMMISSION:

On June 20, 2006, we considered staff's recommendation to propose new rules to increase the safety and reliability of Florida's electrical grid in the face of increased extreme weather events. On that date, we voted to propose several new rules, including new Rule 25-6.0343, which sets requirements for standards of construction, location of facilities, and pole attachment standards and procedures for municipally-owned electrical utilities (Municipals) and rural electrical cooperatives (Cooperatives).[1] We also voted on that date to set the three new proposed rules directly for hearing, including new Rule 25-6.0343. Notice of the proposed rules was published in the July 7, 2006, Florida Administrative Weekly. The three new proposed rules were set for hearing on August 22, 2006; that date has been changed to August 31, 2006.

On July 18, I issued Order No. PSC-06-0610-PCO-EU, Order Establishing Procedure, which set forth controlling dates for the August 31, 2006 hearing on the three new proposed rules (25-6.0341, 25-6.0342, and 25-6.0343). Affected persons must file comments, testimony, or proposed alternative rule language by August 4, 2006, and reply comments or testimony must be filed by August 18, 2006.

On July 24, 2006, the Florida Electric Cooperatives Association, Inc. (FECA) filed a Motion for Bifurcation of Proceeding and Request for Hearing and Rescheduled Comments. In their Motion, FECA asserts that the scope of the existing 060172-EU and 060173-EU dockets has expanded considerably, and FECA is concerned that the circumstances unique to Municipals and Cooperatives may not be fully developed at the August 31, 2006 hearing. FECA also states that it has developed a proposed alternative Rule, and has begun discussions with staff in the expectation of arriving at negotiated rule language which will accomplish the Commission's goal

[1] New proposed Rules 25-6.0341, Location of Utility's Electric Distribution Facilities, and 25-6.0342, Third Party Attachment Standards and Procedures, were also proposed. These two Rules apply to Investor Owned Utilities only.

of increasing the reliability and safety of Florida's electrical grid without leading to a rule challenge over the Commission's jurisdiction.

FECA asserts that being required to devote resources to meeting the existing controlling dates and preparing for hearing on August 31, 2006 will hinder FECA's ability to work cooperatively with staff to develop alternative rule language for the Commission's consideration. FECA instead proposes bifurcation of these proceedings, so that the Commission may consider proposed Rule 25-6.0343 in a separate hearing not involving proposed Rules 25-6.0341 and 25-6.0342. FECA proposes a new hearing date of October 4, 2006, and proposes controlling dates for the filling of comments and testimony leading up to that date, as follows:

Comments on Proposed Rule 25-6.0343	September 8, 2006
Reply Comments	September 22, 2006
Rule Hearing	October 4, 2006

I have considered FECA's Motion, and find its rationale for requesting bifurcation of the proceeding well founded. Providing 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.

I also agree with FECA's concerns that the special considerations and circumstances relating to Municipals and Cooperatives may not be adequately advanced in this proceeding as it is currently structured. FECA's Motion for Bifurcation is reasonable, but does not go far enough to simplify this proceeding. Accordingly, it is my decision that a new docket should be created for new proposed Rule 25-6.0343. That new docket should contain the record of these existing dockets up to this point.

Based upon the foregoing, it is

ORDERED that Florida Electrical Cooperatives Association, Inc.'s Motion for Bifurcation of Proceeding and Rescheduled Comments is granted as set forth in the body of this Order. It is further

ORDERED that a new docket shall be established for new proposed Rule 25-6.0343. It is further

ORDERED that a rule hearing for new proposed Rule 25-6.0343 shall be held on October 4, 2006, and controlling dates shall be established as set forth in this order and any Order Establishing Procedure which may be subsequently issued.

By ORDER of Commissioner Isilio Arriaga, as Prehearing Officer, this 27th day of July, 2006.

ISILIO ARRIAGA
Commissioner and Prehearing Officer

(SEAL)

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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 ORDER NO. PSC-06-0793-PCO-EU ISSUED: September 22, 2006

ORDER ALLOWING SUPPLEMENTAL COMMENTS AND SETTING ADDITIONAL REPLY COMMENT DEADLINE

BY THE COMMISSION:

On September 15, 2006, the Florida Electric Cooperatives Association, Inc. ("FECA") filed a Motion for Leave to File Supplemental Comments, along with Supplemental Comments on Proposed Rule 25-6.0343, F.A.C. The Supplemental Comments are in support of an alternative to the rule the Commission proposed as new Rule 25-6.0343, F.A.C. In its Motion, FECA seeks to have the comments considered at the October 4, 2006, hearing, and to allow reply comments to its alternative rule to be filed by other interested persons prior to the hearing.

FECA explains in its Motion that Order No. PSC-06-0632-PCO-EU, the Order Establishing Procedure, required initial comments on the proposed rule to be filed by September 8, with reply comments to be filed by September 22, 2006. FECA explains that Municipal Electric Utilities ("Municipals"), Rural Electric Cooperatives ("Cooperatives"), and staff have continued to work to produce alternative language to that proposed by the Commission, and that as a result of that work, FECA is able to file alternative rule language for the Commission to consider adopting as a final rule.

FECA explains that they are asking for an additional reply comment date of September 29, 2006, to be established so that other interested persons and parties to this docket, who may not have participated in the development of the alternative rule, will have the ability to file written comments responding to the alterative rule proposed by the Municipals and Cooperatives.

In order to allow FECA to present its alternative rule to the Commission for consideration at the October 4, 2006, rule hearing, and to ensure all interested persons and parties are given notice of that alternative and an opportunity to comment on it in advance, FECA's Motion is reasonable and should be granted.

Based upon the foregoing, it is

ORDERED that the Florida Electric Cooperative Association, Inc.'s Motion for Leave to File Supplemental Comments is GRANTED. IT IS FURTHER

ORDERED that any party or interested person may file comments in response to FECA's Supplemental Comments by Friday, September 29, 2006.

By ORDER of Commissioner Isilio Arriaga, as Prehearing Officer, this 22nd day of September, 2006.

/s/ Isilio Arriaga
ISILIO ARRIAGA
Commissioner and Prehearing Officer

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(SEAL)

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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 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. FECA also adopts and incorporates herein its written comments filed on May 3 and 26, 2006, and oral comments given on April 17, May 19 and June 20, 2006. Contemporaneous with these comments, FECA is also filing with the Florida Public Service Commission's ("Commission") the testimony of Mr. John Martz and Mr. William B. Willingham.

[1]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., 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.

I
INTRODUCTION

In response to the impacts of hurricanes over the last two years and in anticipation of future storms which could interrupt service and require significant time for restoration of electric infrastructure, the Commission has proposed rules requiring all electric utilities subject to its jurisdiction to undertake conduct which the Commission believes will enhance the reliability of transmission and distribution facilities and reduce storm restoration time. FECA shares with the Commission a concern about the reliability of electric transmission and distribution facilities in severe weather events and the need to minimize storm restoration time through acts that are reasonable, practical, feasible and cost-effective. Indeed, in response to the storms of the last two years, FECA's members have undertaken a number of actions designed to enhance the reliability of their systems during severe storm weather events. See pages 13 - 14.

While FECA shares the Commission's concerns about enhanced storm reliability, FECA is concerned about the Commission's approach thus far. The Commission has proposed that the same requirements should apply to not-for-profit, self-governing rural electric cooperatives ("cooperatives") which have elected boards comprised of members served by the cooperatives, as apply to investor-owned electric public utilities ("IOUs"). Given the dramatically different relationship between cooperatives and their members and IOUs and their ratepayers as well as the sharply different relationship between the Commission and comprehensively regulated IOUs and the Commission and cooperatives, FECA respectfully submits that no rule for cooperatives is warranted. If the Commission believes a rule for cooperatives is warranted, a separate rule tailored to the circumstances of cooperatives would be appropriate. Any rule adopted regarding cooperatives must necessarily recognize the much more limited jurisdiction the Commission has

over cooperatives than it does over IOUs. The proposed rule fails to recognize any jurisdictional difference.

The Commission, in response to the request of the cooperatives and municipalities, has agreed to propose a separate rule for those entities. More recently, the Commission has agreed to a separate docket for that rule and those entities. Those are positive and encouraging developments. However, the rule proposed for cooperatives is, in its current form, the same rule as has been proposed for IOUs.

FECA respectfully submits there are multiple reasons why no rule for cooperatives is warranted or that if a rule for cooperatives is to be adopted, the rule applicable to cooperatives should be different from the rule proposed for IOUs. FECA appreciates the opportunity the Commission has provided the cooperatives with a separate docket to develop those differences, explore whether a rule for cooperatives is needed and to propose a reasonable alternative. FECA is optimistic that when the record is fully developed, the Commission will acknowledge that (a) the significantly different relationship between self-governed, not-for-profit cooperatives and their members (customers) relative to the relationship of IOUs and their ratepayers, (b) the significantly different relationship of the Commission to cooperatives and their members relative to the relationship between for-profit, IOUs and their ratepayers, (c) the role of the Rural Utilities Service ("RUS") with most Florida cooperatives, and (d) 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 IOUs.

While FECA still advances the option of the Commission proposing no rule for

cooperatives, FECA has proposed an alternative rule to the Staff of the Commission which should meet the Commission's goals in this proceeding. The proposed alternative rule would reinforce the cooperative relationship that has evolved between the Commission and rural electric cooperatives over the last thirty years. FECA's proposed alternative, which is attached hereto as Attachment A, is a least cost regulatory alternative that addresses all of the stated goals of proposed rules 25-6.034, 25-6.341 and 25-6.0342. FECA requests that if the Commission determines that any rule is necessary for cooperatives, that the Commission adopt the attached rule in lieu of proposed Rule 25-6.0343.

FECA's Comments are divided into five sections in addition to this Introduction. Section II addresses the historic relationship of cooperatives, their members and the Commission and provides a rationale for no rule for cooperatives or a rule for cooperatives separate and distinct from IOUs. Section III addresses RUS requirements applicable to and followed by RUS cooperatives. Section IV addresses the unique customer density and cost profiles of cooperatives, the high costs associated with implementing extreme wind load standards for cooperatives, and the efforts cooperatives have undertaken to address system storm reliability. Section V addresses FECA's proposed alternative rule. Section VI addresses Rule 25-6.0343 as proposed by the Commission.

Once again, FECA thanks the Commission for its recognition thus far that cooperatives warrant their own rule and docket. FECA is confident that the same understanding that led to a separate rule and separate proceeding will lead the Commission to the conclusion either that no rule for cooperatives should be adopted or that rule requirements different than IOU rule requirements are warranted.

II
THE RELATIONSHIP OF COOPERATIVES, THEIR MEMBERS AND THE COMMISSION

Before addressing whether to adopt a rule for cooperatives or whether to adopt either FECA's alternative rule or the Commission's proposed rule for cooperatives and municipalities, it is important to recognize and discuss the unique relationship of not-for-profit, self-governed cooperatives with the members they serve and the Commission's role in that relationship relative to the relationship between for-profit IOUs and their ratepayers and the Commission's role in that relationship. These are very different relationships and roles, and they provide a fundamental rationale for not adopting a rule for cooperatives or for adopting a different rule for cooperatives than for IOUs.

Rural electric cooperatives were organized to meet a growing need for reliable electricity service in rural areas of America. In 1935 when President Roosevelt created the Rural Electrification Administration ("REA") by executive order, nine out of ten rural homes were without electricity. This lack of an essential service was frustrating economic development of rural areas, forcing them to retain an agrarian economy. A year later Congress passed the Rural Electrification Act, creating a low cost lending program administered by REA that allowed rural electric systems to organize and fund necessary facilities.

Florida's electric cooperatives have a proud history of providing reliable, at-cost electric service to the rural and suburban areas of Florida. Florida's electric cooperatives were formed in the 1930s to serve areas that were not being served by other utilities. Cooperatives were created by the people and businesses that needed electricity, and today they are still owned by those they serve.

In 1940 the Florida legislature acted to facilitate the creation of rural electric cooperatives in Florida by enacting the Rural Electric Cooperative Law, which was codified as Chapter 425, Florida Statutes. Section 425.01, Florida Statutes. Under Chapter 425, each cooperative is a "cooperative, nonprofit, membership corporation ... organized ... for the purpose of supplying electric energy and promoting and extending use thereof in rural areas." Section 425.02, Florida Statutes.

Each cooperative organized under Chapter 425 is governed by a board of trustees, which consists of members (customers) served by the cooperative. Section 425.10, Florida Statutes. The trustees are elected by the members of the cooperatives. Id. In addition, cooperatives conduct annual, open meetings of its members as well as special meetings called by the board of trustees or at least ten percent of the members. Section 425.09, Florida Statutes.

Simply stated, cooperatives are democratic organizations controlled by their members who actively participate in setting policies and making decisions. The boards are comprised of members who have no interest to serve other than those of their fellow members. There are no shareholders with profit expectations. Since the members own the cooperative and control its policies through democratic processes, there is no motive for the cooperative to act in any fashion that is not in the interests of its members.

Recognizing the not-for-profit, self-governing aspects of cooperatives, from 1940 until 1974, the Florida Legislature withheld from the Commission any regulatory oversight of rural electric cooperatives. Since 1974, when the Legislature gave the Commission limited jurisdiction over rural electric cooperatives, the Legislature has continued to recognize there is not the need for the Commission to act to protect cooperative members in the same fashion as it

needs to act to protect ratepayers of investor-owned public utilities. Just as the Legislature has recognized there is not the need to regulate cooperatives as there is the need to regulate IOUs, the Commission should recognize that the same rule is not necessary for cooperatives and IOUs.

Just as there is no need for the Commission to set rates to protect cooperative customers, there is not the same level of need for the Commission to act to assure reliability of distribution facilities owned by the members of cooperatives. These facilities are owned by the members they serve. The facilities exist solely to provide reliable service to the members. They are not owned by shareholders who expect a market based return on their investment. The boards of trustees when making decision regarding construction standards and vegetation policies and other matters that affect reliability do not have to balance competing interests of shareholders and ratepayers. The boards of trustees are simply acting, as democratically elected representatives, to preserve and enhance the reliability and quality of service to their fellow members. Thus, the fundamental relationship between cooperatives and their members suggests there is far less need for the Commission to act to protect the interests of members of cooperatives. This should be considered by the Commission in its rulemaking. It is a rational, indeed compelling, basis for making distinctions between the rule proposed for IOUs and the rule proposed for cooperatives or for deciding not to adopt at all for cooperatives.

III
RURAL UTILITIES SERVICE REQUIREMENTS

Most of Florida's cooperatives have low interest loans from the RUS. RUS borrowers are required by their loan covenants to comply with the RUS' rules and regulations. Most of those Florida cooperatives which are not RUS borrowers nonetheless follow RUS guidelines to

preserve their future ability to borrow from RUS.

The RUS has expertise in the area of designing rural electric facilities and has created construction specifications that its borrowers must use. RUS' specifications have been developed over decades based upon RUS' extensive history with nearly 1000 electric cooperatives in the United States, and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). The RUS also requires borrowers to maintain and test their Emergency Response Plans.

RUS' requirements regarding distribution system planning, construction, operation and maintenance are extensive and are contained not only in regulations in the Code of Federal regulations ("CFR"), but also in Bulletins and Information Publications. The Commission is familiar with RUS Bulletins and their guidance, as RUS pole inspection requirements were relied upon, in part, by the Commission in entering Order No. PSC-06-0144-PAA-EI, its pole inspection order in Docket No. 060078-EI. Some of the RUS Bulletins are incorporated by reference into the CFR regulations.

It is not practical for FECA to forward to the Commission as part of its comments all applicable RUS regulations and bulletins. However, it is helpful to provide to the Commission indices of the RUS regulations and bulletins and the text of the RUS regulations applicable to distribution systems and storm restoration. It is important for the Commission to understand that RUS has already acted extensively in the areas covered by the Commission's proposed rule and that in significant measure the Commission's rule is redundant, unnecessary and could possibly even conflict with RUS requirements.

The Rural Utilities Service Electric Program Regulations are posted on the United States Department of Agriculture's ("USDA") web site. The index of those regulations is found on the following website: http://www.usda.gov/rus/electric/regs/index.htm. A copy of that index is attached as part of Attachment C. At a minimum, the Commission should be aware of the following regulations mentioned in that index:

(1) 7 CFR Part 1724, Electric engineering, architectural services and design policies and procedures.
(2) 7 CFR Part 1726, Electric system construction policies and procedures
(3) 7 CFR Part 1728, Electric standards and specifications for materials and construction
(4) 7 CFR Part 1730, Electric system operations and maintenance

For the Commission's ease of reference, all those regulations are also found in Attachment C.

The RUS requires compliance with the National Electrical Safety Code ("NESC"). 7 CFR Part 1724.50. It then goes beyond the requirements of the NESC and requires for distribution facilities conformance "to the applicable RUS construction standards" and utilization of "RUS accepted materials." 7 CFR Part 1724.51(a). RUS also requires the preparation of work plans and specifications for distribution facilities, 7 CFR part 1724.53, and RUS approval of such plans, 7 CFR Part 1724.54(a)(b).

In 7 CFR Part 1728, RUS provides extensive guidance regarding specifications and standards for materials, equipment and construction units that will be used for RUS financial assistance. RUS uses standards from national groups (American National Standards Institute, American Wood Preservers' Association, national engineering societies and the NESC) "to the greatest extent practical." 7 CFR 1728.20(a). RUS has an extensive procedure for including items for its standards listings or technical acceptance, 7 CFR Part 1728.30 – 1728.60, and requires borrowers to procure listed items, 7 CFR Part 1728.70. RUS incorporates by reference

numerous electric bulletins that it has issued. 7 CFR Part 1728.97 through 1728.202.

RUS' regulations also contain various operations and maintenance requirements that are relevant to this proceeding. Each borrower must maintain its system in compliance with "prudent utility practice ... and all applicable laws, regulations and orders" and "shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements...." 7 CFR Part 1730.20. Each borrower must also perform Vulnerability and Risk Assessments and maintain an Emergency Restoration Plan. Id. RUS borrowers also must conduct necessary inspections and tests, and the inspections must include determinations of compliance with the NESC. 7 CFR Part 1730.21. Borrowers must periodically analyze and document its security and O&M practices and performs ratings, which are subject to RUS review. 7 CFR Part 1730. 22 through 24.

As previously noted, there are extensive Bulletins issued by the RUS that supplement the requirements of RUS' regulations. An index of those Bulletins is found in Attachment D. The index is found at the following website, where specific Bulletins can be accessed: http://www.usda.gov.rus/electric/bulletins.htm. As one can see from the index, the vast bulk of the Bulletins corresponds to and supplements Parts 1724 through 1730 of the regulations.

FECA respectfully submits that given the existing requirements of RUS in the form of its regulations and bulletins applicable to RUS cooperatives, there is no need for the Commission to require by rule the adoption of construction standards or compliance with the National Electrical Safety Code. Exacting and demanding standards already are in place for RUS cooperatives. Moreover, Florida's cooperatives borrowing or hoping to borrow from the RUS already have to

comply with not only the NESC but also RUS' requirements.

IV
COOPERATIVE DEMOGRAPHICS, COSTS AND STORM RESPONSES

The demographics and nature of a cooperative's service territory are unique. Cooperatives serve more than sixty percent of Florida's landmass, but they serve less than twelve percent of Florida's population. Nationally, the majority of most cooperatives' service territories are rural, and cooperatives have only seven (7) member-owners per mile of line. This compares to average customers per mile of line for IOUs and municipalities of 35 and 47, respectively.[2]

Despite the low density and the corresponding high cost per customer of serving the rural areas, cooperatives' rates are competitive with their neighboring utilities. However, cooperatives are concerned that if the same rule requirements are applied to cooperatives as are applied to IOUs, given the cooperatives' low customer density and high cost service characteristics, cooperatives rates will be forced to increase rates without any assurance of improved reliability or storm restoration time.

For instance, in earlier comments, FECA provided cost estimates associated with complying with extreme wind loading standards. Those costs are significant, and they appear to have been overlooked. They warrant re-emphasis here, given the Commission's proposed rule that requires cooperatives "to be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC."

Withlacoochee River Electric Cooperative, Inc., which is located in an extreme wind loading area of 130 mph, has estimated the materials cost of complying with the extreme wind

[2] This is based on 2004 EIA and RUS data.

loading standards of NESC 250 C rather than the applicable wind loading standard of NESC 250 B. Those materials cost estimates (exclusive of labor, vehicles, etc.) are shown on Attachment B. The materials cost of construction of new distribution facilities would escalate alarmingly for Withlacoochee and similarly situated cooperatives. Different pole types would be required; span lengths would be significantly shortened; and the resulting costs per mile for various circuits would increase dramatically. The estimated increase in materials costs associated with compliance with extreme wind loading standards is as follows:

Facility	Materials Cost Increase
Single Phase #2 AAAC	65%
3 Phase 394 AAAC Single Circuit	96 - 101%
3 Phase 740 AAAC Single Circuit	87 - 94%
3 Phase 394 AAAC Double Circuit	68 - 159%
3 Phase 740 AAAC Double Circuit	50 – 142%.

These dramatic projected cost increases associated with following extreme wind load standards are sobering, but given other testimony the Commission has heard, it is difficult to understand why the Commission is proposing a rule for cooperatives to be guided by extreme wind load standards.

Compliance with extreme wind load standards is very expensive, but it would not even address the primary cause of loss of distribution facilities during storm events – trees and flying debris hitting lines. As FECA has previously testified, during the 2004 and 2005 hurricane seasons, most cooperative pole failure (more than 50%) was due not to direct wind within the cooperatives' applicable extreme wind ratings (which is what the extreme wind loading

standards address), but to tornadic winds and flying debris (which the extreme wind load standards do nothing to prevent). For most cooperatives, the number of poles that failed due to straight wind within applicable ratings was insignificant, and many of those poles were built to meet extreme wind loading. Adherence to extreme wind loading standards by cooperatives appears to be a costly but ineffective approach.

Moreover, the adoption by cooperatives of extreme wind loading standards likely would increase rather than decrease storm restoration time. Compliance with extreme wind loading standards significantly decreases the span lengths, requiring more poles and more spans exposed to the same amounts of flying debris. If cooperatives complying with extreme wind 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.

Thus, FECA respectfully submits that a rule requiring cooperatives to be guided by extreme wind loading standards would actually frustrate rather than improve storm reliability and storm restoration. That is a decision best left to cooperative's representative boards, which are far more familiar with their service territories, their vulnerability to storm related outages and the service requirements of their members.

Cost considerations aside, in deciding whether to proceed with the existing proposed rule, a less prescriptive rule commensurate with the Commission's more limited jurisdiction over cooperatives, or no rule at all for cooperatives, the Commission should also be aware of the actions Florida's cooperatives have undertaken and are undertaking to improve storm reliability. Florida's cooperatives have been proactive in regard to storm recovery, and their actions suggest

there is no need for a prescriptive Commission rule.

As noted previously, most of Florida's cooperatives already comply with RUS' extensive requirements, requirements that the Commission is already relying upon in its pole inspection docket. Thus, there is no need for the Commission to require construction standards for cooperatives.

All of FECA's members have increased their vegetation management programs. Of course, this directly addresses the primary cause of hurricane related, cooperative distribution outages in the two recent hurricane seasons – tornadic winds, trees and flying debris.

Most Florida cooperatives have created generator programs for large and critical loads. In many cases it is less expensive for a cooperative to provide a permanent or portable backup generator during restoration, either on the customer's site or at a substation, than it is to harden a system.

Many cooperatives have also lowered the underground differential charge. This promotes the installation and use of underground facilities.

Some cooperatives are building ties between feeders to add redundancy to the system. This enhances reliability, avoids storm related outages and decreases storm restoration time.

In many cases cooperatives are using stronger poles and more expensive materials for targeted facilities. They have taken this action because the cooperatives' boards have determined that the increased cost is justified and the members are willing to pay higher associated rates.

On their own initiative, cooperatives have considered whether to adopt extreme wind loading standards. One cooperative, Florida Keys Electric Cooperative Association, Inc., has decided to adopt extreme wind loading standards, despite the associated cost. Other

cooperatives, such as Withlacoochee River Electric Cooperative, Inc., have considered the higher materials costs associated with adopting extreme wind loading standards and have targeted transmission facilities and feeders for upgrades to extreme wind loading standards but have declined to adopt such standards across the board.

Before proposing a prescriptive rule for cooperatives, the Commission should seriously consider whether such a rule, particularly one with high associated costs, is warranted. The democratically representative boards of Florida's cooperatives are uniquely qualified to evaluate and implement storm reliability and restoration measures. Their members expect the boards to act to diminish vulnerability to extreme weather events, and those boards have acted and will continue to act. Of course, it is those boards and not the Commission that also have rate making authority. So, they are better positioned than the Commission to consider the cost implications of each of the alternatives available. Thus, FECA respectfully submits that the Commission should think long and hard about proposing a prescriptive rule that imposes significant costs. If any rule is to be adopted for cooperatives, a rule much less prescriptive than the Commission proposed rule should be adopted.

V
FECA'S PROPOSED ALTERNATIVE RULE

While FECA advocates that the Commission decline to adopt any rule for cooperatives, as an alternative, FECA is proposing a less prescriptive rule. FECA's proposed alternative rule is set forth in Attachment E. It abandons language in the Commission's proposed rule that requires cooperatives to adopt various standards, recognizing that such standards are already in place for RUS cooperatives. Instead, it creates requirements for certain standards to be made

available for Commission review. In addition, the rule contemplates an annual report to be submitted by each cooperative that addresses compliance with the NESC, pole inspections, vegetation management and other matters the cooperatives deems appropriate, including the extent to which facilities may be upgraded to extreme wind loading standards in the NESC. 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 maintain at its corporate headquarters the following information: construction standards, pole inspection standards, vegetation management standards and guidelines, and procedures or methodologies for inspecting transmission structures and poles and distribution poles. These materials are to be readily available to the Commission Staff, and if Staff is unwilling to travel to review these materials, arrangements are to be made to provide Staff access to these materials in Tallahassee.

Section (3) of FECA's alternative rule requires the filing of an annual report with the Commission by March 1 of each year. The report would contain: (a) a statement of compliance with the NESC regarding construction standards (b) a statement of compliance with the NESC

regarding pole attachment contract; (b) a pole inspection report; (c) a vegetation management report; and (d) other appropriate information such as whether facilities were upgraded to meet extreme wind loading standards in the NESC.

FECA's proposed 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 and calls for cooperatives and municipal's voluntary offering to make other matters available to the Commission and its Staff.

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.

VI
PROBLEMS WITH PROPOSED RULE 25-6.0343

Proposed Rule 25-6.0343 is not based upon sound policy for cooperatives. It is nothing more than a mere restatement of the requirements of the rules proposed for the IOUs. The proposed rule completely disregards the dramatically different relationship between cooperatives and their members and IOUs and their ratepayers as well as the Commission's relationship to IOUs and cooperatives. It disregards cooperatives' unique cost characteristics, the high costs that would be imposed on cooperatives by the proposed rule and the fact that it is cooperatives' boards and not the Commission that has to balance customer service expectations with rate impacts. The proposed rule also fails to take into account the existing requirements of the RUS applicable to cooperatives that borrow or wish to borrow money from the RUS as well as the existing requirements of Commission rules that cooperatives comply with the NESC. Thus, it requires standards that are already in place and requires consideration of other standards not required by the RUS or necessary to meet the service expectations of cooperative members.

FECA especially takes issue with the Commission's attempt to resolve conflicts between the cooperative and its members, to define what is cost-effective for a cooperative, to require the use of the extreme wind loading standards, to define construction standards for cooperatives without regard to the existing contracts between cooperatives and their lenders, to require the placement of facilities adjacent to roadways, and to regulate pole attachments for cooperatives. While FECA's members share the Commission's goals of establishing and maintaining adequate construction standards and improving restoration times, FECA maintains that the Commission's

rule must be restricted to subjects that are within its jurisdictional limits and must advance sound public policy.

In the following discussion, FECA addresses some of the specific flaws in the proposed rule. More detailed FECA comments are also reflected in Attachment F, on a section by section basis.

Subsection (1)(e)

Proposed subsection (1)(e) appears to require use of the extreme wind loading standards of the NESC for new distribution facilities unless there are extenuating circumstances, such as failing a cost-effectiveness test. However, there are no definitions in the rule for the terms "reasonably practical", "feasible" or "cost-effective". Under a purely monetary cost-effectiveness test the extreme wind loading standards would never be implemented because they will always be more expensive than the minimum standards of the NESC. Presumably, there are unidentified factors that must be considered for this test, or else this provision would have no purpose other than to prevent the use of the extreme wind loading standards.

While FECA appreciates the fact that the rule appears to give great discretion to the utilities to determine what is cost-effective, feasible and reasonably practicable, cooperatives already have this discretion. Moreover, when the decision only involves distribution facilities that are for the exclusive use of the cooperative and its members, the Commission lacks authority to review the decision of a cooperative's board unless it is related to a territorial issue. FECA also is concerned that a strict application of the rule would be counterproductive to cooperatives that are building to a standard higher than the minimum.

It cannot be disputed that building to the extreme wind loading standards is more

expensive than building to the minimum standard. This has been discussed in detail above and is shown on Attachment B. In some cases the extreme wind loading standard would more than double construction costs for materials, possibly without providing any significant benefits. More importantly, there is no research or evidence in this record that supports a finding that use of the extreme wind loading standards is the best approach for cooperatives. As FECA demonstrated in its presentation to the Commission on June 5, many poles that were constructed to the extreme wind loading standards nevertheless failed due to tornadic wind and tree limbs during hurricanes Charley, Ivan and Wilma.

There are alternatives to improving system performance that may be more effective and cheaper for a cooperative than to double construction costs for infrastructure that may inevitably fail no matter how much is spent to reinforce it. The majority of cooperatives' pole failures in the hurricanes of 2004 and 2005 were the result of tornadic winds and trees falling into the lines or on poles. As explained above, FECA's members have all undertaken specific actions to improve their storm reliability. FECA respectfully submits that a cooperative's board is uniquely qualified to evaluate and implement these alternatives. Moreover, cooperative Boards are the exclusive entity to make rate decisions for their members. It is far better for the body charged with rate making to decide which storm reliability measures should be undertaken by cooperatives.

For some cooperatives moving to the extreme wind loading standards will result in substantial rate increases. While the Commission has rate structure jurisdiction over cooperatives, it does not have ratemaking jurisdiction. *City of Tallahassee v. Mann*, 411 So.2d 162 (Fla. 1981). Ratemaking falls exclusively within the discretion of each cooperative's

governing board, and mandating or imposing significant costs on an electric utility constitutes ratemaking or is inconsistent with the exercise of ratemaking authority. See, *Florida Power Corp. v. Seminole County*, 579 So.2d 105, 107 (Fla. 1991).

FECA's also is concerned that a strict application of the proposed rule could prohibit the use of construction standards that exceed the minimum standards of the NESC. The higher standards are more expensive, and arguably would not pass a cost effectiveness test unless factors other than cost are considered. At least two cooperatives are building all of their distribution facilities to a standard that exceeds the minimum criteria of the NESC. In both cases the cooperative's board determined that the higher construction standard was desired by their members and that the members were willing to pay higher rates for the higher standard. FECA believes that regardless of any tests set forth by the Commission, cooperative boards have the right to build to standards that exceeded the minimum loading criteria of the NESC, and the Commission is without jurisdiction to prevent such construction.

FECA is further concerned that the test set forth in this subsection may conflict with the standards imposed by RUS. Therefore, the Commission's proposed rule may impair a cooperative's contract with RUS.

Section (2)

Proposed subsection (2) appears to require distribution facilities to be placed adjacent to a public road and in front of the customer's premises unless there are extenuating circumstances, such as failing a cost-effectiveness test. There are no definitions in the rule for the terms "reasonably practical", "feasible" or "cost-effective". FECA appreciates the fact that the rule appears to give great discretion to the utilities to determine what is cost-effective, feasible and

reasonably practicable, but cooperatives already have this discretion. A cooperative's management and board are uniquely qualified to establish guidelines for the placement of facilities without rule mandated preferences from the Commission which fail to recognize legitimate alternatives that might be superior in individual circumstances.

A front-lot presumption should not apply in rural areas. In many cases the cooperative will construct lines across open fields because it is a significantly shorter and cheaper path to serve a new member. An alternative route along established roads would be significantly longer and therefore more expensive, and it probably would fail under the cost-effectiveness test. Nevertheless, the presumption in the rule that facilities should be placed adjacent to a public road is troubling and may unintentionally create a legal burden on cooperative boards that dare to place facilities in locations other than along roadways.

FECA also takes exception to the rule as it applies to commercial buildings. FECA agrees that in residential neighborhoods it usually is a good policy to place distribution facilities in the front of the building so that the equipment is more readily accessible (but even that preference is not universal, as there are instances where there is better or equal access to other sides of residential lots). However, commercial buildings are different. In some cases commercial properties have holding ponds and other obstructions in front of the building that would render the utility's facilities inaccessible by vehicles. In some cases it is advantageous to place a pad mounted transformer in the rear of a commercial building to avoid contact with vehicles that travel at high speeds. Arguably, these are extenuating circumstances that should allow the utility to avoid the presumptions in the rule for commercial properties, but the lack of definitions in the rule are cause for concern, and may create undesirable liability for cooperatives

and other utilities that chose to install facilities in a place that is not adjacent to a public road or in front of the premises.

Section (3)

Pole attachment rates for cooperatives and municipals are exempt from the FCC's rate, terms and conditions regulation. If an entity wishes to attach to cooperative facilities, they must pay the full cost of changes to our facilities that are required to maintain the minimum criteria set forth in the NESC. Cooperatives have contracts with entities that attach to their facilities, and RUS cooperatives attachment contracts require attachments to comply with the NESC. Section (3) of the proposed rule could result in the impairment of a cooperative's contracts with attachers and is absolutely unnecessary for cooperatives.

Section (4)

Proposed section (4) usurps the right of a cooperative to resolve disputes with its members. It also usurps the jurisdiction of the courts to resolve contract disputes and other cases between a cooperative and an attacher. These actions are clearly beyond the Commission's limited jurisdiction over cooperatives. In addition, it will be unnecessarily burdensome and costly for the cooperative's member and the cooperative if they are forced to travel to Tallahassee for a hearing on an issue that could have been resolved at home.

CONCLUSION

FECA respectfully submits no rule for cooperatives is warranted. Existing Commission rules and/or RUS requirements already sufficiently address cooperatives. As a second best alternative, FECA has suggested an alternative proposed rule. If the Commission decides to

proceed with the adoption of a rule for cooperatives, the proposed alternative rule attached hereto as Attachment A provides a least cost regulatory alternative to the Commission's proposed rule while also accomplishing all of the stated goals of the Commission's proposal. FECA respectfully requests that the Commission not adopt any rule for cooperatives, but that if the Commission decides to adopt a rule for cooperatives, the Commission adopt its alternative rule in lieu of proposed rule 25-6.0343.

Respectfully submitted,

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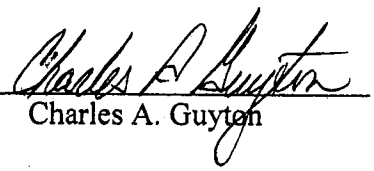
By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments Of The Florida Electric Cooperatives Association, Inc. To Proposed Rule 25-6.0343 was furnished by Hand Delivery (*) or U.S. Mail this 8th day of September, 2006, to the following:

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Attachment

ATTACHMENT A
FECA'S ALTERNATIVE RULE

25-6.0343 Access to Standards of Municipal Electric Utilities and Rural Electric Cooperatives and Reporting of Pole Inspections and Vegetation Management

(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) Each municipal electric utility and rural electric cooperative shall maintain at its corporate headquarters a copy of its construction standards, pole attachment standards, vegetation management standards and the guidelines, procedures or methodologies for inspecting transmission structures and poles and distribution poles, including the pole inspection cycle and pole selection process information. Upon request, the utility shall provide access to a copy of these standards, guidelines, procedures and methodologies to the Commission staff at the utility's headquarters. If the Commission staff is unable to travel to the municipal's or cooperative's headquarters, arrangements will be made to provide access to the documents in Tallahassee.

(3) Each utility shall submit a report to the Director of the Division of Economic Regulation by March 1 of each year for the preceding calendar year which shall include:

(a) A statement of whether the utility's current construction standards comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(b) A statement of whether the utility contractually requires attachments by others to the utility's transmission and distribution facilities to comply with the applicable edition of the NESC.

(c) A pole inspection report which shall include information for the previous 12 months on the following:

(1) The number and percentage of transmission structure and pole and distribution pole inspections planned and completed.

(2) The number and percentage of transmission structures and poles and distribution poles failing the inspection and the cause for such failure, if known.

(3) The number and percentage of transmission structures and poles and distribution poles replaced or for which remediation was taken, including a description of the remediation taken.

(d) A vegetation management report which shall describe the utility's vegetation management plan, including the percentage of the cycle completed for transmission, three-phase distribution, distribution secondary and lateral circuits in the previous 12-month period, if available.

(e) Any other information the utility deems appropriate, which may include facilities which were upgraded to the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC.

History: New

Legislative Authority: 366.04(6)

ATTACHMENT B
EXTREME WIND LOADING COST COMPARISONS

Single Phase #2 AAAC		
NESC Code	250B	250C
Pole Type	40/5 Wood	40/3 Wood
Span Length (ft)	450	270
Cost per Mile	$ 36,694	$ 60,378

3 Phase 394 AAAC Single Circuit			
NESC Code	250B	250C	250C
Pole Type	50/3 Wood	50/2 Wood	50/H2 Steel
Span Length (ft)	375	170	240
Cost per Mile	$ 75,000	$ 150,624	$ 147,327

3 Phase 740 AAAC Single Circuit			
NESC Code	250B	250C	250C
Pole Type	50/3 Wood	50/2 Wood	50/H2 Steel
Span Length (ft)	300	140	200
Cost per Mile	$ 95,815	$ 185,494	$ 179,597

3 Phase 394 AAAC Double Circuit			
NESC Code	250B	250C	250C
Pole Type	50/2 Wood	50/2 Wood	55/H3 Steel
Span Length (ft)	325	110	220
Cost per Mile	$ 149,496	$ 387,690	$ 251,316

3 Phase 740 AAAC Double Circuit			
NESC Code	250B	250C	250C
Pole Type	50/2 Wood	50/2 Wood	55/H4 Steel
Span Length (ft)	250	90	200
Cost per Mile	$ 198,091	$ 479,739	$ 297,468

ATTCHMENT C
APPLICABLE RUS REGULATIONS

USDA Rural Development

Committed to the future of rural communities.

Electric Programs

Electric Programs >> Regulations

Rural Utilities Servi… …ectric … …gram Regulation…

Regulations
Bulletins Codified … …ated by R…
F…

The re… …on… …a… …ir… … form… …vi…ing in …ou… …ser… …d in … …rom the Code of Federal Regulations (CFR) … of January 1, 200… Amendments

The E-CFR beta site, maintained by the Nat… …chives and Records Administration, provides a copy of the CFR whic… …pdated daily.

Regulations

7 CFR Part	HTML	PDF	Descripti…
1709	html	pdf	Assistance to high energy cost rural communities
1710	html	pdf	General and pre-loan policies and procedures common to insure… and guaranteed electric loans
1714	html	pdf	Pre-loan policies and procedures for insured electric loans
1717	html	pdf	Post-loan policies and procedures common to insured and guaranteed electric loans
1718	html	pdf	Loan security documents for electric borrowers
1720	html	pdf	Guarantees for bonds and notes issued for electrification or telephone purposes
1721	html	pdf	Post-loan policies and procedures for insured electric loans
1724	html	pdf	Electric engineering, architectural services and design policies and procedures
1726	html	pdf	Electric system construction policies and procedures
1728	html	pdf	Electric standards and specifications for materials and construction.
1730	html	pdf	Electric system operations and maintenance
1767	html	pdf	Accounting requirements for RUS electric borrowers
1773	html	pdf	Policy on audits of RUS borrowers
1785	html	pdf	Loan account computations, procedures and policies for electric and telephone borrowers

1786	html	pdf	Prepayment of RUS guaranteed and insured loans to electric an telephone borrowers
1788	html	pdf	RUS fidelity and insurance requirements for electric and telephone borrowers
1789	html	pdf	Use of consultants funded by borrowers
1792	html	pdf	Compliance with other Federal statutes, regulations, and Executive orders
1794	html	pdf	Environmental policies and procedures

Bulletins Codified or Incorporated by Reference

Bulletin	Size (.doc)	Text	MS Word	PDF	Description
1728F-803	10.6M	N/A	N/A	.pdf	Specifications and Drawings for 24.9/14.4 kV Line Construction (Incorporated by reference - §1728.97). See letter dated March 7, 2001, letter concerning assembly numbering (html) (pdf).
1728F-804	12.8M	N/A	N/A	.pdf	Specifications and Drawings for 12.5/7.2 kV Line Construction (Incorporated by reference - §1728.97) (4/21/2005)
1728F-806	4.2M	N/A	N/A	.pdf	Specifications and Drawings for Underground Electric Distribution (Incorporated by reference - §1728.97)
1728F-700	4.1M	N/A	.doc	.pdf	Specification for Wood Poles, Stubs and Anchor Logs (Incorporated by reference - §1728.97)
1728H-701	30K	.txt	.doc	.pdf	Specifications for wood crossarms, transmission timber and pole keys (Codified - §1728.201)
1728H-702	24K	.txt	.doc	.pdf	Specifications for quality control and inspection of timber products (Codified - §1728.202)

For bulletins and informational publications, see the Electric Program Bulletins Page.

The free Adobe Adobat Reader is required to view PDF files. You may download it from: http://www.adobe.com/prodindex/acrobat/readstep.html

Electric Programs borrowers will be notified of new and revised regulations by memo or hard copy. Borrowers should notify their business associates of the availability of these regulations. All new and revised Electric Program regulations will be available here upon issuance. If you have any questions regarding these documents or documents not included here, call (202) 720-8674 or FAX (202) 205-3654.

For other Rural Development Utilities Programs regulations, visit the main Utilities Programs Publications and Directives Page.

E-mail suggestions and comments to the Electric Programs Webmaster. Please include your name, e-mail address, telephone number, and company affiliation in the body of your message so that we may be able to contact you for additional information, if necessary.

begin with the next payment. For example: the amount deferred in the October payment will be reamortized over a 84 month period starting with the next payment (November if paying on a monthly basis). When a Borrower defers principal under any of these programs the scheduled payment on the account will increase by an amount sufficient to pay off the deferred amount, with interest, by the date specified in the agreement (usually 84 months (28 quarters)).

[67 FR 485, Jan. 4, 2002, as amended at 68 FR 37954, June 26, 2003]

§ 1721.107 Agreement.

After approval of the Borrower's request for a deferment of principal and interest, an extension agreement, containing the terms of the extension, together with associated materials, will be prepared and forwarded to the Borrower by RUS. The extension agreement will then be executed and returned to RUS by the Borrower.

§ 1721.108 Commencement of the deferment.

The deferment of principal and interest will not begin until the extension agreement and other supporting materials, in form and substance satisfactory to RUS, have been executed by the Borrower and returned to RUS. Examples of other supporting materials are items such as approving legal opinions from the Borrower's attorney and approvals from the relevant regulatory body for extending the maturity of existing debt and for the additional debt service payment incurred.

§ 1721.109 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0123.

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

Subpart A—General

Subpart B—Architectural Services

Subpart C—Engineering Services

Subpart D—Electric System Planning

Subpart E—Electric System Design

Subpart F—RUS Contract Forms

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 63 FR 35314, June 29, 1998, unless otherwise noted.

Subpart A—General

§ 1724.1 Introduction.

(a) The policies, procedures and requirements in this part implement certain provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers.

(b) All borrowers, regardless of the source of financing, shall comply with RUS' requirements with respect to design, construction standards, and the use of RUS accepted material on their electric systems.

(c) Borrowers are required to use RUS contract forms only if the facilities are financed by RUS.

§ 1724.2 Waivers.

The Administrator may waive, for good cause on a case-by-case basis, requirements and procedures of this part.

§ 1724.3 Definitions.

Terms used in this part have the meanings set forth in § 1710.2 of this chapter. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in § 1710.2 of this chapter, the following terms have the following meanings for the purposes of this part:

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Engineer means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

Force account construction means construction performed by the borrower's employees.

GPO means Government Printing Office.

NESC means the National Electrical Safety Code.

RE Act means the Rural Electrification Act of 1936 as amended (7 U.S.C. 901 *et seq.*).

Repowering means replacement of the steam generator or the prime mover or both at a generating plant.

RUS means Rural Utilities Service.

RUS approval means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given orally followed by a confirming letter.

RUS financed means financed or funded wholly or in part by a loan made or guaranteed by RUS, including concurrent supplemental loans required by § 1710.110 of this chapter, loans to reimburse funds already expended by the borrower, and loans to replace interim financing.

[63 FR 35314, June 29, 1998, as amended at 63 FR 58284, Oct. 30, 1998]

§ 1724.4 Qualifications.

The borrower shall ensure that:

(a) All selected architects and engineers meet the applicable registration and licensing requirements of the States in which the facilities will be located;

(b) All selected architects and engineers are familiar with RUS standards and requirements; and

(c) All selected architects and engineers have had satisfactory experience with comparable work.

§ 1724.5 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS. (See part 1700 of this chapter.)

(b) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B and C of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by a certified copy of the board resolution awarding the contract.

(c) *Contract amendments requiring RUS approval.* The borrower shall submit to

RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval. Each contract amendment submittal to RUS must be accompanied by a certified copy of the board resolution approving the amendment.

§ 1724.6 Insurance requirements.

(a) Borrowers shall ensure that all architects and engineers working under contract with the borrower have insurance coverage as required by part 1788 of this chapter.

(b) Borrowers shall also ensure that all architects and engineers working under contract with the borrower have insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount at least as large as the amount of the architectural or engineering services contract but not less than $500,000.

§ 1724.7 Debarment and suspension.

Borrowers shall comply with the requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

§ 1724.8 Restrictions on lobbying.

Borrowers shall comply with the restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1724.9 Environmental compliance.

Borrowers shall comply with the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers.

§ 1724.10 Standard forms of contracts for borrowers.

The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through E of this part prescribe when and how borrowers are required to use RUS standard forms of contracts for engineering and architectural services. Subpart F of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for engineering and architectural services.

[63 FR 58284, Oct. 30, 1998]

§§ 1724.11-1724.19 [Reserved]

Subpart B—Architectural Services

§ 1724.20 Borrowers' requirements—architectural services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower shall select a qualified architect to perform the architectural services required for the design and construction management of headquarters facilities. The selection of the architect is not subject to RUS approval unless specifically required by RUS on a case by case basis. Architect's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(b) The architect retained by the borrower shall not be an employee of the building supplier or contractor, except in cases where the building is prefabricated and pre-engineered.

(c) The architect's duties are those specified under the Architectural Services Contract and under subpart E of this part, and, as applicable, those duties assigned to the "engineer" for competitive procurement procedures in part 1726 of this chapter.

(d) If the facilities are RUS financed, the borrower shall submit or require the architect to submit one copy of each construction progress report to RUS upon request.

(e) Additional information concerning RUS requirements for electric borrowers' headquarters facilities are set forth in subpart E of this part. See also RUS Bulletin 1724E-400, Guide to Presentation of Building Plans and Specifications, for additional guidance.

This bulletin is available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522.

§ 1724.21 Architectural services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS Form 220, Architectural Services Contract, must be used by electric borrowers when obtaining architectural services.

(b) The borrower shall ensure that the architect furnishes or obtains all architectural services related to the design and construction management of the facilities.

(c) Reasonable modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Such modifications or additions shall not relieve the architect or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. All substantive changes must be approved by RUS prior to execution of the contract.

(d) Architectural services contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(e) *Closeout.* Upon completion of all services and obligations required under each architectural services contract, including, but not limited to, submission of final documents, the borrower must closeout that contract. The borrower shall obtain from the architect a final statement of cost, which must be supported by detailed information as appropriate. For example, out-of-pocket expense and per diem types of compensation should be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation. RUS Form 284, Final Statement of Cost for Architectural Service, may be used. All computations of the compensation must be made in accordance with the terms of the architectural services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§§ 1724.22-1724.29 [Reserved]

Subpart C—Engineering Services

§ 1724.30 Borrowers' requirements—engineering services.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) Each borrower shall select one or more qualified persons to perform the engineering services involved in the planning, design, and construction management of the system.

(b) Each borrower shall retain or employ one or more qualified engineers to inspect and certify all new construction in accordance with § 1724.32. The engineer must not be the borrower's manager.

(c) The selection of the engineer is not subject to RUS approval unless specifically required by RUS on a case by case basis. Engineer's qualification information need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(d) The engineer's duties are specified under the Engineering Services Contract and under part 1726 of this chapter. The borrower shall ensure that the engineer executes all certificates and other instruments pertaining to the engineering details required by RUS.

(e) Additional requirements related to appropriate seismic safety measures are contained in part 1792, subpart C, of this chapter, Seismic Safety of Federally Assisted New Building Construction.

(f) If the facilities are RUS financed, the borrower shall submit or require the engineer to submit one copy of each construction progress report to RUS upon RUS' request.

§ 1724.31 Engineering services contracts.

The provisions of this section apply only to RUS financed electric system facilities.

(a) RUS contract forms for engineering services shall be used. Reasonable

modifications or additions to the terms and conditions in the RUS contract form may be made to define the exact services needed for a specific undertaking. Any such modifications or additions shall not relieve the engineer or the borrower of the basic responsibilities required by the RUS contract form, and shall not alter any terms and conditions required by law. All substantive changes to the RUS contract form shall be approved by RUS prior to execution of the contract.

(b) RUS Form 236, Engineering Service Contract—Electric System Design and Construction, shall be used for all distribution, transmission, substation, and communications and control facilities. These contracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) RUS Form 211, Engineering Service Contract for the Design and Construction of a Generating Plant, shall be used for all new generating units and repowering of existing units. These contracts require RUS approval.

(d) Any amendments to RUS approved engineering services contracts require RUS approval.

(e) *Closeout.* Upon completion of all services and obligations required under each engineering services contract, including, but not limited to, submission of final documents, the borrower must closeout the contract. The borrower shall obtain from the engineer a completed final statement of engineering fees, which must be supported by detailed information as appropriate. RUS Form 234, Final Statement of Engineering Fee, may be used. All computations of the compensation shall be made in accordance with the terms of the engineering services contract. Closeout documents need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1724.32 Inspection and certification of work order construction.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) The borrower shall ensure that all field inspection and related services are performed within 6 months of the completion of construction, and are performed by a licensed engineer, except that a subordinate of the licensed engineer may make the inspection, provided the following conditions are met:

(1) The inspection by the subordinate is satisfactory to the borrower;

(2) This practice is acceptable under applicable requirements of the States in which the facilities are located;

(3) The subordinate is experienced in making such inspections;

(4) The name of the person making the inspection is included in the certification; and

(5) The licensed engineer signs such certification which appears on the inventory of work orders.

(b) The inspection shall include a representative and sufficient amount of construction listed on each RUS Form 219, Inventory of Work Orders (or comparable form), being inspected to assure the engineer that the construction is acceptable. Each work order that was field inspected shall be indicated on RUS Form 219 (or comparable form.) The inspection services shall include, but not be limited to, the following:

(1) Determination that construction conforms to RUS specifications and standards and to the requirements of the National Electrical Safety Code (NESC), State codes, and local codes;

(2) Determination that the staking sheets or as-built drawings represent the construction completed and inspected;

(3) Preparation of a list of construction clean-up notes and staking sheet discrepancies to be furnished to the owner to permit correction of construction, staking sheets, other records, and work order inventories;

(4) Reinspection of construction corrected as a result of the engineer's report;

(5) Noting, initialing, and dating the staking or structure sheets or as-built drawings and noting the corresponding work order entry for line construction; and

(6) Noting, initialing, and dating the as-built drawings or sketches for generating plants, substations, and other major facilities.

(c) *Certification.* (1) The following certification must appear on all inventories of work orders:

I hereby certify that sufficient inspection has been made of the construction reported by this inventory to give me reasonable assurance that the construction complies with applicable specifications and standards and meets appropriate code requirements as to strength and safety. This certification is in accordance with acceptable engineering practice.

(2) A certification must also include the name of the inspector, name of the firm, signature of the licensed engineer, the engineer's State license number, and the date of signature.

§§ 1724.33–1724.39 [Reserved]

Subpart D—Electric System Planning

§ 1724.40 General.

Borrowers shall have ongoing, integrated planning to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements for their electric systems. The primary components of the planning system consist of long-range engineering plans and construction work plans. Long-range engineering plans identify plant investments required over a long-range period, 10 years or more. Construction work plans specify and document plant requirements for a shorter term, 2 to 4 years. Long-range engineering plans and construction work plans shall be in accordance with part 1710, subpart F, of this chapter. See also RUS Bulletins 1724D-101A, Electric System Long-Range Planning Guide, and 1724D-101B, System Planning Guide, Construction Work Plans, for additional guidance. These bulletins are available from Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522.

§§ 1724.41–1724.49 [Reserved]

Subpart E—Electric System Design

§ 1724.50 Compliance with National Electrical Safety Code (NESC).

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) A borrower shall ensure that its electric system, including all electric distribution, transmission, and generating facilities, is designed, constructed, operated, and maintained in accordance with all applicable provisions of the most current and accepted criteria of the National Electrical Safety Code (NESC) and all applicable and current electrical and safety requirements of any State or local governmental entity. Copies of the NESC may be obtained from the Institute of Electrical and Electronic Engineers, Inc., 445 Hoes Lane, Piscataway, NJ 08855. This requirement applies to the borrower's electric system regardless of the source of financing.

(b) Any electrical standard requirements established by RUS are in addition to, and not in substitution for or a modification of, the most current and accepted criteria of the NESC and any applicable electrical or safety requirements of any State or local governmental entity.

(c) Overhead distribution circuits shall be constructed with not less than the Grade C strength requirements as described in Section 26, Strength Requirements, of the NESC when subjected to the loads specified in NESC Section 25, Loadings for Grades B and C. Overhead transmission circuits shall be constructed with not less than the Grade B strength requirements as described in NESC Section 26.

§ 1724.51 Design requirements.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Distribution.* All distribution facilities must conform to the applicable RUS construction standards and utilize RUS accepted materials.

(b) *Transmission lines.* (1) All transmission line design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, transmission line design data summary, general description of terrain, right-of-way calculations, discussion concerning conductor and structure selection, conductor sag and tension information, design clearances, span limitations due to clearances, galloping or conductor separation, design loads, structure strength limitations, insulator selection and design, guying requirements, and vibration considerations. For lines composed of steel or concrete poles, or steel towers, in which load information will be used to purchase the structures, the design data shall also include loading trees, structure configuration and selection, and a discussion concerning foundation selection.

(3) Line design data for uprating transmission lines to higher voltage levels or capacity must be approved by RUS.

(4) Transmission line design data which has received RUS approval in connection with a previous transmission line construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(c) *Substations.* (1) All substation design data must be approved by RUS.

(2) Design data consists of all significant design features, including, but not limited to, a discussion of site considerations, oil spill prevention measures, design considerations covering voltage, capacity, shielding, clearances, number of low and high voltage phases, major equipment, foundation design parameters, design loads for line support structures and the control house, seismic considerations, corrosion, grounding, protective relaying, and AC and DC auxiliary systems. Reference to applicable safety codes and construction standards are also to be included.

(3) Substation design data which has received RUS approval in connection with a previous substation construction project for a particular borrower is considered approved by RUS for that borrower, provided that:

(i) The conditions on the project fall within the design data previously approved; and

(ii) No significant NESC revisions have occurred.

(d) *Generating facilities.* (1) This section covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (e) of this section. Generation plant buildings must meet the requirements of paragraph (e)(1) of this section.

(2) For all new generation units and for all repowering projects, the design outline shall be approved by RUS, unless RUS determines that a design outline is not needed for a particular project.

(3) The design outline will include all significant design criteria. During the early stages of the project, RUS will, in consultation with the borrower and its consulting engineer, identify the specific items which are to be included in the design outline.

(e) *Headquarters*—(1) *Applicable laws.* The design and construction of headquarters facilities shall comply with all applicable Federal, State, and local laws and regulations, including, but not limited to:

(i) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794), which states that no qualified individual with a handicap shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Uniform Federal Accessibility Standards (41 CFR part 101–19, subpart 101–19.6, appendix A) are the applicable standards for all new or altered borrower buildings, regardless of the source of financing.

(ii) The Architectural Barriers Act of 1968 (42 U.S.C. 4151), which requires that buildings financed with Federal funds are designed and constructed to

be accessible to the physically handicapped.

(iii) The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR 1990 Comp., p. 269). Appropriate seismic safety provisions are required for new buildings for which RUS provides financial assistance. (See part 1792, subpart C, of this chapter.)

(2) The borrower shall provide evidence, satisfactory in form and substance to the Administrator, that each building will be designed and built in compliance with all Federal, State, and local requirements.

(f) *Communications and control.* (1) This section covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The performance considerations for a new or replacement master system must be approved by RUS. A master system includes the main controller and related equipment at the main control point. Performance considerations include all major system features and their justification, including, but not limited to, the objectives of the system, the types of parameters to be controlled or monitored, the communication media, alternatives considered, and provisions for future needs.

§ 1724.52 Permitted deviations from RUS construction standards.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *Structures for raptor protection.* (1) RUS standard distribution line structures may not have the extra measure of protection needed in areas frequented by eagles and other large raptors to protect such birds from electric shock due to physical contact with energized wires. Where raptor protection in the design of overhead line structures is required by RUS; a Federal, State or local authority with permit or license authority over the proposed construction; or where the borrower voluntarily elects to comply with the recommendations of the U.S. Fish and Wildlife Service or State wildlife agency, borrowers are permitted to deviate from RUS construction standards, provided:

(i) Structures are designed and constructed in accordance with "Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996" (Suggested Practices for Raptor Protection); and,

(ii) Structures are in accordance with the NESC and applicable State and local regulations.

(2) Any deviation from the RUS construction standards for the purpose of raptor protection, which is not in accordance with the Suggested Practices for Raptor Protection, must be approved by RUS prior to construction. "Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996," published by the Edison Electric Institute/Raptor Research Foundation, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be obtained from the Raptor Research Foundation, Inc., c/o Jim Fitzpatrick, Treasurer, Carpenter Nature Center, 12805 St. Croix Trail South, Hastings, Minnesota 55033. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246-S, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Transformer neutral connections.* Where it is necessary to separate the primary and secondary neutrals to provide the required electric service to a consumer, the RUS standard transformer secondary neutral connections may be modified in accordance with Rule 97D2 of the NESC.

(c) *Lowering of neutral conductor on overhead distribution lines.* (1) It is permissible to lower the neutral attachment on standard construction pole-

top assemblies an additional distance not exceeding two feet (0.6 m) for the purpose of economically meeting the clearance requirements of the NESC.

(2) It is permissible to lower the transformer and associated neutral attachment up to two feet (0.6 m) to provide adequate clearance between the cutouts and single-phase, conventional distribution transformers.

(3) It is permissible to lower the neutral attachment on standard construction pole-top assemblies an additional distance of up to six feet (2 m) for the purpose of performing construction and future line maintenance on these assemblies from bucket trucks designed for such work.

[63 FR 35314, June 29, 1998, as amended at 69 FR 18803, Apr. 9, 2004]

§ 1724.53 Preparation of plans and specifications.

The provisions of this section apply to all borrower electric system facilities regardless of the source of financing.

(a) *General.* (1) The borrower (acting through the engineer, if applicable) shall prepare plans and specifications that adequately represent the construction to be performed.

(2) Plans and specifications for distribution, transmission, or generating facilities must be based on a construction work plan (as amended, if applicable), engineering study or construction program which has been approved by RUS if financing for the facilities will at any time be requested from RUS.

(b) *Composition of plans and specifications package.* (1) Whether built by force account or contract, each set of plans and specifications must include:

(i) *Distribution lines.* Specifications and drawings, staking sheets, key map and appropriate detail maps;

(ii) *Transmission lines.* Specifications and drawings, transmission line design data manual, vicinity maps of the project, a one-line diagram, and plan and profile sheets;

(iii) *Substations.* Specifications and drawings, including a one-line diagram, plot and foundation plan, grounding plan, and plans and elevations of structure and equipment, as well as all other necessary construction drawings, in sufficient detail to show phase spacing and ground clearances of live parts;

(iv) *Headquarters.* Specifications and drawings, including:

(A) A plot plan showing the location of the proposed building plus paving and site development;

(B) A one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown; and

(C) An outline specification including materials to be used (type of frame, exterior finish, foundation, insulation, etc.); and

(v) *Other facilities (e.g., generation and communications and control facilities).* Specifications and drawings, as necessary and in sufficient detail to accurately define the scope and quality of work required.

(2) For contract work, the appropriate standard RUS construction contract form shall be used as required by part 1726 of this chapter.

§ 1724.54 Requirements for RUS approval of plans and specifications.

The provisions of this section apply only to RUS financed electric system facilities.

(a) For any contract subject to RUS approval in accordance with part 1726 of this chapter, the borrower shall obtain RUS approval of the plans and specifications, as part of the proposed bid package, prior to requesting bids. RUS may require approval of other plans and specifications on a case by case basis.

(b) *Distribution lines.* RUS approval of the plans and specifications for distribution line construction is not required if standard RUS drawings, specifications, RUS accepted material, and standard RUS contract forms (as required by part 1726 of this chapter) are used. Drawings, plans and specifications for nonstandard distribution construction must be submitted to RUS and receive approval prior to requesting bids on contracts or commencement of force account construction.

(c) *Transmission lines.* (1) Plans and specifications for transmission construction projects which are not based on RUS approved line design data or do not use RUS standard structures must

receive RUS approval prior to requesting bids on contracts or commencement of force account construction.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for transmission construction which use previously approved design data and standard structures do not require RUS approval. Plans and specifications for related work, such as right-of-way clearing, equipment, and materials, do not require RUS approval unless required by paragraph (a) of this section.

(d) *Substations.* (1)(i) Plans and specifications for all new substations must receive RUS approval prior to requesting bids on contracts or commencement of force account construction, unless:

(A) The substation design has been previously approved by RUS; and

(B) No significant NESC revisions have occurred.

(ii) The borrower shall notify RUS in writing that a previously approved design will be used, including identification of the previously approved design.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for substation modifications and for substations using previously approved designs do not require RUS approval.

(e) *Generation facilities.* (1) This paragraph (e) covers all portions of a generating plant including plant buildings, the generator step-up transformer, and the transmission switchyard at a generating plant. Warehouses and equipment service buildings not associated with generation plants are covered under paragraph (f) of this section.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $1,500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

(f) *Headquarters buildings.* (1) This paragraph (f) covers office buildings, warehouses, and equipment service buildings. Generating plant buildings are covered under paragraph (e) of this section.

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for headquarters buildings do not require RUS approval. The borrower shall submit two copies of RUS Form 740g, Application for Headquarters Facilities. This form is available from Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. The application must show floor area and estimated cost breakdown between office building space and space for equipment warehousing and service facilities, and include a one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown. The information concerning the planned building may be included in the borrower's construction work plan in lieu of submitting it with the application. (See 7 CFR part 1710, subpart F.) Prior to issuing the plans and specifications for bid, the borrower shall also submit to RUS a statement, signed by the architect or engineer, that the building design meets the Uniform Federal Accessibility Standards (See § 1724.51(e)(1)(i)).

(g) *Communications and control facilities.* (1) This paragraph (g) covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $500,000 or more. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

(h) Terms and conditions include the RUS standard form of contract, general and special conditions, and any other non-technical provisions of the contract. Terms and conditions which have received RUS approval in connection with a previous contract for a particular borrower are considered approved by RUS for that borrower.

[63 FR 35314, June 29, 1998, as amended at 65 FR 63196, Oct. 23, 2000]

§ 1724.55 Dam safety.

(a) The provisions of this section apply only to RUS financed electric system facilities.

(1)(i) Any borrower that owns or operates a RUS financed dam must utilize the"Federal Guidelines for Dam Safety,"(Guidelines), as applicable. A dam, as more fully defined in the Guidelines, is generally any artificial barrier which either:

(A) Is 25 feet (8 m) or more in height; or

(B) Has an impounding capacity at maximum water storage elevation of 55 acre-feet (68,000 m^3) or more.

(ii) The"Federal Guidelines for Dam Safety,"FEMA 93, June, 1979, published by the Federal Emergency Management Agency (FEMA), is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the"Federal Guidelines for Dam Safety"may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246-S, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) The borrower shall evaluate the hazard potential of its dams in accordance with Appendix E of the U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110-2-1155, July 31, 1995. A summary of the hazard potential criteria is included for information as Appendix A to this subpart. The U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110-2-1155, July 31, 1995, published by the United States Army Corps of Engineers, is hereby incorporated by reference. This incorporation by reference is approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the U. S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program may be obtained from the U. S. Army Corps of Engineers, Publications Depot, 2803 52nd Ave., Hyattsville, MD 20781. It is also available for inspection during normal business hours at RUS, Electric Staff Division, 1400 Independence Avenue, SW., Washington, DC, Room 1246-S, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(3) For high hazard potential dams, the borrower must obtain an independent review of the design and critical features of construction. The reviewer must have demonstrated experience in the design and construction of dams of a similar size and nature. The reviewer must be a qualified engineer not involved in the original design of the dam or a Federal or State agency responsible for dam safety. The reviewer must be approved by RUS.

(4) The independent review of design must include, but not necessarily be limited to, plans, specifications, design calculations, subsurface investigation reports, hydrology reports, and redesigns which result from encountering unanticipated or unusual conditions during construction.

(5) The independent review of construction shall include:

(i) *Foundation preparation and treatment.* When the foundation has been excavated and exposed, and before critical structures such as earth embankments or concrete structures are placed thereon, the borrower shall require the reviewer to conduct an independent examination of the foundation to ensure that suitable foundation material has been reached and that the measures proposed for treatment of the foundation are adequate. This examination must extend to the preparation and treatment of the foundation for the abutments.

(ii) *Fill placement.* During initial placement of compacted fill materials, the borrower shall require the reviewer to conduct an independent examination

to ensure that the materials being used in the various zones are suitable and that the placement and compaction procedures being used by the contractor will result in a properly constructed embankment.

(6) If the reviewer disagrees with any aspect of the design or construction which could affect the safety of the dam, then the borrower must meet with the design engineer and the reviewer to resolve the disagreements.

(7) *Emergency action plan.* For high hazard potential dams, the borrower must develop an emergency action plan incorporating preplanned emergency measures to be taken prior to and following a potential dam failure. The plan should be coordinated with local government and other authorities involved with the public safety and be approved by the borrower's board of directors.

(b)(1) For more information and guidance, the following publications regarding dam safety are available from FEMA:

(i)"Emergency Action Planning Guidelines for Dams,"FEMA 64.

(ii)"Federal Guidelines for Earthquake Analysis and Design of Dams,"FEMA 65.

(iii)"Federal Guidelines for Selecting and Accommodating Inflow Design Floods for Dams,"FEMA 94.

(iv)"Dam Safety: An Owner's Guidance Manual,"FEMA 145, August, 1987.

(2) These publications may be obtained from the Federal Emergency Management Agency, Mitigation Directorate, PO Box 2012, Jessup, MD 20794.

[63 FR 35314, June 29, 1998, as amended at 69 FR 18803, Apr. 9, 2004]

§§ 1724.56–1724.69 [Reserved]

APPENDIX A TO SUBPART E OF PART 1724—HAZARD POTENTIAL CLASSIFICATION FOR CIVIL WORKS PROJECTS

The source for this appendix is U.S. Army Corps of Engineers Engineering and Design Dam Safety Assurance Program, ER 1110-2-1155, Appendix E. Appendix E is available from the address listed in §1724.55(a)(2).

Category [1]	Low	Significant	High
Direct Loss of Life [2]	None expected (due to rural location with no permanent structures for human habitation)	Uncertain (rural location with few residences and only transient or industrial development)	Certain (one or more extensive residential, commercial or industrial development).
Lifeline Losses [3]	No disruption of services—repairs are cosmetic or rapidly repairable damage	Disruption of essential facilities and access	Disruption of critical facilities and access.
Property Losses [4]	Private agricultural lands, equipment and isolated buildings	Major public and private facilities	Extensive public and private facilities.
Environmental Losses [5]	Minimal incremental damage	Major mitigation required	Extensive mitigation cost or impossible to mitigate.

NOTES:

[1] Categories are based upon project performance and do not apply to individual structures within a project.

[2] Loss of life potential based upon inundation mapping of area downstream of the project. Analysis of loss of life potential should take into account the extent of development and associated population at risk, time of flood wave travel and warning time.

[3] Indirect threats to life caused by the interruption of lifeline services due to project failure, or operation, i.e., direct loss of (or access to) critical medical facilities or loss of water or power supply, communications, power supply, etc.

[4] Direct economic impact of value of property damages to project facilities and down stream property and indirect economic impact due to loss of project services, i.e., impact on navigation industry of the loss of a dam and navigation pool, or impact upon a community of the loss of water or power supply.

[5] Environmental impact downstream caused by the incremental flood wave produced by the project failure, beyond which would normally be expected for the magnitude flood event under a without project conditions.

Subpart F—RUS Contract Forms

§ 1724.70 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. (See section 5.16 of appendix A to subpart C of part 1718 of this chapter.) This subpart prescribes RUS procedures in promulgating electric program standard contract forms and identifies those forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1724.74(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms identified in the List of Guidance Contract Forms contained in § 1724.74(c) that the borrowers may but are not required to use in the planning, design, and construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

[63 FR 58284, Oct. 30, 1998]

§ 1724.71 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the RE Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called "listed contract forms") identified in the List of Required Standard Contract Forms contained in § 1724.74(c).

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS with a written request explaining the need for the waiver.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

[63 FR 58285, Oct. 30, 1998, as amended at 69 FR 7108, Feb. 13, 2004]

§ 1724.72 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed contract forms are published by RUS. Interested parties may obtain the forms from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522,

1400 Independence Avenue, SW., Stop 1522, Washington, DC 20250–1522, telephone number (202) 720–8674. The list of contract forms can be found in § 1724.74(c), List of Required Contract Forms.

[63 FR 58285, Oct. 30, 1998]

§ 1724.73 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the FEDERAL REGISTER announcing, as appropriate, a revision in, or a proposal to amend § 1724.74, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. A copy of each such FEDERAL REGISTER document shall be sent by regular or electronic mail to all borrowers.

[63 FR 58285, Oct. 30, 1998]

§ 1724.74 List of electric program standard contract forms.

(a) *General.* The following is a list of RUS electric program standard contract forms for architectural and engineering services. Paragraph (c) of this section contains the list of required contract forms, *i.e.*, those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section contains the list of guidance contract forms, *i.e.*, those forms of contracts provided as guidance to borrowers in the planning, design, and construction of their systems. All of these forms are available from RUS. See § 1724.72(b) for availability of these forms.

(b) *Issuance date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms in paragraph (c) of this section, as most recently published as of the date the borrower executes the contract.

(c) *List of required contract forms.* (1) RUS Form 211, Rev. 4–04, Engineering Service Contract for the Design and Construction of a Generating Plant. This form is used for engineering services for generating plant construction.

(2) RUS Form 220, Rev. 6–98, Architectural Services Contract. This form is used for architectural services for building construction.

(3) RUS Form 236, Rev. 6–98, Engineering Service Contract—Electric System Design and Construction. This form is used for engineering services for distribution, transmission, substation, and communications and control facilities.

(d) *List of guidance contract forms.* (1) RUS Form 179, Rev. 9–66, Architects and Engineers Qualifications. This form is used to document architects and engineers qualifications.

(2) RUS Form 215, Rev. 5–67, Engineering Service Contract—System Planning. This form is used for engineering services for system planning.

(3) RUS Form 234, Rev. 3–57, Final Statement of Engineering Fee. This form is used for the closeout of engineering services contracts.

(4) RUS Form 241, Rev. 3–56, Amendment of Engineering Service Contract. This form is used for amending engineering service contracts.

(5) RUS Form 244, Rev. 12–55, Engineering Service Contract—Special Services. This form is used for miscellaneous engineering services.

(6) RUS Form 258, Rev. 4–58, Amendment of Engineering Service Contract—Additional Project. This form is used for amending engineering service contracts to add an additional project.

(7) RUS Form 284, Rev. 4–72, Final Statement of Cost for Architectural Service. This form is used for the closeout of architectural services contracts.

(8) RUS Form 297, Rev. 12-55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9-58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

[63 FR 58285, Oct. 30, 1998, as amended at 65 FR 63196, Oct. 23, 2000; 69 FR 52595, Aug. 27, 2004]

§§ 1724.75-1724.99 [Reserved]

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

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(8) RUS Form 297, Rev. 12-55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9-58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

[63 FR 58285, Oct. 30, 1998, as amended at 65 FR 63196, Oct. 23, 2000; 69 FR 52595, Aug. 27, 2004]

§§ 1724.75-1724.99 [Reserved]

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Subpart A—General

Sec.

Subpart B—Distribution Facilities

Subpart C—Substation and Transmission Facilities

Subpart D—Generation Facilities

Subpart E—Buildings

Subpart F—General Plant

Subpart G—Procurement Procedures

Subpart H—Modifications to RUS Standard Contract Forms

Subpart I—RUS Standard Forms

Subpart J—Contract Closeout

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 60 FR 10155, Feb. 23, 1995, unless otherwise noted.

Subpart A—General

§§ 1726.1–1726.9 [Reserved]

§ 1726.10 Introduction.

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers. Unless prior written approval is received from RUS, borrowers are required to comply with RUS policies and procedures as a condition to RUS providing loans, loan guarantees, or reimbursement of general funds for the construction and improvement of electric facilities. Requirements relating to RUS approval of plans and specifications, duties and responsibilities of the engineer and architect, and engineering and architectural services contracts, are contained in other RUS regulations. The terms "RUS form", "RUS standard form", "RUS specification", "and RUS bulletin" have the same meanings as the terms "REA form", "REA standard form", "REA specification", "and REA bulletin", respectively, unless otherwise noted.

§ 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. RUS, as a secured lender, has a legitimate interest in accomplishing RUS's programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

§ 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric borrowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, the borrower must comply with the procedures required by this part. In the case of jointly owned projects, RUS will determine on a case by case basis the applicability of the requirements of this part.

§ 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. RUS reserves the right, as a condition of providing loans, loan guarantees, or other assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator.

§ 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

Approval of proposed construction means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate requirements of part 1794 of this chapter.

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Bona fide bid means a bid which is submitted by a contractor on the borrower's list of qualified bidders for the specific contract, prior to bid opening.

"Buy American" certificate means a certification that the contractor has complied with the "Buy American" requirement (see § 1726.15).

Competitive procurement means procurement of goods or services based on lowest evaluated bid for similar products or services when three or more bids are received.

Construction unit means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

Contracting committee means the committee consisting of three to five members representing the borrower's management and board of directors and the engineer. The contracting committee represents the borrower during contract clarifying discussions or negotiations under informal competitive bidding or multiparty negotiation, respectively.

Encumbrance means the process of approval for advance of loans funds by RUS.

Engineer means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

Equipment means a major component of an electric system, e.g., a substation transformer, heat exchanger or a transmission structure.

Force account construction means construction performed by the borrower's employees.

Formal competitive bidding means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

Goods or services means materials, equipment, or construction, or any combination thereof.

Informal competitive bidding means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

Material means miscellaneous hardware which is combined with equipment to form an electric system, e.g., poles, insulators, or conductors.

Minor error or irregularity means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. A minor error or irregularity is not an exception for purposes of determining whether a bid is responsive.

Minor modification or improvement means a project where the cost is less than $50,000, exclusive of the cost of owner furnished materials.

Multiparty lump sum quotations means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received. (See § 1726.205).

Multiparty negotiation means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower's best interest (see § 1726.203).

Multiparty unit price quotations means the procurement of goods or services on a unit price basis, based on the lowest evaluated offering, when three or more offers are received (See § 1726.204).

Net utility plant (NUP) means Part C, Line 5 of RUS Form 7 for distribution borrowers or Section B, Line 5 of RUS Form 12a for power supply borrowers for the immediately preceding calendar year.

Procurement method means a procedure, including, but not limited to, those in subpart G of this part, that a borrower uses to obtain goods and services.

Owner furnished materials means materials or equipment or both supplied by the borrower for installation by the contractor.

Responsive bid means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

RUS approval means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given over the telephone followed by a confirming letter.

Unit prices means individual prices for specific construction units defined in accordance with RUS approved units specified in RUS standard contract forms.

§ 1726.15 "Buy American".

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by RUS complies with the "Buy American" provisions of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended by the North American Free Trade Agreement Implementation Act (107 Stat 2129). When a "Buy American" certificate is required by this part, this must be on RUS Form 213.

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1726.18 Preloan contracting.

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

§ 1726.19 Use of competitive procurement.

RUS borrowers' procurement is not subject to the provisions of the Federal Acquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a RUS loan or loan guarantee is involved except:

(a) As specifically provided for in subparts B through F of this part; or

(b) A waiver is granted.

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

[69 FR 7109, Feb. 13, 2004]

§ 1726.21 New materials.

The borrower shall purchase only new materials and equipment unless otherwise approved by RUS, on a case by case basis, prior to the purchase.

§ 1726.22 Methods of construction.

The borrower is generally responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. RUS reserves the right to require contract construction in lieu of force account construction on a case by case basis.

§ 1726.23 Qualification of bidders.

(a) *Qualified bidder list (QBL).* The borrower shall (acting through its engineer, if applicable) review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience. It is also important to consider the firm's performance record, safety record, and similar factors in determining whether to include that firm on the QBL, since the borrower may not evaluate these factors when evaluating a bid from a qualified and invited bidder.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

§ 1726.24 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and the borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through H and J of this part prescribe when and how borrowers are required to use RUS standard forms of contracts in procurement and construction. Subpart I of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for procurement and construction.

(b) *Amendments to contracts*—(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements associated with the proposed construction have been met.

(3) *Amendment approval requirements.* (i) If a RUS approved form of contract is required by this part, an amendment must not alter the terms and conditions of the RUS approved form of contract without prior RUS approval.

(ii) The borrower must make a contract amendment subject to RUS approval if the underlying contract was made subject to RUS approval and the total amended contract price exceeds 120 percent of the original contract price (excluding any escalation provision contained in the contract).

(iii) Contract amendments, except as provided in paragraph (b)(3)(ii) of this section, are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 63 FR 58286, Oct. 30, 1998; 69 FR 7109, Feb. 13, 2004]

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to

RUS unless specifically requested by RUS on a case by case basis.

[69 FR 7109, Feb. 13, 2004]

§ 1726.26 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

[63 FR 58286, Oct. 30, 1998]

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(c) Surety companies providing contractor's bonds shall be listed as acceptable sureties in the U.S. Department of the Treasury Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Copies of the circular and interim changes may be obtained directly from the Government Printing Office (202) 512–1800. Interim changes are published in the FEDERAL REGISTER as they occur. The list is also available through the Internet at *http://www.fms.treas.gov/c570/index.html* and on the Department of the Treasury's computerized public bulletin board at (202) 874–6887.

[63 FR 58286, Oct. 30, 1998, as amended at 69 FR 7109, Feb. 13, 2004]

§§ 1726.28–1726.34 [Reserved]

§ 1726.35 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS (see part 1700 of this chapter.)

(b) *Borrower certification.* When a borrower certification is required by this part, it must be made by the borrower's manager unless the board of directors specifically authorizes another person to make the required certification. In such case, a certified copy of the specific authorizing resolution must accompany the document or be on file with RUS.

(c) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B through F of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by:

(1) A bid tabulation and evaluation and, if applicable, a written recommendation of the architect or engineer.

(2) For awards made under the informal competitive bidding procedure or the multiparty negotiation procedure, a written recommendation of the contracting committee (See §§ 1726.202 and 1726.203).

(3) Three copies of an executed contractor's bond on RUS approved bond forms as required in the contract form (at least one copy of which must be an original signed in ink) and one copy of the bid bond or facsimile of the certified check.

(4) A certification by the borrower or chairperson of the contracting committee, as applicable, that the appropriate bidding procedures were followed as required by this part.

(5) A certified copy of the board resolution awarding the contract.

(6) Evidence of clear title to the site for substations and headquarters construction contracts, if not previously submitted.

(7) Documentation that all reasonable measures were taken to assure competition if fewer than three bids were received.

(d) *Contract amendments requiring RUS approval.* The borrower must submit to RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval under § 1726.24(b). Each contract amendment submittal to RUS must be accompanied by:

(1) A certified copy of the board resolution approving the amendment; and

(2) A bond extension, where necessary.

(e) *Encumbrance of loan or loan guarantee funds.* (1) For contracts subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for such contracts.

(2) For contracts not subject to RUS approval (except for generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can show good cause for a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed contract, provided it meets all applicable RUS requirements.

(3) For generation project contracts not subject to RUS approval, the borrower must submit to RUS the following documentation:

(i) A brief description of the scope of the contract, including contract identification (name, number, etc.);

(ii) Contract date;

(iii) Contractor's name;

(iv) Contract amount;

(v) Bidding procedure used;

(vi) Borrower certification that:

(A) The board of directors approved the contract;

(B) The bidding procedures and contract award for each contract were in conformance with the requirements of Part 1726, Electric System Construction Policies and Procedures;

(C) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract have not been altered;

(D) If RUS has approved plans and specifications for the contract, the contract was awarded on the basis of those plans and specifications; and

(E) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

(4) *Contract amendments.* (i) For amendments subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for contract amendments requiring RUS approval.

(ii) For amendments not subject to RUS approval (except generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can justify a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed amendment, providing it meets all applicable RUS requirements.

(iii) For each generation project contract amendment not subject to RUS approval, the borrower must submit to RUS the following information and documentation:

(A) The contract name and number;

(B) The amendment number;

(C) The amendment date;

(D) The dollar amount of the increase or the decrease of the amendment;

(E) Borrower certification that:

(*1*) The amendment was approved in accordance with the policy of the board of directors (the borrower must ensure that RUS has a certified copy of the board resolution establishing such policy);

(*2*) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract has not been altered; and

(*3*) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

§ 1726.36 Documents subject to RUS approval.

Unless otherwise indicated, the borrower shall make all contracts and

amendments that are subject to RUS approval effective only upon RUS approval.

§ 1726.37 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572–0107.

§§ 1726.38–1726.49 [Reserved]

Subpart B—Distribution Facilities

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $500,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Distribution line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing any unlisted distribution line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for the purchase of material and equipment to be used in distribution line construction.

(d) *Contract approval.* Contracts for purchases of distribution line materials and equipment are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use RUS Form 790, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $250,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for all other distribution line construction.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) In addition to the cumulative total stipulated in paragraph (b)(1) of this section, a borrower may use Multiparty Unit Price Quotations to award contracts in amounts of up to a cumulative total of $350,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(3) The borrower shall use formal competitive bidding for all other distribution line contract construction. The amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(4) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Contracts for distribution line construction are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

§§ 1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

§ 1726.75 General.

As used in this part, "substations" includes substations, switching stations, metering points, and similar facilities.

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower must use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $500,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Substation and transmission line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing of any unlisted substation or transmission line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of material and equipment to be used in substation and transmission line construction.

(d) *Contract approval.* Contracts for purchases of substation and transmission line materials and equipment are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for construction of substations, except for minor modifications or improvements.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) The borrower shall use formal competitive bidding for all other contract construction, including all contracts requiring RUS approval. The amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(3) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Individual contracts in amounts of $250,000 or more or one percent of NUP (not to exceed $500,000 for distribution borrowers or $1,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and

RUS approval and the closeout documents need not be sent to RUS unless specifically requested by RUS.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7111, Feb. 13, 2004]

§ 1726.405 Inventory of work orders (RUS Form 219).

Upon completion of the contract closeout, the borrower shall complete RUS Form 219, Inventory of Work Orders, in accordance with part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, of this chapter.

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

Sec.

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

§ 1728.10 General purpose and scope.

(a) The requirements of this part are based on contractual provisions between RUS and the organizations which receive financial assistance from RUS.

(b) RUS will establish certain specifications and standards for materials, equipment, and construction units that will be acceptable for RUS financial assistance for the electric program. Materials and equipment purchased by the electric borrowers or accepted as contractor-furnished material must conform to RUS standards and specifications where they have been established and, if included in RUS Bulletin 43-5, "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers" (List of Materials), must be selected from that list or must have received technical acceptance from RUS. RUS, through its Technical Standards Committees, will evaluate certain materials, equipment and construction units, and will determine acceptance.

[50 FR 47710, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.20 Establishment of standards and specifications.

(a) *National and other standards.* RUS will utilize standards of national standardizing groups, such as the American National Standards Institute (ANSI), American Wood Preservers' Association (AWPA), the various national engineering societies and the National Electrical Safety Code (NESC), to the greatest extent practical. When there are no national standards or when RUS determines that the existing national standards are not adequate for rural electric systems, RUS will prepare standards for material and equipment to be used on systems of electric borrowers. RUS standards and specifications will be codified or listed in § 1728.97, Incorporation by Reference of Electric Standards and Specifications. RUS will also prepare specifications for materials and equipment when it determines that such specifications will result in reduced costs, improved materials and equipment, or in the more effective use of engineering services.

(b) *Deviations from Standards.* No member of the RUS staff will be permitted to authorize deviations from the standard specifications, or to establish or change the technical standards, or to authorize the use of items that have not received acceptance by the Technical Standards Committees, except as provided for under § 1728.70, or by authorization and/or delegation of authority by the Administrator of RUS.

(c) *Category of Items.* Items appearing in the List of Materials are listed by categories of generic items which are used in RUS construction standards incorporated by reference in § 1728.97. RUS will establish and define these

categories and will establish all criteria for acceptability within these categories.

[50 FR 47710, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990, and amended at 55 FR 53487, Dec. 31, 1990]

§ 1728.30 Inclusion of an item for listing or technical acceptance.

(a) *Scope.* RUS, through its Technical Standards Committees "A" and "B" will determine the acceptability of certain standards, standard specifications, standard drawings, and items of materials and equipment to be used in transmission, distribution and general plant (excluding office equipment, tools, and work equipment, and consumer-owned electric wiring facilities).

(b) *Addresses of Committees.* The address of Technical Standards Committee "A" is: Chairman, Technical Standards Committee "A" (Electric), Rural Utilities Service, U.S. Department of Agriculture, Washington, DC 20250–1500. The address of Technical Standards Committee "B" is: Chairman, Technical Standards Committee "B" (Electric), Rural Utilities Service, U.S. Department of Agriculture, Washington, DC 20250–1500.

(c) *Review by Technical Standards Committee "A".* All proposals for listing a product in the List of Materials must be addressed to Technical Standards Committee "A." This committee will consider all proposals made by sponsors of specifications, drawings, materials, or equipment in categories for which RUS has established criteria for acceptability. A sponsor may be a manufacturer, supplier, contractor or any other person or organization which has made an application for listing or has requested an action by the committee. Committee "A" will consider all relevant information presented in determining whether an item should be accepted by Technical Standards Committee "A." Formal rules of evidence and procedure shall not apply to proceedings before this committee.

(d) *Action by Technical Standards Committee "A".* (1) Committee "A" may take one of the following actions:

(i) Accept an item for listing without conditions (domestic items only),

(ii) Reject an item (domestic or nondomestic),[1]

(iii) Accept an item for listing with conditions (domestic items only),

(iv) Table an item for a time period sufficient to allow the sponsor to be notified and furnish additional information (domestic or nondomestic),

(v) Grant technical acceptance with or without conditions for a period of one year from the date of notification by RUS (nondomestic items only).

(2) All committee decisions regarding the actions listed above must be unanimous. If the vote is not unanimous, the item shall be referred to Technical Standards Committee "B." Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(3) Items accepted without conditions by the Technical Standards Committees will be considered to be accepted on a general basis. No restrictions as to quantity or application will be placed on items which have received general acceptance. Items accepted subject to certain conditions, such as limited use to gain service experience, or limited use appropriate to certain areas and conditions, will be considered to be accepted on a conditional basis. The conditions will be cited as a part of the listing provided for in § 1728.60, or as part of the technical acceptance for nondomestic items.

(e) *Appeal to Technical Standards Committee "B".* A sponsor may request a review of an adverse decision by Technical Standards Committee "A" within ten (10) days of notification of such decision by submitting a letter requesting such review to Technical Standards Committee "B" (Electric).

(f) *Action by Technical Standards Committee "B".* Committee "B" may take any of the actions listed for Committee "A" in § 1728.30(d). However, for a Committee "B" action to be effective it must be by majority vote. Failure to obtain a majority on one of the proposed actions shall mean that the product will not be listed or accepted. Committee "B's" determination shall be

[1] Nondomestic items are items which do not qualify as domestic products pursuant to RUS "Buy American" requirement.

based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of procedure and evidence shall not apply to proceedings before Committee "B." Written notice of Committee "B's" decision, stating the basis of the decision, will be provided to the sponsor.

(g) *Appeal to the Administrator.* In the event of an adverse decision by Committee "B," the sponsor may, within ten (10) days of notification of such decision, request a review of this decision by submitting a letter to the Administrator requesting such a review.

(h) *Change in Design.* RUS acceptance of an item will be conditioned on the understanding that no design changes (material or dimensions) affecting the quality, strength, or electrical characteristics of the item shall be made without prior concurrence of Technical Standards Committee "A."

[50 FR 47711, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.40 Procedure for submission of a proposal.

(a) *Written Request.* Consideration of an item of material or equipment will be obtained by the sponsor through the submission of a written request in an original and five copies addressed to the Chairman, Technical Standards Committee "A" (Electric). The letter must include the catalog number or other identifying number or code as well as a description of the item. In the event that an item being submitted is also intended for consideration by Technical Standards Committee "A" (Telephone), a separate request must be made to the telephone committee. (See part 1755 of this chapter).

(b) *Technical and Performance Data.* Six copies of the specification of manufacture, drawings and test data must be submitted to the committee. Six copies of the performance history shall also be submitted unless RUS determines that such performance history is not reasonably available.

(c) *Sample.* One sample of the item must be submitted to the Chairman, Technical Standards Committee "A," unless RUS waives the requirements of the sample. In case of large, bulky or extremely heavy samples, the sponsor should contact the Chairman, Technical Standards Committee "A" (Electric), at the above address, before any sample is shipped.

(d) *Action on Proposal.* RUS will inform a sponsor of the action taken on the sponsor's proposal.

[50 FR 47711, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.50 Removal of an item from listing or technical acceptance.

(a) *Removal Actions.* An item of material or equipment may be removed from the listing or technical acceptance in accordance with the following procedures upon determination that the item is unsatisfactory or has been misrepresented to the owner or RUS.

(b) *Notification by the Committee.* The sponsor of an item of material or equipment will be notified in writing of a proposal to remove such item from the listing or technical acceptance.

(c) *Supplemental Information.* Within ten (10) days of receipt of such notification, the sponsor may submit to Committee "A" a letter expressing the sponsor's intent to submit written supplemental technical information relevant to Committee "A's" determination. The sponsor must submit such information within twenty (20) days from the submission of its letter to Committee "A." Committee "A" will have the discretion of making a decision following the expiration of the time periods provided in this paragraph.

(d) *Review by the Technical Standards Committee "A".* Committee "A" will consider all relevant information presented in determining whether an item should be removed from the listing or technical acceptance. Formal rules of evidence and procedure shall not apply to proceedings before Technical Standards Committee "A."

(e) *Action by the Technical Standards Committee "A".* Committee "A" may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which will adequately protect the interest of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to Technical Standards Committee "B."

All committee "A" decisions regarding the actions listed above must be by unanimous vote. If the vote is not unanimous, the item will be referred to Technical Standards Committee "B."

Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(f) *Additional Opportunity to Present Information.* At the request of the sponsor, RUS may afford additional opportunity for consideration of relevant information. Such additional opportunity may include, without limitation, a meeting between RUS and the sponsor in such a forum that RUS may determine. In making this decision, RUS will consider, among other things, the best interests of RUS, its borrowers, and the sponsor, and the best manner to develop sufficient information relating to the proposed action.

(g) *Appeal to the Technical Standards Committee "B".* Within ten (10) days of notification of Committee "A's" decision, a sponsor may appeal in writing to Technical Standards Committee "B" to review Committee "A's" decision, specifying the reasons for such a request. Committee "B's" determination, in response to such request, shall be based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of procedure and evidence shall not apply to proceedings before Committee "B."

(h) *Action by Technical Standards Committee "B".* Committee "B," by majority vote, may take one of the following actions:

(1) Order the immediate removal of the item from listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which adequately protects the interests of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to the Administrator of RUS.

Failure to obtain a majority vote on any of the above actions shall mean that the product will continue to be listed or accepted.

Written notice of Committee "B's" decision stating the basis of the decision will be provided to the sponsor.

(i) *Appeal to the Administrator.* Within ten (10) days of the receipt of Committee "B's" decision, a sponsor may appeal to the Administrator to review Committee "B's" decision. If an appeal is made, the sponsor shall submit a written request to the Administrator, Rural Utilities Service, Room 4053, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500 specifying the reasons to request reconsideration. The Administrator will have the option to decline the request, in which case the decision of Committee "B" shall stand. If a review is granted, the determination by the Administrator or the Administrator's designee shall be based on the record developed before Committee "A" and Committee "B" and such additional information as the Administrator may request. Formal rules of procedure and evidence shall not apply to the actions of the Administrator.

(j) *Action by the Administrator.* The Administrator may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition its continued listing, or technical acceptance, or

(3) Recommend a basis of settlement which adequately protects the interests of the Government.

Written notice of the Administrator's determination, stating the basis for the decision, will be provided to the sponsor.

The Administrator's actions are final.

[50 FR 47711, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.60 List of materials and equipment.

(a) *General.* Those items of material or equipment accepted by Technical Standards Committee "A" or "B," with the exception of technically accepted nondomestic items, will be listed in the List of Materials. Items

which do not qualify as domestic products may be accepted on a technical basis only (technical acceptance) for a period of one year as provided in §1728.30(c)(1) and will not be included in the List of Materials.

(b) *Publishing and Revisions.* RUS will reissue the List of Materials every year, dated July, and issue supplements, if needed, dated October, January, and April of every year. An RUS office copy, which is the official current copy, of the List of Materials, will be updated every time changes are made by the Technical Standards Committees.

(c) *Dual Listings.* RUS, through its Technical Standards Committees, will accept for listing only one item of a particular type of material or equipment for each manufacturer. If a manufacturer submits an item to perform the identical function of a listed item, RUS, through its Technical Standards Committees, may accept that item and remove the one previously listed. RUS will list only new items of material and equipment in the List of Materials. Used items will not be considered for listing.

[50 FR 47712, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.70 Procurement of materials.

(a) *By Owner.* When purchasing the type of materials included in the List of Materials, RUS borrowers shall purchase only materials listed in the List of Materials, or materials which have a current technical acceptance by RUS and meet the "Buy American" requirement.

(b) *By Contractor.* When performing work for an RUS borrower, contractors shall supply only items from the general acceptance pages of the List of Materials, or obtain the borrower's concurrence prior to purchase and use of a technically nondomestic item or any item listed on a conditional basis.

(c) *Procurement of Unlisted Items.* (1) The borrower shall request prior approval from RUS for use of an item that does not fall in categories established by RUS in the List of Materials for which acceptability has been established by the Technical Standards Committees.

(2) RUS will also determine, on a case-by-case basis, whether to allow use of an unlisted item in emergency situations and for experimental use or to meet a specific need. For purposes of this part 1728, an emergency shall mean a situation wherein the supply of listed material and equipment from the industry is not readily available, or the standard designs are not applicable to the borrower's specific problem under consideration.

(3) RUS will make arrangements for test or experimental use of newly developed items requiring limited trial use. RUS, working with the borrower and the manufacturer, will establish test locations for the items to facilitate installation and observation.

[50 FR 47712, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.97 Incorporation by reference of electric standards and specifications.

(a) The following electric bulletins have been approved for incorporation by reference by the Director of the Office of the Federal Register. The bulletins containing construction standards (50-4 and 1728F-803 to 1728F-811), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bulletins containing specifications for materials and equipment (50-15 to 50-99 and 1728F-700) may be obtained from the Rural Utilities Service, Program Development and Regulatory Analysis, Stop 1522, Room 4028-S, Washington, DC 20250-1522. The terms "RUS form", "RUS standard form", "RUS specification", and "RUS bulletin" have the same meanings as the terms "REA form", "REA standard form", "REA specification", and "REA bulletin", respectively unless otherwise indicated. The bulletins are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials are incorporated as they exist on the date of the approval and a notice of any

change in these materials will be published in the FEDERAL REGISTER.

(b) *List of Bulletins.*

Bulletin 50–4 (D–801), Specification and Drawings for 34.5/19.9 kV Distribution Line Construction (11–86)

Bulletin 50–15 (DT–3), RUS Specifications for Pole Top Pins with 1⅜' Diameter Lead Thread (1–51)

Bulletin 50–16 (DT–4), RUS Specifications for Angle Suspension Brackets (3–52)

Bulletin 50–19 (DT–7), RUS Specifications for Clevis Bolts (8–53)

Bulletin 50–23 (DT–18), RUS Specifications for 60" Wood Crossarm Braces (2–71)

Bulletin 50–31 (D–3), RUS Specifications for Pole Top Pins with 1" Diameter Lead Threads (2–79)

Bulletin 50–32 (D–4), RUS Specifications for Steel Crossarm Mounted Pins with 1" Diameter Lead Threads (10–50)

Bulletin 50–33 (D–5), RUS Specifications for Single and Double Upset Spool Bolts (2–51)

Bulletin 50–34 (D–6), RUS Specifications for Secondary Swinging Clevises (12–70)

Bulletin 50–35 (D–7), RUS Specifications for Service Swinging Clevises (9–52)

Bulletin 50–36 (D–8), RUS Specifications for Service Deadend Clevises (9–52)

Bulletin 50–40 (D–14), RUS Specifications for Pole Top Brackets for Channel Type Pins (9–51)

Bulletin 50–41 (D–15), RUS Specifications for Service Wireholders (11–51)

Bulletin 50–55 (T–2), RUS Specifications for Overhead Ground Wire Support Brackets (5–53)

Bulletin 50–56 (T–3), RUS Specifications for Steel Plate Anchors for Transmission Lines (12–53)

Bulletin 50–60 (T–9), RUS Specification—Single Pole Steel Structures, Complete with Arms (12–71)

Bulletin 50–70 (U–1), RUS Specification for 15 kV and 25 kV Primary Underground Power Cable (12–22–87)

Bulletin 50–72 (U–4), RUS Specification for Electrical Equipment Enclosures (5–35 kV) (10–79)

Bulletin 50–73 (U–5), RUS Specifications for Pad-Mounted Transformers (Single and Three-Phase) (1–77)

Bulletin 50–74 (U–6), RUS Specification for Secondary Pedestals (600 Volts and Below) (10–79)

Bulletin 50–91 (S–3), RUS Specifications for Step-Down Distribution Substation Transformers (34.4–138 kV) (1–78)

Bulletin 1728F–700, RUS Specification for Wood Poles, Stubs and Anchor Logs (8–93).

Bulletin 1728F–803, Specifications and Drawings for 24.9/14.4 kV Line Construction (10–98).

Bulletin 1728F–804 (D–804), Specification and Drawings for 12.47/7.2 kV Line Construction October 2005.

Bulletin 1728F–806 (D–806), Specifications and Drawings for Underground Electric Distribution, June 2000.

Bulletin 1728F–810, Electric Transmission Specifications and Drawings, 34.5 kV to 69 kV (3–98).

Bulletin 1728F–811, Electric Transmission Specifications and Drawings, 115 kV to 230 kV (3–98).

[48 FR 31853, July 12, 1983, as amended at 52 FR 22289, June 11, 1987; 52 FR 48799, Dec. 28, 1987; 53 FR 39229, Oct. 6, 1988; 53 FR 44176, Nov. 2, 1988; 55 FR 8909, Mar. 9, 1990. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 1563, Jan. 16, 1991; 58 FR 41398, Aug. 3, 1993; 59 FR 66440, Dec. 27, 1994; 63 FR 11591, Mar. 10, 1998; 63 FR 72104, Dec. 31, 1998; 65 FR 34047, May 26, 2000; 69 FR 18803, Apr. 9, 2004; 70 FR 20703, Apr. 21, 2005]

§ 1728.201 RUS Bulletin 1728H–701, RUS Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.

(a) *General provisions.* (1) This section implements contractual provisions between RUS and borrowers receiving financial assistance from RUS. The contractual agreement between RUS and its borrowers requires the borrower's system to be constructed in accordance with RUS accepted plans and specifications. Each RUS electric borrower must purchase only wood crossarms produced in accordance with the specification in this section.

(2) Each RUS electric borrower shall require each contractor to agree in writing to furnish only materials produced in accordance with the specification in this section.

(3) This specification describes the minimum acceptable quality of wood distribution crossarms and transmission crossarms (hereinafter called crossarms) that are purchased by or for RUS borrowers. Where there is conflict between this specification and any other specification referred to in this section, this specification shall govern.

(4) Various requirements relating to quality control and inspection are contained in § 1728.202 of this part, RUS Specification for Quality Control and Inspection of Timber Products. Section 1728.201 of this part and the American National Standards Institute (ANSI) 05.2, 1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, shall be followed exactly and

shall not be interpreted or subjected to judgment by the quality control person or an independent inspector.

(5) The borrower shall purchase from producers only material that meets the requirements of this specification. Each purchaser shall use a written purchase order to purchase material for use in RUS financed systems in order to insure compliance with the standards and specifications of this part. The written purchase order shall contain a provision that specifically requires the producer to comply with the provisions of this part. The purchase order shall contain a provision that specifically requires the producer to make the treating plant, and storage areas available, during normal business hours, in order for representatives of either the purchaser or RUS to inspect such to determine compliance with the standards and specifications of this part.

(6) The borrower shall insure that the producer provides the inspectors with full information (drawings, etc.) relating to the requirements contained in purchase order which is supplementary to this specification.

(7) The borrower shall insure that the producer maintains, or has access to, adequate laboratory facilities at or very near the treating plant. All chemical tests, assays or analyses associated with the treatment shall be independently performed in this laboratory by both the quality control designee and the borrower's inspector. If acceptable to RUS on a case-by-case basis, the producer may use a central laboratory.

(8) Inspection and treatment of all timber products produced under this specification should be performed after receipt of the order from the purchaser, except as provided for reserve treated stock.

(9) The borrower shall insure that each inspection agency maintains its own central laboratory with qualified staff capable of completely analyzing the preservative and treatments. If acceptable to RUS, this central laboratory may be used for the independent inspector's routine assays, with results made available the next working day.

(10) The testing and inspection of the lamination process shall be in accordance with American Institute of Timber Construction (AITC) 200-83, Inspection Manual.

(11) With the exception of reserve treated stock, all invoices for treated timber products shall be accompanied, in duplicate, by a copy of the producer's Certificate of Compliance and a copy of either the Independent Inspection Report or a Quality Assurance Plan Certificate. The certificate shall be presented to the purchaser with the invoice. For reserve treated stock, inspection reports shall be available from the inspection agency. When shipped from reserve stock, the invoice shall bear an endorsement and a further certification by the producer that the material meets the requirements of this specification and any supplementary requirements cited in the purchase order under which it is purchased.

(12) Crossarms shall be warranted to conform to this specification. If any crossarm is determined to be defective or does not conform to this specification within 1 year after shipment to the borrower, it shall be replaced as promptly as possible by the producer. In the event of failure to do so, the purchaser may make such replacement and the cost of the crossarm, at destination, recoverable from the producer.

(b) *Definitions.*

Arm refers to structural wood member used to support electrical conductors.

Certificate of compliance is a certification by an authorized employee of the producer that the material shipped meets the requirements of this specification and any supplementary requirements specified in a purchase order from a borrower or the borrower's contractor.

Crossarm is a term used interchangeably with arm.

Independent inspection relates to examination of material by an independent inspector employed by a commercial inspection agency.

Inspection means an examination of material in sufficient detail to insure conformity to all phases of the specification under which it was purchased.

Lot is a quantity of crossarms of like size, conditioning, and fabrication, usually making up one treating charge.

Producer is used to describe the party who manufactures and treats crossarms.

Purchaser refers to either the RUS borrower or contractors acting as the borrower's agent, except where a part of the specification specifically refers to only the RUS borrower or the contractor.

Quality control designee refers to an individual designated by the producer to be responsible for quality control.

Reserve treated stock consists of timber products treated in accordance with this specification, prior to and in anticipation of the receipt of specific orders, and held in storage ready for immediate shipment.

Supplier is a term used interchangeably with producer, or in some cases, may be the distributor selling crossarms to the borrower.

Treating plant is the organization that applies the preservative treatment to the crossarms.

(c) *Related specifications and standards incorporated by reference.* The following specifications and standards are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each reference are available for inspection during normal business hours at RUS, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of these standards and specifications may be purchased from the addresses shown below.

(1) West Coast Lumber Inspection Bureau, Standard No. 17, Grading Rules for West Coast Lumber, September 1, 1991, available from West Coast Lumber Inspection Bureau, P.O. Box 23145, Portland, Oregon 97223, telephone (503) 639-0651, Fax (503) 684-8928.

(2) Southern Pine Inspection Bureau, Standard Grading Rules for Southern Pine Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434-2611.

(i) Southern Pine Inspection Bureau, Special Product Rules for Structural, Industrial, and Railroad-Freight Car Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434-2611.

(ii) [Reserved]

(3) American Wood Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163-0286.

(i) A1-91, Standard Methods for Analysis of Creosote and Oil-Type Preservatives.

(ii) A2-91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3-91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5-91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6-89, Method for the Determination of Oil-Type Preservatives and Water in Wood.

(vi) A7-75, Standard Wet Ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9-90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Spectroscopy.

(viii) A11-83, Standard Method for Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1-91, All Timber Products—Preservative Treatment by Pressure Processes.

(x) C4-91, Poles—Preservative Treatment by Pressure Processes.

(xi) C8-91, Western Red Cedar and Alaska Yellow Cedar Poles—Preservative Treatment by the Full-Length Thermal Process.

(xii) C10-91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12-90, Western Larch Poles—Full-Length Preservative Treatment by Thermal Process.

(xiv) M1-90, Standard for the Purchase of Treated Wood Products.

(xv) M2-91, Standard for Inspection of Treated Timber Products.

(xvi) M3-81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4-91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13-91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5-91, Standards for Waterborne Preservatives.

(xx) P8-91, Standards for Oil-Borne Preservatives.

(xxi) P9-91, Standards for Solvents and Formulations for Organic Preservative Systems.

(4) American Institute of Timber Construction (AITC) 200-83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110, telephone (303) 761-3212.

(5) American National Standards Institute (ANSI) 05.2-1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(6) American Society for Testing and Materials (ASTM) D9-87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, PA 19103-1187, telephone number (215) 299-5585.

(d) *Independent inspection plan.* This plan or a Quality Assurance Plan, as described in paragraph (e) of this section, is acceptable for supplying crossarms. All crossarms produced under the independent inspection plan for use on an RUS financed system shall be inspected by a qualified independent inspector in accordance with § 1728.202 of this part.

(1) The borrower has the prerogative to contract directly with the inspection agency for service. The borrower should, where practical, select the inspection agency so that continual employment is dependent only on performance acceptable to the borrower and in accordance with this specification. The selected inspection agency shall not subcontract the service to any other inspection agency without the prior written consent by the borrower.

(2) The producer shall not be a party to the selection of the inspection agency by the borrower and shall not interfere with the work of the inspector, except to provide notification of the readiness of material for inspection. To obtain the inspection services for reserve stock, the producer may deal directly with the inspection agency. Under the Independent Inspection Plan, the producer shall not treat material before it has been properly inspected in the white, as evidenced by the inspector's hammer mark.

(3) The methods of inspection described in this section and in § 1728.202 of this part shall be used no matter which plan crossarms are produced under, i.e., Independent Inspection Plan, or Quality Assurance Plans, as described in this section. The number of crossarms actually inspected by monitors of quality control under a Quality Assurance Plan may vary from the number of crossarms inspected under the Independent Inspection Plan.

(e) *Quality assurance plans.* The producer shall furnish crossarms conforming to this specification as monitored by a Quality Assurance Plan acceptable to RUS. RUS borrower groups or agents for borrower groups endeavoring to operate Quality Assurance Plans shall submit their plan for assuring quality control to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250-1500, for specific approval prior to contracting with RUS borrowers under such plans.

(f) *Material requirements*—(1) *Material and grade.* All crossarms furnished under this specification shall be free of brashy wood, decay, and insect holes larger than 3/32 of an inch (0.24 cm), and shall meet additional requirements as shown on specific drawings. They shall be made of one of the following:

(i) Douglas-fir which conforms to the applicable crossarm provisions of paragraphs 170 and 170a, or the applicable transmission arm provisions of paragraphs 169 and 169a of the 1991 Standard Grading Rules for West Coast Lumber No. 17. All references to Douglas-fir shall be of coastal origin;

(ii) Southern Yellow Pine which conforms to the provisions of Dense Industrial Crossarm 65, as described in paragraph 31.2 in Southern Pine Inspection Bureau 1991 Special Product Rules for Southern Pine; or

(iii) Laminated wood crossarms shall conform to ANSI 05.2–1983, and have at least the same load carrying capacity as the solid sawn arm it replaces. The load carrying capacity of the laminated arms shall be determined by one of the procedures outlined in ANSI 05.2.

(2) Borrowers may use alternative wood crossarms that are listed in RUS Bulletin 1728C-100, List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers.

(3) *Knots.* Sound, firm, and tight knots, if well spaced, are allowed.

(i) Slightly decayed knots are permitted, except on the top face, provided the decay extends no more than 3/4 of an inch (1.91 cm) into the knot and provided the cavities will drain water when the arm is installed. For knots to be considered well spaced, the sum of the sizes of all knots in any 6 inches (15.24 cm) of length of a piece shall not exceed twice the size of the largest knot permitted. More than one knot of maximum permissible size shall not be in the same 6 inches (15.24 cm) of length. Slightly decayed, firm, or sound "Pin knots" (3/8 of an inch (0.95 cm) or less) are not considered in size, spacing, or zone considerations.

(ii) Knots are subject to the following limits on size and location:

KNOT LIMITS FOR DISTRIBUTION ARMS
DRAWING M-19 (SEE FIGURE 1, EXHIBIT A)
ALL DIMENSIONS IN INCHES

Class of Knot and Location	Maximum Knot Diameter	
	Close Grain	Dense Grain
Round Knots		
Single Knot: Maximum Diameter.		
Center Section*.		
Upper Half	3/4	1
Lower Half	1	1–1/4
Elsewhere	1–1/4	1–1/2
Sum of Diameters in a 6-Inch Length: Maximum		
Center Section.		
Upper Half	1–1/2	2
Lower Half	2	2–1/2
Elsewhere	2–1/2	3

Inch	Cm
3/4	1.91
1	2.54
1–1/4	3.18
1–3/8	3.49
1–1/2	3.81
1–3/4	4.45
1–7/8	4.76
2	5.08
2–1/4	5.72
2–1/2	6.35
3–1/4	8.26
3–1/2	8.89
3–5/8	9.21
4–5/8	11.75
5–5/8	14.29
7–3/8	18.73
9–3/8	23.81

KNOT LIMITS FOR TRANSMISSION ARMS
(SEE FIGURE 2, EXHIBIT A)
ALL DIMENSIONS IN INCHES

Pole Mounting Hole Zone*	Maximum Diameter For Single Knot
Upper Half (inner zone)	3/4
Upper Half (outer zone)	1 for close grain 1–1/4 dense grain

Other Locations Transmission Arm Size**	Narrow Face	Wide Face (Two Sides)	
		Edge	Along Centerline
4–5/8x5–5/8 or less	1	1–1/4	1–1/4
5–5/8x7–3/8	1–1/4	1–3/8	1–7/8
3–5/8x9–3/8	3/4	1–3/4	2–1/4

*No knot will be closer than its diameter to the pole mounting hole.
**For cross sections not shown, refer to grading rules.

(iii) Knot clusters shall be prohibited unless the entire cluster, measured on the worst face, is equal to or less than the round knot allowed at the specific location.

(iv) Spike knots shall be prohibited in deadend arms. Any spike knot across the top face shall be limited to the equivalent displacement of a knot 3/8 of an inch (0.95 cm) deep on one face and the maximum round knot for its particular location on the worst face, with a maximum width of 1 inch (2.54 cm) measured at the midpoint of the spiked section. Elsewhere across the bottom or side faces, spike knots shall not exceed 1/2 the equivalent displacement of a round knot permitted at that location, provided that the depth of the knot on the worst face shall not exceed the maximum round knot allowed at that location.

(v) Loose knots and knot holes shall drain water when the arm is normally

installed. In the center section, upper half, they shall not be greater than 1/2 the dimensions of round knots. Elsewhere, they shall not be greater than the ro[illegible] knot dimension. They shall [illegible] in deadend arms.

[illegible]se "spike" knots intersec[illegible] corner [illegible] measured on the least dia[illegible] knot.

(vii) A knot shal[illegible] considered to occupy a specific zone or section if the center of the knot (i.e. pith [illegible] knot) is [illegible] zone's bound-[illegible]

(viii) If a round or oval [illegible] on two faces and is in two zones, each face shall be judged independently. When this does not occur, average the least dimension showing on both faces. Knots which occur on only one face of a free of heart center (FOHC) arm shall be permitted to be 25 percent larger than the stated size.

(ix) *Knot spacing.* Two or more knots opposite each other on any face shall be limited by a sum not to exceed the size of a maximum single knot permitted for the location. On all four faces, all knots shall be well spaced.

(x) Knots which have a maximum of 5/8 inch (1.59 cm) diameter may intersect pin holes in the center section. One inch (2.54 cm) diameter knots may intersect pin holes elsewhere.

(4) *Miscellaneous characteristics, features and requirements.* (i) The top face of distribution crossarms shall not have more than four medium pitch and bark pockets in 8 foot (2.4 m) arms, and not more than five pitch and bark pockets in 10 foot (3.0 m) arms. Elsewhere a maximum of six medium pockets in 8 foot (2.4 m) arms and eight in 10 foot (3.0 m) arms shall be permitted. Equivalent smaller pockets shall be permissible. An occasional large pocket is permissible.

(ii) Shakes shall be prohibited.

(iii) *Checks.* Prior to treatment on properly seasoned arms, single face checks shall not exceed an average penetration of 1/4 the depth from any face and shall be limited to 10 inches (25.40 cm) long on the top face, and 1/3 the arm length on the other faces. Checks shall not be repeated in the same line of grain in adjacent pin holes. The sum of the average depths of checks occurring in the same plane on opposite faces shall be limited to 1/4 the face depth.

(iv) Compression wood shall be prohibited on any face. It is permitted if wholly enclosed in the arm, more than six annual rings from the surface, and not over 3/8 of an inch (0.95 cm) in width.

(v) Insect holes larger than 3/32 of an inch (0.24 cm) shall be prohibited. Pin holes (i.e. holes not over 1/16 of an inch (0.16 cm) diameter) shall be allowed if scattered and not exceeding 10 percent [illegible]

[illegible]wed on one edge, limited to approximately 1 inch (2.54 cm), measured across the corner. Outside of the top center section, an aggregate length not to exceed 2 feet may have wane up to 1-1/2 inches (3.81 cm) on an occasional piece on one or both edges. Bark shall be removed.

(vii) Prior to preservative treatment, crook, bow, or twist shall not exceed 1/2 of an inch (1.27 cm) in 8 foot arms (2.4 m) and 5/8 of an inch (1.59 cm) in 10 foot (3.0 m) arms.

(g) *Manufacture.* (1) All dimensions and tolerances shall conform to those shown on the drawings in this section or drawings supplied with the purchase order. Drawings supplied shall meet or exceed minimum dimensions and tolerances shown on the drawings in this section. Cross-sectional dimensions shall be measured and judged at about 1/4 the arm length, except when the defects of "skip dressing" or "machine bite or offset" are involved.

(2) Lamination techniques shall comply with ANSI 05.2-1983.

(3) Pin and bolt holes shall be smoothly bored without undue splintering where drill bits break through the surface. The center of any hole shall be within 1/8 of an inch (0.32 cm) of the center-line locations on the face in which it appears. The holes shall be perpendicular to the starting and finishing faces.

(4) *Shape.* The shape of the arms at any cross section, except for permissible wane, shall be as shown on the respective drawings in this section or supplied with the order. The two top edges may be either chamfered or rounded 3/8 of an inch (0.95 cm) radius. The two bottom edges may be slightly

eased 1/8 of an inch (0.32 cm) radius for the entire length.

(5) *Incising.* The lengthwise surfaces of Douglas-fir crossarms shall be incised approximately 1/4 of an inch (0.64 cm) deep. The incision shall be reasonably clean cut with a spacing pattern that insures uniform penetration of preservative.

(6) *Workmanship.* All crossarms shall be first quality workmanship. Crossarms shall be dressed on four sides, although "hit and miss skips" may occur on two adjacent faces on occasional pieces. Five (5) percent of a lot or shipment may be 1/8 of an inch (0.32 cm) scant in thickness or width at the ends for a length not exceeding 6 inches (15.24 cm), or may have 1/8 of an inch (0.32 cm) machine bite on offset.

(h) *Conditioning prior to treatment.* (1) All solid sawn crossarms shall be made of lumber which has been kiln-dried. Douglas-fir arms shall have an average moisture content of 19 percent or less, with a maximum not to exceed 22 percent. Southern Yellow Pine arms shall have an average moisture content of 22 percent or less, with a maximum not to exceed 30 percent.

(2) Moisture content levels shall be measured at about 1/4 the length and at a depth of about 1/5 the crossarm's thickness. Additionally, the moisture content gradient between the shell (i.e. 1/4 of an inch (0.64 cm) deep) and the core (i.e. about 1 inch (2.54 cm) deep) shall not exceed 5 percentage points.

(3) A minimum of at least 20 solid sawn crossarms per treating charge shall be measured to verify moisture content and shall be duly recorded by the quality control designee or independent inspector.

(4) The moisture content of lumber used in laminating shall, at the time of gluing, be within the range of 8 to 12 percent, inclusive.

(i) *Preservatives.* (1) The preservatives shall be:

(i) Creosote which conforms to the requirements of AWPA Standard P1 when analyzed in accordance with the methods in AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6;

(ii) Pentachlorophenol which contains not less than 95 percent chlorinated phenols and conforms to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5 or A9. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A; or

(iii) Waterborne preservatives, which may only be one of the following:

(A) Ammoniacal Copper Arsenates (ACA) and Ammoniacal Copper Zinc Arsenate (ACZA) which shall meet the requirements of AWPA Standard P5, when analyzed in accordance with methods in AWPA Standards A2, A9, or A11; and

(B) Chromated Copper Arsenates (CCA) which shall meet the requirements of one of the formulations given in AWPA Standard P5, sections 4, 5 or 6, and 10. Tests to establish conformity shall be made in accordance with AWPA Standards A2, A9, or A11.

(1) The pH of treating solutions of the waterborne preservatives shown in AWPA Standard P5, section 10, shall be determined in accordance with AWPA Standard A2, section 8.

(2) Waterborne preservatives are available either as oxides, which form non-ionizing chemical compounds in the wood, or as salts, which leave ionizing compounds as well as non-ionizing compounds in the wood. Salt formulations of a waterborne preservative are more corrosive to metal than the oxide formulation and may cause surface deposits. Unless otherwise specified in the purchase order, the oxide formulations of waterborne preservatives shall be supplied.

(3) Douglas-fir crossarms shall not be treated with CCA preservatives.

(4) Materials treated with waterborne preservatives shall be free of visible surface deposits.

(iv) Copper Naphthenate (CuN) concentrate used to prepare wood preserving solutions shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and shall conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A.

(2) [Reserved]

(j) *Preservative treatment.* (1) All timber products treated under this specification shall be treated by either a pressure or a thermal (nonpressure) process.

(2) These materials may be further conditioned by steaming, or by heating in hot oil (Douglas-fir), within the following limits:

	Time Hours (max.)	Temperature Deg. F (max.)
Steam	3	220 (104.4C)
Heating in Preservative	3	210 (98.9C)

(3) A final steam or hot oil bath may be used only to meet cleanliness requirements of paragraph (k) of this section. Total duration of the final steam bath shall not exceed 2 hours and the temperature shall not exceed 240 degrees Fahrenheit (115.6C).

(k) *Results of treatments.* (1) The quality control designee shall test or supervise the testing of each treated charge for penetration and retention.

(2) *Method of sampling.* When testing penetration and retention, a borer core shall be taken from not less than 20 crossarms in each treating charge. The borings shall be taken from any face except the top face at a point as close to the end as possible, being at least 3 inches (7.62 cm) from the end of the arm and no closer than 3 inches (7.62 cm) from the edge of the holes. The bored holes shall be plugged with preservative-treated plugs driven into the arm. Borings from laminated arms shall not be taken from the same laminate unless there is an end joint separation.

(3) Penetration by the preservative, as determined in accordance with AWPA Standard A3, shall be 100 percent of the sapwood in crossarms. In the heartwood of Douglas-fir crossarms, the penetration shall be not less than 3 inches (7.62 cm) longitudinally from the edge of holes and ends, and at least 3/16 inch (0.45 cm) from the surface of any face.

(4) Retention of preservative in the outer 6/10 of an inch (1.52 cm) for Douglas-fir and one inch (2.54 cm) for Southern Yellow Pine assay zones at the treating plant shall be not less than:

Preservative	Retention (pcf)	AWPA Analysis Method
Creosote	8	A6
Pentachlorophenol	0.4*	A5
ACA, ACZA, or CCA	0.4	A2, A7, A9, or A11
Copper Naphthenate	0.04	A5, A9, or A11

*This retention is for the lime ignition method. The copper pyridine method, retention 0.36 pcf, is required when timbers may have been in contact with salt water, and for all species native to the Pacific coast region. It is not required when it specifically states on the rough sawn material invoice that this material has not been in contact with salt water or is shown by analysis to have no additional chlorides present in the wood before treating.

(5) Cleanliness of lengthwise surfaces of all crossarms shall be free from tarry, greasy, or sticky material, and from oil exudation and pentachlorophenol crystallization (blooming).

(6) Re-treatment of materials which do not meet the penetration and retention requirements of this specification may be done only twice. Initial treatment steaming time plus re-treatment steaming time, combined, shall not exceed time allowed in paragraph (i) of this section.

(l) *Marks and brands.* (1) All crossarms shall be branded (hot brand) or die-stamped legibly and to a depth of approximately 1/16 of an inch (0.16 cm) before treatment.

(2) The letters and figures shall be not less than 1/2 of an inch (1.27 cm) in height. The top of the brand shall be oriented to the top of the arm.

(3) The brand or die-stamp shall include:

(i) The manufacturer's identification symbol;

(ii) Month and year of manufacture;

(iii) Species of timber such as DF for Douglas-fir and SP for Southern Yellow Pine; and

(iv) The preservative notated with a C for creosote, P for penta, S for salts, or N for Copper Naphthenate.

(4) An example is:

M-6-72 Manufacturer—Month—Year
DF-P Douglas-fir—penta treated

(5) The brand or stamp shall be placed on either of the wide surfaces of the arms, oriented with letters right side up towards the top of the arm and preferably about 1 foot (30.48 cm) from the midpoint of the arm.

(6) The mark should be approximately the same location on each type of crossarm of each producer.

(7) Brands, inspection marks, or quality assurance marks shall be removed from arms that do not meet these specifications

(m) *Storage.* (1) Producers may treat crossarms for reserve stock under any of the RUS approved plans. Prior to treating reserve stock, and annually thereafter, producers shall notify the Director of the Electric Staff Division of their intent to treat reserve stock. The letter of notification shall be addressed to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250–1500.

(2) RUS shall acknowledge, by letter, each notification of intent to treat material for reserve stock under the RUS specification.

(3) RUS's letter acknowledging the plant's advance notice of intent to treat material for reserve treated stock for the calendar year in question shall be evidence of compliance with the notification requirements.

(4) Producers shall notify RUS of:

(i) The locations of all storage or distribution yards where reserve treated stock will be maintained;

(ii) The designation of the RUS-approved plan;

(iii) The name of the selected inspection agency, where applicable; and

(iv) Any changes that occur during the year.

(5) Crossarms treated with oil-borne preservatives which have been held in storage for more than 1 year before shipment to the borrower, shall be reassayed before shipment and shall be re-treated if found nonconforming for retention on orders placed in accordance with this section.

(6) The crossarms shall meet the assay after re-treatment in accordance with paragraph (k) of this section.

(7) Crossarms which are held in storage after final acceptance shall be stacked in piles or on skids in such a manner as to assure good ventilation. The stacks shall be covered or stored indoors for protection from the sun and weather to reduce checking, bending, and loss of preservative.

(8) Borrowers or their contractors shall not purchase reserve treated stock from plants that fail to comply with the notification requirements.

(n) *Drawings.* (1) The drawings of Exhibit B of this section, Crossarm Drilling Guide, have a type number and show in detail the hole size, shape, and pattern desired for crossarms ordered under this specification.

(2) Purchase orders shall indicate the type required.

(3) Crossarms shall be furnished in accordance with the details of these drawings or in accordance with drawings attached to the purchase order

(4) Technical drawings for transmission crossarms are published in RUS Bulletin 1728F-T805B (formerly 50-1), Electric Transmission Specifications and Drawings, 115kV through 230kV, and RUS Bulletin 1728F-T805A (formerly 50-2), Electric Transmission Specification and Drawings, 34.5kV through 69kV.

(5) Appropriate drawings for transmission arms are to be specified and included with purchase orders.

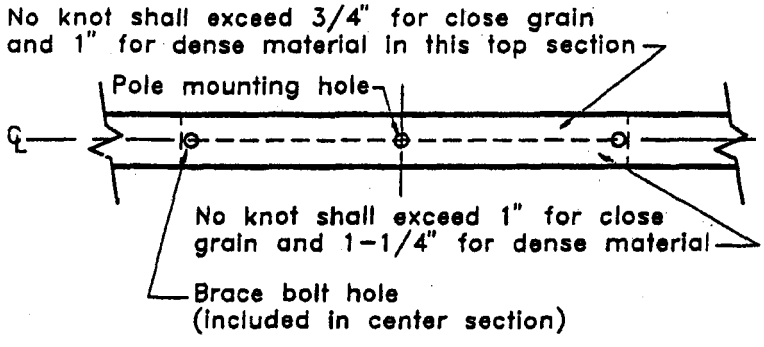
(o) *Destination inspection.* (1) When cross-sectional tolerances are measured at destination, average shrinkage allowance shall be considered using the arm's current moisture content and actual size.

(2) Using the average shrinkage allowances for Douglas-fir and Southern Yellow Pine as 1 percent size change for each four point moisture content change below the fiber saturation point, calculations can be made to determine if the arm met the minimum size at time of manufacture, when the arm was to meet the average moisture content.

EXHIBIT A TO § 1728.201—DISTRIBUTION AND TRANSMISSION ARMS

DISTRIBUTION ARMS

Figure 1



TRANSMISSION ARMS

POLE MOUNTING HOLE ZONE

Figure 2

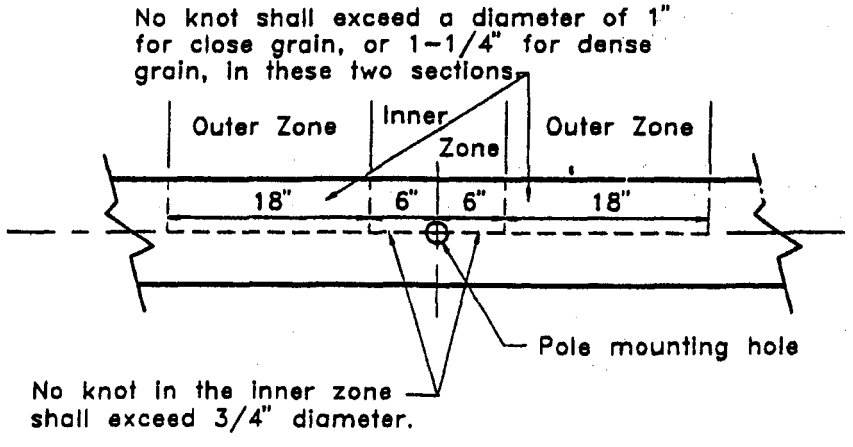
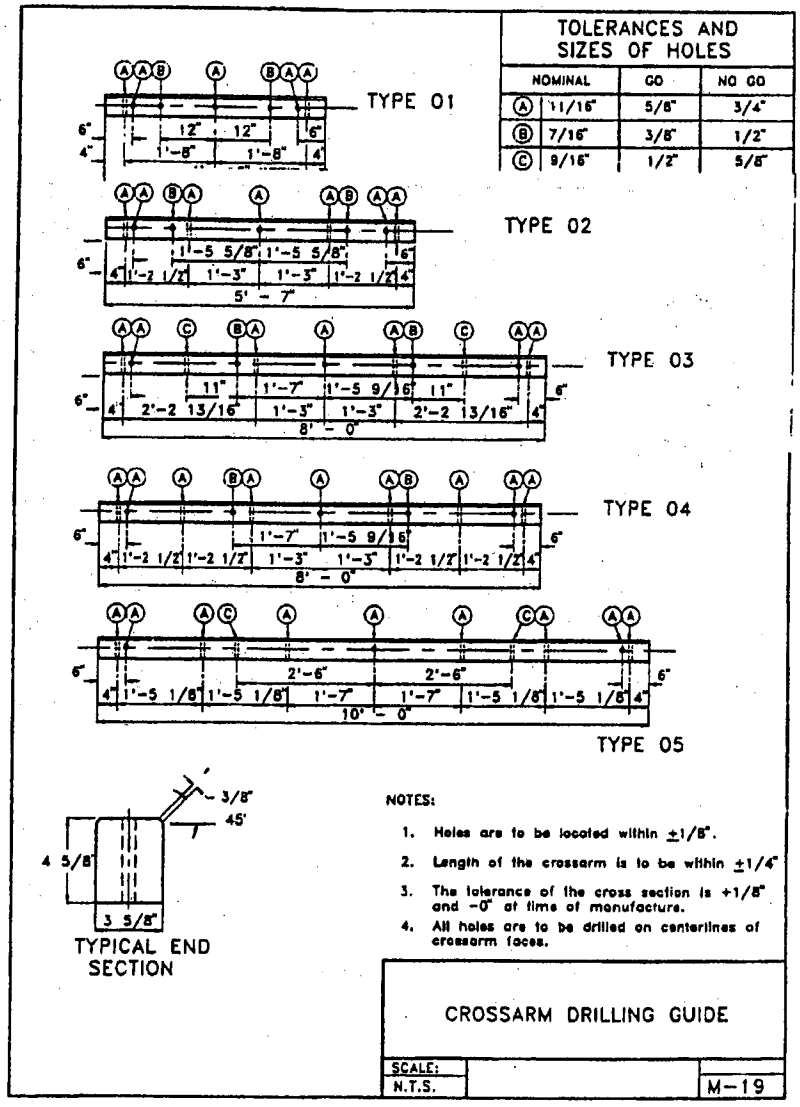


EXHIBIT B TO § 1728.201—CROSSARM DRILLING GUIDE



[58 FR 41396, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004]

§ 1728.202 RUS Bulletin 1728H-702, RUS Specification for Quality Control and Inspection of Timber Products.

(a) *Scope.* This specification describes in more detail the responsibilities and procedures pertaining to quality control for crossarms, as specified in § 1728.201 of this part, and poles, covered in RUS Bulletin 1728F-700, incorporated by reference in § 1728.97 of this part and in § 1755.97 of 7 CFR part 1755.

(b) *Related specifications and standards incorporated by reference.* The following specifications and standards referenced throughout this section are incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each are available for inspection during normal business hours at RUS, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of these standards and specifications may be purchased from the addresses shown below.

(1) American Wood-Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163-0286.

(i) A1-91, Standard for Coal Tar Creosote for Land and Fresh Water Use.

(ii) A2-91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3-91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5-91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6-89, Method for the Determination of Water and Oil-Type Preservatives in Wood.

(vi) A7-75, Wet ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9-90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Emission Spectroscopy.

(viii) A11-83, Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1-91, Standard for Preservative Treatment by Pressure Processes All Timber Products.

(x) C4-91, Standard for the Preservative Treatment of Poles by Pressure Processes.

(xi) C8-91, Standard for the Full-Length Thermal Process Treatment of Western Red Cedar Poles.

(xii) C10-91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12-90, Western Larch Poles—Full-Length preservative Treatment by Thermal Process.

(xiv) M1-90, Standard for the Purchase and Preservation of Forest Products.

(xv) M2-91, Standard Instructions for the Inspection of Preservative Treatment of Wood.

(xvi) M3-81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4-91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13-91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5-91, Standards for Water-Borne Preservatives.

(xx) P8-91, Standards for Oil-Borne Preservatives.

(xxi) P9-91, Standards for Solvents for Organic Preservative Systems.

(2) American Institute of Timber Construction (AITC) 200-83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110.

(3) American National Standards Institute (ANSI) 05.2-1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(4) American National Standards Institute/American Institute of Timber Construction (ANSI/AITC) A190.1-1983, American National Standard for Wood Products—Structural Glued Laminated Timber, available from ANSI, 1430 Broadway, New York, New York 10018.

(5) American Society for Testing and Materials (ASTM) D9–87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(c) *General stipulations.* (1) Each RUS electric borrower shall submit to the Director, Electric Staff Division, Rural Utilities Service, room 1250-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, in January of each year a list of plants from which it obtained poles or crossarms during the preceding calendar year.

(2) Ultimate quality control is the responsibility of the producer's management; however, a member of the producer's staff shall be designated quality control designee and charged with the responsibility for the exercise of proper quality control procedures. The requirements in American Wood Preservers' Association (AWPA) Standard M3, covering records, adequate laboratory, plant gauges, and other plant facilities including proper storage, shall be followed.

(3) The methods of inspection described in this section shall be used no matter which plan timber products are purchased under, i.e., Insured Warranty Plan, Independent Inspection Plan, or Quality Assurance Plans as described in § 1728.201 of this part or RUS Bulletin 1728F-700. The number of poles and crossarms actually inspected by monitors for quality control under a Quality Assurance Plan or the Insured Warranty Plan may vary from the number of poles and crossarms inspected under the Independent Inspection Plan. Under the Independent Inspection Plan, each pole and a sample number of crossarms shall be inspected.

(4) Under the Independent Inspection Plan, the RUS borrower should designate in the purchase order which inspection agency it has selected. Unless the RUS borrower contracts for inspection as a separate transaction, the treating company shall obtain the services of the RUS borrower's designated inspection agency. For reserve treated stock for purchase under the Independent Inspection Plan, the treating company shall obtain the services of an inspection agency. Selection of and changes in inspection agencies for reserve treated stock shall be promptly reported to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250–1500, in accordance with RUS Bulletin 1728F-700, and § 1728.201.

(5) Individual inspectors in the employ of Independent Inspection Agencies shall be experienced and competent. The inspector shall perform all phases of the inspection personally and in the proper sequence. The primary responsibility of the inspector is to determine, for the borrower, by careful inspection and verification, that the timber products, preservative, and treatment meet the requirements of RUS Bulletin 1728F-700 and Bulletin 1728H-701 and that the methods, storage facilities, and production equipment conform to applicable RUS specifications. For details of the recommended inspector's qualifications see appendix A of this section.

(6) Laminated materials for use on RUS borrower systems shall follow manufacturing and quality control requirements as specified in ANSI 05.2—1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, and ANSI/AITC A190.1–1983, American National Standard for Wood Products—Structural Glued Laminated Timber. The product shall be marked and certified.

(i) Laminated material shall be inspected by a qualified inspection and testing agency.

(ii) Quality control of material shall be performed to determine conformance with § 1728.201 of this part and AITC 200–83, Inspection Manual.

(d) *Quality control and inspection procedures for product acceptance.* It is the responsibility of the plant quality control designee to perform the following procedures to insure that a particular lot of material conforms to the requirements of the applicable RUS specification prior to treatment. After the plant quality control designee has performed these procedures, a particular lot of material shall be released to the inspector for verification of conformance.

(1) Poles can be purchased under any of the three purchase plans. These

plans are Insured Warranty Plan, Independent Inspection Plan, or a Quality Assurance Plan. Under the Independent Inspection Plan, all poles in a lot shall be inspected. Under the Insured Warranty Plan and a Quality Assurance Plan, the number of poles in a lot actually inspected may be less than every pole, depending on the terms of the plans.

(i) Ample space and assistance shall be provided by the treating plant for handling and turning to insure that the surfaces of all items can be adequately inspected.

(ii) Under the Independent Inspection Plan, all poles shall be inspected for conformance to the requirements of RUS Bulletin 1728F-700. If a pole is rejected and the cause of rejection is corrected, the rejected pole may be offered again for inspection as new material.

(iii) Dimensions, length, and circumference shall be measured by a standard steel pole tape to determine that they are in agreement with the details for class and length in the brand and butt stamp. If it is obvious by visual comparison with a measured pole that the brand information is correct, individual poles need not be measured. Pole circumference dimensions made prior to treatment shall govern acceptance. Reduction in dimension due to treatment and shipping shall be not more than 2 percent below the minimum for the pole class.

(iv) If 15 percent of the poles in a lot offered for inspection are defective, the inspector shall terminate the inspection. Re-examination of an entire lot by plant quality control shall be required when the number of rejected poles equals or exceeds 15 percent of the lot inspected. All defective or nonconforming poles either shall be removed from the lot or marked out.

(v) Poles in a lot inspected for decay shall be of the same seasoning condition. If the independent inspector suspects that decay has occurred, he shall cut a slice from both ends for closer examination. If 5 percent of the inspected poles in a lot shows evidence of decay, the entire lot shall be unconditionally rejected without further sorting.

(vi) Moisture content, when limited by the purchaser, as stated on the borrower's purchase order, shall be measured by calibrated electric moisture meter. Calibration of the meter shall include not only the zero settings for the X and Y readings, but also two resistance standards for 12 and 22 percent moisture content.

(vii) Material failing to conform for moisture content may be retested upon request after a recalibration of the instrument. The results of the second test shall govern disposition of the lot.

(viii) Re-examination for any mechanical damage or deterioration and for original acceptance shall be conducted on timber products not treated within 10 days after original inspection.

(2) Crossarms can be purchased only under either of two purchase plans. These plans are the Independent Inspection Plan or Quality Assurance Plans. Under the Independent Inspection Plan, crossarms are to be inspected prior to manufacture, during manufacture, and after treatment. Under a Quality Assurance Plan, crossarms are monitored according to the terms of the quality assurance program acceptable to RUS.

(i) Inspection prior to treatment shall include:

(A) Surface inspection of all ends of all arms. This is usually done on the stacks of arms prior to manufacture. Particular attention shall be paid to defects commonly found in the ends, such as compression wood, red heart and other forms of decay, shakes, splits, through checks, scantiness, honeycomb, and low density, determined by rings per inch (centimeter) and percent of summerwood. Whenever the number of nonconforming arms is found to exceed 0.5 percent of the lot or one arm, whichever is greater, the entire lot shall be rejected for excess number of defective ends. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(B) Surface inspection of the lengthwise sides performed on a random representative sample. The sample size shall equal 20 percent of a lot size or 200 arms, whichever is smaller. The inspector shall examine side surfaces as they are slowly rotated. When necessary, the rotation may be stopped for

closer inspection. Whenever the number of nonconforming arms is found to exceed 2 percent of the sample size, the entire lot shall be rejected. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(C) Check of moisture content of the random sample by a calibrated moisture meter.

(D) Check of crossarm dimensions of the random sample measured after surfacing.

(ii) Inspection during manufacture shall consist of:

(A) Checking bolt and insulator pin holes for squareness and excessive splintering;

(B) Checking brands for completeness, location, and legibility; and

(C) Checking arms for conformance.

(iii) Under the Independent Inspection Plan, there shall be a final inspection during and after treatment for preservative retention and penetration and for damage.

(3) Structural glued laminated timber shall be tested and inspected in accordance with AITC 200–83, Inspection Manual. Grade of lumber shall be inspected by a qualified grader for specified quality, and so marked, in accordance with grading rules of the American Lumber Standards. Adhesives used for all structural arms shall meet requirements of ANSI 05.2–83, paragraph 5.2. Melamine urea adhesives shall not be used. End joint spacings and limitations shall be in accordance with ANSI 05.2–83.

(e) *Preservatives.* (1) Creosote shall conform to the requirements of AWPA Standard P1 when analyzed by AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6.

(i) Each occasional charge, all material treated in a cylinder at one time, shall be analyzed.

(ii) The first charge and one of every five charges randomly selected in consecutive charges shall be analyzed.

(2) Solutions of waterborne preservatives shall be analyzed for components in accordance with AWPA Standards A2, A9, or A11, and shall meet the requirements of P5 for composition. AWPA A2 shall be used as a referee method.

(3) Pentachlorophenol shall contain not less than 95 percent chlorinated phenols and conform to AWPA Standard P8 in hydrocarbon solvent AWPA P9 Type A.

(4) Copper Naphthenate in hydrocarbon solvent (AWPA P9 Type A) shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5.

(f) *Plant facilities and inspection during treatment.* (1) Manufacturing and treating plant facilities shall conform to AWPA Standard M3, paragraph 3. Pressure plants shall be equipped with recording instruments to register time, pressure, temperature and vacuum during each cycle of treatment. They shall also be equipped with indicating thermometers and pressure and vacuum gauges to check the accuracy of the recorders. Work tanks shall be equipped with a thermometer. Thermal treating vats shall be equipped with a time and temperature recorder and with an indicating thermometer. Temperature recording devices are not mandatory for plants treating exclusively with waterborne preservatives.

(2) Under the Independent Inspection Plan, the inspector shall be present during the treatment procedure, except at times when it may be impractical, such as during late night or early morning treatments. At such times, temperature, pressure, and vacuum data shall be taken from the recording charts.

(3) Recording instruments shall be checked with indicating gauges and thermometers. Inaccuracies shall be referred to the treating company for prompt correction. In the event of an inaccuracy, indicating possible damage to the material, the inspector shall reject the charge.

(g) *Results of treatment.* (1) Poles shall be tested for retention and penetration by means of a calibrated increment borer 0.2 inches (0.51 cm) ±0.02 inches (0.05 cm) in diameter in accordance with procedures in AWPA Standard M2, paragraph 5.22. Under the Independent Inspection Plan, all treating charges

shall be tested for retention and penetration. Plant quality control and independent inspection shall do their analyses separately. Under the Insured Warranty Plan and Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) Western red and northern white cedars and western larch poles shall be bored at any point of the periphery approximately 6–12 inches (15.24–30.48 cm) above ground line and all other species approximately 1 foot (30.48 cm) above or below the brand.

(ii) Penetration shall be determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(iii) *Retention sampling.* (A) When there are 20 or more poles in the treating charge, the retention sample for creosote shall consist of 20 assay zones from southern pine and Douglas-fir poles. All poles in charges with fewer than 20 poles shall be bored once. Charges with less than 15 poles shall be bored once and bored again on a random basis to obtain a minimum of 15 assay zones.

(B) Retention samples shall be taken from 20 poles in charges of 20 or more poles.

(C) Retention samples for Alaska yellow, western red, and northern white cedars shall be comprised of a minimum of 30 assay zones for creosote and waterborne preservatives. For penta charges of fewer than 30 poles, the sample shall contain the assay zone from each pole in the lot.

(D) Retention samples shall be comprised of borings, representative of pole volumes for each class and length in the charge. Further selection and marking of poles of mixed seasoning, volume, and location on the tram shall be made as illustrated in the following table:

Number of Poles	Class/Length	Vol. in cu. ft.	Total Volume	Number of Borings
27	7/30(09.1 m)	232	15	3
26	4/35(10.7 m)	447	29	6
11	5/35(10.7 m)	163	10	2
55*	6/35(10.7 m)	704	46	9
Total		1,546		

*If a portion of these poles were green and some partially seasoned, then the number of borings should reflect the approximate percentage of each.

(iv) When material in a lot consists of fewer pieces than the designated minimum number of samples for assay, additional borings shall be taken so as to make up at least the minimum sample, and in such manner that the sample is representative of the lot of material with respect to any variations in size, seasoning condition, or other features that might affect the results of treatment.

(v) Analyses for preservative retention shall be performed.

(A) Creosote shall be analyzed by AWPA Standard A6.

(B) Penta shall be analyzed by AWPA Standard A5 or A9. Copper pyridine method is required when timber may have been in contact with salt water and for all species native to the Pacific coast region, unless the raw material invoice specifically states that the material either has not been in contact with salt water or has been shown by analysis to have contained no additional chlorides before treating.

(C) Copper Naphthenate shall be analyzed by tests in accordance with AWPA Standards A5 or A9.

(D) Waterborne preservatives shall be analyzed by tests in accordance with AWPA Standards A2, A7, A9, or A11.

(E) Prior to unloading a tram, the inspectors may take their own samples and analyze them concurrently with the quality control designee, but each shall work independently, and quality control data shall be presented before acceptance of the charge.

(vi) *Penetration sampling of poles.* (A) Group A poles consist of poles with a circumference of 37.5 inches (95.25 cm) or less at 6 feet (1.8 m) from butt.

(*1*) Bore 20 Group A poles or 20 percent of the poles, whichever is greater. Accept if 100 percent of the sample conform; otherwise, bore all poles.

(*2*) Re-treat the charge if more than 15 percent of the borings are found to be nonconforming.

(*3*) Re-treat all nonconforming poles if 15 percent or fewer fail the requirement.

(B) Group B poles consist of poles with circumference greater than 37.5 inches (95.25 cm) at 6 feet (1.8 m) from the butt.

(*1*) For Group B poles 50 feet (15.2 m) and shorter, bore each pole and re-treat only those found to be nonconforming, unless more than 15 percent fail; in that case, re-treat the entire lot.

(*2*) For Group B poles longer than 50 feet (15.2 m), bore each pole twice at 90 degrees apart around the pole and accept only those poles conforming to the penetration requirement in both borings. All nonconforming poles may be re-treated only twice.

(vii) All holes (nominal 0.2 of an inch (0.05 cm) diam. bit) shall be promptly filled with treated, tight-fitting wood plugs.

(2) Under the Independent Inspection Plan, all treating charges of crossarms shall be tested for retention and penetration. Plant quality control inspectors and independent inspectors shall do their analyses *independently.* Under the Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) The penetration and retention sample shall consist of 20 (48 for creosote) outer 6/10 of an inch (1.52 cm) for Douglas-fir and 1 inch (2.54 cm) for Southern Yellow Pine zones from borings taken from any face except the top face at a location as close to the end as possible being at least 3 inches (7.62 cm) from the end of the arm and no closer than 3 inches from the edge of any holes. For laminated material, borings shall be taken from laminates on a random basis.

(ii) Penetration shall be tested by taking not less than 20 borings from 20 crossarms in each charge, determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(3) Laminated material shall be checked for any evidence of delamination due to treatment and for the identifying quality stamp of AITC or American Plywood Association (APA).

(4) When x-ray fluorescence (XRF) instruments are used to analyze preservative or retention, Periodic Instrument Checks (PIC) shall be made by the treating plant and any outside inspection agency using the treating plant's instrument or its own. Appendix B of this section outlines a recommended procedure.

(5) At a minimum, treating plants shall perform the PIC weekly and record the results in the instrument's log, which shall be stored with the instrument. Independent inspection agencies shall use their own samples to perform the PIC on treater's instrument once per visit, not to exceed one PIC per week. Inspection agencies shall record their results in the instrument's log and state the date of its latest PIC on all treating reports.

(6) XRF instruments shall be accurate and reliable, and they shall generate reproducible results. Instruments shall have thorough instructions which should include recommendations on drying techniques, equipment, and density calculations. These drying recommendations shall be followed when using these instruments.

(h) *Product acceptance.* Under the Independent Inspection Plan, the inspector shall signify acceptance by marking each piece of accepted material with a clear, legible hammer stamp in one end prior to treatment and in the other end after treatment. The inspector shall personally mark each piece, and shall not delegate this responsibility to another person.

(i) *Charge inspection reports.* (1) Inspection Reports shall cover the following:

(i) The total pieces in the lot, number of and causes for rejection;

(ii) The conditioning of the material prior to treatment;

(iii) The analyses of preservative identified by the analyst's signature or certification;

(iv) The details of treatment; and

(v) The results of treatment. These results shall include the following:

(A) The depth of penetration for retention sample and a summary of all

poles rejected for insufficient penetration;

(B) Worksheets for retention analyses, each identified by quality control designee and independent inspector;

(C) The number of pieces offered and rejected, together with the cause(s) for rejection;

(D) The date of latest Periodic Instrument Check.

(2) On each inspection report the independent inspector and the plant quality control designee shall certify, in writing, that the material listed on the report has been inspected before, during, and after treatment, and that the preservative used was analyzed in accordance with the requirements of this section.

(3) Each inspector or inspection agency shall retain for a period of 1 year a copy or transcript of each report of inspection, together with laboratory worksheets covering retention by assay and preservative analyses for the purchaser, and on request shall furnish a copy or transcript of any of these reports to the Director, Electric Staff Division, Rural Utilities Service, Washington, DC 20250–1500.

(j) *Charge numbers on re-treat poles.* The letter "R" shall be added to the original charge number in the butts of all poles that are re-treated for insufficient penetration or retention of preservative. All poles that fail to meet treatment requirements after two retreatments shall be permanently rejected.

(k) *Safety provisions.* Poles intended for RUS borrowers shall not be inspected when, in the opinion of the inspector, unsafe conditions are present.

APPENDIX A TO § 1728.202—RECOMMENDED INSPECTORS' QUALIFICATIONS

(a) Inspection agencies should see that inspectors assigned to the inspection of timber products and treatment for RUS borrowers are competent and experienced.

(b) *Recommended experience.* In general, any of the following examples are recommended as minimum qualifying experience before a new inspector may be permitted to inspect timber products for RUS borrowers:

(1) Three years' experience as an inspector of timber and the preservative treatment of timber.

(2) Three years' experience in timber treating plant quality control work.

(3) Under the direct supervision of an experienced, well-qualified inspector, who has performed the following:

(i) Inspected at least 2,500 poles and/or crossarms "in the white."

(ii) Checked preservative penetration results on at least 500 poles and crossarms.

(iii) Made at least 35 wood assays for preservative retention.

(iv) Made at least 25 analyses of each type preservative used on material the person is assigned to inspect.

(v) In both (b)(1) and (b)(2) of this appendix A, the experience should be not less than that required in (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv).

(4) Inspectors experienced in the inspections of one product, such as poles, should not be qualified to inspect another product, such as crossarms, until the above experience is gained.

(5) The inspector should be especially well informed in wood preservation and the operation of a timber treating plant, and be competent in preservative analysis and other laboratory work.

(6) In all cases, an inspector should be thoroughly instructed in the application of RUS specifications and the standards pertaining thereto before being permitted to independently inspect timber products and the treatments applied to them. Knowledge of these specifications and standards, as well as the inspector's proficiency, may be checked routinely by members of the RUS staff.

APPENDIX B TO § 1728.202—PERIODIC INSTRUMENT CHECK X-RAY FLUORESCENCE

(a) *General.* The following sample calibration standards and procedures may be used in lieu of comparison with analysis by wet ash or lime ignition methods.

(b) *Penta.* Until such time as AWPA approves calibration standards for penta, the following method should be used to run a salt water solution to measure Cl (chloride).

(1) *Standard Solution.* Dry approximately 15 grams of reagent grade NaCl at 105 °C for 1 hour. Weigh 10.00 grams into a tared beaker. Add distilled water until the total weight is 100.00 grams. Stir until completely dissolved. This will give a 10 percent weight to weight solution of NaCl.

(2) *Baseline Check.* (i) Insure that the instrument is in good agreement with lime ignition.

(ii) Record any user correction factors.

(iii) Stabilize and standardize the instrument.

(iv) Run the salt solution five times using the PENTA-OIL calibration mode.

(v) Record the average and standard deviation of the values for percent penta. The average value will now be considered the nominal value.

(3) *Periodic Instrument Check.* Run the salt solution two times and average the results. If the value is more than ±5 percent of the nominal value, the instrument needs further calibration, following manufacturer's recommendation.

(c) *Waterborne preservatives.* Treaters and inspection agencies should purchase AWPA Committee P-5 Standard Reference Materials to analyze on their instruments. Reference materials should be in the retention range of the material being produced at the plants. If the value is more than ±5 percent of the nominal value, the instrument needs further calibration. AWPA Committee P-5 Standard Reference Materials may be purchased from:

American Wood Preservers' Association, P.O. Box 286, Woodstock, Maryland 21163, Phone: (410) 456-3169.

[58 FR 41406, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004]

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

Subpart A—General

Sec.

Subpart B—Operations and Maintenance Requirements

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

SOURCE: 63 FR 3450, Jan. 23, 1998, unless otherwise noted.

Subpart A—General

§ 1730.1 Introduction.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) related to electric borrowers' operation and maintenance practices and RUS' review and evaluation of such practices.

(b) The policies and procedures included in this part apply to all electric borrowers (both distribution borrowers and power supply borrowers) and are intended to clarify and implement certain provisions of the security instrument and loan contract between RUS and electric borrowers regarding operations and maintenance. This part is not intended to waive or supersede any provisions of the security instrument and loan contract between RUS and electric borrowers.

(c) The Administrator may waive, for good cause, on a case by case basis, certain requirements and procedures of this part.

§ 1730.2 RUS policy.

It is RUS policy to require that all property of a borrower be operated and maintained properly in accordance with the requirements of each borrower's loan documents. It is also RUS policy to provide financial assistance only to borrowers whose operations and maintenance practices and records are satisfactory or to those who are taking corrective actions expected to make their operations and maintenance practices and records satisfactory to RUS.

§ 1730.3 RUS addresses.

(a) Persons wishing to obtain forms referred to in this part should contact: Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522, telephone (202) 720-8674. Borrowers or others may reproduce any of these forms in any number required.

(b) Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's assigned RUS General Field Representative (GFR) or such other office as designated by RUS.

§ 1730.4 Definitions.

Terms used in this part have the meanings set forth in 7 CFR Part 1710.2. References to specific RUS forms and other RUS documents, and

to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR Part 1710.2, the term *Prudent Utility Practice* has the meaning set forth in Article 1, Section 1.01 of Appendix A to Subpart B of 7 CFR Part 1718—Model Form of Mortgage for Electric Distribution Borrowers, for the purposes of this Part.

§§ 1730.5–1730.19 [Reserved]

Subpart B—Operations and Maintenance Requirements

§ 1730.20 General.

Each electric program distribution, transmission and generation borrower (as defined in § 1710.2) shall operate and maintain its system in compliance with prudent utility practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, individually or regionally performing a system security Vulnerability and Risk Assessment (VRA), establishing and maintaining an Emergency Restoration Plan (ERP), maintaining records of the physical, cyber and electrical condition and security of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system and annually exercise its ERP in accordance with the requirements of this part. An actual manmade or natural event on the borrowers system in which a borrower utilizes a significant portion of its ERP shall count as an annual exercise for that calendar year, provided that after conclusion of the event, the borrower verifies accuracy of the emergency points-of-contact (POC) and the associated contact numbers as listed in their ERP. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

[69 FR 60540, Oct. 12, 2004]

§ 1730.21 Inspections and tests.

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, annually exercise its ERP, and maintain records of such inspections and tests. For the purpose of this part, "Exercise" means a borrower's Tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. Such Exercise may be performed singly by an individual borrower, or as an active participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) Tabletop execution or actual full implementation of the ERP. For the purpose of this part, "Tabletop" means a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response.

(b) The frequency of inspection and testing will be determined by the borrower in conformance with applicable laws, regulations, national standards, and Prudent Utility Practice. The frequency of inspection and testing will be determined giving due consideration to the type of facilities or equipment, manufacturer's recommendations, age, operating environment and hazards to which the facilities are exposed, consequences of failure, and results of previous inspections and tests. The records of such inspections and tests will be retained in accordance with applicable regulatory requirements and Prudent Utility Practice. The retention period should be of a sufficient time period to identify long-term trends. Records must be retained at

least until the applicable inspections or tests are repeated.

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations and whether additional security measures are considered necessary to reduce the vulnerability of those facilities which, if damaged or destroyed, would severely impact the reliability and security of the electric power grid, cause significant risk to the safety and health of the public and/or impact the ability to provide service to consumers over an extended period of time. The electric power grid, also known as the transmission grid, consists of a network of electrical lines and related facilities, including certain substations, used to connect distribution facilities to generation facilities, and includes bulk transmission and subtransmission facilities as defined in §1710.2 of this title. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

[63 FR 3450, Jan. 23, 1998, as amended at 69 FR 60540, Oct. 12, 2004]

§ 1730.22 Borrower analysis.

(a) Each borrower shall periodically analyze and document its security, operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical or cyber condition or the operational effectiveness of the system or suggest a need for changes in security, operations or maintenance policies, practices and procedures. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's security, operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

(1) Conduct the analysis required by paragraph (a) of this section not more than 90 days prior to the scheduled RUS review;

(2) Complete RUS Form 300, Review Rating Summary, and other related forms, prior to RUS' review and evaluation; and

(3) Make available to RUS the borrower's completed RUS Form 300 (including a written explanation of the basis for each rating) and records related to the operations and maintenance of the borrower's system.

(c) For those facilities not included on the RUS Form 300 (e.g., generating plants), the borrower shall prepare and complete an appropriate supplemental form for such facilities.

[63 FR 3450, Jan. 23, 1998, as amended at 69 FR 60541, Oct. 12, 2004]

§ 1730.23 Review rating summary, RUS Form 300.

RUS Form 300 in Appendix A shall be used when required by this part.

§ 1730.24 RUS review and evaluation.

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every three years. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its complete system. Reports made by other inspectors (e.g., other Federal agencies, State inspectors, etc.) will also be made available, as applicable. RUS will not duplicate these other reviews but will use their reports to supplement its own review. RUS may inspect facilities, as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected

are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower. The borrower's management will discuss this review and evaluation with its Board of Directors.

§ 1730.25 Corrective action.

(a) For any items on the RUS Form 300 rated unsatisfactory (i.e., 0 or 1) by the borrower or by RUS, the borrower shall prepare a corrective action plan (CAP) outlining the steps (both short term and long term) the borrower will take to improve existing conditions and to maintain an acceptable rating. The CAP must include a time schedule and cost estimate for corrective actions, and must be approved by the borrower's Board of Directors. The CAP must be submitted to RUS for approval within 90 days after the completion of RUS' evaluation noted in § 1730.24.

(b) The borrower must periodically report to RUS in writing progress under the CAP. This report must be submitted to RUS every six months until all unsatisfactory items are corrected unless RUS prescribes a different reporting schedule.

§ 1730.26 Certification.

(a) *Engineer's certification.* Where provided for in the borrower's loan documents, RUS may require the borrower to provide an "Engineer's Certification" as to the condition of the borrower's system (including, but not limited to, all mortgaged property.) Such certification shall be in form and substance satisfactory to RUS and shall be prepared by a professional engineer satisfactory to RUS. If RUS determines that the Engineer's Certification discloses a need for improvements to the condition of its system or any other operations of the borrower, the borrower shall, upon notification by RUS, promptly undertake to accomplish such improvements.

(b) *Emergency Restoration Plan certification.* The borrower's Manager or Chief Executive Officer shall provide written certification to RUS stating that a VRA has been satisfactorily completed that meets the criteria of § 1730.27 (a), (b), (c), or (d), as applicable and § 1730.27(e)(1) through (e)(8), and that the borrower has an ERP that meets the criteria of § 1730.28 (a), (b), (c), or (d), as applicable, and § 1730.28 (e), (f), and (g). The written certification shall be in letter form. Applicants for new RUS electric loans, loan guarantees or grants shall include the written certification in the application package submitted to RUS. If the self-certification of an ERP and VRA are not received as set forth in this section, approval of the loan, loan guarantees or grants will not be considered until the certifications are received by RUS.

[63 FR 3450, Jan. 23, 1998, as amended at 69 FR 60541, Oct. 12, 2004]

§ 1730.27 Vulnerability and Risk Assessment (VRA).

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall perform an initial VRA of its electric system no later than July 12, 2005. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and July 12, 2005 shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after July 12, 2005 shall include with its application package a letter certification that such applicant has performed an initial VRA of its electric system. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(e) The VRA shall include identifying:

(1) Critical assets or facilities considered necessary for the reliability and security of the electric power grid as described in § 1730.21(c);

(2) Facilities that if damaged or destroyed would cause significant risk to the safety and health of the public;

(3) Critical assets or infrastructure owned or served by the borrower's electric system that are determined, identified and communicated as elements of national security by the consumer, State or Federal government;

(4) External system impacts (interdependency) with loss of identified system components;

(5) Threats to facilities and assets identified in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section;

(6) Criticality and risk level of the borrower's system;

(7) Critical asset components and elements unique to the RUS borrower's system; and

(8) Other threats, if any, identified by an individual borrower.

[69 FR 60541, Oct. 12, 2004]

§ 1730.28 Emergency Restoration Plan (ERP).

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall have a written ERP no later than January 12, 2006. The ERP should be developed by the borrower individually or in conjunction with other electric utilities (not all having to be RUS borrowers) through the borrower's unique knowledge of its system, prudent utility practices (which includes development of an ERP) and the borrower's completed VRA. If a joint electric utility ERP is developed, each RUS borrower shall prepare an addendum to meet the requirements of paragraphs (e), (f), and (g) of this section as it relates to its system.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall have a written ERP in accordance with § 1730.28(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and January 12, 2006, shall have a written ERP in accordance with § 1730.28(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after January 12, 2006 shall include with its application package a letter certification that such applicant has a written ERP.

(e) The ERP shall include:

(1) A list of key contact emergency telephone numbers (emergency agencies, borrower management and other key personnel, contractors and equipment suppliers, other utilities, and others that might need to be reached in an emergency);

(2) A list of key utility management and other personnel and identification of a chain of command and delegation of authority and responsibility during an emergency;

(3) Procedures for recovery from loss of power to the headquarters, key offices, and/or operation center facilities;

(4) A Business Continuity Section describing a plan to maintain or re-establish business operations following an event which disrupts business systems (computer, financial, and other business systems); and

(5) Other items, if any, identified by the borrower as essential for inclusion in the ERP.

(f) The ERP must be approved and signed by the borrower's Manager or Chief Executive Officer, and approved by the borrower's Board of Directors.

(g) Copies of the most recent approved ERP must be made readily available to key personnel at all times.

(h) The ERP shall be Exercised at least annually to ensure operability and employee familiarity. Completion of the first exercise of the ERP must occur on or before January 12, 2007.

(i) If modifications are made to an existing ERP:

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (e), (f), and (g) of this section; and

(2) Additional Exercises may be necessary to maintain employee operability and familiarity.

(j) Each borrower shall maintain records of such Exercises.

[69 FR 60541, Oct. 12, 2004]

§ 1730.29 Grants and Grantees.

For the purposes of this part, the terms "borrower" shall include recipients of RUS electric program grants, and "applicant" shall include applicants for such grants. References to "security documents" shall, with respect to recipients of RUS electric program grants, include grant agreements and other grant-related documents.

[69 FR 60541, Oct. 12, 2004]

§§ 1730.30–1730.99 [Reserved]

SUBPART B TO PART 1730—REVIEW RATING SUMMARY, RUS FORM 300

Borrower Designation _____
Date Prepared _____

Ratings on form are:

0: Unsatisfactory—no records
1: Unsatisfactory—corrective action needed
2: Acceptable, but should be improved—see attached recommendations
3: Satisfactory—no additional action required at this time
N/A: Not applicable

PART I—TRANSMISSION and DISTRIBUTION FACILITIES

1. Substations (Transmission and Distribution)
   a. Safety, Clearance, Code Compliance—Rating: _____
   b. Physical Condition: Structure, Major Equipment, Appearance—Rating: _____
   c. Inspection Records Each Substation—Rating: _____
   d. Oil Spill Prevention—Rating: _____
2. Transmission Lines
   a. Right-of-Way: Clearing, Erosion, Appearance, Intrusions—Rating: _____
   b. Physical Condition: Structure, Conductor, Guying—Rating: _____
   c. Inspection Program and Records—Rating: _____
3. Distribution Lines—Overhead
   a. Inspection Program and Records—Rating: _____
   b. Compliance with Safety Codes: Clearances—Rating: _____
   Compliance with Safety Codes: Foreign Structures—Rating: _____
   Compliance with Safety Codes: Attachments—Rating: _____
   c. Observed Physical Condition from Field Checking: Right-of-Way—Rating: _____
   Observed Physical Condition from Field Checking: Other—Rating: _____
4. Distribution—Underground Cable
   a. Grounding and Corrosion Control—Rating: _____
   b. Surface Grading, Appearance—Rating: _____
   c. Riser Poles: Hazards, Guying, Condition—Rating: _____
5. Distribution Line Equipment: Conditions and Records
   a. Voltage Regulators—Rating: _____
   b. Sectionalizing Equipment—Rating: _____
   c. Distribution Transformers—Rating: _____
   d. Pad Mounted Equipment—Safety: Locking, Dead Front, Barriers—Rating: _____
   Mounted Equipment—Appearance: Settlement, Condition—Rating: _____
   e. Kilowatt-hour and Demand Meter Reading and Testing—Rating: _____

PART II—OPERATION AND MAINTENANCE

6. Line Maintenance and Work Order Procedures
   a. Work Planning and Scheduling—Rating: _____
   b. Work Backlogs: Right-of-Way Maintenance—Rating: _____
   Work Backlogs: Poles—Rating: _____
   Work Backlogs: Retirement of Idle Services—Rating: _____
   Work Backlogs: Other—Rating: _____
7. Service Interruptions
   a. Average Annual Hours/Consumer by Cause (Complete for each of the previous 5 years)
   1. Power Supplier _____
   2. Major Storm _____
   3. Scheduled _____
   4. All Other _____
   5. Total _____
   Rating: _____
   b. Emergency Restoration Plan—Rating: _____
8. Power Quality
   General Freedom from Complaints—Rating: _____
9. Loading and Load Balance
   a. Distribution Transformer Loading—Rating: _____
   b. Load Control Apparatus—Rating: _____
   c. Substation and Feeder Loading—Rating: _____
10. Maps and Plant Records
   a. Operating Maps: Accurate and Up-to-Date—Rating: _____
   b. Circuit Diagrams—Rating: _____
   c. Staking Sheets—Rating: _____

PART III—ENGINEERING

11. System Load Conditions and Losses
   a. Annual System Loses, _____%—Rating: _____
   b. Annual Load Factor, _____%—Rating: _____

c. Power Factor at Monthly Peak, _____%—Rating:_____
d. Ratio of Individual Substation Peak kW to kVA, _____—Rating:_____
12. Voltage Conditions
a. Voltage Surveys—Rating:_____
b. Substation Transformer Output Voltage Spread—Rating:_____
13. Load Studies and Planning
a. Long Range Engineering Plan—Rating:_____
b. Construction Work Plan—Rating:_____
c. Sectionalizing Study—Rating:_____
d. Load Data for Engineering Studies—Rating:_____
e. Load Forecasting Data—Rating:_____

PART IV—OPERATION AND MAINTENANCE BUDGETS

For Previous 2 Years:
Normal Operation—Actual $_____
Normal Maintenance—Actual $_____
Total—Actual $_____
For Present Year:
Normal Operation—Budget $_____
Normal Maintenance—Budget $_____
Total—Budget $_____
For Future 3 Years:
Normal Operation—Budget $_____
Normal Maintenance—Budget $_____
Additional (Deferred) Maintenance—Budget $_____
Total—Budget $_____
14. Budgeting:
Adequacy of Budgets For Needed Work—Rating:_____
15. Date Discussed with Board of Directors _____
Remarks: _____

EXPLANATORY NOTES

Item No. _____ Comments _____
Rated by _____ _____ Title _____ Date _____
Reviewed by _____ Manager _____ Date _____
Reviewed by _____ RUS GFR _____ Date _____

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

Subpart A—General

Sec.

Subpart B—Loan Purposes and Basic Policies

Subpart C—Types of Loans

Subpart D—Terms of Loans

Subpart E—Basic Requirements for Loan Approval

Subpart F—Mortgage Controls on Acquisitions and Mergers

Subpart G—Acquisitions Involving Loan Funds

ATTACHMENT D
INDEX OF APPLICABLE RUS BULLETINS

Committed to the future of rural communities.

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Informational Publication	Size (.doc)	Text	MS Word	PDF	Description
100-1	1M	N/A	N/A	.pdf	Rural Electrification Act of 1936, as amended, 7 U.S.C. 901-950b (as of 1/23/2004)
200-3	17K	.txt	.doc	.pdf	Index of Electric Program Issuances (updated 5/12/98)
202-1	N/A	N/A	N/A	N/A	List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers. Visit the LIST OF MATERIALS page to download the latest copy in Adobe Acrobat pdf format.
250-B6	104K	N/A	N/A	.pdf	Electric Program Directory (February 2006)
250-B10	219K	N/A	N/A	.pdf	Electric and Telecommunications Programs - General Field Representatives (GFR); Program Accounting and Regulatory Analysis - Field Accountants (FA) (May 2005)

Bulletin	Size (.doc)	Text	MS Word	PDF	Description
43-9	-	-	-	.pdf	"Buy American" Requirement with related Federal Register Notices (7/28/1955) (also available in html)
65-1	-	-	-	-	Design Guide for Rural Substations - No Longer Available - Replaced by Bulletin 1724E-300
180-2	217K	-	.doc	.pdf	Record Retention Recommendations for RUS Electric Borrowers (6/26/03)

1717B-2	-	-	.doc	.pdf	Guide for Preparing Financial and Statistical Reports for Electric Distribution Borrowers (files located on DCS website)
1717B-3	217K	-	-	.pdf	Guide For Preparing Financial and Statistical Reports For Power Supply Borrowers and Electric Distribution Borrowers with Generating Facilities (5/12/2006)
1717M-2	199K	-	-	.pdf	Sale or Transfer of Capital Assets by Electric Borrower (2/9/2005)
1717-Y	85K	.txt	.doc	.pdf	Settlement of Debt Owed by Electric Borrowers (9/26/97)
1724D-101A	72K	.txt	.doc	.pdf	Electric system long-range planning guide
1724D-101B	65K	N/A	N/A	.pdf	System Planning Guide - Construction Work Plans (2000) (also available in html format)
1724D-103	2K	.txt	.doc	.pdf	System planning guide, system mapping guide [only the 328k .pdf file includes all pages] {revised 7/19/93}
1724D-104	2K	.txt	.doc	.pdf	Engineering Economics Computer Workbook Procedure - Also available: Economic Analysis Worksheet (.xls format)
1724D-106	32K	N/A	N/A	.pdf	Considerations For Replacing Storm-Damaged Conductors (6/1/05)
1724D-112	736K	N/A	N/A	.pdf	The Application of Capacitors on Rural Electric Systems (Replaces Bulletin 169-1) (4/27/01)
1724E-104	102K	N/A	N/A	.pdf	Reduced Size Neutral Conductors for Overhead Rural Distribution Lines (Supersedes REA Bull. 61-4) {revised September 23, 1999}
1724E-150	249K	N/A	N/A	.pdf	Unguyed Distribution Poles – Strength Requirements (7/30/03)
1724E-151	511K	N/A	N/A	.pdf	Mechanical Loading on Distribution Crossarms (11/21/02)
1724E-152	225K	N/A	N/A	.pdf	The Mechanics of Overhead Distribution Line Conductors (7/30/03)
1724E-153	345K	N/A	N/A	.pdf	Electric Distribution Line Guys and Anchors (4/25/01)
1724E-154	317K	N/A	N/A	.pdf	Distribution Conductor Clearances and Span Limitations (7/30/03)
1724E-200	7.6M	N/A	N/A	.pdf	Design Manual for High Voltage Transmission Lines (9/23/04) (with May 2005 revisions) May 2005 Revisions (pdf format)
1724E-202	52K	.txt	.doc	.pdf	An overview of transmission system studies
1724E-203	34K	.txt	.doc	.pdf	Guide for upgrading transmission lines
1724E-204	680K	N/A	N/A	.pdf	Guide Specifications for Steel Single Pole and H-Frame Structures {revised 9/6/1997}
1724E-205	1456K	N/A	N/A	.pdf	Design guide: Embedment depths for concrete and steel poles {revised 8/22/95}
1724E-206	160K	.txt	.doc	.pdf	Guide Specification for Spun, Prestressed Concrete Poles and Concrete Pole Structures (1997)
1724E-214	950K	N/A	N/A	.pdf	Guide Specification for Standard Class Steel Transmission Poles (7/2/2001)

1724E-216	2.2M	N/A	N/A	.pdf	Guide Specification for Standard Class Spun, Prestressed Concrete Transmission Poles (2000) (also available in html format)
1724E-220	478K	N/A	N/A	.pdf	Procurement and Application Guide for Non-Ceramic Composite Insulators, Voltage Class 34.5 kV and Above (3/17/2005)
1724E-300	10M	N/A	N/A	.pdf	Design Guide for Rural Substations {issued June 2001} - replaces Bulletin 65-1
1724E-301	241K	.txt	.doc	.pdf	Guide for the Evaluation of Large Power Transformer Losses {revised 12/17/97}
1724E-302	227K	.txt	.doc	.pdf	Design guide - oil spill prevention and control at substations
1724E-400	25K	.txt	.doc	.pdf	Building plans and specifications
1726-601	55K	-	-	.pdf	Electric System Construction Policies and Procedures - Interpretations {revised 7/27/2004}
1726A-125	4K	.txt	.doc	.pdf	Joint use agreements with CATV companies (The PDF file contains scanned images of the pages in the Appendix.)
1726C-115	4K	N/A	.doc	.pdf	Checking sag in a conductor using the return wave method [The .doc file is MS Word 7]
1726I-602	1.18M	N/A	.doc	.pdf	Attachments to Electric Program Standard Contract Forms (2/19/04)
1728F-700	4101K	N/A	.doc	.pdf	Specification for Wood Poles, Stubs and Anchor Logs [The .doc file is MS Word 7]
1728F-800	112K	N/A	N/A	.pdf	Construction Assembly Unit Numbers and Standard Format
1728F-803	10.6M	N/A	N/A	.pdf	Specifications and Drawings for 24.9/14.4 kV Line Construction
1728F-803 Notice	22K	N/A	N/A	.pdf	Compliance with Bulletin 50-5 or 1728F-803. Also available in html format. See also letter dated March 7, 2001, letter concerning assembly numbering (PDF) (HTML).
1728F-804	12.8M	N/A	N/A	.pdf	Specifications and Drawings for 12.5/7.2 kV Line Construction (4/21/2005)
1728F-806	4.2M	N/A	N/A	.pdf	Specifications and Drawings for Underground Electric Distribution
1728H-701	30K	.txt	.doc	.pdf	Specifications for wood crossarms, transmission timbers, and pole keys
1728H-702	24K	.txt	.doc	.pdf	Specifications for quality control and inspection of timber products
1730B-2	195K	N/A	N/A	.pdf	Guide for Electric System Emergency Restoration Plan (1/7/2005) (includes revised page 20 - 3/1/2005)
1730B-121	2247K	N/A	N/A	.pdf	Pole Inspection and Maintenance (4/15/96)
1730-1	32K	.txt	.doc	.pdf	Electric System Operation and Maintenance (O&M) (1/26/98)
1767B-1	1M	.txt	.doc	.pdf	Uniform System of Accounts - Electric Program
1767B-2	116K	.txt	.doc	.pdf	Work order procedures - Electric Program
					Preparation and use of the RUS Form 254, Construction

1767B-3	2K	.txt	.doc	.pdf	Inventory
1794A-600	232K	N/A	.doc	.pdf	Guide for Preparing an Environmental Report for Categorically Excluded Projects {revised 12/15/98}
1794A-601	210K	N/A	.doc	.pdf	Guide for Preparing an Environmental Report for Electric Projects Requiring an Environmental Assessment {revised 12/9/98}
1794A-603	260K	-	-	.pdf	Scoping Guide for RUS Funded Projects Requiring Environmental Assessments with Scoping and Environmental Impact Statements

For regulations, see the Electric Programs Regulations page.

For RUS Accounting Bulletins, see the Program Accounting Services Division Regulations and Bulletins page.

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ATTACHMENT F
FECA COMMENTS ON PROPOSED RULE 25-6.0343

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

FECA Comments:

(1) There is no need for the Commission to define construction standards for cooperatives. The RUS has already defined construction standards for RUS cooperatives which ensure the provision of adequate and reliable electric service. Those standards have worked well.

(2) There is no need for the Commission to act to protect cooperative members (customers) as there is for the Commission to protect IOU ratepayers. Unlike IOUs, cooperatives do not have to balance the interests of customers with shareholders. In cooperatives there are no shareholders with profit expectations. There is no incentive to limit expenditures to maximize return. The only basis to determine the appropriate level of expenditures is the reliability of service. Moreover, there is already a democratically-elected organization of members in place to protect the interests of members – each cooperative's board

of trustees The Commission does not need to, indeed should not act to protect members and supplant the role of the cooperatives' boards.

(3) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities, which under the plain language of the Grid Bill are not part of the "coordinated electric grid." This conclusion is also supported by more recent expressions of legislative intent as well as more than thirty years of Commission application of the Grid Bill where it has not once asserted jurisdiction over the distribution facilities for purposes of reliability.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

FECA Comments:

(1) Because of RUS requirements, RUS cooperatives already have construction standards in place. There is no need for the Commission to require the adoption of construction standards.

Cooperatives have volunteered to make their construction standards available to Commission Staff at corporate headquarters and in Tallahassee if Staff is unable to travel.

(2) There is no need for the Commission to act to protect cooperative members (customers) as there is for the Commission to protect IOU ratepayers.

(3) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

FECA Comments:

(1) This subsection of the rule is unnecessary. Existing Rule 25-6.0345, F.A.C. already requires compliance with the NESC. In addition, Section 366.04(6), Florida Statutes states that compliance with the NESC constitutes "good engineering practice by the utilities." Thus, this rule mandate is already covered by existing rules and statutes.

(2) Because of RUS requirements, RUS cooperatives already are required to construct, install, maintain and operate facilities in accordance with generally accepted engineering practice. 7 CFR Part 1728. Indeed, RUS' standards are more demanding than generally accepted engineering practice.

(3) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.

(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

FECA Comments:

(1) Because of RUS requirements, RUS cooperatives already must comply with the NESC. 7 CFR Part 1724.50(a). Indeed, RUS' standards are more demanding than the NESC. 7 CFR Part 1724.50(b).

(2) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.

(3) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

FECA Comments:

(1) Because of RUS requirements, RUS cooperatives already are required to construct, install, maintain and operate facilities in accordance with the NESC and RUS requirements. 7 CFR Parts 1724.50(a)(b), 1728. In addition, RUS cooperatives are required to perform Vulnerability and Risk Assessments that address risks to critical assets or facilities and other facilities that if

damaged would cause significant risk to the safety and health of the public. 7 CFR Part 1730.27.

(2) The boards of trustees of cooperatives, who are democratically elected members of the cooperatives, are already assessing the standards necessary to assure reliable service to fellow members. It is presumptuous for the Commission to imply that they are not. Some boards have adopted extreme wind load standards for their systems and other have chosen not to adopt such standards. Setting aside legitimate jurisdictional questions, there is no need for the Commission to promulgate a rule that requires cooperatives' boards to perform their roles in a certain fashion. These boards are already acting in a fashion they deem reasonable, practical and cost-effective, and they should not be told to adopt construction standards with guidelines and procedures governing the applicability and use of the extreme wind loading standards. This presumes an absence of responsible conduct which has not been established by the evidence in this proceeding as well as jurisdiction that the Commission does not have. The extreme wind loading standard does not apply to structures less than 60 feet in height; thus, they are not applicable to most, if not all, distribution facilities. This proposed rule requirement simply goes too far for no apparent purpose.

(3) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.

(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

FECA Comments:

(1) There is no need for the Commission to define construction standards or guidelines and procedures to deter flood and storm surge damage for cooperatives. The RUS has already defined construction standards for RUS cooperatives which ensure the provision of adequate and reliable electric service. Those standards have worked well. Because of RUS requirements, RUS cooperatives already are required to construct, install, maintain and operate facilities in accordance with generally accepted engineering practice. 7 CFR Part 1728. Indeed, RUS' standards are more demanding than generally accepted engineering practice. Id. Because of RUS requirements, RUS cooperatives already must comply with the NESC. 7 CFR Part 1724.50(a). Indeed, RUS' standards are more demanding than the NESC. 7 CFR Part 1724.50(b). RUS standards apply to both overhead and underground facilities.

(2) The boards of trustees of cooperatives, who are democratically elected members of the cooperatives, are already assessing the standards necessary to assure reliable service to fellow members. It is presumptuous for the Commission to imply that they are not. Setting aside legitimate jurisdictional questions, there is no need for the Commission to promulgate a rule that requires cooperatives' boards to perform their roles in a certain fashion. These boards are already acting in a fashion they deem reasonable, practical and cost-effective, and they should

not be told to adopt guidelines and procedures to deter storm surge and flood damage. This presumes an absence of responsible conduct which has not been established by the evidence in this proceeding as well as jurisdiction that the Commission does not have.

(3) There is no need for the Commission to act to protect cooperative members (customers) as there is for the Commission to protect IOU ratepayers. Unlike IOUs, cooperatives do not have to balance the interests of customers with shareholders. In cooperatives there are no shareholders with profit expectations. There is no incentive to limit expenditures to maximize return. The only basis to determine the appropriate level of expenditures is the reliability of service. Moreover, there is already a democratically-elected organization of members in place to protect the interests of members – each cooperative's board of trustees The Commission does not need to, indeed should not act to protect members and supplant the role of the cooperatives' boards

(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities, which under the plain language of the Grid Bill are not part of the "coordinated electric grid." This conclusion is also supported by more recent expressions of legislative intent as well as more than thirty years of Commission application of the Grid Bill where it has not once asserted jurisdiction over the distribution facilities for purposes of reliability

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-

effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

FECA Comments:

(1) This stated preference for the location of facilities is unnecessary. RUS Bulletin 1724D-101A already addresses the appropriate consideration of factors regarding the construction and replacement of distribution lines. These factors note that a right-of-way adjacent to a highway might provide more economical maintenance, but the Bulletin stops short of stating a preference for construction front of customer premises. This is appropriate, for in some instance construction in the rear of premises would be appropriate – for instance where there is an alleyway or road and an existing easement or right to use an existing right of way.

(2) The remaining prescriptions once again presume that cooperative boards are not properly performing their responsibilities in terms of design of facilities and presume a Commission jurisdiction which it does not have. More importantly, these standards are unnecessary, as they are already being followed to the extent they are not overridden by other appropriate considerations.

(3) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.

(4) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and

operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

FECA Comments:

(1) Pole attachment rates for cooperatives and municipals are exempt from the FCC's rates, terms and conditions regulation. If an entity wishes to attach to cooperative facilities, they must pay the full cost of changes to our facilities that are required to maintain the minimum criteria set forth in the NESC.

(2) Cooperatives have contracts with entities that attach to their facilities, and the contracts require attachments to comply with the NESC. Section (3) of the proposed rule could result in the impairment of a cooperative's contract with an attacher, and is absolutely unnecessary for cooperatives.

(3) RUS already has Bulletins in place addressing joint use agreements with CATV companies (1726A-125).

(4) There is no need for the Commission to act to protect cooperative members (customers) as there is a need for the Commission to protect IOU ratepayers.

(5) The Commission's jurisdiction over cooperatives and municipal electric utilities to preserve reliability is limited to generation and transmission facilities comprising the coordinated grid. It does not extend to distribution facilities.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

FECA Comments:

(1) Proposed section (4) usurps the right of a cooperative to resolve disputes with its members.

(2) It also usurps the jurisdiction of the courts to resolve contract disputes and other cases between a cooperative and an attacher. This action is clearly beyond the Commission's limited jurisdiction over cooperatives.

(3) This section potentially runs afoul of constitutional provisions prohibiting impairment of contract, as pole attachments for cooperatives are already matters subject to contract.

(4) In addition, it will be unnecessarily burdensome and costly for the cooperative's member and the cooperative if they are forced to travel to Tallahassee for a hearing on an issue that could and should have been resolved at home.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's

general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

FECA Comments:

(1) The standard for exemption is unclear. Less reliable than what?

(2) There is already a statutory standard for rule waiver, and this does not appear to comply.

(3) There is no need for the Commission to require the promulgation of municipal or cooperative standards of construction, as set forth above in detail. Thus, there is no corresponding need for exemption.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2) (c) (f), (5), (6), and 366.05(8) F.S.

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 060512-EU

FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

SEPTEMBER 8, 2006

Q. Please state your name, your position, and your business address.

A. My name is William B. Willingham. I am Executive Vice President of the Florida Electric Cooperative Association, Inc. ("FECA"). My business address is 2916 Apalachee Parkway, Tallahassee, Florida 32301.

Q. Please summarize your background and experience.

A. I received a Bachelors of Industrial Engineering from the Georgia Institute of Technology in 1981, and a Juris Doctor from the FSU College of Law in 1990. From 1981 to 1988, I was employed by the Florida Power & Light Company in various capacities that involved distribution engineering and operations in their Southeast Division. From 1991 through 1997, I was in private practice primarily representing municipally-owned and investor-owned electric, gas, water, and sewer utilities, and investor-owned alternative local exchange companies before the Florida

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Public Service Commission ("Commission"). In January of 1998 I became the Executive Vice President of FECA.

Q. Have you previously testified before the Commission?

A. No. I have appeared before the Commission on behalf of several clients, but I have never testified.

Q. What is the purpose of your testimony?

A. My testimony addresses FECA's specific areas of concerns with the Commission's proposed rule, including (a) the Commission's attempt to define construction standards for co-ops, (b) the Commission's attempt to mandate the application of the extreme wind loading standards in the National Electrical Safety Code ("NESC") to co-op distribution facilities, (c) the Commission's attempt to regulate the placement of a co-op's distribution facilities, and (d) the Commission's attempt to resolve disputes between a co-op and its members, and the Commission's attempt to resolve contractual disputes between a co-op and a third party attacher. I also address the alternative proposed rule that FECA submitted in this proceeding.

Q. Please tell the Commission about FECA.

A. FECA is a membership association that represents two generation co-ops, and 15 of the 16 distribution co-ops that serve end-use customers in Florida. Electric Cooperatives serve almost 1,000,000 meters in Florida, with the smallest co-op serving approximately 10,000 meters and the largest serving approximately 200,000 meters. Florida's cooperatives were formed in the late 1930's and early 1940's in areas that were not served by investor-owned or municipally-owned utilities. All of Florida's co-ops are owned by those they serve, and they are governed by boards that are elected by the co-op members. Each trustee must be a member of the cooperative and must live in the district they represent. The trustees ultimately are responsible to the member-owners for the co-op's service and rates.

Q. Did you file comments on behalf of FECA regarding the Commission Staff's draft rules in Docket Nos. 060172-EU and 060173-EU?

A. Yes, and FECA's stated concerns have not been addressed in Proposed Rule 25-6.0343. For example, in our May 3 comments, a copy of which is attached hereto as Attachment A, we pointed out that the construction standards for most of FECA's members are defined and regulated by the Rural Utilities Service ("RUS"), which is a division of the United States Department of Agriculture. The RUS has an extensive history with nearly 1,000 electric cooperatives in the United States. RUS' standards have

been developed through their own expertise and experience with co-ops and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). This Commission has previously recognized RUS' expertise by adopting RUS' Bulletin 1730B-121 as the basis for pole inspection procedures for investor-owned utilities. Order No. PSC-06-0144-PAA-EI issued on February 27, 2006.

FECA argued then, as it does now, that there is no need for the Commission to adopt a rule requiring the adoption of construction standards by co-ops, given that they already have construction standards and all RUS co-ops must comply with RUS standards. FECA also expressed concern that any construction standards defined by the Commission pursuant to proposed Rule 25-6.0343(1)(a) might interfere with the co-op's contract with RUS, and I reiterate that concern today.

FECA also stated in its earlier comments that a requirement to use the extreme wind loading standards of the NESC would greatly increase our cost of construction, possibly without any measurable benefits. We pointed out that use of the extreme wind loading standards for distribution will do very little to prevent damage from straight-line winds that greatly exceed the extreme wind loading standards, tornadic winds, falling trees and limbs and flying debris, which were the causes for most of the co-op

distribution pole failures during the 2004 and 2005 hurricane seasons. We also attached Exhibit "A" to our comments which showed that Withlacoochee River Electric Cooperative estimates that the cost of materials per mile of line for various applications of the 250B and 250C criteria in the NESC will more than double the cost of construction materials in some cases.[1] Use of the extreme wind loading standards would require Withlacoochee to increase the number of poles by approximately 50%. I share the concerns raised by Verzion witness Dr. Slavin in Docket Nos. 060172-EU and 060173-EU on August 31, that use of the extreme wind loading standards will result in longer outages in many cases due to the requirement to use more poles. Therefore, FECA disagrees with the underlying premise of proposed Rule 25-6.0343(1)(a).

Q. You stated that FECA is opposed to the Commission's attempt in its proposed Rule 25-6.0343(2) to regulate the placement of a co-op's distribution facilities?

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[1] FECA disputes the statement on page 24 of the Commission Staff's analysis of proposed Rule 25-6.0343, dated June 8, 2006, that "cooperative utilities did not provide cost impacts of the proposed changes to Rule 25-6.034." We assume the Staff overlooked this cost estimate.

A. Yes, subsection (2) of proposed Rule 25-6.0343 appears to require distribution facilities to be placed adjacent to a public road and in front of the customer's premises unless there are extenuating circumstances, such as failing an unspecified cost-effectiveness test. First and foremost, FECA believes that a cooperative's management and board are uniquely qualified to establish guidelines for the placement of facilities without guidance from the Commission. Second, the front-lot presumption should not apply in rural areas. In many cases the cooperative will construct lines across open fields because it is a significantly shorter and cheaper path to serve a new member. In many cases, an alternative route along established roads would be significantly longer and therefore more expensive, and probably would fail under the cost-effectiveness test. Nevertheless, the presumption in the rule that facilities should be placed adjacent to a public road is troubling and may unintentionally create a legal burden on cooperative boards that dare to place facilities in locations other than along roadways.

FECA also takes exception to the rule's location preference as it applies to commercial buildings. Whenever possible, cooperatives will locate facilities in an area that is accessible to vehicles because it minimizes the time and the effort to install and to maintain the equipment, but the best location is not necessarily the front of the building. In some cases commercial properties have holding ponds and other obstructions in front

of the building that would render the utility's facilities inaccessible by vehicles if placed in the front. In other cases it is advantageous to place a pad mounted transformer in the rear of a commercial building to avoid contact with vehicles that travel at high speeds. Perhaps these are extenuating circumstances that should allow the utility to avoid the presumptions in the rule for commercial properties, but this is not clear from the Rule, and again it may create undesirable liability for cooperatives that chose to install facilities in a place that is not adjacent to a public road or in front of the premises.

Q. In proposed Rule 25-6.0343(4), the Commission states that it shall resolve "[a]ny dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity." Do you think this is a good policy for a cooperative or its members?

A. No. In the first place, I agree with Mr. Martz's testimony regarding the resolution of member issues at the co-op. I would also add that when co-op members call into the Commission's consumer complaint line regarding a co-op issue, they are routinely referred to my office or directly to the co-op's staff. When a co-op member contacts the Governor's office, they receive a standard letter from the Governor stating that co-ops "are not regulated by state government." See Attachment "B" hereto. I

seriously doubt that the Commission has the requisite jurisdiction to interfere with a co-op's dispute resolution process with its members.

I also doubt that the Commission has the requisite jurisdiction to resolve a contract dispute between a co-op and a third party attacher. Co-op pole attachments are not subject to the Federal Communications Commission's jurisdiction. FECA's members have private contracts with third party attachers that define the terms and conditions for attaching to the other party's facilities. Even if the Commission somehow has jurisdiction to resolve private contracts, Section (3) of the proposed rule could result in the impairment of a cooperative's existing contract with an attacher, and it is absolutely unnecessary for cooperatives.

Q. Are you familiar with the alternative rule that FECA filed as Attachment "A" to its comments on September 8?

A. Yes. However, let me be clear. It is FECA's position there is no need for any new rule applicable to co-ops. The Commission first established its construction standard rule well before the passage of the Grid Bill and well before it had any jurisdiction over co-ops. That rule applied only to investor owned public utilities, and even today, thirty-two years after the adoption of the Grid Bill giving the Commission limited jurisdiction over co-ops, it still only applies to investor owned public utilities.

As has been set forth in FECA's comments, there is no apparent need for a construction standards rule for co-ops. Such standards are already in place. They require compliance with the NESC and generally accepted engineering practices. Moreover, RUS co-ops have to comply with extensive standards that have been adopted by the RUS. There has been no demonstration of need for proposed Rule 25-6.0343.

In addition, as set forth above, many issues in the Commission's proposed rule appear to be beyond the Commission's jurisdiction. Even if such matters were within the Commission's limited jurisdiction over co-ops, they would be best left to the co-op's democratically representative boards that are far more familiar with the unique characteristics of the co-op's local service territory, the level of service required by their fellow members and the cost implications of the resolution of such issues.

The remaining issues that the Commission appears to be addressing in proposed Rule 25-6.0343 are tied to the NESC. Consequently, they already are subsumed in the Commission's existing Rule 25-6.0345. As required by Rule 25-6.0345(2), co-ops file their completed work orders with the Commission. In addition, Commission staff inspects the

construction standards and pole attachments of each co-op four times a year.[2] Therefore, a new rule appears to be redundant.

For all the foregoing reasons, FECA encourages the Commission not to adopt any rule applicable to co-ops. Nevertheless, in the spirit of good faith and compromise, FECA is offering an alternative proposed rule. The alternative proposed rule provides a least cost regulatory alternative to the Commission's proposed rule while also accomplishing all of the stated goals of the Commission's proposal. It also has the advantage of allowing FECA and the Commission to avoid a jurisdictional fight on the Commission's proposed rule.

FECA's alternative proposed rule, which is premised upon the Commission's safety jurisdiction, sets forth a procedure for the Commission to review certain standards, procedures and guidelines of co-ops and municipals, and it requires the utilities to file annual reports on pole inspection and vegetation management activities. All of the activities in FECA's alternative rule are related to the NESC and should be within the Commission's limited jurisdiction over co-ops.

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[2] Attachment "C" hereto is a letter from Commission staff to Glades Electric Cooperative, Inc. regarding the most recent inspection and the variances found during the inspection.

Q. Does this conclude your testimony?

A. Yes. Thank you for the opportunity to have input into this proceeding which is of great interest to Florida's cooperatives.

ATTACHMENT A

To

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by the NESC.	)))	Docket No. 060173-EU
In re: Proposed rules governing placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.	)))))	Docket No. 060172-EU Filed: May 3, 2006

POST-WORKSHOP COMMENTS OF THE FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.

The Florida Electric Cooperatives Association, Inc, ("FECA"), by and through its counsel, submit the following Post-Workshop Comments in the above-referenced dockets on behalf of its fifteen distribution and two generation and transmission member-cooperatives.[1]

GENERAL COMMENTS ON PROPOSED RULE 25-6.304, STANDARD OF CONSTRUCTION

FECA and its member-cooperatives share the Commission's desire to minimize the outages that will inevitably result from hurricanes, and we welcome the opportunity to work with staff to craft a rule that promotes improved system reliability. However, the rule must be crafted within the confines of the Commission's limited jurisdiction over cooperatives.

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[1] 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., 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 represented by the undersigned counsel.

FECA's comments are directed only to the proposed amendments to Rule 25-6.034. As proposed, Sections 5 and 6 of amended Rule 25-6.034 would mandate that cooperatives expend tremendous amounts on new and modified overhead facilities, and either spend outrageous amounts on new and existing underground facilities or eliminate underground altogether in flood and surge prone areas. These increased costs for both underground and overhead construction will directly increase the rates that cooperatives must charge and will impact the cooperative's policies for Customer in Aid of Construction and Underground Differential charges. Regardless of any jurisdiction the Commission may or may not have under the Grid Bill, FECA believes the expenditures at issue are so significant that they would constitute ratemaking. Ratemaking falls exclusively within the discretion of each cooperative's governing board, and FECA believes the Commission should forgo exercising any jurisdiction that it may have over a cooperative's efforts to harden its facilities. Therefore, unless the proposed amendments to sections 5 and 6 are deleted or significantly modified, FECA recommends that cooperative utilities should continue to be excluded from Rule 25-6.034. This can be accomplished by deleting the following phrase from the end of proposed section 25-6.034(1): "including municipal electric utilities and rural electric cooperative utilities unless otherwise noted."

SPECIFIC COMMENTS TO PROPOSED RULE 25-6.034, STANDARD OF CONSTRUCTION

If cooperatives are not excluded from the Rule, FECA recommends the following changes to proposed Sections (1), (2), (5) and (6):

Section (1)

Construction specifications for the majority of Florida's cooperatives are defined by the Rural Utilities Service ("RUS"), which is the federal agency that has expertise in the area of designing rural electric facilities. RUS borrowers are required by their loan covenants to comply with the RUS construction specifications. RUS' specifications have been developed over the years based upon RUS' extensive history with nearly 1000 electric cooperatives in the United States, and by adopting national standards of groups such as the American National Standards Institute, American Wood Preservers Association, various national engineering societies and the National Electrical Safety Code ("NESC"). FECA is concerned about potential conflicts between whatever standards the PSC may adopt under this rule and the cooperative's loan covenants.

Recommendation - Either delete the first 3 lines of proposed Section 1 or clarify that cooperatives may utilize the RUS standards or other nationally recognized standards in lieu of any standards that the Commission adopts or defines.

Section (2)

The Commission clearly has authority to adopt the NESC for cooperatives as safety standards pursuant to Section 366.04(6), F.S., and in fact has adopted the NESC for all of the electric utilities in its Rule 25-6.0345. Adopting the NESC in Rule 25-6.034 would be redundant. In addition, adopting the NESC as a "construction standard" would be an inappropriate application of the NESC. The NESC expressly disclaims any use of the Code as a "design specification." Section 1.010 of the NESC states:

> The purpose of these rules is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment. These rules contain basic provisions that are considered necessary for the safety of employees and the public under the specified conditions. **This code is not intended as a design specification** or as an instruction manual. (Emphasis added)

Moreover, as set forth above, FECA is concerned that any standards that may be adopted by the Commission could conflict with the standards imposed by RUS upon cooperatives. FECA is not aware of any state or organization that utilizes the NESC as a construction standard, and we believe it should not be so adopted by this Commission.

> **Recommendation - Either delete this proposed Section or insert the following phrase prior to the word "minimum" on page page 3, line 12: "criteria to be incorporated into".**

Section (5)

In addition to the aforementioned jurisdictional issue, FECA questions whether it would be economically prudent to generically impose the extreme wind loading for poles and all other structures less than 60 feet for cooperatives or for any utility. For many electric cooperatives this would at least double[2] the cost per mile of line for new construction and would have a significant rate impact on our member-owners. Moreover, we believe that use of the extreme wind loading would do very little to prevent outages during hurricanes. During the 2004 and 2005 hurricane seasons, most of the poles owned by cooperatives that failed were the result of trees and flying debris hitting the poles or wires, not direct wind.

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[2] Withlachoochee River Electric Cooperative has estimated the cost of materials per mile of line for various applications of the 250B and 250C criteria in the NESC, which is attached as Exhibit A.

Many of the poles that failed due to wind were in fact built to meet the extreme wind loading, and we believe the extreme wind loading is not sufficient to protect a pole against all of the winds that a hurricane may generate. For most cooperatives, the number of poles that failed due to wind was so insignificant that the difference in the restoration time between the present criteria and the extreme wind criteria for distribution facilities would have been measured in hours, not days.

FECA believes that a more prudent approach to reducing interruptions is to allow utilities to selectively upgrade facilities that are critical for serving a large number of customers and, if prudent, to make some operational changes. Many cooperatives have become more aggressive with vegetation management[3] and most cooperatives are pursuing generator programs for large and critical loads. In many cases it is cheaper for the cooperative to provide a permanent or portable backup generator during restoration, either on the customer's site or at a substation, than it is to harden a system that may never experience hurricane force winds and may inevitably fail no matter how much you spend to reenforce it.

Cooperatives already have the discretion to build any facilities to meet or exceed the extreme wind criteria, and in some cases they have exercised this option on a targeted basis. At least one cooperative, the Florida Keys Electric Cooperative, has elected to build all of its facilities to meet the extreme wind standards. However, other cooperatives believe that

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[3] SB 980 passed out of the Legislature on May 3, 2006, and if it becomes law utilities will be empowered to better maintain vegetation around power lines.

the additional cost cannot be justified. FECA believes that cooperative Boards should be allowed to decide whether the extreme wind standard is justified for their particular circumstances and that proposed Section (5) should not apply to cooperatives.

Recommendation: Either delete proposed Section (5), or clarify that it does not apply to cooperatives.

Section (6)

In addition to the aforementioned jurisdictional issue, FECA believes that it is not possible for a cooperative to "assure" that underground facilities in potential surge and flood areas can be protected. FECA is not aware of any practicable construction standards for underground electric facilities that are designed to withstand the surge of a hurricane. In the event that such standards are available and utilities can "assure" that their underground facilities will be protected from both flooding and storm surges, the cost of doing so may be cost-prohibitive.

If cooperatives cannot "assure" the protection of these facilities as required by the proposed rule, they will be placed in a precarious situation when trying to serve those communities that have mandated underground facilities. FECA believes that our member-owners and electric cooperative governing boards should retain the discretion to determine how and where underground facilities may be provided, but we are open to any suggestions as to how the facilities can be protected in flood and surge prone areas.

Recommendation - If the Commission decides to pursue this provision, Section (6) should be amended to clarify that it does not apply to electric cooperatives. Alternatively, the words "assure", 'practicable", and "protected" in lines 15 and 16 on page 4 need to be substantially softened.

CONCLUSION

FECA thanks Staff for the opportunity to participate in the development of rules that give a utility the flexibility to enhance its electric facilities after careful cost/benefit analyses are considered and a determination is made by the utility that such enhancements are practical and cost-effective to all of the utility's customers. It is of utmost importance to each electric cooperative that its governing board of trustees and management retain discretion to make the necessary critical decisions to upgrade and bolster their facilities.

Respectfully submitted,

WILLIAM B. WILLINGHAM, ESQ.
(fecabill@earthlink.net)
MICHELLE HERSHEL, ESQ.
(mhershel@earthlink.net)
Florida Electric Cooperatives Association, Inc.
2916 Apalachee Parkway
Tallahassee, FL 32301
850.877.6166 (Telephone)
850.656.5485 (Facsimile)

Attorneys for the Florida Electric Cooperatives Association, Inc.

EXTREME WIND LOADING COST COMPARISONS

Single Phase #2 AAAC		
NESC Code	250B	250C
Pole Type	40/5 Wood	40/3 Wood
Span Length (ft)	450	270
Cost per Mile	$ 36,694	$ 60,378

3 Phase 394 AAAC Single Circuit			
NESC Code	250B	250C	250C
Pole Type	50/3 Wood	50/2 Wood	50/H2 Steel
Span Length (ft)	375	170	240
Cost per Mile	$ 75,000	$ 150,624	$ 147,327

3 Phase 740 AAAC Single Circuit			
NESC Code	250B	250C	250C
Pole Type	50/3 Wood	50/2 Wood	50/H2 Steel
Span Length (ft)	300	140	200
Cost per Mile	$ 95,815	$ 185,494	$ 179,597

3 Phase 394 AAAC Double Circuit			
NESC Code	250B	250C	250C
Pole Type	50/2 Wood	50/2 Wood	55/H3 Steel
Span Length (ft)	325	110	220
Cost per Mile	$ 149,496	$ 387,690	$ 251,316

3 Phase 740 AAAC Double Circuit			
NESC Code	250B	250C	250C
Pole Type	50/2 Wood	50/2 Wood	55/H4 Steel
Span Length (ft)	250	90	200
Cost per Mile	$ 198,091	$ 479,739	$ 297,468

Exhibit A

ATTACHMENT B

To

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

August 9, 2006

Reverend Paul W. Jennings
1795 JA Forehand Road
Bonifay, Florida 32450

Dear Reverend Jennings:

Thank you for your recent letter. I appreciate your asking for my help.

Co-ops are non-profit utilities that are owned by the customer-members they serve and are not regulated by state government. To further assist you, I have forwarded your letter to Bill Willingham, Executive Vice President of the Florida Electric Cooperative Association, for his review.

The person who could best answer your legal questions would be an attorney. If you need assistance in locating a lawyer, please call the Florida Bar's Attorney Referral Service toll-free at 1-800-342-8011. Those with limited financial resources should consider contacting their local legal aid office or foundation for assistance.

Thank you again for sharing your concerns with me. If I can assist you with a state government matter, I hope you will let me know.

Sincerely,

Jeb Bush

JB/cas/rn
cc/enc: Mr. Bill Willingham, Executive Vice President
Florida Electric Cooperative Association
2916 Apalachee Parkway
Tallahassee, Florida 32301
(850) 877-6166

7/10/06

OFFICE OF THE GOVER
CITIZEN SERVICES
06 JUL 14 PM 4:2

Governor Jeb Bush
Office of the Governor
The Capitol, Tallahassee Florida
32399-0001

Dear Sir,

The West Fl Electric is coming down JA Forehand Rd. and cutting down most of the beautiful hardwood trees on both sides of residents property. The owners have no say in this matter. Owners rights are gone and destruction of our land is out of control.
It is a constant fight to keep people from claiming more road frontage and power company from taking complete control of what they want.
We have beautiful wild birds and would like to know what can be done to save our property, trees and environment?
A retreat center is planned for the property. Any help (and as soon as possible, the power company has already contracted trees trimmers/cutters) that that you may give is deeply appreciated.

Thank you

Rev. Paul W. Jennings
1795 JA Forehand Rd.
Bonifay, FA. 32450

#611729 Jennings, Paul
Recd: 7/17/2006 DEO: JAJ
To: CAS-N/A-RTN -- PLEASE HANDLE
Due: 7/31/2006

West Florida Electric Cooperation
Mr. William S. Rimes
President & Chief Executive Office
5282 Peanut Rd.
Graceville, Fl. 32440-0127

7/8/06

Dear Sir,

Ref: A Church Property owned by the Church of Plilip the Evangelist. @
1795 J.A. Forehand Rd.
Legal Description: E ½ of S.W. ¼ of Section 28 Township 6 North, Range 15 West.

Your primary transmission electric line comes off the road right of way near the North east corner of this posted property - crosses this posted property - then returns to the right of way near the south east corner.

Does West Fl. Electric Coop have a written legal easement across this property? If not please instruct the crews at West Fl. Electric to remove this primary transmission line and poles as soon as possible, at Coop expense.

Also instruct any coop contractors to <u>not</u> trespass upon this posted property in any way with any equipment.

Your earliest attention this matter is appreciated.

Thank you

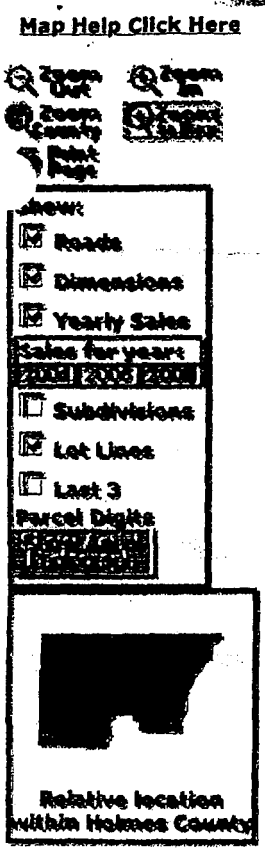
Rev. Paul W. Jennings
1795 J A Forehand Rd.
Bonifay, Fl. 32450

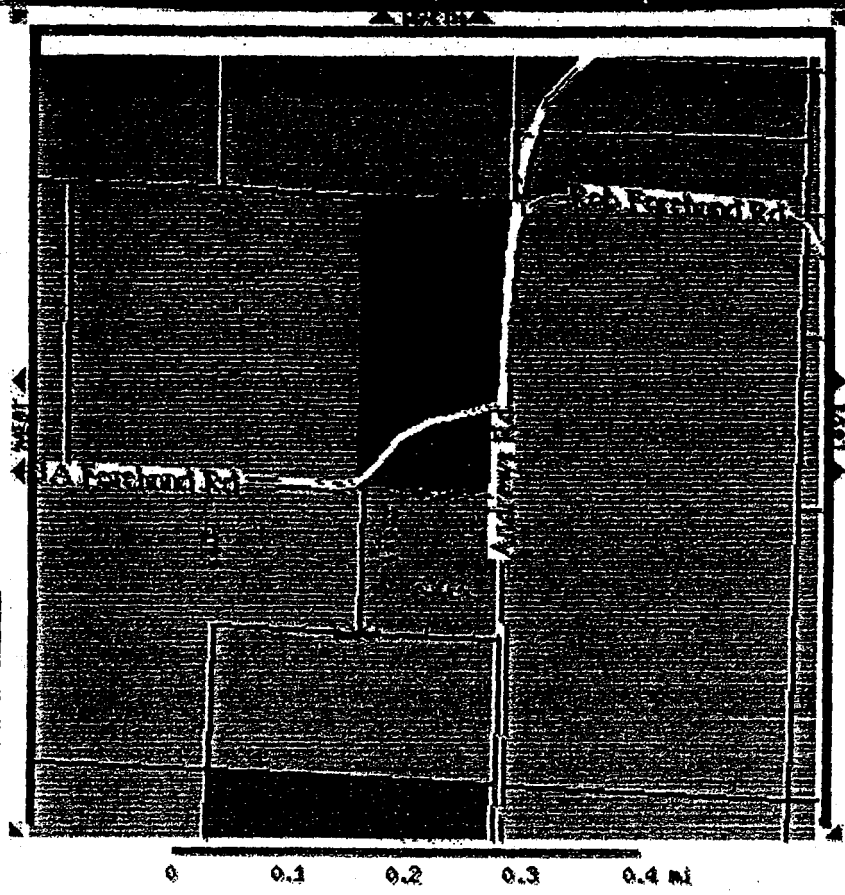
APPRAISER HOME

Holmes County Parcel Maps

BACK TO SEARCH PAGE

Map Help Click Here





PARCEL INFORMATION TABL	
Selected Parcel	0828.00-000-000-011.300 (Click for Complete Card)
Property Use	PASTURE
Acres	20.00
Land Use	T6 IMP U
OWNERSHIP INFORMATION	
Name	THE CHUR OF PHILI THE
Mailing Address	EVANGEL OF SANTA ROSA BEA 111 DOLPHIN DRIVE SANTA RO BEACH, FI 32459
Situs Address	
VALUES	
Land Value	3,200
Agricultural Value	2,811
Building Value	60,785
Misc Value	16,241
Classified Value	83,037
Assessed Value	75,602
Exempt Value	25,000
Taxable Value	50,602
Homesteaded	N

LAST 2 SALES

Date	Price	Vacant?	
05-2005	77,500	N	
05-2005	77,500	N	

The Holmes County Property Assessment Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, it's use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

APPRAISER HOME ------ RETURN TO SEARCH PAGE

ATTACHMENT C

To

DIRECT TESTIMONY OF WILLIAM B. WILLINGHAM

STATE OF FLORIDA

TAMPA DISTRICT OFFICE
4950 W. KENNEDY BLVD.
SUITE 310
TAMPA, FLORIDA 33609
(813) 356-1444

Public Service Commission

August 21, 2006

Mr. L. T. Todd, Jr.
General Manager
Glades Electric Cooperative, Inc.
P. O. Box 519
Moore Haven, Florida 33471-0519

CERTIFIED MAIL
7005 0390 0006 2874 9903

Re: Compliance with Commission Rule 25-6.0345, Safety Standards for Construction

Dear Mr. Todd:

A selected sample of the 2nd and 3rd quarters of 2005 was taken from the list of work orders submitted to the Commission. An evaluation of the electric system construction was made from this sample and completed during July, 2006.

This evaluation was conducted to verify compliance with Commission Rule 25-6.0345, Florida Administrative Code, which adopts the 2002 National Electrical Safety Code as the standard for electric utility construction. Variances from the Code were identified and are listed in the enclosed document.

A written response to this notice of safety variances is required by September 25, 2006. The response must state the anticipated date of correction and the remedial measures that will be taken to prevent future recurrences of the variance. The Commission also requires notification when the corrective action has been completed, and certification that it complies with the National Electrical Safety Code. Send the response to this variance notice and the subsequent completion notification and certification to me at the address in the upper right hand corner of this letter. Response via e-mail to avelazqu@psc.state.fl.us is also acceptable.

If you have questions regarding the enclosed variances you can contact the inspecting Engineer, Francisco Paez at (305) 470-6907, or me at (813) 356-1432.

Sincerely,

Tony Velazquez

Tony Velazquez, Electric Safety Supervisor
Bureau of Safety

Enclosure

cc: Dan Hoppe, Director, Division of Regulatory Compliance & Consumer Assistance, w/o enclosures
C. Edward Mills, Chief, Bureau of Safety, w/o enclosures
Francisco Paez, Engineering Specialist III, Bureau of Safety, w/o enclosures

UTILITY: GEC QUARTER: 2 YEAR: 2005

INSPECTED BY: FRANCISCO PAEZ MONTH: JULY YEAR: 2006

REQUEST

# WORK ORDER	TYPE OF VARIANCE	LOCATION OF VARIANCE
40490 rNum: 052374	CATV 1)11496 CLICK RD A)NESC#234B1 CATV NEEDS TO ATTACH TO POLE.	11496 CLICK RD. GLADES
41089 rNum: 052375	FPL 1)ACROSS THE STREET FROM 102 ROSEMARY AVE A)NESC#218A GLADE CO. NEEDS TO TRIM TREE LIMBS IN PRIMARY.	ACROSS THE STREET FROM 102 ROSEMARY AVE GLADES
30461 :Num: 052499	GEC 1)F/O 3320 RIVERSIDE DR. A)NESC#214B3 GEC NEEDS TO REMOVE OLD POLE AFTER CATV TRANSFER FACILITIES TO NEW POLE. CATV 1)F/O 3320 RIVERSIDE DR. NESC#214B3 CATV NEEDS TO TRANSFER CABLE AND DOWN GUY TO NEW POLE.	3320 RIVERSIDE DR. GLADES

UTILITY: GEC QUARTER: 3 YEAR: 2005

INSPECTED BY: FRANCISCO PAEZ MONTH: JULY YEAR: 2006
REQUEST

# WORK ORDER	TYPE OF VARIANCE	LOCATION OF VARIANCE
50658 rNum: 052380	GEC 1)F/O PROPERTY MAP#463-4-32-0-038 A)NESC#93D3 GROUND WIRE IS NOT SNUG TO POLE (NEAR BOTTOM OF POLE.)	V/O POTTER RD GLADES
51003 rNum: 052381	TELEPHONE 1)2248 WOLF CREEK RD A)NESC#234B1 TELEPHONE NEEDS TO TRANSFER CABLE FROM TREES TO POLE.	2248 WOLF CREEK RD GLADES

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060512-EU

FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.

DIRECT TESTIMONY OF JOHN MARTZ

SEPTEMBER 8, 2006

Q. Please state your name, your position, and your business address.

A. My name is John Martz. I am the Executive Vice President and Chief Executive Officer of the Suwannee Valley Electric Cooperative ("SVEC"). My business address is P.O. Box 160, Live Oak, Florida 32064-0160.

Q. Please summarize your background and experience.

A. I have over 25 years in the electric utility business, having worked for an investor-owned, a municipally-owned and two cooperative electric utilities. For most of my career, I worked for Florida Power Corporation ("FPC") in various levels of management.

Q. Have you previously testified before the Florida Public Service Commission?

CMP
COM 5
CTR 07
ECR
GCL 1
OPC
RCA
SCR
SGA
S 1
OTH

A. Yes. I have previously testified before the Florida Public Service Commission ("Commission") on behalf of the Florida Power Corporation the late 80's and early 90's, involving a dispute FPC and the Sebring Utilities Commission and subsequently during the purchase of Sebring Utilities' distribution system by FPC.

Q. What is the purpose of your testimony?

A. My testimony addresses: (a) SVEC and the relationship between SVEC's member-owners and its Board of Directors; (b) the connections between SVEC and other electric utilities; and (c) why the dispute resolution process in proposed Rule 25-6.0343(4) would be detrimental to SVEC and its members, aside and apart from whether it is within the Commission's jurisdiction.

Q. Please tell the Commission about SVEC.

A. SVEC provides electric service to approximately 26,000 end-users in Columbia, Hamilton, Lafayette, and Suwannee counties. SVEC has approximately 6 meters per mile of line, and more than 3 poles per meter. SVEC is entirely dependent upon the transmission facilities ("grids") owned by Progress Energy Florida ("PEF") and Florida Power & Light

Company ("FPL") to receive its wholesale, all-requirements power from Seminole Electric Cooperative, Inc. SVEC has 5 transmission poles comprising a short transmission line between a PEF transmission line and a substation owned by a SVEC customer which takes service from SVEC at transmission voltage. That transmission line is not used or relied upon by any utility other than SVEC.

SVEC operates pursuant to Chapter 425, Florida Statutes. SVEC also must comply with the rules and regulations of the Rural Utilities Service ("RUS"), which is a division of the United States Department of Agriculture. The RUS rules and regulations contain extensive design, construction, operation and maintenance standards designed to ensure reliability and safety of SVEC's transmission and distribution systems. Among those requirements is compliance with the National Electrical Safety Code ("NESC").

SVEC was incorporated in 1937 . Like other electric co-ops, SVEC was created by the people and businesses that needed electricity in their unserved and underserved rural communities. SVEC is not-for-profit and is owned and controlled by those we serve. All of our customers are members and owners of the co-op, and every member-owner has one vote. SVEC has a nine person board, one-third of which is elected by the member-owners each year at SVEC's annual meeting. Each trustee must

be a member of the cooperative and must live in the district they represent. The trustees ultimately are responsible to the member-owners of SVEC regarding the co-op's service and rates. The trustees take great pride in serving SVEC, and they make sure that their constituents receive reliable service at a reasonable rate.

Q. On page 20 of the their analysis of proposed Rule 25-6.0343, dated June 8, 2006, the Commission Staff stated that "Given the ever increasing interconnection between numerous separate electrical systems, and the increasing complexity of the statewide electric grid, staff does not believe continued exclusion of the Municipals and Cooperatives is in the best interest of the state's electric customers." Are any of SVEC's facilities interconnected with other electric utilities?

A. SVEC's system is connected to PEF's and FPL's transmission grids. The point of interconnection between SVEC and other electric utilities is at the transmission level, with the transmission lines of transmission providers connected to either SVEC's sole transmission line or at the high side (transmission voltage) of SVEC's substations. SVEC's distribution system lies on the other side of the SVEC substations. This substation interconnection is akin to a plug and a socket where SVEC's substation is the plug, the other utility's transmission facilities are the socket and SVEC's distribution network is the line running from the plug. If SVEC

were to drop off line, it would have no effect on PEF's and FPL's customers. PEF and FPL do not use our transmission or distribution facilities to serve their customers or to move electricity to customers of other electric utilities.

No electric utility uses SVEC distribution facilities now, and there is no reason to believe they would use our distribution facilities at any time in the foreseeable future. SVEC's distribution facilities are not relied upon by any electric utility (other than SVEC) to provide electric service. Indeed, none of SVEC's system is relied upon to wheel power or otherwise provide electric service to customers other than SVEC customers.

The transmission service that other utilities provide to SVEC is strictly a one-way transaction. SVEC does not provide transmission service to other electric utilities, and it certainly does not use its distribution system to provide transmission service.

The fact is that the restoration by SVEC of its distribution system would have no impact on the restoration of service by any other electric utility in the state. In contrast, the speed of restoration of FPL's and PEF's transmission system is important not only to FPL and PEF customers, but also to customers of other electric utilities.

Q. In proposed Rule 25-6.0343(4), the Commission proposes that it shall resolve "[a]ny dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity." Is this a good policy for the cooperative or its members?

A. With all due respect, no.

In the first place, I am quite sure that neither I nor the Board would ever let a legitimate complaint from a member get to the level where it needed to be resolved by the Commission.. We have amicably handled member issues for almost 70 years, and I am not aware of any need or justification for the Commission to intervene between our members and the co-op. SVEC and its Board are very open to every member's issue, and we have to respond because the members ultimately control the Board and the co-op. SVEC and its Board have every incentive, and no disincentive, to resolve any legitimate dispute to the satisfaction of its members.

Second, I can't imagine how the Commission can possibly make a more informed decision about the particular circumstances of SVEC than our Board, which has an intimate day-to-day working knowledge of the co-op and is personally responsible to their constituent members. The Board

consists of members charged with the responsibility to assure reliable, cost-based service to fellow members.

Third, even if the Commission had such jurisdiction (a matter about which I am not testifying), involving the Commission would simply increase the cost and time to resolve the issue. Why should our members be forced to deal with folks in Tallahassee, no matter how well intentioned, when they already have a local, less formal dispute resolution process before elected fellow members comprising the SVEC Board? It would be less convenient and more costly for the Commission to be involved, and I see no ultimate benefit to our members.

Q. Does this conclude your testimony?

A. Yes, and thank you for the opportunity to express these opinions.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS 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, moves the Commission for leave to file 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. In support of this motion, FECA states:

1. 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 No. PSC-06-0632-PCO-EU.

2. In Order No. PSC-06-0632-PCO-EU, Commissioner Arriaga established a schedule for the filing of comments and a hearing date on the Proposed Rule. It called for initial comments to be filed on September 8, 2006, with reply comments due September 22, 2006. The hearing date is October 4, 2006. In the order the Commission specifically noted that the controlling dates may be effected by a subsequent Order "which may be issued."

---

[1]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., 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.

3. In Order No. PSC-06-0632-PCO-EU, the Commission encouraged negotiation of alternative rule language among the Staff, municipal electric utilities and cooperatives. 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."

4. FECA filed on September 8, 2006 initial comments as well as the testimony of Mr. John Martz and Mr. William B. Willingham, all of which addressed the Proposed Rule. In those initial comments, FECA proposed an alternative proposed Rule 25-6.0343, Attachment E, and discussed its alternative in Section V of its comments.

5. Subsequent to filing its initial comments, FECA, FMEA and the Staff came to agreement on alternative rule language other than that posed by FECA in its initial comments. FECA seeks leave to file supplemental comments that include the alternative rule language which is the fruit of negotiations along with an explanation of the advantages of such language. Essentially, the supplemental comments would take the place of Section V of and Attachment E to FECA's earlier comments. Contemporaneous with the filing of this motion, FECA is filing its supplemental comments.

6. It is unclear whether FECA even needs to file for leave to file supplemental comments. Section 120.54, Florida Statutes, allows parties to file written material as late as the date of the scheduled public hearing. However, FECA is filing these comments earlier to allow all parties to this proceeding the opportunity to review and file replies to these supplemental comments. In that regard, FECA encourages the Commission to add a September 29, 2006 date to its schedule allowing parties to file comments responsive to FECA's supplemental comments.

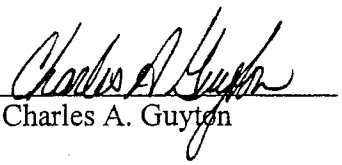
7. Thus, no party would be prejudiced by the granting of FECA's motion. More importantly, the granting of the motion would facilitate the hearing process and the Commission's and the Parties' consideration of alternative rule language. Therefore, FECA respectfully requests that this motion for leave to file supplemental comments be granted.

WHEREFORE, FECA respectfully moves the Commission to: (a) grant leave to FECA to file supplemental comments, and (b) enter an order providing parties until September 29, 2006 the opportunity to file comments in reply to FECA's supplemental comments.

Respectfully submitted,

Charles A. Guyton, Esq.
Elizabeth C. Daley, Esq.
Squire, Sanders & Dempsey L.L.P.
215 South Monroe St., Suite 601
Tallahassee, Florida 32301

William B. Willingham, Esq.
Michelle Hershel, Esq.
Florida Electric Cooperatives Assoc., Inc.
2916 Apalachee Parkway
Tallahassee, Florida 32301

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Leave to File Supplemental Comments 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:

Lawrence Harris*
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Florida Municipal Electric Assoc., Inc.
Frederick M. Bryant
Jody Lamar Finklea
Post Office Box 3209
Tallahassee, Florida 32315-3209

Florida Cable Telecommunications Association, Inc.
Michael A. Gross
246 E. 6th Avenue, Ste. 100
Tallahassee, Florida 32303

Lee Cty. Electric Cooperative, Inc.
John A. Noland
Luis E. Rivera, II
Henderson, Franklin, Starnes & Holt
Post Office Box 280
Ft. Myers, Florida 33902-0280

Verizon Florida, Inc.
Dulaney L. O'Roark, III
Legal Department
Six Concourse Parkway, Ste. 600
Atlanta, Georgia 30328

Trevor G. Underwood
2425 Sunrise Key Blvd.
Fort Lauderdale, Florida 33314-3827

BellSouth Telecommunications, Inc.
James Meza, III
c/o Nancy H. Sims
150 South Monroe Street, Rm. 400
Tallahassee, Florida 32301-1556

Embarq
Susan S. Masterton
Mailstop: FLTLHO0102
1313 Blair Stone Road
Tallahassee, Florida 32301

Time Warner Telecom of Florida
Howard E. Adams
Peter M. Dunbar
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

Charles A. Guyton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: 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 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

[1]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., 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.

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 dame 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 sever 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, available[3] reliability data regarding their distribution systems with the Staff. All but one[4] 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

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[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.

Respectfully submitted,

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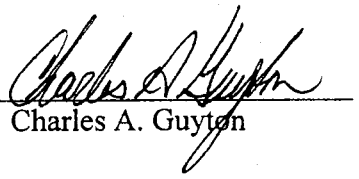
By: 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing 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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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_____.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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,[1] 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")

[1]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., 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.

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.[2]

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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[2] '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)[3] applies only to "public utilities." Public utilities are defined in Section

[3]"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.

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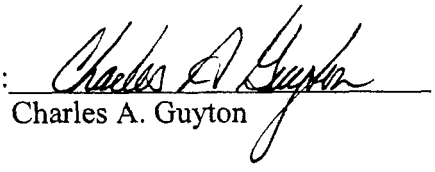
By: 
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CERTIFICATE OF SERVICE

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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ORIGINAL

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

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LEE COUNTY ELECTRIC COOPERATIVE, INC.'s COMMENTS REGARDING PROPOSED RULE DEVELOPMENT

LEE COUNTY ELECTRIC COOPERATIVE, INC. ("LCEC"), by and through its undersigned counsel, files the following comments to proposed Rule 25-6.0343, Standards of Construction, stating as follows:[1]

INTRODUCTION

LCEC is governed by a nine-member Board of Directors elected by its members-owners ("Members") who set the policies and rates for LCEC, and have oversight of the rates and reliability of LCEC's services. Under LCEC's system of governance, those LCEC Members who may have concerns with LCEC's service or reliability have the opportunity to raise these concerns directly with LCEC's Board of Directors. In fact, if a significant number of Members were dissatisfied with LCEC's service and reliability, those Members would have the right and ability to replace the Board of Directors.[2]

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[1] LCEC files these comments without conceding regulatory oversight regarding construction standards, and reserves the right to challenge the jurisdiction issue at a later date, if necessary. More particularly, it is LCEC's position that, while the recent amendment of § 366.04, Florida Statutes, clearly expands the jurisdiction of the Public Service Commission over rural electric cooperatives to include the prescription and enforcement "safety standards", the Commission is without jurisdiction to prescribe and enforce construction standards.

[2] However, dissatisfaction does not appear to be the case. In fact, during the past three years, 92.81% of LCEC Members have rated LCEC's service as "Good" or "Excellent." In addition, in 2006, LCEC rated 8th out of 77 electric utilities in the JD Power Satisfaction Survey.

LCEC Members serve areas that are geographically challenging for any electric utility. LCEC has met the challenges of serving its diverse service territory, yet LCEC's rates consistently rank among the lowest-cost providers in peninsular Florida. As a not-for-profit working exclusively to balance reliability with cost, LCEC has excelled in all aspects. While Hurricane Wilma may have focused the public's attention on electrical service, LCEC had 57% of its customers without power immediately following Hurricane Wilma. LCEC was able to restore power to substantially all of its Members within 6 days. LCEC Members were generous in their praise of LCEC's restoration efforts following Hurricane Wilma.

LCEC strives to balance all aspects of its operations, reliability, and rates. Every dollar LCEC spends comes directly from its Members. There are no other sources of revenue for LCEC. As a result, the impact of regulatory requirements will affect the customer directly. The implementation of these rules will directly affect the rates of LCEC Members. While everyone would enjoy uninterrupted electric service, LCEC Members understand that this is not possible in storm conditions at all times. LCEC continually attempts to achieve a realistic balance of capital expenditures and reliability.

COMMENTS

25-6.0343(1) Standards of Construction

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all

municipal electric utilities and rural electric cooperatives.

LCEC Comments: It is LCEC's position that the Public Service Commission is without jurisdiction to prescribe Standards of Construction for rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee.

LCEC Comments: LCEC may not be able to implement the changes required by this proposed Rule within the 180 day time-frame prescribed due to the staff-time which would be required to rewrite the construction standards, train staff, change internal computer systems, and procure materials. LCEC would request that this proposed Rule be amended to provide a time-frame of one (1) year for the implementation of the proposed Rule.

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

LCEC Comments: None

(d) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

LCEC Comments: None

(d)1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

LCEC Comments: None

(d)2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

LCEC Comments: None

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading

standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

LCEC Comments: Assuming ¶ (b) of the proposed Rule is amended to provide a one (1) year implementation time-frame, LCEC believes it could comply with the construction standards required under this section. However, based upon the damage LCEC experienced during Hurricanes Charley and Wilma, LCEC does not believe it has been demonstrated that constructing to these standards will enhance reliability, reduce restoration costs, or reduce restoration times throughout the system. It is LCEC's position that the terms "where reasonably practical, feasible, and cost-effective" are vague and ambiguous as to what entity will be charged with making this determination. LCEC is also concerned about the costs to implement these construction standards, which will in turn have to be recovered from Members in the form of a rate

increase or reductions in system maintenance, which may in turn have a larger negative impact on reliability.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

LCEC Comments: It is LCEC's practice to specify equipment that is "water tight." It has been LCEC's experience, however, especially during Hurricane Charley, that this equipment's ability to reject water breaks down over time. In addition, although LCEC installs this equipment "above grade," in areas prone to flooding, water intrusion greatly impacts the reliability of these systems.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

LCEC Comments: It is LCEC's general practice to locate electrical distribution facilities with the goal of providing for efficient access to the facilities. Governmental entities, however, have occasionally prohibited or discouraged the location of electrical distribution facilities in front of the customer's premises for aesthetic reasons.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

LCEC Comments: It is LCEC's general practice to construct overhead facilities upon land which LCEC has the legal right to occupy. Governmental entities, however, have occasionally prohibited or discouraged the location of electrical distribution facilities upon "easements, public streets, roads and highways along which the utility has the legal right to occupy" due aesthetic concerns. In addition, as a result of rapid community growth within LCEC's service territory and in an effort to avoid passing on relocation costs to its Members, LCEC has required easements from its Members for the construction of transmission facilities, as opposed to constructing along "public streets, roads and highways."

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

LCEC Comments: It is LCEC's general practice to construct facilities upon land which LCEC has the legal right to occupy.

Governmental entities, however, have occasionally prohibited or discouraged this practice due aesthetic concerns. In addition, as a result of rapid community growth within LCEC's service territory and in an effort to avoid passing on relocation costs to its Members, LCEC has required easements from its Members for the construction of transmission facilities, as opposed to constructing along "public streets, roads and highways."

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

LCEC Comments: It is LCEC's general practice to construct overhead facilities upon land which LCEC has the legal right to occupy. Governmental entities, however, have occasionally prohibited or discouraged the location of electrical distribution facilities upon "easements, public streets, roads and highways along which the utility has the legal right to occupy" due aesthetic concerns. In addition, as a result of rapid community growth within LCEC's service territory and in an effort to avoid passing on relocation costs to its Members, LCEC has required easements from its Members for the

construction of transmission facilities, as opposed to constructing along "public streets, roads and highways."

It is LCEC's position that utilities should have the ability to require easements from applicants for service, as opposed to incurring expensive relocations costs without a mechanism to collect them from the applicant for service. It is also LCEC's position that the terms "meets the utility's legal, financial, and operational requirements" are vague and ambiguous as to what entity will be charged with making this determination.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

LCEC Comments: LCEC is amenable to including Attachment Standards

and Procedures in the construction standards adopted by LCEC. However, 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.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

LCEC Comments: LCEC prohibits any attachments in the electrical zone.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.

LCEC Comments: LCEC is concerned about the process and delays which this paragraph may cause for the construction of infrastructure. In particular, LCEC anticipates challenges by third-party attachers to its construction standards due to the additional expense which will be passed on to third-party attachers are a result of the requirements of the proposed Rule.

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

LCEC Comments: It is LCEC's position that the proposed Rule should provide greater specifics and/or guidance to the Commission on how the phrase "less reliable" will and should be interpreted and applied by the Commission when considering an exemption for the requirements of the proposed Rule.

CONCLUSION

Proposed Rule 25-6.0343 exceeds the Public Service Commission's limited grant of jurisdiction over rural electric cooperatives, and LCEC is not willing to concede any regulatory oversight to the Public Service Commission which is beyond its statutory jurisdiction.

Nonetheless, the establishment of any construction standards applicable to rural electric cooperative, is arbitrary and capricious in that there is no competent evidence that the hardening of distribution facilities to NESC extreme wind standards will result in reduced storm damage and outages or that there is a practical need to increase reliability within the service territories of the rural electric cooperatives. First and foremost, there is no factual support for the proposition that hardening of distribution facilities to NESC extreme wind standards is the most effective and cost-efficient means of reducing storm

damage and outages. In addition, LCEC's experiences with Hurricanes Charley and Wilma, amongst others, has demonstrated the reliability of the system built by LCEC. Although approximately 57% of LCEC customers were without power immediately following Hurricane Wilma, LCEC was able to restore power to substantially all of its Members within six (6) days. This tremendous accomplishment was a direct result of LCEC's commitment to building and maintaining distribution facilities to the highest practicable standards.

Further, the establishment of any construction standards applicable to rural electric cooperatives, and LCEC in particular, is arbitrary and capricious in that the costs which will be borne by LCEC's Members greatly outweigh the small gains in reliability which proposed Rule 25-6.0343 might accomplish. In sharp contract to investor-owned utilities (IOUs), cooperative's members will directly bear the costs of proposed Rule 25-6.0343; these costs will not be passed on to third-party customers through Commission-approved rate increases. Rather, the costs of implementing proposed Rule 25-6.0343 must be recovered from Members in the form of a rate increase or reductions in system maintenance, which may in turn have a larger negative impact on reliability. As a result, it is LCEC's position that it would be most prudent to allocate these resources to system maintenance in the form of increased pole inspections and vegetation management.

It is for the foregoing reasons that LCEC opposes the adoption of proposed Rule 25-6.0343, as well as any attempted extension of regulatory oversight to the construction standards and practices employed by LCEC.

Nonetheless, in a spirit of cooperation, LCEC provides the foregoing comments on the proposed rules, and respectfully requests the Commission consider the same in deciding to limit the proposed storm hardening rules to investor-owned utilities.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the following:

Florida Cable Telecommunications Association, Inc. (Gross)
Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

Trevor G. Underwood
2425 Sunrise Key Blvd.
Fort Lauderdale, FL 33304-3827

by regular United States Mail, this 7th day of September, 2006.

HENDERSON, FRANKLIN, STARNES & HOLT
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By: s/ John A. Noland
John A. Noland
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Luis E. Rivera II
Florida Bar No. 0013913

ORIGINAL

DISTRIBUTION CENTER

2425 Sunrise Key Blvd.
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Ms. Blanca S. Bayo
Director
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0862

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COMMISSION CLERK

August 8, 2006

Dear Ms. Bayo,

Rule 25-6.0343

Following Order No. PSC-06-0632-PCO-EU on bifurcation of the proceedings and establishment of a separate docket for Rule 25-6.0343 relating to Municipals and Cooperatives I wish to file a Notice of Intent to Participate in Rulemaking Docket 060512-EU.

I am attaching my comments on the proposed amendments to Rule 25-6.0343.

Yours sincerely,

Trevor Underwood

Trevor G. Underwood

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August 8, 2006

Florida Public Service Commission Docket 060512-EU

Comment of Trevor Underwood, resident of the City of Fort Lauderdale, regarding the proposed amendments to Rule 25-6.0343 relating to Standards of Construction for Municipal Electric Utilities and Rural Electric Cooperatives.

As Rules 25-6.034, 25-6.0341, 25-6.0342, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115 have been restricted or defined to apply only to distribution facilities owned by investor-owned electric utilities (IOUs) and only Rule 25-6.0343 appears to apply to distribution facilities owned by Municipal Electric Utilities or Rural Electric Cooperatives this appears to be the only current or proposed Rule that might need to address any issues arising from the creation of a new municipally-owned underground local utilities distribution system to replace the existing investor-owned distribution systems at the termination of the current municipal franchises as I have proposed to the Utilities Advisory Committee of the City of Fort Lauderdale.

The primary objectives of my proposal are (a) to underground the local utility distribution system for electricity, telephone, Internet access and cable services throughout the City to ensure greater reliability in the future; (b) to facilitate open access to multiple suppliers in a fully competitive environment for electricity, telephone, Internet access and cable services to reduce costs and improve the quality of service; (c) to remove the dependency on restricted access and price regulation for these services; and (d) to achieve these objectives at no cost to residents of the City of Fort Lauderdale either in the form of non-refundable deposits, CIACs, rate increases, surcharges or taxes. The latter would be achieved through a municipally owned authority funding the construction with a bond issue and servicing the interest and capital repayments on the bond from rental income charged to the providers of the various services. The cost reduction, increased income and other benefits achieved though a more competitive environment, a more robust local distribution system and the avoidance of duplication of local distribution costs should easily outweigh the amortized cost of constructing a uniform local utilities distribution system.

In particular this proposal would avoid the problems faced by third party attachers both in terms of passed-on costs and the opportunities for anti-competitive behavior resulting from above ground local distribution system hardening proposals that have already featured strongly in the PSC Rulemaking proceedings under Dockets 060172 and 060173. These problems disappear in my proposal since all service providers would be on an equal footing in renting the underground local utility distribution facilities from the municipal authority. My proposal would also provide protection against "build-out" and "cherry-picking" that was of concern to State legislators in their attempt earlier this year to open up cable services to increased competition.

As Rule 25-6.0343 is a subsection of Rule 25-6.034 addressing Standards of Construction it may be too restrictive to address all issues arising from my proposal that might be subject to PSC Rules.

I would like to formally request these comments be considered under the proposed rule change for Rule 25-6.0343 and be included in the Hearing scheduled for October 4, 2006, so that this situation can properly be addressed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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**
Re: Proposed rules governing placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.	**Docket No. 060172-EU**
	Filed: July 28, 2006

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REQUEST FOR PUBLIC HEARING BY THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC., PURSUANT TO SECTION 120.54(3)(c)1, FLORIDA STATUTES, AND RULE 28-103.004, FLORIDA ADMINISTRATIVE CODE, AS TO RULES 25-6.034 STANDARD OF CONSTRUCTION, 25-6.0341 LOCATION OF THE UTILIITY'S ELECTRIC DISTRIBUTION FACILIITES, 25-6.0342 THIRD-PARTY ATTACHMENT STANDARDS AND PROCEDURES, 25-6.0343 MUNICIPAL ELECTRIC UTILIITES AND RURAL ELECTRIC COOPERATIVES, 25-6.064 ~~EXTENSION OF FACILITIES~~; CONTRIBUTION-IN-AID-OF-CONSTRUCTION FOR INSTALLATION OF NEW OR UPDATED FACILITIES; 25-6.078 SCHEDULE OF CHANGES, AND 25-6.115 FACILITY CHARGES FOR CONVERSION OF EXISTING OVERHEAD ~~PROVIDING UNDERGROUND FACILITIES OF PUBLIC~~ INVESTOR-OWNED DISTRIBUTION FACILITIES ~~EXCLUDING NEW RESIDENTIAL SUBDIVISIONS~~

The Florida Cable Telecommunications Association, Inc., (FCTA), pursuant to Section 120.54(3)(c)1, Florida Statutes, and Rule 28-103.004, Florida Administrative Code, hereby requests a public hearing on Rules 25-6.034 Standard of Construction, 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, 25-6.064 ~~Extension of Facilities~~; Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities, 25-6.078 Schedule of Charges, and 25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~, and states:

1. The FCTA is a non-profit trade association representing the cable telecommunications industry in the State of Florida, cable companies providing cable services and information services in the State of Florida, as well as certificated competitive local exchange carriers (CLECs) providing voice communications services in the State of Florida (FCTA Members). The FCTA's business address is 246 E. 6th Avenue, Tallahassee, FL 32303.

2. The name and address of the person authorized to receive all notices, pleadings and other communications in this docket is:

Michael A. Gross
Vice President, Regulatory Affairs and Regulatory Counsel
Florida Cable Telecommunications Association
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303
Tel: 850/681-1990
Fax: 850/681-9676
E-mail: mgross@fcta.com

3. The Florida Public Service Commission (Commission) issued a Notice of Rulemaking on June 28, 2006, initiating rulemaking to adopt Rules 25-6.034 Standard of Construction, 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, 25-6.0345 Safety Standards for Construction of New Transmission and Distribution, 25-6.064 ~~Extension of Facilities~~; Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities, 25-6.078 Schedule of Charges, and 25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~.

4. The purpose and effect of the rules as stated in the Notice of Proposed Rulemaking is: "to increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and

underground electric infrastructure."

5. The summary of the rules as stated in the Notice of Proposed Rulemaking states: "The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities."

6. The Commission approved the proposed rules by vote at its Agenda Conference on June 20, 2006.

7. The Notice of Proposed Rulemaking was published in the FAW in Volume 32, Number 27, July 7, 2006.

8. The Commission voted to set the proposed rules 25-6.0341, 25-6.0342, and 25-6.0343 directly for hearing.

9. An Order Establishing Procedure to be followed at the rulemaking hearing was issued on July 18, 2006.

10. The Notice of Rulemaking issued on June 28, 2006, and published on July 7, 2006, initially set the three aforementioned rules for hearing on August 22, 2006. The Notice of Rulemaking also provided that, "[w]ritten requests for hearing and written comments or suggestions on the rules must be received by the Director Division of the Commission Clerk, and Administrative Services, Florida Public Service Commission...no later than July 28, 2006." The Notice of Proposed Rulemaking further provided that a hearing will be held on Rules 25-6.0341, 25-6.0342, and 25-6.0343, on August 22, 2006. The Notice of Proposed Rulemaking also provided that a hearing will be held on Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, and 25-

6.115, also on August 22, 2006, but only if requested within 21 days of the date of the Notice, i.e., July 28, 2006.

11. A Notice of Change of Hearing Date was issued by the Commission on July 17, 2006, rescheduling the hearing from August 22, 2006 to August 31, 2006.

12. An Order Establishing Procedure To Be Followed At Rulemaking Hearing was issued on July 18, 2006, confirming that a rulemaking hearing on Rules 25-6.0341, 25-6.0342, and 25-6.0343, F.A.C., is scheduled before the Commission on August 31, 2006. The Order Establishing Procedure additionally provided that, if timely requested by any affected person, the hearing may be held on the remaining proposed rules, and that such "hearing may be held on August 31, 2006 or such other date as may be set by the Commission. The Commission will publish notice of the date, time and location of the hearing, if one is requested." This provision deviates from the implication in the Notice of Proposed Rulemaking that requests for hearing on any or all of the remaining rules would be held on the same day as the hearing on the rules directly set for hearing by the Commission.

13. The Order Establishing Procedure provided that "[a]ffected persons who are or will be requesting the Commission adopt changes to Rules 25-6.0341 and 25-6.0342, F.A.C. as proposed in the July 7, 2006, Florida Administrative Weekly shall file comments or testimony enumerating the comments and changes no later than August 4, 2006, apparently extending the time initially set in the Notice of Proposed Rulemaking for July 28, 2006." The Order Establishing Procedure did not provide that comments or testimony enumerating comments or changes to Rule 25-6.0343, F.A.C., shall be filed by August 4, 2006. Nor did the Order Establishing Procedure reaffirm that comments or testimony enumerating the comments or changes shall be filed on July 28, 2006. Contact with Staff indicated that the filing deadline, although omitted from the Order Establishing Procedure, for Rule 25-6.0343, F.A.C. shall still be

July 28, 2006.[1]

14. Although the Commission has set Rules 25-6.0341, 25-6.0342 and 25-6.0343, F.A.C., for hearing on its own initiative, the FCTA, choosing to err on the side caution, is requesting a hearing on Rules 25-6.034, 25-6.0341, 25-6.0342 and 25-6.0343, F.A.C.

15. The FCTA praises and applauds the Commission and the Florida Legislature in taking positive steps to address the storm damage and protracted power outages that there were experienced during the recent storm seasons. Cable operators are no longer purely providers of cable TV, but are now offering voice service and data service both nationally and, more importantly, in Florida. Accordingly, the cable industry has an equal interest in assuring against downed poles and outages. The electric distribution system is vital to the cable industry's plant and feed to its customers. The cable industry is in a very competitive environment. Last hurricane season, satellite trucks were following the downed poles to market residences for satellite TV services. Safe, strong poles are in the cable industry's best interest. However, the FCTA believes that the power companies are waiving the "safety" flag inappropriately in the direction of attaching entities. FCC has recognized that the public welfare depends upon safe and reliable provision of utility services, yet the FCC also recognized that the 1996 Act reinforces the vital role of telecommunications and cable services.

16. Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through conduits and trenches. Proposed Rule 25-6.034 requires investor-owned utilities (IOUs) to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0342 requires IOUs to establish, as part of their construction

[1] The confusion about the prehearing filing deadline for Rule 25-6.0343 has been rendered moot by the Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing New Docket, issued on July 27, 2006.

standards adopted pursuant to Rule 25-6.034, F.A.C., third-party attachment standards and procedures for attachments by others to the utility's electric transmission and distribution poles. FCTA members attach their facilities to distribution poles owned by IOUs. These electric IOUs own a substantial majority of the pole plant in Florida and will have enormous incentives to use their bottleneck control of distribution infrastructure to leverage their position in their ongoing disputes with the cable industry over third-party attachments. The electric and cable industries have been litigating for 20 years over pole attachment rates and access rights, including issues involving safety, reliability, capacity, and engineering standards.

17. Section 366.05(1), Florida Statutes, was amended by SB 888 recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service.

18. Although the statutory authority delegated to the Commission is clear that **the Commission has the power to adopt construction standards,** these rules sub-delegate the Commission's authority to the IOUs to establish construction standards and attachment standards as part of their construction standards.[2] The same sub-delegation has been made in Rule 25-6.0343, which sub-delegates the Commission's authority to establish construction and attachment standards to the municipal electric utilities (Munis) and rural electric cooperatives (Coops). The applicable rules require the IOUs as well as the municipal electric utilities and rural electric cooperatives to solicit input from third-party attachers. However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. This

[2] The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

19. One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules, the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the utilities.

20. The construction standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. Another example of the inextricable ties between the construction standards in general and the attachment standards that are a part of the construction standards is that the extreme wind loading standards of the NESC that would be required in the utility's construction standards would have to be considered in connection with the wind load of third-party attachments. This example is equally applicable to the Muni and Coop rules for standards of construction which are to be guided by extreme wind loading standards specified by the NESC, which would have to be considered in connection with third-party attachment standards.

21. Although the rules give the Commission authority to resolve any disputes over the construction and attachment standards, any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, nondiscriminatory access rights granted under section 224 of the Commissions Act of 1934, 47 U.S.C.A. § 224. The FCC jurisdiction may be triggered by construction and attachment standards that are facially unreasonable and unjust or by an unreasonable and unjust application of such standards.

22. The FCC has stated that "it would not invalidate summarily all local requirements," while in the same paragraph, the FCC made equally clear that state and local safety requirements apply *only* if there is no "direct conflict with federal policy.... Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail." *In the Matter of* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* CC Dkt. Nos. 96-98, 95-1 85, 11 FCC Rcd. 16073 § 1154 (1996) *("Local Competition Order").*

The FCC went on to say that it would consider the merits of "any individual case" alleging safety, reliability or engineering as a basis for denial.[3] The FCC also specifically rejected "the contention of some utilities that *they* are the primary arbiters of such concerns, or that their determinations should be presumed reasonable,'' while noting that § 224(f)(1) "reflects Congress' intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators."[4] On reconsideration of that Order, the FCC refused to categorically restrict the type of pole attachments that must be allowed, reiterating that "when evaluating any attachment request, including a wireless attachment, access determinations are to be based on the statutory factors of safety, reliability, and engineering principles."[5] Those

[3] Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, *Public Notice* (December *23,* 2004) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* Order on Reconsideration, 14 FCC Rcd 18049, 19074 172 (1999)).

[4] *Id.* at 16074 § 1158; *see also In the Matter* of Kansas City Cable Partners v. Kansas City Power & Light Company, 14 FCC Rcd 11599, T 11 (1 999) (stating that "the utility is not the final arbiter of [standards for safety, reliability, and generally applicable engineering standards] and its conclusions are *not* presumed reasonable") (emphasis added).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; InterconnectionBetween Local Exchange Carriers and Commercial Mobile Radio Service Providers,* Order on Reconsideration, 14 FCC Rcd 18049,19074 772 (1999).

statutory factors are subject to a reasonableness determination by the FCC (or a *certified* state, which Florida is not) on a case by case basis, where, as here, a prospective attaching entity protests the denial of access on one of those, or other, grounds.

Indeed, as stated by the FCC only a few months ago in response to similar claims by another utility pole owner, Entergy Arkansas, Inc., that the FCC lacked jurisdiction and "specific expertise with respect to electric utilities and their unique safety and operational issues," the FCC ruled:

> Pursuant to the provisions of section 224, the Commission, through its Bureaus, has exercised its jurisdiction in prior pole attachment complaint proceedings to determine whether a pole owner's adoption or application of specific engineering standards was unjust and unreasonable. Making such a determination does not require the Commission to establish a set of engineering standards that utilities must use across-the-board. Indeed, in adopting rules governing pole attachments, the Commission expressly declined to establish a comprehensive set of engineering standards that would govern when a utility could deny access to its poles based on capacity, safety, reliability, or engineering concerns. The Commission concluded, instead, that "the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis."[6]

There is abundant precedent for the FCC's jurisdiction over safety issues. The FCC routinely considers allegations that attachments will pose safety problems. *See, e.g., In the Matter of the Cable Television Assoc. of Georgia v. Georgia Power Company,* 2003 FCC Lexis 4463, *14 (2003) (dismissing a pole owner's alleged safety issues, as they were not supported by the record, because the pole owner could not point to a single instance of property damage or personal injury caused by the pole attachments); *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company,* Order and Request for Information, File No. PA 99-005, DA 00-1250 at ¶19 (June 7, 2000) (requiring a utility pole owner to "cease and desist from selectively enforcing safety standards or unreasonably changing the safety standards" that the

party seeking to attach to its poles must adhere); *In the Matter of Newport News Cablevision, Ltd. Communications, Inc. v. Virginia Electric and Power Company, Order,* 7 FCC Rcd. 2610 ¶ 15 (April 27, 1992) (considering the reasonableness of VEPCO's guying requirements). The FCC has also affirmatively considered specific safety requirements in rulemaking proceedings, such as the impact of overlashing by attaching entities and third parties, including the impact on wind and weight load burdens. *In the Matter of Amendment of Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996,* Consolidated Partial Order on Reconsideration, CS Dkt. Nos, 97-98, 97-151, 16 FCC Rcd. 12103 ¶¶ 73-78 (2001). Accordingly, the FCC has, and does exercise, jurisdiction over pole safety issues. Consequently, the proposed rules violate federal legal precedent in giving unilateral and unfettered discretion to utilities to set construction and attachment standards and deny access. Further, the assignment of authority under the rules to the Commission to resolve such disputes is clearly a violation of FCC rules and policy in cases where safety conditions are used unreasonably to deny access.

23. If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of direct charges for certain services while simultaneously recovering the same costs in their annual rental charges ("double billing"), recovering excessive amounts from attaching entities for services that can only be performed by the pole owners ("over billing"), and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves. Moreover, utilities also

[6] *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158,lv 8-10 (rel March 2, 2006) (internal citations omitted).

have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overlashing of fiber optic cable to existing strand – a practice the Federal Communications Commission ("FCC") has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. In addition, utilities have unreasonably denied attachment to their anchors – requiring attaching entities instead to set their own anchors and thereby expend unnecessary resources. Again, the FCC has found this practice to be unreasonable. Attached hereto as Exhibit 1 is a memorandum of FCC cases showing instances where utility pole owners have engaged in unreasonable billing practices, double-billing, over-billing and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves, and unreasonable operational practices which have resulted in significant, unnecessary costs to attaching entities.

24. Rule 25-6.0343, requiring Munis and Coops to establish construction standards and third-party attachment standards creates the same unlawful sub-delegation of the Commission's statutory authority as in the case of the same provisions in the rules applicable to IOUs.

25. Moreover, to a substantial degree, there is the potential for the same types of abuses on the part of Munis and Coops as described in Exhibit 1 in relation to IOUs. Although the Munis and Coops do not operate for a profit, too much discretion given by the rules to Munis and Coops provides financial incentives to raise Muni's revenues for municipal coffers, and for Coops to raise revenues for their consumer/shareholders.

26. Rule 25-6.0341(1), (2) and (3) all allow for relocating existing facilities by IOUs from the rear edge of a lot to the front edge of the lot. Rule 25-6.0343(2)(a), (b), and (c) also have the same potential for relocation of existing facilities by Munis and Coops from the rear lot to the front lot.

27. Rear lot facilities are able to serve twice as many residences, and relocation to the front lot would require a duplication of facilities to serve the same number of residences that rear lot facilities can serve.

28. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is $20,000 per mile and $125 to $150 per service drop. An approximate cost of underground is $35,000 to $40,000 per mile if constructed before subdivisions are established. Cost can be $100,000 to $125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs $9 to $18 per foot. Consequently, relocation from rear lot to front lot is less efficient and more costly. In a substantial number of cases, good maintenance will be more cost-efficient than relocation of facilities.

29. Therefore, Rules 25-6.0341(1), (2), and (3) and 25-6.0343(2)(a), (b), and (c), should be limited to initial installations, and inapplicable to expansions, rebuilds or relocations. The FCTA appreciates the provision in Rules 25-6.0341(4) and 25-6.0343(4) requiring the electric utility to seek input from and, to the extent practical, to coordinate the construction of its facilities with the third-party attacher. However, in the event that expansions, rebuilds, and relocations remain part of the rules, the FCTA requests that the opportunity for input be timely with respect to the evaluation of construction alternatives and the FCTA members' budgeting time deadlines. Specifically, the FCTA requests language providing that an electric utility provide third-party attachers with at least twelve months notice of its construction plans to permit

third-party attachers sufficient advance notice to evaluate construction alternatives and make budgeting plans. Additionally, since the utilities may disregard input from third-party attachers in cases of expansion, rebuild, or relocation of electric distribution facilities affecting existing third-party attachments, the FCTA suggests that additional language be inserted into Rules 25-6.0341(4) and 25-6.0343(4), to the effect that any disputes involving the expansion, rebuild, or relocation of electric distribution facilities which affect existing third-party attachments, shall be resolved by the Commission.

30. Rule 25-6.064(5) requires the cost formula for calculating the contribution-in-aid-of-construction (CIAC) for new or upgraded overhead facilities pursuant to Rule 25-6.064(2) and cost formula for CIAC for new or upgraded underground facilities shall be based on the requirements of Rule 25-6.034, Standards of Construction. Consequently, the entire rule as amended is invalid, since all references to CIAC throughout the amended rule are rendered invalid as a result of being based on invalid Rule 25-6.034.

Rule 25-6.078(2) which is based on Rule 25-6.034 renders all amendments to the existing rule in invalid. Rule 25-6.115(8)(a) and (9) is based on invalid Rule 25-6.034 which renders the entire amendment to the existing rule invalid.

30. There has been no competent, substantial evidence that storm damage and power outages in Florida from the recent hurricane seasons were caused by third-party attachments and/or inadequate construction and NESC standards. Third-party cable attachments are almost exclusively on distribution poles. The most effective effort to reduce widespread and lengthy power outages is to inspect transmission poles and substations and to take remedial or corrective actions to repair or restore transmissions lines and substations to design strengths and performance criteria. Distribution lines and poles are often surrounded by trees and buildings, particularly in urban areas. It is not effective to build stronger distribution lines, only to have

them brought down by tall trees and flying debris. Urban areas are also where the greatest concentration of communications cables are attached to distribution poles. It is rare that a distribution pole is broken by wind force alone resulting from the added wind load caused by communications cable attachments. In essence, inspection and repair of transmission poles and substations, and improved inspections, maintenance, and vegetation management for tree trimming are the most effective means to increase the safety and reliability of Florida's electrical grid in the face of increased extreme weather events. The major causes of problems with distribution lines during hurricanes are trees, tree limbs, flying building and other debris, poles rotten at the ground line, and broken or ineffective guy wires. Therefore a priority should be vegetation management or tree trimming.

31. The FCTA has a substantial interest in this proceeding in that its substantial interests are subject to determination and will be affected by this proceeding.

32. The rules as proposed, if adopted, will inflict immediate and/or imminent injury in fact upon the FCTA's members, in terms of violation of their rights under state and federal law, imposition of increased costs which are unnecessary and unjustified, and precipitation of increased litigation between the power industry and the Florida cable industry.

33. The FCTA's substantial injury is of a type or nature which this proceeding is designed to protect.

34. A substantial number of the FCTA's members are substantially affected by the proposed rules.

35. The subject matter of the proposed actions is within the FCTA's general scope of interest and activity, and the relief requested by the FCTA, i.e., incorporation by the Commission of the FCTA's suggested changes to the proposed rules, is the type of relief appropriate for the FCTA to receive on behalf of its members.

36. The rights and interests of FCTA's members cannot be adequately represented by any other party in this docket. The FCTA's participation in this docket will not unduly delay or prejudice the rights of other parties.

37. The FCTA's representation of its members in this docket will advance judicial efficiency by consolidating the participation of multiple FCTA members.

WHEREFORE, for the foregoing reasons, the FCTA requests that the Commission grant the FCTA's Request for Hearing on Rules 25-6.034, 25-6.0341, 25-6.0342, 25-6.0343, 25-6.064, 25-6.078, and 25-6.0115, and grant such further relief as this Commission deems appropriate.

Respectfully submitted this 28th day of July 2006.

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CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing Request for Hearing of Florida Cable Telecommunications Association has been served upon the following parties electronically and by U.S. Mail this 28th day of July 2006.

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Michael A. Gross

A. Unreasonable Billing Practices by Utilities

1. Double Billing:

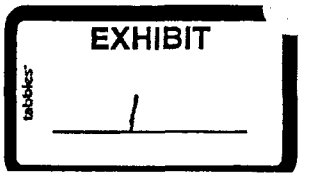
- Collected money from attachers for unnecessary, duplicative, or defective make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 26 (2003) (identifying at least 29 examples of engineering errors or duplicative charges that Georgia Power unreasonably forced Knology to pay).

- Required cable operators to pay a share of indirect costs associated with the functions performed by dedicated employees and simultaneously to pay for the dedicated employees amounting to an unreasonable duplicative charge. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 53 (2003) (demonstrating that Georgia Power included management and supervisory functions in the calculation of the indirect overhead expenses when these same functions were already paid by Knology through the direct expense of the two dedicated Georgia Power employees).

- Charged for cost of private easements when the cost was already recovered in the pole attachment rent. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 27 (2003) (holding that Georgia Power was not entitled to additional payment for private easements because the Commission's rate formula assures that Georgia Power receives just compensation as required by the Fifth Amendment).

- Imposed a direct charge for anchors while also recovering the costs of anchors in the pole attachment rent. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶¶ 28, 33 (1983) (holding VEPCO's $7.00 charge for use of each anchor rod was unjust and unreasonable because the rate formula takes into account the cost of a bare pole and the investment in anchors). *See also Capital Cities Cable v. Mountain States Telephone & Telegraph Co.*, Memorandum Opinion & Order, 56 RR 2d 393 ¶¶ 40-42 (1984) (holding the utility was double recovering the cost of the anchors by charging a separate anchor fee when the cost of the anchors was already included in the rate formula by way of the bare pole cost).

- Used administrative fees to double recover administrative costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Soutwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the administrative costs associated with the "Billing Event Fee" and the "CATV Pole License Agreement" fee were already included in the carrying charges used to calculate the maximum pole attachment rate).



2. **Over Billing:**

- Imposed charges without any discernable backup or itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 50 (2003) (holding Georgia Power's $190,805.86 charge to Knology for "GPESS SUPR & ADMIN" costs was unreasonable because Georgia Power provided no explanation or support for this figure).

- Charged excessive penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶¶ 11, 13 (2000) (holding the unauthorized pole attachment penalty charge of up to $250 per pole was unreasonable in light of the industry practice of charging between $15 and $25 per unauthorized pole attachment).

- Imposed unreasonably high markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding the "margin of error" surcharge of approximately 10.5% on all make-ready bills was unreasonable because no evidence was provided to justify the percentage).

- Provided insufficient detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding that VEPCO's make-ready bills to Cavalier Telephone were insufficiently detailed).

- Failed to provide refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO never provided a make-ready overcharge refund despite charging a margin of error surcharge).

- Applied make-ready surcharges across an entire category of attachers without regard to the underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO charged all CLECs the margin of error surcharge without any connection to the work performed).

- Imposed administrative fees that exceeded actual costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Soutwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the "Billing Event Fee" and the "CATV Pole License Agreement" fee do not represent actual costs).

- Imposed engineering survey fees unrelated to the actual costs. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138 ¶¶ 6, 10 (1999) (holding the engineering fee was inappropriate because it was not based on non-recurring actual costs; therefore, by definition, the

engineering survey fee was already included in the annual pole attachment fee based on fully allocated costs).

3. **Billing One Attacher for Costs Associated with Another Attacher:**

- Charged new attacher for make-ready work to remedy pre-existing safety violations. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 16 (2000) (illustrating VEPCO's attempt to push costs associated with correcting pre-existing safety violations onto Cavalier Telephone).

- Charged new attacher to replace poles to remedy pre-existing safety violations. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 40 (2003) ("Having rejected Georgia Power's defenses regarding pole change-outs, we order Georgia Power to refund Knology the costs of any change-outs necessitated by the safety violations of other attachers. . . .").

4. **Billing a Single Attacher for Costs Common to All Attachers:**

- Charged new attacher for the full cost of a post attachment pole inspection that benefited the utility and other attachers. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 34 (2003) (holding that Georgia Power's post attachment inspection was a routine inspection because the inspection involved the identification and correction of other attachers' safety violations). *See also Newport News Cablevision, Ltd. Communications, Inc. v. Va. Elec. & Power Co.*, 7 FCC Rcd 2610 ¶¶ 8-14 (1992) (holding that VEPCO unreasonably allocated 100% of the inspection costs to the cable provider); *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 16 (2003) (holding that charges to cable operators for periodic inspections were unreasonable since "costs attendant to routine inspections of poles, which benefit all attachers, should be included in the maintenance costs account and allocated to each attacher in accordance with the Commission's formula . . .").

- Charged new attacher the full cost for the pre-make-ready inspections that benefited the utility and other attachers. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 43 (2003) (rejecting Georgia Power's assertion that Knology should pay the entire cost of the pre-make-ready inspections because both Georgia Power and the other attachers benefited from the large scale inspection).

B. Unreasonable Operational Practice by Utilities

- Imposed a consent requirement on cable operators for overlashing that contravened Commission policy. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 13 (2003) (rejecting Georgia Power's requirement that cable operators seek written consent prior to overlashing because the Commission's policy was that "neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment").

- Denied anchor attachments for safety reasons without explanation or support. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶ 33 (1983) (rejecting VEPCO's denial of anchor attachments because VEPCO made no detailed showing that its poles were engineered in such a way that separate anchors were necessary).

C. Actual Costs Relating to Pole Attachments

1. Pole Replacement:

- $2,146 per pole. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶¶ 40-41 (2003) (Ordering Georgia Power to refund Knology for 16 pole replacements at $2,146 per pole for a total refund of $34,366. The $2,146 amount was the average amount that had been charged by Georgia Power where Knology was found not to be the cause of the pole replacement.)

- $3,000 - $5,000 per pole. *Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, Consolidated Order, 14 FCC Rcd 11599 ¶ 9 (1999) (The primary issue in the case was Kansas Cit Power & Light's failure to perform make-ready work in timely fashion. The amount per pole was provided by KCPL in response to a request from Time Warner for estimated cost of pole replacements.)[1]

2. Pole audit:

- $0.70 per pole. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶ 9 n.62 (2000) (commenting that this may be a reasonable rate).

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[1] The per pole cost data cited is provided for illustrative purposes only. It should be noted that pole costs and associated labor costs have gone up substantially in general, and particular poles may be extremely expensive depending on characteristics of individual poles. The price of a single pole may vary by as much as tenfold depending on the characteristics of the poles.

- "The just and reasonable cost for the 1996 [Pole] Count is $1.40 [per pole]." *Cable Tex., Inc. v. Entergy Services, Inc.*, Order, 14 FCC Rcd 6647 ¶ 16 (1999).[2]

3. **Make ready construction costs, management and inspection costs, and engineering costs:**

   - $150 per pole. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 19 (2003) (The Cable Association was contesting Georgia Power's $150 up-front fee for make-ready work. The Enforcement Bureau found the fee unreasonable and concluded that "Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs." It is not clear from the decision the specific tasks that this fee was designed to cover.)

[2] The audit fees cited involved the total cost for a pole count. Audits currently are much broader in scope, and the costs have increased substantially.

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 8, 2006

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC. AND REQUESTED CHANGES TO RULE 25-6.0343, FLORIDA ADMINSTRATIVE CODE

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 comments and suggested rule changes for Rule 25-6.-0343, to be considered at the public hearing scheduled for October 4, 2006.

INTRODUCTION

The Florida Public Service Commission (Commission) issued a Notice of Rulemaking on June 28, 2006, initiating rulemaking to adopt Rules 25-6.0341, Location of the Utility's Electric Distribution Facilities, 25-6.0342, Third-Party Attachment Standards and Procedures, 25-6.0343, Municipal Electric Utilities and Rural Electric Cooperatives, and amend Rules 25-6.034, Standard of Construction, 25-6.0345, Safety Standards for Construction of New Transmission and Distribution, 25-6.064, ~~Extension of Facilities~~; Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities, 25-6.078, Schedule of Charges, and 25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions~~.

The purpose and effect of the rules as stated in the Notice of Proposed Rulemaking is: "to increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and underground electric infrastructure." The summary of the rules as stated in the Notice of Proposed Rulemaking states: "The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities."

The Commission approved the proposed rules by vote at its Agenda Conference on June 20, 2006. The Commission voted to set the proposed rules 25-6.0341, 25-6.0342, and 25-6.0343 directly for hearing. An Order Establishing Procedures to be Followed at Rulemaking Hearing was issued on July 18, 2006, confirming that a rulemaking hearing on Rules 25-6.0341, 25-6.0342, and 25-6.0343, F.A.C., is scheduled before the Commission on August 31, 2006. The Order Establishing Procedures provided that "[a]ffected persons who are or will be requesting the Commission adopt changes to Rules 25-6.0341 and 25-6.0342, F.A.C. as proposed in the July 7, 2006, Florida Administrative Weekly shall file comments or testimony enumerating the comments and changes no later than August 4, 2006." An Order Granting Motion to Bifurcate Proceeding and Establish Controlling Dates and Establishing New Docket, Order No. PSC-06-0632-PCO-EU, was issued on July 27, 2006, establishing Docket No. 060512, setting a separate schedule for Rule 25-6.0343, and setting a hearing date on October 4, 2006.

The FCTA praises and applauds the Commission and the Florida Legislature in taking

positive steps to address the storm damage and protracted power outages that were experienced during the recent storm seasons. Cable operators are no longer purely providers of cable TV, but are now offering voice service and data service both nationally and, more importantly, in Florida. Accordingly, the cable industry has an equal interest in assuring against downed poles and outages. The electric distribution system is vital to the cable industry's plant and feed to its customers. The cable industry is in a very competitive environment. Last hurricane season, satellite trucks were following the downed poles to market residences for satellite TV services. Safe, strong poles are in the cable industry's best interest. The FCC has recognized that the public welfare depends upon safe and reliable provision of utility services, yet the FCC also recognized that the 1996 Act reinforces the vital role of telecommunications and cable services.

RULE 25-6.0343 MUNICIPAL ELECTRIC UTILITIES AND RURAL ELECTRIC COOPERATIVES

(1) Standards of Construction.

Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through conduits and trenches. Proposed Rule 25-6.0343(1) requires municipal electric utilities (Munis) and rural electric cooperatives (Coops) to establish construction standards for overhead and underground electric transmission and distribution facilities. FCTA members attach their facilities to distribution poles owned by investor owned utilities (IOUs) and Munis and Coops.

Section 366.05(1), Florida Statutes, was amended by SB 888 which recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service. Although the statutory authority delegated to the Commission is clear that **the**

Commission has the power to adopt construction standards, these rules sub-delegate the Commission's authority to the Munis and Coops to establish construction standards and attachment standards as part of their construction standards.[1] Rule 25-6.0343(4) requires Munis and Coops in the process of establishing the Construction Standards to solicit input from other entities with existing agreements to share the use of its electric facilities. However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. Rule 25-6.0343(1) is vague and contains inadequate guidelines for the utilities to establish the Construction Standards, and although the rules reserve an ad hoc right of the Staff to request a copy of the rules, there is no requirement for Commission review and approval of the standards either before or after the standards become effective. This sub-delegation constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules, the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the utilities. The FCTA's concern is underscored as a result of granting such discretion to utilities that have a pecuniary interest in the outcome of the Construction Standards development process thereby creating incentives for abuse that the utilities have in relation to the cable industry as third-party attachers.

[1] The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

The Florida legislature, Florida courts and the Attorney General all have recognized that administrative agencies are limited in the responsibilities they may delegate to private entities.[2] Under the prevailing cases, agencies can not delegate technical matters of implementation but even then, agencies must retain ultimate decision making authority and sufficient control over the delegated function.[3] A private entity may only play an advisory role and the agency may not simply "rubber stamp" the private entity's findings. Rather, discretion and ultimate supervision and control must rest with the governmental entity. [4] This is especially true where the private entity has a stake in the project for which it is performing a technical function.[5]

Here, the proposed rules require the investor owned utilities to develop the standards that will govern third-party attachments. There is no provision for approval of the standards by the Commission; rather the utilities need only make a copy of the standards available on request. The Commission is not obligated to request a copy of the standards, and there is no further language about what might happen if the Commission were to request and/or review a copy of the Standards. Further, the Commission has included a provision for reviewing disputes on an ad hoc

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[2] Fla. Stat. § 120.52 (2006); *County Collection Services, Inc. v. Thomas C. Charnock, aka C.T. Charnock aka Tom Charnock, et al.*, 789 So. 2d 1109 (Fla. App. 2001) (recognizing that county could not delegate its taxing authority to a private entity); *City of Belleview v. Belleview Fire Fighters, Inc.*, 367 So. 2d 1086 (Fla. App. 1979) (recognizing city could not delegate its police power functions to private entity); *Florida Nutrition Counselors Association v. Department of Business and Professional Regulation, Board of Medicine, Dietetics and Nutrition Practice Council*, 667 So. 2d 218, _ (Fla. App. 1995) (striking down a rule that relied too heavily upon role of private educational institutions in setting standards for medical devices); *State of Florida v. State Road Department*, 173 So. 2d 693, _ (Fla. 1965); *Florida Attorney General Op. 078-53*, issued March 28, 1978 at 5-6 (recognizing that state cannot delegate its rate making authority to private entities).

[3] *Brown v. Apalachee Regional Planning Council*, 560 So. 2d 782, _ (Fla. 1990) (distinguishing between delegation of a technical matter of implementation with sufficient constraints including considerable detail and specific criteria about the review process and delegation of a policy function).

[4] *Florida Attorney General Op. 078-53*, issued March 28, 1978 a6t 5-6 (recognizing that state cannot delegate its rate making authority to private entities) (citing *State of Florida v. State Road Department*, 173 So. 2d 693, _ (Fla. 1965).

[5] *Sierra Club v. Lynn*, 502 F. 2d 43, 59 (5th Cir. 1974) (Florida was part of the 5th Circuit until 1980, when the 11th Circuit was created) (finding that HUD had the obligation to "independently perform its reviewing, analytical, and judgmental functions, and participate actively and significantly in the preparation and drafting process" and could not "abdicate its statutory duties by reflexively rubber stamping a statement prepared by others."); *Sierra Club v. Sigler*, 695 F. 2d 957 , 962, n. 3(5th Cir. 1983) ("The role of the private firm in preparation of [the draft and final version of environmental impact statement] is particularly troubling in this case because the consulting firm also had a stake in the project which it was evaluating.").

basis but that review is undermined by the FCC's jurisdiction over pole attachment disputes. Thus, there is no effective control or final decision making authority in the Commission and the rules are therefore an unauthorized exercise of the Commission's delegated authority.

The Construction Standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. Another example of the inextricable ties between the construction standards in general and the attachment standards that are a part of the construction standards is that the extreme wind loading standards of the NESC that would be required in the utility's construction standards would have to be considered in connection with the wind load of third-party attachments.

If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of direct charges for certain services while simultaneously recovering the same costs in their annual rental charges ("double billing"), recovering excessive amounts from attaching entities for services that can only be performed by the pole owners ("over billing"), and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves. Moreover, utilities also have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. Moreover, to a substantial degree, there is the potential for the same types of abuses on the part of Munis and Coops as in the case of IOUs. Although the Munis and Coops do not operate for a profit, too much discretion given by the rules to Munis

and Coops provides financial incentives to raise Munis' revenues for municipal coffers, and for Coops to raise revenues for their consumer/shareholders.

Rule 25-6.0343(1) will subject cable third-party attachers to an unlawful exercise of delegated authority and exclude third-party attachers from meaningful participation in the development of the Construction Standards. The FCTA's requested changes to Rule 25-6.0343(1) are attached hereto as a portion of **Composite Exhibit 1**.

PROPOSED RULE 25-6.0343(1) IS ANTI-COMPETITIVE AND NOT FACTUALLY SUPPORTED AS THE MOST EFFECTIVE MEANS OF MEETING THE GOALS OF REDUCING STORM DAMAGE AND PROTRACTED OUTAGES.

There has been no competent evidence that storm damage and power outages in Florida from the recent hurricane seasons were caused by third-party attachments and/or inadequate construction and NESC standards. Third-party cable attachments are almost exclusively on distribution poles. The most effective effort to reduce widespread and lengthy power outages is to inspect transmission poles and substations and to take remedial or corrective actions to repair or restore transmissions lines and substations to design strengths and performance criteria. Distribution lines and poles are often surrounded by trees and buildings, particularly in urban areas. It is not effective to build stronger distribution lines, only to have them brought down by tall trees and flying debris. Urban areas are also where the greatest concentration of communications cables are attached to distribution poles. It is rare that a distribution pole is broken by wind force alone resulting from the added wind load caused by communications cable attachments. In essence, inspection and repair of transmission poles and substations, and improved inspections, maintenance, and vegetation management for tree trimming are the most effective means to increase the safety and reliability of Florida's electrical grid in the face of increased extreme weather events. The major causes of problems with distribution lines during

hurricanes are trees, tree limbs, flying building and other debris, poles rotten at the ground line, and broken or ineffective guy wires. Therefore a priority should be vegetation management or tree trimming. The cited rules give anticompetitive advantages to utilities and are not factually supported as the most effective means of meeting the goals of reducing storm damage and protracted outages. The record shows that there are more effective means of accomplishing these goals.

RULE 25-6.0343(2) LOCATION OF THE UTILIITY'S ELECTRIC DISTRIBITION FACILITIES

Rule 25-6.0343(2)(a), (b), and (c) all create the potential for relocating existing facilities by Munis and Coops from the rear edge of a lot to the front edge of the lot. Rear lot facilities are able to serve twice as many residences, and relocation to the front lot would require a duplication of facilities to serve the same number of residences that rear lot facilities can serve.

For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is $20,000 per mile and $125 to $150 per service drop. An approximate cost of underground is $35,000 to $40,000 per mile if constructed before subdivisions are established. Cost can be $100,000 to $125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs $9 to $18 per foot. Consequently, relocation from rear lot to front lot is less efficient and more costly. In a substantial number of cases, good maintenance will be more cost-efficient than relocation of facilities. However, the Munis and Coops are given sole discretion to make decisions to relocate their facilities, and cable third-party attachers will be compelled to relocate their facilities.

Therefore, 25-6.0343(2)(a), (b), and (c), should be limited to initial installations, and the utilities should not be given complete discretion to make determinations in the case of

expansions, rebuilds or relocations. The FCTA appreciates the provision in Rule 25-6.0343(4) requiring the electric utility to seek input from and, to the extent practical, to coordinate the construction of its facilities with the third-party attacher. However, the opportunity for input must be timely with respect to the FCTA members' evaluation of construction alternatives, and the FCTA members' budgeting time deadlines. Specifically, language should be inserted providing that an electric utility provide third-party attachers with reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate construction alternatives and make budgeting plans. Therefore, the cited rules are invalid in violation of Section 120.52(8), in that the rules give complete discretion to the utilities to make decisions as to relocation of their facilities without any meaningful input (since the utilities may disregard input from third-party attachers) or consideration of the costs that will be incurred by third-party attachers as a result of such relocations, and without a requirement of sufficient advance notice to accommodate a third-party attacher's needs to evaluate construction alternatives and make budgeting decisions. In general, utilities make their construction plans at least a year in advance and 12 months advance notice is reasonable. Additional language to allow third-party attachers a larger degree of participation and a requirement of a greater degree of cooperation from the utilities in the process of coordinating construction of its facilities with third-party attachers. The FCTA's requested changes to Rule 25-6.0343(2)(a), (b), and (c), are attached hereto as a portion of **Composite Exhibit 1.**

RULE 25-6.0343(3) THIRD-PARTY ATTACHMENT STANDARDS AND PROCEDURES.

Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through

conduits and trenches. Proposed Rule 25-6.0343(1) requires Munis and Coops to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0343(3) requires Munis and Coops to establish, as part of their construction standards adopted pursuant to subsection (1), third-party attachment standards and procedures for attachments by others to the utility's electric transmission and distribution poles. FCTA members attach their facilities to distribution poles owned by Munis and Coops.

Section 366.05(1), Florida Statutes, was amended by SB 888 recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service. Although the statutory authority delegated to the Commission is clear that **the Commission has the power to adopt construction standards,** these rules sub-delegate the Commission's authority to the Munis and Coops pursuant to Rule 25-6.0343(1)(a), (b), (e), and (f) and (3)(a) and (b), and (4), to establish construction standards and attachment standards as part of their construction standards. Rule 25-6.0343(4) requires Munis and Coops to solicit input from third-party attachers. However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. The rules contain inadequate guidelines to the Munis and Coops to establish the construction standards, and although the rules reserve an ad hoc right of the Commission to request a copy of the rules, there is no requirement for Commission review and approval of the standards. This sub-delegation constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules,

the Commission will be giving unilateral authority to the Munis and Coops to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the Munis and Coops. The FCTA's concern is underscored as a result of granting such discretion to Munis and Coops in light of the fact that they have a pecuniary interest in the outcome of the third-party attachment standards ultimately established. Accordingly, Rule 25-6.0343(3) constitutes an unlawful exercise of the delegated authority in violation of section 120.52(8), Florida Statutes. See discussion at pages 4 and 5.

If the Munis and Coops are given unilateral discretion to establish third-party attachment standards and procedures, they will undoubtedly pass on improper costs to attaching entities. See discussion at page 6.

The construction standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. See discussion at page 6.

Rule 25-6.0343 as proposed will subject cable third-party attachers to an unlawful exercise of delegated authority and exclude third-party attachers from meaningful participation in the development of the third-party attachment standards. The FCTA's requested changes to Rule 25-6.0343(3) are attached hereto as a portion of **Composite Exhibit 1.**

PROPOSED RULES 25-6.0343(3) IS ANTI-COMPETITIVE AND NOT FACTUALLY SUPPORTED AS THE MOST EFFECTIVE MEANS OF MEETING THE GOALS OF REDUCING STORM DAMAGE AND PROTRACTED OUTAGES.

See discussion at pages 7 and 8.

Respectfully submitted this 8th day of September 2006.

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 8th day of September 2006.

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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 8, 2006

MICHAEL T. HARRELSON'S COMMENTS AND SUGGESTED CHANGES TO RULE 25-6.0343, ON BEHALF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC.

25-6.0343(1) Standard of Construction

(a) Application and Scope. No comments at this time.

(b) The Florida Cable Telecommunications Association (FCTA) members require access to the electric utility's construction standards first to effect its input into the establishment of the standards as provided for in paragraph 25-6.0343(4). FCTA members also require access to the construction standards required by the FPSC for use in make ready engineering for new attachments, review of existing attachments' compliance with attachment standards and evaluating feasible rearrangement of cable and power facilities where necessary to correct violations. Some power companies will want the attacher to sign confidentiality agreements. Without reasonable access to the power utility's overhead and underground distribution construction standards, FCTA members cannot adequately engineer, operate or manage their cable systems. Therefore, please add "Upon request by a third party attacher, licensed to make attachments to the utility's poles, the utility shall provide a copy of its construction standards to the attaching company."

(c) No comments at this time.

(d) If a company complies with the NESC, it meets the requirements of the code. If one exceeds the various requirements of the code, they still comply. The phrase "at a minimum" is confusing in this context. Therefore, please strike "at a minimum."

The NESC Handbook, Fifth Edition, published in 2001 is intended specifically to aid users in understanding and correctly applying the requirements of the 2002 NESC. The Handbook states the following in a discussion of the purpose of the NESC on page 4 and 5:

"*The 1990 Edition of the NESC was specifically editorially revised to delete the use of the word 'minimum' because of intentional or inadvertent misuse of the term by some to imply that the NESC values were some kind of minimum number that should be exceeded in practice; such is not the case.*"

(d) 1. "2002 edition" should be changed to "2007 edition" since the 2007 edition is now available and mandatory compliance goes into effect 180 days after its publication date. The 2007 Edition of the NESC was published on August 1, 2006.

See NESC *Section 1. Rule 016 which states:*

016. ***Effective Date***

This edition may be used at any time on or after the publication date. Additionally, this edition shall become effective no later than 180 days following its publication date for application to new installations and extensions where both design and approval were started after the expiration of that period, unless otherwise stipulated by the administrative authority.

(d) 2. This paragraph is not a correct statement of NESC Section 1 Rules 013.B.1. 2. and 3. The NESC covers "electric supply and communications lines and associated equipment," not just electric facilities. The paragraph should read: Facilities constructed prior to the effective date of the 2007 edition of the NESC shall be governed by the applicable edition of the NESC as stated in NESC Rule 013.B.1., 013.B.2, and 013B3.

There is no reason to apply rule 013.B., known as the grandfathering provision, to electric facilities and not to communications facilities. FCTA supports the inclusion of this

paragraph, as revised, as a clear statement emphasizing that Rule 013.B. is a fundamental principle of the NESC and applies to electric and communications facilities alike.

The NESC 2002 rule states:

Rule 013.B. Existing Installations

1. *Where an existing installation meets, or is altered to meet, these rules, such installation is considered to be in compliance with this edition and is not required to comply with any previous edition.*
2. *Existing installations, including maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply with these rules except as may be required for safety reasons by the administrative authority.*
3. *Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with either (a) the rules that were in effect at the time of the original installation, or (b) the rules in effect in a subsequent edition to which the installation has been previously brought into compliance, or (c) the rules of this edition in accordance with Rule 013.B.1.*

(e) This paragraph instructs each utility to establish guidelines and procedures governing the use of extreme wind loading standards. Utility appears to mean electric utility. Most electric utilities already have construction standards which meet or exceed NESC requirements. The intent of the rule should be "to incorporate greater strength requirements, approved by the FPSC (the administrative authority), into distribution standards." The NESC requires extreme wind design only for structures which exceed 60 feet in height. Florida electric utilities must establish guidelines and procedures for applying greater strength

standards to distribution poles less than 60 feet in height as ultimately ordered by the FPSC. By specifically limiting the rule language to require application of greater strength standards to distribution poles less than 60 feet high, the FPSC will be much more focused on the increased pole and line strength it contemplated to better withstand hurricanes in exposed areas near the coast. Perhaps it will also relieve many of the concerns relating to the FPSC's broad mandate to the electric utilities to develop construction standards which exceed NESC requirements.

The guidelines and procedures to be developed by each electric utility as required by the FPSC should take a conservative approach of applying the stronger design only to areas which would obviously benefit from the high cost required for the extra strength. Where storm guying of poles is feasible, it is a very effective and cost efficient means of strengthening distribution lines. These areas would include only areas near the coast or very exposed open areas such as lines with littler or no shelter effect from high winds by trees, buildings, etc. The major engineering justification for designing lines to withstand greater wind loads than required by the NESC is that such lines will be exposed directly to high winds. That is a major reason the NESC has chosen only poles or structures greater than 60 feet in height to which to apply the extreme wind design requirements.

Again, it makes no sense to expend limited valuable resources constructing lines to extreme wind standards, only to have them torn down by overhanging or nearby trees or roof tops, signboards, etc. which cannot withstand the extreme winds.

FCTA believes this conservative philosophy is well covered in the phrase "to the extent reasonably practical, feasible, and cost-effective." However, we believe the determination of feasibility and cost effectiveness must include the costs to all utilities, and that specific projects should be reviewed by the FPSC if ultimately disputed by an affected utility which believes the project to be not feasible or not cost effective.

Other initiatives to inspect wood poles and guys and repair or replace deficiencies together with vegetation management are much more certain to be prudent expenditures of limited funds.

(f) None at this time.

Rule No.25-6.0343(2) Location of the Utility's Electric Distribution Facilities

FCTA members prefer that new overhead electric lines be constructed in accessible locations such as (we believe) are required by this rule. Expansion, rebuild or relocation of overhead lines with cable attachments will be a great expense to FCTA members where existing line relocation results.

Poles on rear lot lines with narrow alleys or no alleys at all can usually serve houses directly from the main line poles to the rear of the houses with aerial drop wires, both communications and electric. Overhead lines along front streets usually require "lift" poles across the street from the main line to access the sides or corners of houses for attachment of aerial drop wires. In some cases there are no houses on the opposite side of front streets. Line relocation in this case would require twice as much cable plant to serve the same customers overhead. If CATV lines are relocated from back lot lines aerial to front streets underground, complete cable lines down each side of each street is often more feasible than boring under the street for all drop connections to houses which were already served overhead.

Underground electric lines can be located in a joint trench with communications lines. However, there is no widespread use of this practice in Florida. Since most FCTA members have to provide their own trench or conduit, the location of underground electric lines has little effect on our members. When electric lines are relocated to underground locations where communications cables are already buried, the risk of cable cuts is great. The

associated disruption of service and the cost of repairs are excessive but can and should substantially be avoided by the power companies during construction.

For conversions of overhead lines to underground, the disruption and cost to FCTA members can be extreme with no increase in revenue. We believe that prudent evaluation of alternatives will indicate that good vegetation management and maintenance of poles and lines will be much more cost effective in most circumstances. Access to lines can also be improved by community and customer awareness initiatives.

In limited instances it will be practical for telephone companies to assume ownership of abandoned poles after power lines are relocated. FCTA members could then remain on the poles with telephone.

Coordination and effective communication between all joint users will be extremely important to the success of this initiative.

FCTA supports the location of new lines in accessible locations, but believes that relocation of existing lines with attachments should be fully justified based on costs and benefits to all attachers. We believe relocations will and should have limited application after complete analysis.

Rule No. 25-6.0343(1) proposes to order all electric utilities to establish construction standards "guided by the extreme wind loading" requirements of the NESC. Rule No. 25-6.0343(3) proposes: "As part of the construction standards, each utility shall establish third party attachment standards and procedures." Construction standards, attachments standards, and attachment contracts already exist between power companies and third party attachers. The contracts and attachment standards are supposed to be negotiated between the parties. 25-6-0343(4) This paragraph requires the utility to seek input from other entities with existing agreements to share the use of its electric facilities. FCTA expects to participate

actively to provide responsible input to the proposed standards as they affect FCTA members. We look forward to the opportunity.

Prepared by:

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On behalf of the FCTA

COMPOSITE EXHIBIT MAG-1

FCTA PROPOSED CHANGES TO RULE 25-6.0343

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account the construction and service requirements of third-party attachers in developing the Construction Standards, as well as subsequent updates, changes, and modifications to the utility's Construction Standards. The jointly developed Construction Standards shall be submitted to the Commission for approval. The Commission shall have an independent obligation, whether the Construction Standards are adopted by agreement of the parties or as a result of an evidentiary hearing, to assure that the Construction Standards are fair and reasonable and ensure the reliable provision of electric service.[1] Each utility shall maintain a copy of its construction standards at its main corporate

[1] The requested changes in this subsection are to assure proper exercise of the Commission's delegated authority and to assure that the construction and service requirements of third-party attachers are taken into account in developing Construction Standards. Michael A. Gross (MAG)/FCTA Comments at pages 3 through 6. M.T. (Mickey) Harrelson (MTH)/FCTA Comments at page 1,3 and 6.

headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee. Upon request by a third-party attacher, the utility shall provide a copy of its Construction Standards to the attaching entity.[2]

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall~~, at a minimum,~~[3] comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2007~~2~~[4] edition of the NESC, published August 1, 2006~~1~~[5]. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. ~~Electrical~~ Ffacilities constructed prior to the effective date of the 2007~~2~~ edition of the NESC shall be governed by the applicable edition of the NESC as stated in NESC

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[2] It is necessary for cable third-party attachers to have access to the electric utility's Construction Standards for numerous reasons related to third-party attachments. MTH/FCTA Comments at page 1.

[3] The 1990 Edition of the NESC deleted the use of the word "minimum" to avoid any implication that the NESC standards represented a minimum that should be exceeded, which is not the case. MTH/FCTA Comments at pages 1 and 2.

[4] The 2007 Edition is now available and may be used at any time on or after the publication date. MTH/FCTA Comments at page 2.

[5] The 2007 Edition of the NESC was published on August 1, 2006. MTH/FCTA Comments at page 2.

Rule 013.B.1., 013.B.2., and 013.B.3. ~~in effect at the time of the initial construction.~~[6]

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2007 edition of the NESC. The intent of this subsection is to promote the review of existing Construction Standards, assure that those standards comply with current NESC rules, and include extreme wind design criteria to the extent reasonably practical, feasible, and cost-effective, rather to develop a completely new Construction Standard.[7] As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-

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[6] See footnote 4 for applicability of the 2007 Edition of the NESC. This subsection is not a correct statement of NESC Section 1 Rules 013.B.1., 2, and 3, since the NESC covers electric supply and communications lines and associated equipment, not just electric facilities. MTH/FCTA Comments at pages 2 and 3.

[7] See footnote 4 for applicability of the 2007 Edition of the NESC. The additional language has been inserted to clarify the intent of this subsection in the context of existing practices. MTH/FCTA Comments at pages 3, 4 and 5.

effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(d) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, third-party attachers shall be provided notice and an opportunity to participate, and the utility shall take into account the needs and requirements of third-party attachers in coordinating the construction of its facilities with the third-party attacher. The electric utility shall provide third-party attachers with reasonable and sufficient advance notice of its construction plans to permit third-party

attachers to evaluate their construction alternatives and to make necessary budgeting plans.[8]

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) Third-party attachers shall be provided notice and an opportunity to participate, and the utility shall take into account the construction and service requirements of third-party attachers in developing Attachment Standards and Procedures. The jointly developed Attachment Standards and Procedures shall be

[8] The requested changes to this subsection are for the purpose of assuring that the budget and construction requirements of third-party attachers are taken into account by utilities in coordinating construction of their facilities with the third-party attacher. The notice requirement is for the purpose of providing third-party attachers reasonable and sufficient notice of the utility's construction plans to enable third-party attachers to evaluate their construction alternatives and make necessary budgeting plans. These requested changes are calculated to minimize costs, increase efficiency, mitigate the risks of cable cuts and the costs of repair, and to require consideration of less costly alternatives, especially when good maintenance will be more cost-efficient than relocation. MAG/FCTA Comments at pages 8 and 9. MTH/FCTA Comments at pages 5 through 7.

submitted to the Commission for approval. The Commission shall have an independent obligation, whether the Attachment Standards and Procedures are adopted by agreement of the parties or as a result of an evidentiary hearing, to assure that the Attachment Standards and Procedures are fair and reasonable and ensure the reliable provision of electric service.[9]

(cb) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures., except that a utility shall not make a unilateral determination to deny access on the basis that there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes. Third-party attachers shall be given reasonable notice, and any determination to deny access shall be based upon agreement of the parties or if the parties cannot agree, after review by the appropriate agency or administrative or judicial forum possessing jurisdiction to adjudicate an attacher's rights and obligations.[10]

(4) ~~In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities.~~ Any dispute or challenge to a utility's construction standards and/or third-party attachment standards and procedures by a customer, applicant for service, or attaching entity, or a challenge arising out of the expansion rebuild or relocation of electric distribution facilities affecting existing third-party

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[9] The requested changes in this subsection are to assure proper exercise of the Commission's delegated authority and to assure that the construction and service requirements of third-party attachers are taken into account in developing Attachment Standards and Procedures. Michael A. Gross (MAG)/FCTA Comments at pages 9 through 11. M.T. (Mickey) Harrelson (MTH)/FCTA Comment at pages 6 and 7.

[10] The requested changes in this subsection are for the purpose of assuring that cable third-party attachers' rights to reasonable, non-discriminatory access to poles are preserved. MAG/FCTA Comments at pages 10 through 11.

attachments, shall be resolved by the Commission. ~~Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.~~[11]

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

History New.

[11] The request changes to this subsection are for the purpose of assuring that there is a viable remedy for prompt resolution of disputes rising out of the development and application of the provisions of this rule. MAG/FCTA Comments at pages 3 through 11.

ORIGINAL

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 ASSSOCIATION, 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 ADMINSTRATIVE 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 rules.[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.

ORIGINAL

BEFORE THE FLORIDA 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 8, 2006

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 13, 2006. Subsequent to these workshops, the P.S.C. has issued its order bifurcating these issues to allow the Municipal Utilities and Rural Electric Cooperatives to proceed with separate rulemaking regarding pole attachment and National Electric Safety Code standards.

4. Time Warner Telecom asserts that the Public Service Commission currently does not have jurisdiction over pole attachments, pole attachment rates or charges for pole attachments by third party pole attachers. While Time Warner Telecom does not object to the

Florida Public Service Commission exercising jurisdiction over pole attachments, the Florida Public Service Commission has currently chosen not to exercise its jurisdiction as may be delegated to the State through the Federal Communications Commission. Other parties' comments also assert the Public Service Commission may lack legislative authority to exercise pole attachment jurisdiction. Time Warner Telecom asserts that the proposed rules, to the extent they may allow additional charges or costs to be assessed to third-party pole attachers, are in violation of Federal Communications Commission rules and regulations which set pole attachment rates in the absence of State jurisdiction over these issues.

5. Time Warner Telecom suggests additional language be inserted in the rule as is shown in the annotated rule attached hereto as Exhibit 1, which provides that utilities and its customers shall bear any increased costs in the relocation, expansion, rebuilding or relocation of electric distribution facilities.

6. Time Warner Telecom is concerned with the proposed rule with regard to suggestions that the commission delegate to the electric companies the ability to establish written safety, reliability, capacity and engineering standards along with procedures for attachments to utility electric distribution poles. These procedures as suggested would provide that third party facilities could not be attached to the electric distribution poles if the facilities "impair electric system safety or reliability, do not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility service territory." Time Warner Telecom is concerned that such a broad grant of authority to the utility could result in discriminatory practices to third party attachers.

7. Granting to the electric utilities a broad implementation authority to determine safety and reliability standards, as well as capacity standards, could result in a systematic effort to discourage or prohibit third party pole attachers from utilizing electric distribution poles. Such a practice could fail to comport with recognized federal law granting usage of utility poles.

8. The proposed rule also provides that no attachments could be made to any electric utility distribution poles except in compliance with the attachment standards and procedures. Mandated compliance could allow a utility to systematically deny pole attachment rights under the guise of safety standards and again systematically exclude third parties from attachment. The standards developed by the electric utility may be calculated to provide a competitive disadvantage to Time Warner Telecom where such poles are owned by another competitive incumbent telecommunications company or utility seeking a competitive advantage.

9. Time Warner Telecom states that should the Commission adopt standards suggested by the utilities regarding pole attachments, then these standards should be consistent with federal law. Attachments should be allowed consistent with federal law, which laws should be reviewed by the commission as a part of these proceedings with regard to the issues of capacity and fees consistent with FCC rulings on this subject.

10. Time Warner Telecom also states that the Florida Public Service Commission is in essence delegating what the rules and regulations regarding third-party attachment and safety standards shall be to the rural electric utility companies and municipal electric utilities. Such a delegation is impermissible under Florida administrative law but also has the potential to threaten third-party attachers with engineering or safety standards which in essence will

"regulate off the poles" any third-party attachments. Time Warner Telecom suggests language in the portions of the rules which would provide that the adoption of the National Electric Safety Code safety standards shall become the standard for compliance. The Florida Public Service Commission shall then review each plan of each utility for consistency with that standard. By not allowing each utility to develop its own standards which exceed the standard or develop differing implementation methods regarding these standards, the Florida Public Service Commission can maintain a uniform standard to be applied to all third-party attachers. This uniform standard would ensure that each utility in its implementation would not exceed the minimum requirements to such an extent that local implementation standards, engineering practices or local safety standards would prevent an attacher from being allowed to attach to the pole. The uniform standard would also prevent the utility from allowing discriminating practices or impose additional costs to the attachers. Time Warner Telecom would be at a distinct disadvantage if the utilities utilized these standards to either transfer costs or used these standards to "regulate" attachers on the poles so that no further attachments would be allowed because of wind loading concerns. Time Warner Telecom as a competitive carrier would be economically and competitively unable to compete if these costs were imposed on Time Warner Telecom.

11. Time Warner Telecom has significant numbers of pole attachments both in the Tampa Bay region and in the Orlando service regions. For competitive reasons, Time Warner Telecom has filed a separate confidential attachment listing the exact numbers of pole attachments and approximate mileage of fiber optic cable which it currently uses to service its customers. However, for proprietary reasons, Time Warner Telecom has asked that such disclosure be kept confidential. Should the Commission or the Legislature mandate an

undergrounding of all service, Time Warner Telecom would emphatically note that such mandate would pose a significant economic burden on Time Warner Telecom and any other competitive communications carrier that attaches to the poles of the electric utilities. The current estimated price for undergrounding each mile of fiber optic cable is $65,000 per mile. Since competitive carriers have no rate base nor ability to apply for storm surcharge reconstruction costs, such a huge impact of capital construction costs could place a competitive carrier at a severe disadvantage by virtue of such a capital outlay, literally an outlay costing tens if not hundreds of millions of dollars.

12. With the entry of power companies into broadband competition or a concentrated effort by a competing telephone company which maintains poles, an anti-competitive effort could 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. Such a move could put competitive carriers at a significant competitive disadvantage by forcing the current pole attachers to move underground and spend mass amounts of capital without the ability to recover these capital costs unless the Commission specifically states the cost of undergrounding these attached utilities are to be borne by the pole owners or their customers.

13. In addition to these capital costs, Time Warner estimates that there will be an additional burden of an increase in the number of responses to One Call inquiries which will need to be answered. This will result in either company employees or contracted service employees responding to public requests for location markings of underground utility facilities. While anecdotal evidence suggests that underground utility maintenance may be less, Time Warner Telecom believes through its past experiences that maintenance costs are approximately the same for underground as they are for overhead cable services.

14. Time Warner Telecom is also concerned that there may be additional costs for right of way fees for the use of undergrounding 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 ROW fees, however, could be offset by a reduction in pole attachment fees paid to other utilities.

15. 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 underground potentially have significant anti-competitive effects upon competitive carriers such as Time Warner Telecom.

16. Rule 25-6.0343 for instance, requires that each utility will begin using rights of way along public streets, roads and highways including any rebuild or relocation of facilities whether underground or overhead. This could result immediately in a large construction expense for competitive carriers who are currently attached to facilities which run along the back edge or alleyway of lots. The only requirement is that the utilities seek input from third party attachers and coordinate the construction of these facilities with the third party attachers. Any cost implications are potentially left for the third party attacher to absorb. It is critical that this rule specifically state that the electric utilities or the pole owners, and not the attachers to the poles, must absorb the costs of converting to underground or moving existing facilities.

17. Rule 25-6.0343 as proposed provides that the utility is to establish and maintain safety, reliability, pole loading capacity and engineering standards for third-party attachers. These attachment procedures are "to meet or exceed the applicable edition of the National Electric Safety Code." Time Warner Telecom's concern as previously stated is that 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. While the rule attempts to state that the utility shall seek input from other entities, it does not provide that such input shall be adhered to nor utilized in establishing these standards. While the Commission has retained jurisdiction to resolve any disputes arising from the implementation of the rule, such 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 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, that they should be deleted from the rule to provide that the attachment's standards and procedures shall "meet" the applicable edition of the National Electric Safety Code and the Commission should be required to review each plan for conformity with this known standard. To allow each utility to exceed the National Electric Safety Code under its own terms could result in an "over-engineering" standard being imposed upon third-party attachers which could effectively regulate third-party attachers off the poles.

18. 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's outages have occurred when as an attacher, downed poles and wires are cleared from an area for reconstruction during a storm-related repair and cables which had not been severed and were continuing to provide service are severed as a part of the reconstruction event. Customers must then wait for restoration of

their telecommunications services while their electricity has already been restored. Time Warner Telecom had approximately $400,000 total in storm-related costs for the past 3 years. These costs were absorbed by Time Warner Telecom. Time Warner Telecom, believes the public and the Commission think it will benefit from placing utilities underground: however, Time Warner Telecom's experience would demonstrate that troubleshooting underground utilities can be problematic from time to time; flooding during storms can cause outages and that overall restoration times may in fact be similar whether utilities are underground or overhead.

COMMENTS ON PROPOSED RULES

19. Rule 25-6.0343 – The following changes are suggested: A new sentence is added to paragraph (1)(b) to provide: "The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code." In Paragraph (1)(d) the words "at a minimum" shall be stricken. Paragraph (3) shall be amended to strike the words "or exceed". Paragraph (4) shall be amended to provide: "The Commission shall review for consistency the construction standards and attachment standards and procedures developed by the utility pursuant to this rule. These standards shall be consistent with the National Electric Safety Code as adopted pursuant to this rule." Paragraph (4) is further amended to provide: "Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction rules and may be recovered as provided by other appropriate rules of the Commission to recover these costs."

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 testimony and that it be allowed to participate fully in the hearing as an affected party and to present further argument and oral statements on the proposed rules as may be necessary.

Respectfully submitted this 8th day of September, 2006.

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CERTIFICATE OF SERVICE

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EXHIBIT "A" TO TIME WARNER TELECOM'S RULE COMMENTS AND TESTIMONY WITH CHANGES AND DELETIONS SHOWN TO PROPOSED RULE

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all municipal electric utilities and rural electric cooperatives.

(b) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff in Tallahassee. [1]

(c) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(d) Each utility shall [2] comply with the applicable edition of the National Electrical Safety

Deleted:

Deleted: at a minimum

[1] See Comments/Testimony ¶ 6, 7, 8, 9, 10, 19 regarding delegation of standards.

[2] The text ", at a minimum" was deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 8, 9, 10, 19.

Code (ANSI C-2) [NESC].

1. The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

2. Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(e) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

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.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-

effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(a) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(b) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(c) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet [3]the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection (1)(d) of this rule and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability;

Deleted: or exceed

[3] The text "or exceed" has been deleted. Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 6, 7, 8, 9, 10, 12, 17, 19.

do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(b) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.

(4) In establishing the construction standards and the attachment standards and procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission. Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher. [redacted] [4]

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

[4] Set standard would not allow utility to exceed standard. See Comments/Testimony ¶ 5, 6, 11, 12, 13, 14, 15, 16, 17, 18, 19.

BEFORE THE FLORIDA 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

RESPONSE COMMENTS TO RULE COMMENTS AND TESTIMONY

COMES NOW Time Warner Telecom of Florida, L.P., as an affected party and files this its RESPONSE COMMENTS TO THE RULE COMMENTS AND TESTIMONY filed by the affected parties in the above styled docket and would show the following:

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 comments regarding proposed rules on pole attachments on September 8, 2006 for those rules applicable to municipal and rural electric cooperative utilities.

4. Time Warner Telecom filed written comments in this docket after the bifurcation of the dockets for municipal and cooperative utilities. Time Warner understood that negotiations were ongoing for development of a rule that recognized the differing

jurisdictional issues of rules dealing with the municipal and rural electric cooperative utilities.

5. Time Warner Telecom has reviewed the comments filed by the Florida Municipal Electric Association and the Florida Electric Cooperatives Association, Inc. regarding the rule. Time Warner has also reviewed the proposed supplemental comments and the Motion for Leave To File Supplemental Comments to the Proposed Rule, 25-6.0343. Time Warner has no objection to the motion for leave to file the supplemental comments.

6. Time Warner Telecom addresses these Response Comments to the Proposed Draft Rule developed by the municipal utilities, rural electric cooperatives and staff. Time Warner Telecom continues to suggest additional language is inserted in the proposed draft rule as shown in previously filed comments and the version of the annotated rule attached thereto as Exhibit 1. That Exhibit provided that the utilities and its customers shall bear any increased costs in the relocation, expansion, rebuilding or relocation of electric distribution facilities. This language would help to insure that such costs are not unfairly apportioned or burdened on third party attachers.

7. Time Warner Telecom is concerned with the newly proposed draft rule with regard to suggestions that the commission only receive reports regarding the application of the utilities standards of construction designed to implement the National Electrical Safety Code (NESC). The rule still requires compliance "at a minimum" with the NESC codes. Time Warner Telecom renews its concern that this language allows "over engineering" in excess of the standards which if used improperly and applied to third party attachers could "regulate off the poles" any third-party attachments. Time Warner Telecom suggests striking the "minimum" language in the portions of the rule which would then provide that the adoption

of the National Electric Safety Code safety standards would become the uniform standard for compliance. This uniform standard would ensure that each utility in its implementation would not exceed the minimum requirements to such an extent that local implementation standards, engineering practices or local safety standards would prevent an attacher from being allowed to attach to the pole. The uniform standard would also prevent the utility from implementing locally discriminatory practices or imposing additional unwarranted costs to the attachers. Time Warner Telecom would be at a distinct disadvantage if the utilities utilized these standards to either transfer costs or used these standards to "regulate" attachers on the poles so that no further attachments would be allowed because of wind loading concerns. Time Warner Telecom as a competitive carrier would be economically and competitively unable to compete if these costs were imposed on it.

8. Time Warner Telecom agrees with the Comments of the Rural Electric Cooperative Association that while street side or front street locations for utility facility siting are desirable, much more flexibility is needed in rural areas as a cost savings measure. While that language regarding front street locations is deleted from the proposed jointly developed proposed rule, Time Warner agrees with the rural electric cooperatives that the language should remain stricken. As long as adequate access for repair in emergencies is maintained, there should not be a required "front of lot" access requirement.

9. Time Warner Telecom states that it has concerns that no mechanism for dispute resolution is provided in the proposed amended rule as negotiated by staff and the utilities. The municipal electric association suggests that contractual rights through the courts and forums in front of public bodies provide an ample dispute forum for resolution of problems for pole attachers. Time Warner however asserts that those forums are neither quick nor

inexpensive avenues of resolution and suggests the commission continue to seek ways to arbitrate or provide an alternative forum other than the courts where disputes could be resolved. A forum through the Commission with its expertise, its staff knowledge of the NESC standards and its resources could resolve disputes without years of protracted litigation over pole attachments or design and attachment policies. Use of the Commission's interconnection jurisdiction or as staff had suggested, the use of a modified customer complaint process could resolve issues quickly and without costly court litigation.

10. Time Warner Telecom states that the rules should also allow for input by affected pole attachers into the development and use of the standards for wind loading and pole attachment standards by the utilities. Such input would be valuable and draw upon the expertise of the attachers as to needs, experience and standards with pole attachments. The rule does not state that the utility shall seek input from pole attachers or other entities and it does not provide that such input shall be reviewed and utilized in establishing the construction standards. The jurisdiction to resolve any disputes arising from the implementation of the standards could take years without a speedy and appropriate process and forum. The untimely resolution of disputes could favor the cooperatives and municipalities with each having its own standards and no readily available forum for the resolution of disputes over these standards.

11. Finally, the rule should provide a clear statement that the application of the standards to be developed regarding safety, engineering standards and procedures for attachments should not be used in a manner to discriminate against third party attachers. A statement in the rule clarifying this intent would help to prevent misapplication of the rule in

the future and help to thwart any intentional use of the standards to harm or prevent third party attachments.

COMMENTS ON PROPOSED RULE AS DRAFTED BY STAFF AND UTILITIES

12. Rule 25-6.0343 – The following changes are suggested: A new sentence is added as a new paragraph (6) to provide:

(6) "The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code."

13. In Paragraph (3)(a) the words and punctuation ",at a minimum," shall be stricken.

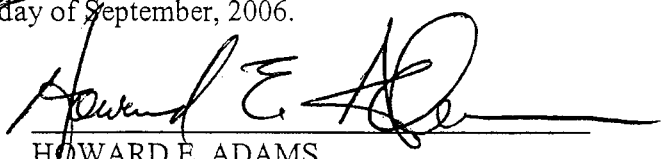
14. A new Paragraph (7) is created to provide:

(7) "Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution in aid of construction or other appropriate cost recovery mechanisms. "

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 testimony and that it be allowed to participate fully in the hearing as an affected party and to present further argument and oral statements on the proposed rules as may be necessary.

Respectfully submitted this 22nd day of September, 2006.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 22nd day of September 2006 to the following:

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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 (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 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.

(6) The construction standards provided in this rule shall not act to impair, restrict, impede, or discriminate against third-party attachers from attaching to poles where such attachments do not violate the safety standards of the applicable National Electric Safety Code.

(7) Any additional costs for expansion, rebuilding or relocation of the electric distribution facility shall be born by the utility or the customer as provided by the contribution-in-aid-of-construction or other appropriate cost recovery mechanisms.

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

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

History New _____.

ORIGINAL

FLORIDA PUBLIC SERVICE COMMISSION

Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events	Docket No. 060172-EU
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: September 8, 2006

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

On August 4, 2006, BellSouth Telecommunications, Inc. ("BellSouth") filed the Direct Testimony of Kirk Smith and Pam Tipton regarding proposed Rules 25-6.0341, 25-6.0342 and proposed amendments to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115 in the above-captioned dockets. Because that Direct Testimony applies to proposed Rule 25-6.0343 as well, BellSouth hereby adopts *in toto* and refiles the testimony of witnesses Smith and Tipton herein.

In addition to the comments contained in the previously filed Direct Testimony, BellSouth submits that the unique laws regarding municipalities present additional arguments for the Florida Public Service Commission ("Commission") to consider in evaluating proposed Rule 25-6.0343. Specifically, Section 337.401, Florida Statutes, sets out clear parameters for municipalities when exercising their police power over the use of streets and public rights-of-way by providers of communications services. For example, subsection (3)(b) of that statute mandates that rules and regulations that govern occupation of its

roads and rights-of-way "must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality...". *See* Section 337.401(3)(b), Florida Statutes. To the extent municipal electric cooperatives establish and maintain standards and procedures for aerial or underground construction, or that otherwise impact third party attachments, such standards and procedures constitute regulations that are subject to these statutory strictures.

Additionally, Section 350.81, Florida Statutes, addresses conditions by which government entities must abide in providing communications services over government-owned networks. Subsection (3)(d) of the statute requires such a governmental entity to apply its rules and regulations regarding subjects such as access to public rights-of-way and matters concerning use of governmental entity-owned poles in a non-discriminatory manner. Thus, to the extent municipal electric cooperatives that operate government networks establish and maintain standards and procedures for aerial or underground construction, or that otherwise impact third party attachments, such standards and procedures would be subject to the mandates of Fla. Stat. § 350.81.

Accordingly, in addition to all of those arguments, comments, and evidence that BellSouth previously presented and adopts herein, the

Commission should consider these additional statutory strictures in evaluating the validity of proposed Rule 25-6.0343.

Respectfully submitted this 8th day of September, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

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BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF KIRK SMITH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

AUGUST 4, 2006

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Kirk Smith. I am employed by BellSouth as Supervising Manager – Network Staff Support on the Network Operations and Industrial Engineering Staff for the nine-state BellSouth region. My business address is 3535 Colonnade Parkway, Rm. W3D, Birmingham, Alabama 35243.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Auburn University in 1973 with a Bachelor of Science degree in Industrial Engineering. I became employed by BellSouth in June 1973. I have held various line and staff positions with the Company, including positions in Construction, Engineering, Installation, Maintenance, Mechanization (Deployments and Support) and Contract Administration (Outside Plant Construction, Facility Locates, Engineering and Joint Use). I managed Regional Emergency Generator

Pools that deploy emergency generators in large scale power outages throughout BellSouth's nine-state region. I provided support in my capacity as Manager–Network Operations Support for BellSouth to the BellSouth Regional Emergency Control Center and have field experience in storm restoration, including hurricanes, ice storms and tornadoes. I assumed my current position as Supervising Manager – Network Staff Support on the Network Operations and Industrial Engineering Staff in October 2002, and my current responsibilities include supervising a team of BellSouth managers responsible for bidding and negotiating contracts for Outside Plant Construction, Facility Locating, Engineering, and Joint Use. The team is also responsible for administration of CATV license agreements, agreements for CLECs pertaining to pole attachments and conduit occupancy, agreements for attachments to towers on some central offices, and BellSouth regional damage prevention activities. I participated at the workshop held in this matter on July 13, 2006. I also participated in the workshop held in Docket 060077-TL regarding the mandated pole inspection cycle on February 21, 2006.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain how proposed new Rules 25-6.0341 and 25-6.0342, and proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115 of the Florida Administrative Code (the "Proposed Rules")[1] will impact

[1] Pursuant to Order No. PSC-06-0646-PCO-EU, BellSouth is required to file comments as to Proposed Rules 25-6.034, 25-6.0345, 25-6.064, 25.6.78, and 25-6.115 on August 11, 2006. For ease of convenience, BellSouth files comments for all of the Proposed Rules it takes issues with herein, except for Proposed Rule

BellSouth from an operational and cost perspective.[2] BellSouth owns approximately 459,000 poles in the state of Florida, with 307,459 of these bearing attachments placed by electric utilities. BellSouth's lines and facilities are attached to approximately 756,000 electric utility poles, including poles owned by investor-owned companies, municipal electrics and rural electric cooperatives. While the Proposed Rules, on their face, impose requirements on electric utilities, the Proposed Rules will significantly impact BellSouth and other entities that attach to electric utility poles.

Q. PLEASE PROVIDE AN OVERVIEW OF BELLSOUTH'S CONCERNS REGARDING THE PROPOSED RULES.

A. BellSouth appreciates the Commission's interest in minimizing widespread power outages in the state following hurricanes or other extreme adverse weather conditions. BellSouth is concerned, however, that the Proposed Rules are premature, upset the status quo of using the National Electric Safety Code ("NESC") as the uniform national standard by which power and telephone companies operate, and give each power company the license to unilaterally create its own construction standards for overhead and underground facilities. BellSouth is also concerned that the Florida Public Service Commission ("Commission") has not adequately assessed or considered the operational and cost implications the

25-6.0343. Per Order No. PSC-06-0632-PCU-EU, Rule 25-6.0343 will be addressed in a separate hearing, with initial comments due on September 8, 2006.

[2] My testimony on costs is based on estimates and assumptions because, until such time as we know how each electric utility will implement the Proposed Rules, it is impossible to identify the particular costs that BellSouth may experience.

Proposed Rules will have on BellSouth and other attaching entities, and; that, through the Proposed Rules, the Commission is effectively regulating pole attachments, even though, as explained by Ms. Tipton, it has no jurisdiction to do so. Finally, pole attachments are currently governed by joint use and pole license agreements between pole owners and attaching entities. The Proposed Rules will likely impact, and could interfere with, these contracts.

Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE PROPOSED RULES ARE PREMATURE.

A. Just six months ago, in February 2006, the Commission ordered electric utilities and telecommunications companies to inspect their poles every 8 years and conduct "both remaining strength assessments as well as pole attachment loading assessments." *See In re: Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program,* Docket No. 060077-TL, Order No. PSC-06-0168-PAA-TL (Issued March 1, 2006) (hereinafter "*Telecom Inspection Order*") and *In re: Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection program,* Docket No. 060078-EI, Order No. PSC-06-0144-PAA-EI (Issued February 27, 2006) (hereinafter "*Electric Utility Inspection Order*"). The Commission also imposed significant and detailed reporting requirements on the parties. Specifically, both industries had to file an initial "comprehensive wood pole inspection plan." *See Telecom Inspection Order* at p. 11; *see also Electric Utility Inspection Order* at p. 11. They also have to

file an annual report on a going forward basis that includes a review of the methods we used to determine NESC compliance for strength and structural integrity (taking into account pole loading where required), and summary data and results of the prior year's inspections, addressing the strength, structural integrity, and loading requirements of the NESC. *See Telecom Inspection Order* at p. 9; *see also Electric Utility Inspection Order* at p. 10. From participating in the Commission's workshop on the proposed pole inspection plan and reading the *Telecom Inspection Order* and the *Electric Utility Inspection Order*, I understood that one of the primary purposes of the pole inspection process was for pole owners to review their poles to assure that the poles are "reasonably robust" and that pole loadings are appropriate, presumably so that if problems were identified, they could be addressed.

BellSouth worked very successfully with several major electric companies in the State to approach this pole inspection process in a joint fashion. The early results of the pole inspections are just now starting to come in, and the first report is due to the Commission in March 2007. Instead of first reviewing the data before implementing new rules, the Commission has adopted rules which result in electric companies adopting new overhead construction, pole loading capacity, and engineering standards and procedures. Indeed, the Proposed Rules specifically call for electric utilities to adopt standards for third party pole attachments that "meet or exceed" NESC requirements, presupposing that third-party attachments on poles cause safety and reliability problems. There has been no evidence presented to the Commission, nor any data compiled, indicating that this is the case. The Proposed

Rules do not take into account that the chief stress on the distribution infrastructure results from the significant load placed by the power industry – not telephone or cable. Moreover, additional factors, such as vegetation, affect the reliability of the electric infrastructure. Without reviewing the pole inspection data and looking at all of these factors, the Commission is putting the cart before the horse.

Additionally, as the Commission is aware, BellSouth owns approximately 40% of the poles in its serving area in the State. These Proposed Rules, therefore, do not address a large percentage of Florida's poles and the attachments on those poles. It seems logical and more efficient for the Commission to collect data from the mandated pole inspection process and conduct a comprehensive analysis, taking into account the interests and concerns of all pole owners and attaching entities, their respective differences (i.e., price cap regulated vs. rate-of-return regulated), before adopting rules that upset long-standing uniform construction standards that, on their face, apply only to a portion of the poles in the State.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO RULE 25-6.034.

A. Both the power and telecommunications industries currently follow the NESC as the rule of thumb, nationally. The Proposed Rules alter that national uniform scheme and allow each power company to set its own standards. Specifically, Proposed Rule 25-6.034(2) allows each investor-owned electric utility to establish and

maintain its own construction standards for overhead and underground facilities. Given this broad discretion, electric utilities may use the Proposed Rules as an opportunity to enhance their infrastructure and pass the associated costs along to attaching entities. For instance, the electric utilities could demand that attachments be upgraded, rearranged or removed, or that poles be replaced, and then attempt to impose those costs on attaching entities, like BellSouth, despite the fact that BellSouth might not be the cost-causer or the beneficiary of the taller or stronger poles. In particular, to the extent that joint use agreements expressly address, among other things, which entity is responsible to pay for the costs of upgrades, replacement, and taller/stronger poles, the Proposed Rules could have an unintended consequence. While BellSouth does not concede the argument and specifically claims that such an argument would be inappropriate[3], the electric utilities could attempt to use the Commission's Proposed Rules to claim that, under existing joint use agreements, BellSouth is responsible for some portion of the costs of the upgrades -- costs that the electric utilities ordinarily pay per the agreements -- despite the fact that BellSouth would not be the cost-causer nor the beneficiary of the taller or stronger poles.

The electric companies might also attempt to use their leverage as the majority pole owners to amend existing agreements so that they can recover the costs resulting

[3] By acknowledging the existence of this argument, BellSouth does not concede it or believe that it is appropriate. In fact, in an abundance of caution, BellSouth denies the argument and reserves all rights and defenses associated with its joint use agreements and any claim that the Proposed Rules impact said agreements.

from the Proposed Rules. This is surely an unintended consequence of the Proposed Rules which needs to be considered.

The Commission should be cognizant of this cost-shifting risk, which potentially results in the electric utilities recovering all of the additional costs mandated by the Proposed Rules from attaching entities, and the electric utility rate payers through rate-of-return regulation.

Additionally, if electric utilities place new taller or stronger poles, BellSouth and other attaching entities will certainly face higher pole rental rates as electrics will argue that their average historical pole costs and associated carrying costs have increased. To the extent this does occur and as later referenced in my testimony regarding Proposed Rule 25-6.064, BellSouth should receive a credit or reduction against the historical cost of the electric utility's average historical pole cost for the customers' contribution-in-aid of construction, and payments made by other attachers, to ensure that pole rental fees are not further skewed.

Furthermore, the fact that the Proposed Rules allow each of the 40-plus electric utilities in Florida to set its own construction standards will also impact the design and construction processes of attaching entities, like BellSouth, and will certainly lead to cost increases that are not insignificant. For example, in implementing the Proposed Rules, the electrics may decide to enhance their infrastructure by placing non-wood poles, like steel, fiberglass or concrete poles. Currently, BellSouth

technicians are not adequately equipped with the tools to place attachments on these types of poles. Taking into account BellSouth providing its technicians with the proper tools and training, and the increase in the time it would take to place attachments on these poles, BellSouth's cost to place attachments could increase by approximately $55 per attachment.

BellSouth will likely not only be faced with the increased expense of designing and installing facilities to meet standards that are excessive in light of its infrastructure requirements, but we will also incur the added costs of training our thousands of employees on the potential 40-plus differing standards and any subsequent revisions to those standards. BellSouth technicians assigned to one wire center generally work on poles owned by multiple power companies operating within the geographical boundaries of that wire center. Currently, technicians rely on the NESC as the uniform construction standard. Under the Proposed Rules, each electric utility within the wire center boundaries could have its own set of standards. Also, though less common, as BellSouth places facilities, especially aerial facilities, it could move from one electric company's serving area into another such that poles one through five in a pole line might be governed by one power company's standards and poles six through ten in the same pole line, by another. It will be a challenge to adhere to differing standards within one wire center and communicate each power company's differing standards to the field technicians to ensure compliance.

Additionally, changes in construction standards and procedures could translate into a significant increase in BellSouth's workload. The Company might have to hire additional management and non-management employees, as well as buy more equipment and vehicles. We are unable to estimate the potential increase in these types of expenses because, again, we do not yet know how the electrics will implement the Proposed Rules.

To add to the uncertainty, there are no guidelines governing how often an electric utility can revise its standards or how quickly BellSouth and other attachers would have to change their operations to comply with those revisions. As a point of interest, Proposed Rule 25-6.034(4) contemplates that the electrics use the 2002 edition of the NESC as a baseline for developing their individual construction standards. My understanding is that the NESC is revised every 5 years, so we can expect an updated edition in 2007. According to the Proposed Rules, the electrics have 6 months to develop construction standards, putting their deadline in 2007. At a minimum, the Commission should consider postponing adoption of the Proposed Rules until it has had a chance to review the 2007 edition of the NESC to avoid another mandate from this Commission for changes to the electric utilities' newly-issued standards.

BellSouth is also concerned that Proposed Rule 25-6.034(4)(b) expressly grandfathers electric facilities constructed prior to the 2002 edition of the NESC, providing that such facilities are governed by the edition of the NESC in effect at

the time of the initial construction. The specific reference to the electric facilities implies that the pre-2002 facilities of the other attaching entities do not enjoy the same grandfathering protection. This is contrary to standard language in joint use contracts that the attachments of all pole users should be governed by the edition of the NESC in effect at the time the attachment was placed.

Further, Proposed Rule 25-6.034(4)(b), together with Proposed Rules 25-6.0342 and 25-6.0343 which require electrics to establish and maintain standards and procedures for third-party attachments, could be read to justify, or even require, random inspections of third-party attachments by the electric utilities to ensure that third party attachments comply with the latest edition of the NESC and the electric utilities' standards. The electric utilities would likely try to pass the cost of these inspections on to the attaching entities – again, through a creative, unreasonable interpretation of an existing provision in the joint use and pole attachment license agreements, or by using their leverage to amend those agreements.

Moreover, Proposed Rule 25-6.034(5) provides that each investor-owned utility shall "establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times" for three different classes of construction: new construction, "major planned work" and "targeted critical infrastructure facilities." The Proposed Rules are overbroad and vague because these terms are not defined. Planned work that is "major" could include distance in feet or miles, number of lanes, length of

construction or other factors. "Targeted critical infrastructure" could include electrical substations or gas stations, all community hospitals or some neighborhood walk-in facilities. Again, the Proposed Rules give each electric utility *carte blanche* to determine where extreme wind loading standards will be applied.

Proposed Rule 25-6.034(6) requires electric utilities to establish guidelines and procedures to prevent damage to underground and overhead facilities from flooding and storm surges. The Commission should consider the impact of this proposed rule on all entities in these geographical areas with underground and overhead facilities, not just electric utilities.

Proposed Rule 25-6.034(7) requires the electric utilities to "seek input" from attaching entities when developing construction standards, but the rule does not require that the electric utilities collaborate with, or obtain the approval of, the attaching entities. Thus, on a case by case basis, BellSouth will have to balance whether to install attachments in accordance with construction standards it may not agree with, or seek relief from the Commission (assuming the Commission had jurisdiction), presumably with the expense and burden of proving to the Commission why the standards in question are unreasonable. I anticipate that giving the electric utilities broad discretion over construction standards, with no parameters and no mandated level of collaboration from the attaching entities, will likely result in contentious relationships between the parties when, in fact, it is in the best interest of the public for them to act in cooperation.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH PROPOSED NEW RULE 25-6.0341.

A. Proposed Rule 25-6.0341 calls for electric utilities, as a general rule, to place overhead and underground facilities adjacent to public roads in front of customers' premises. If the electric utility moves its aerial facilities from the rear of a property to a pole line in the front, BellSouth would have to decide whether to stay on the abandoned pole, or relocate to the new pole. It would cost BellSouth an average of $250 - $300 per pole to remain on the abandoned pole and assume ownership of it, along with resulting administrative costs. BellSouth, as the new pole owner, may also have to expend time, manpower, and money to secure an easement from the property owner. These newly obtained poles would increase BellSouth's pole inspection costs by roughly $30 per pole; and BellSouth would have to expend the time, manpower, and money to negotiate new agreements with the other cable and communications providers attached to the poles.

BellSouth's lines and facilities are attached to approximately 756,000 electric utility poles, including poles owned by investor-owned companies, municipal electrics and rural electric cooperatives. The following table represents assumptions that the electric companies will abandon between 10% and 40% of poles that have BellSouth attachments. It also provides a forecast of cost to BellSouth to assume ownership of those poles for a per pole cost within a range of $250 - $300.

Cost Per Pole	10% Abandon Rate	20% Abandon Rate	30% Abandon Rate	40% Abandon Rate
$250	$18,900,000	$37,800,000	$56,700,000	$75,600,000
$275	$20,790,000	$41,580,000	$62,370,000	$83,160,000
$300	$22,680,000	$45,360,000	$68,040,000	$90,720,000

So, if we assume that the electric utilities will abandon 10% of their poles to BellSouth in a given year, BellSouth could potentially face a minimum cost of $18,900,000, which does not include payments made to property owners to secure easements, resources expended to negotiate easements and new pole attachment agreements, and associated administrative costs.

BellSouth's other option would be to relocate its attachments to the new pole at the front of the property.[4] We estimate the cost of placing the new aerial facility to be anywhere between $25 and $40 per foot. If we assume that BellSouth relocated 10% of its existing aerial cable attached to electric utility poles in a given year (which equates to 18,900,000 feet of aerial facilities) to follow the electrics' move to front property lines, BellSouth would face a minimum cost of $472,500,000. The following table provides an impact based on a range of possibilities:

Cost Per Foot	10% of Existing Aerial Cable Replaced	20% of Existing Aerial Cable Replaced	30% of Existing Aerial Cable Replaced	40% of Existing Aerial Cable Replaced
$25.00	$472,500,000	$945,000,000	$1,417,500,000	$1,890,000,000
$30.00	$567,000,000	$1,134,000,000	$1,701,000,000	$2,268,000,000
$35.00	$661,500,000	$1,323,000,000	$1,984,500,000	$2,646,000,000
$40.00	$756,000,000	$1,512,000,000	$2,268,000,000	$3,024,000,000
$45.00	$850,500,000	$1,701,000,000	$2,551,500,000	$3,402,000,000

[4] It is not unreasonable to think that BellSouth might be forced to choose relocation, even if its facilities on the rear pole line are in excellent condition, if a property owner refuses to grant BellSouth a new easement or seeks to take economic advantage of BellSouth's situation.

$50.00	$945,000,000	$1,890,000,000	$2,835,000,000	$3,780,000,000

If the electric utility chooses to move aerial facilities from the rear property and bury them in the front and BellSouth chooses to join in the conversion, the costs would increase by approximately $10 per foot so that the cost of conversion would be between $35 and $50 per foot.

Alternatively, should an electric company choose to replace existing poles with taller, stronger poles to strengthen an existing pole line, BellSouth would be required to transfer its facilities. Using the same assumption that the electric utilities will replace between 10% and 40% of their poles, the following table represents an estimate of cost to BellSouth to transfer facilities from one pole to the other. The BellSouth cost per transfer represents the price range from a simple to a more complex transfer.

Cost per Transfer	10% Electric Company Pole Change-out	20% Electric Company Pole Change-out	30% Electric Company Pole Change-out	40% Electric Company Pole Change-out
$95	$7,182,000	$14,364,000	$21,546,000	$28,728,000
$280	$21,168,000	$42,336,000	$63,504,000	$84,672,000
$470	$35,532,000	$71,064,000	$106,596,000	$142,128,000

Realistically, in response to the Proposed Rules, an electric utility would incorporate a varied approach to 'hardening' its network, which would involve a combination of the three aforementioned scenarios. Assuming BellSouth will face a combination of these scenarios, the range of the cost impact is between approximately $500,000,000 for a 10% rate of change and $4,000,000,000 for a 40% rate of change.

In addition to the above costs, it is near certain that a push for electric utilities to bury facilities along public roads will also result in an increase in damage to BellSouth's existing buried facilities, as electric utilities will generally need to place their facilities beneath those of telecommunications and cable companies to meet NESC requirements. Through June 2006, BellSouth has already experienced approximately 2,500 incidents of damage to its buried facilities, with a total cost to BellSouth in excess of $3 million. Seventy-five percent of these incidents occurred in street-side environments. While BellSouth diligently tries to recover its damages, BellSouth is not always successful and frequently has to expend resources to pursue collection activities, including litigation against the wrongdoer. Further, BellSouth experiences additional costs in these scenarios because (1) it must pull technicians away from other tasks to address facility damages and; (2) it takes preventative measures by talking to the excavators and making site visits to ensure, to the extent possible, that BellSouth facilities are protected. Additionally, an increase in burying facilities will result in an increase in BellSouth's locate costs as entities seeking to underground will request that BellSouth locate its existing buried facilities. Accordingly, the Proposed Rules will only result in the exponential increase in the costs BellSouth currently experiences with street-side, underground facilities.

In sum, as evidenced by the above, there can be no dispute that the Proposed Rules will impact BellSouth and other attaching entities on many different fronts, with a great potential for significant cost increases. It is impossible to provide an accurate

estimate of the total anticipated costs because we have no idea how each of the 40-plus electric utilities in Florida will implement the Proposed Rules.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH PROPOSED NEW RULE 25-6.0342.

A. Proposed New Rule 25-6.0342 requires electric utilities to establish and maintain standards and procedures for attachments by others to transmission and distribution poles. Critically, this provision mandates that the Third-Party Attachment Standards and Procedures "meet or exceed" the NESC and other applicable standards imposed by state and federal law so that attachments do not, among other things, impair the safety and reliability of the electric system and exceed pole loading capacity; and that third party facilities are "constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." Further, the Proposed Rule prohibits attachments that do not comply with the electric utility's Attachment Standards and Procedures.

As a primary concern and as explained in Pam Tipton's testimony, the Commission has no jurisdiction over pole attachments and, thus, this Proposed Rule is an improper exercise of the Commission's power.

From an operational perspective, the adoption of this Proposed Rule is premature and nullifies the Commission's orders mandating an 8 year pole inspection cycle.

Proposed Rule 25-6.0342 presupposes that third party attachments on poles cause safety or reliability problems. As I previously mentioned, there has been no evidence presented to the Commission, nor any data compiled, indicating that this is the case.

Also to the point that the Proposed Rules are premature, I reiterate the fact that the 2002 NESC is due to be revised in 2007. Proposed Rule 25-6.0342 mandates that the Third-Party Attachment Standards and Procedures "meet or exceed" the 2002 edition of the NESC. As previously discussed, it would be more efficient, at a minimum, to await the issuance of the 2007 NESC guidelines to avoid the need for further revisions to pole construction standards.

Like previous sections, Proposed Rule 25-6.0342 also disregards the advantages of uniform standards for pole construction and attachments and gives electric utilities *carte blanche* over pole attachments. While problems may have occurred with certain providers failing to comply with applicable safety requirements, no data has been compiled to indicate that the problems warrant drastic changes to the current uniform procedures in place to ensure safety and reliability. Additionally, as I mentioned previously, the chief stress on the distribution infrastructure results from the significant load placed by the power industry, not by telephone or cable. Moreover, other factors such as vegetation affect the reliability of the electric infrastructure. Addressing only attachments in the Proposed Rules paints a misleading and lopsided picture.

Lastly, as more fully explained in my testimony regarding the proposed amendments to Rule 25-6.034, BellSouth is also concerned that Proposed Rule 25-6.0342 could be read to justify, or even require, random inspections of third-party attachments by the electric utilities and that the electric utilities would likely try to pass the cost of these inspections on to the attaching entities through a creative, unreasonable interpretation of existing provisions in joint use and pole attachment license agreements, or by using their leverage to force an amendment to the those contracts. More significantly, despite the fact that the attaching entity might not be the cost-causer or the beneficiary of the taller or stronger poles, the electric utilities could use the same tactics to demand that attachments be upgraded, rearranged or removed, or that poles be replaced, potentially at considerable cost (capital and expense) to the attaching entities, like BellSouth. This attempted cost-shifting is not supported by the joint use agreements and, as such, BellSouth is not responsible for such costs.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO RULE 25-6.064.

A. Section 25-6.064 requires an investor-owned electric utility to calculate amounts due as contributions-in-aid-of-construction from customers who request new facilities or upgraded facilities. As an attacher that pays pole rental fees, BellSouth pays a portion of the electric utility's costs when the electric utility installs a taller pole or a stronger pole of the same class because those costs are used when

factoring rental rates. To ensure that pole rental rates are not further skewed, BellSouth should receive a credit or reduction against the historical cost of the electric utility's average pole cost for the contribution-in-aid-of-construction, and for payments made by other attachers.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO 25-6.078.

A. To the extent an electric utility's policy filed pursuant to Proposed Rule 25-6.078 affects the installation of underground facilities in new subdivisions, or the utility's charges for conversion implicates new construction, I reiterate the concerns raised in my testimony regarding the proposed amendments to Rule 25-6.034.

Q. PLEASE EXPLAIN BELLSOUTH'S CONCERNS WITH THE PROPOSED AMENDMENTS TO RULE 25-6.115.

A. BellSouth recognizes that several electric utilities have tariffs addressing the recovery of costs for converting existing overhead facilities. Proposed Rule 25-6.115 incorporates language on Undergrounding Fee Options that includes the recovery of conversion costs from the customer. The Commission needs to consider, as Pam Tipton's testimony will explain in more detail, that BellSouth, unlike electrics, cannot pass conversion costs along to its customers.

Q. EXPLAIN YOUR STATEMENT THAT THE PROPOSED RULES WILL LIKELY IMPACT OR INTERFERE WITH JOINT USE AND POLE ATTACHMENT LICENSE AGREEMENTS.

A. I have touched on this point throughout my testimony, but as a primary example, joint use and other pole attachment license agreements generally address, among other things, which entity is responsible for paying the costs of new or upgraded poles and the transfers to those poles. Typically, under the terms of its joint use agreements with electric utilities, BellSouth would not contribute to these costs because BellSouth would not be the cost-causer, or the beneficiary of the new or upgraded poles. The electric utilities might attempt, however, to use the Proposed Rules as justification to interpret existing joint use provisions in a creative, unintended, and unreasonable manner to attempt to pursue these costs from BellSouth. BellSouth maintains that such a position would be contrary to the plain language and the spirit of the joint use agreements. Also as I previously mentioned, the electrics might try to use their leverage as majority pole owner to renegotiate unreasonable amendments to existing agreements.

This example not only shows how the Proposed Rules might interfere with existing joint use and pole attachment license agreements, but also how they will likely produce the unintended consequence of creating a contentious relationship between the electrics and attaching entities. It seems logical that in attempting to increase service reliability and minimize public safety issues, especially following

hurricanes, the Commission should seek to foster positive working relationships between pole owners and attaching entities.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF PAM TIPTON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NOS. 060172-EU and 060173-EU

AUGUST 4, 2006

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Pam Tipton. I am employed by BellSouth Telecommunications, Inc., as a Director, Regulatory and External Affairs, responsible for regulatory policy implementation in BellSouth's nine-state region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Arts in Economics from Agnes Scott College in 1986, and a Masters Certification in Project Management from George Washington University in 1996. I have over 18 years experience in telecommunications, with my primary focus in the areas of process development, services implementation, product management, marketing

strategy and regulatory policy implementation. I joined Southern Bell in 1987, as a manager in Interconnection Operations, holding several roles over a 5-year period including process development and execution, quality controls and services implementation. In 1994, I became a Senior Manager with responsibility for End User Access Services and implementation of Virtual and (later) Physical Collocation. In 2000, I became Director, Interconnection Services, responsible for development and implementation of Unbundled Network Element ("UNE") products, including responsibility for access to poles, ducts and conduit, and later development of marketing and business strategies. In June 2003, I became responsible for implementation of state and federal regulatory mandates for Local and Access markets and the management of the switched services product portfolio. I assumed my current responsibilities on August 1, 2005.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?

A. Yes. I have appeared before the Florida Public Service Commission in Docket No. 980800-TP, In re: Petition for Emergency Relief of Supra Telecommunications and Information Systems, Inc., Against BellSouth Telecommunications, Inc.; Docket No. 030851-TP, In the Matter of Implementation of requirements arising from Federal Communications

Commission triennial UNE review: Local Circuit Switching for Mass Market Customers; and Docket No. 041269-TP, In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc. I have filed written testimony in other Dockets before this commission that were settled prior to hearing.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide BellSouth's policy position regarding the Commission's jurisdiction to regulate pole attachments. I will also explain the difference between rate-of-return and price-cap regulated industries, their respective ability (or inability) to recover increased costs and how these distinctions impact the different industries that will be subject to the Proposed Rules (Rules 25-6.0341, 25-6.0342, and 25-6.0343, and proposed amendments to Rules 25-6.034, 25-6.064, 25-6.078 and 25-6.115).

Q. PLEASE ELABORATE ON BELLSOUTH'S POSITION REGARDING THE COMMISSION'S JURISDICTION TO REGULATE POLE ATTACHMENTS.

A. While I am not a lawyer, it is my understanding that the Commission does not have the authority to adopt any rule to the extent it regulates the terms

and conditions associated with pole attachments. First, Section 224 of the Telecommunications Act, places authority to regulate pole attachments squarely on the Federal Communications Commission ("FCC"):

> (b)(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions.

Subsection (c)(1) limits this authority in any case where such matters are regulated by a State and subsection (c)(2) provides limited circumstances in which this exception applies. My reading of 47 U.S.C. § 224 (c)(2) is that the FCC has jurisdiction over pole attachments unless a state certifies the following to the FCC: (1) that it regulates rates, terms, and conditions for pole attachments; and (2) that in so regulating such rates, term, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

Q. HAS THE COMMISSION ATTEMPTED TO CERTIFY TO THE FCC THAT IT HAD JURISDICTION OVER POLE ATTATCHMENTS AND IF SO, WHAT WAS THE OUTCOME?

A. Yes. While I am not a lawyer and BellSouth's legal counsel will file a brief addressing this issue more thoroughly, the Florida Supreme Court rejected the Commission's prior attempt to certify to the FCC, pursuant to 47 U.S.C. § 224, that it had jurisdiction over pole attatchments in Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980). Specifically, in Hawkins, the Commission, pursuant to 47 U.S.C. § 224, notified the FCC that it had authority to regulate pole attachment agreements. This declaration of authority was challenged on the grounds that the Commission did not have the authority under Florida law to regulate the agreements or the interests of cable subscribers. In quashing the Commission's certification, the Florida Supreme Court relied on the Commission's own prior finding in Southern Bell Tel. & Tel. Co., 65 PUR 3d 117, 119-20 (Fla.Pub.Serv.Comm'n 1966) that it lacked authority over pole attachments:

> In 1913, when the Florida legislature enacted a comprehensive plan for the regulation of telephone and telegraph companies in this state, and conferred upon the commission authority to administer the act and to prescribe rules and regulations appropriate to the exercise of the powers conferred therein, the science of television transmission and the business of operating community antenna television systems were not in existence. The 1913 Florida legislature, therefore, could not have envisioned much less have intended to regulate and control the television transmission facilities and services with which we are concerned....*We must conclude...that the Florida Public Service Commission has no jurisdiction or authority over the operations of community antenna television systems and the rates they charge, or the service they provide to their customers.*

Id. at 649-50 (emphasis added).

Using this analysis, the Court recognized that the legislature had not subsequently conferred any relevant jurisdiction upon the Commission between 1913 and 1980. Accordingly, based upon my reading of Hawkins, the Court found that the Commission lacked jurisdiction over pole attachments.

To my knowledge, there has been no statutory grant of jurisdiction over pole attachments or cable subscribers or providers since 1980 when the Florida Supreme Court decided Hawkins.[1] Therefore, it appears that the Commission does not have the authority to implement the Proposed Rules to the extent those rules result in the regulation of the rates, terms, and conditions associated with pole attachments.

Q. WHAT IS YOUR RESPONSE TO THE ARGUMENT THAT 47 USC § 224 DOES NOT COVER CHARGES BETWEEN ILECS AND ELECTRIC UTILITIES?

[1] Indeed, since the Hawkins decision, the Commission has recognized that it lacks jurisdiction over the regulation of pole attachment agreements. *See In re: Application of Marco Island Utilities, a division of Deltona Utilities, Inc. for a new class of service – effluent for spray irrigation in Collier County*, Docket No. 870743-SU, Order no. 20257 (November 4, 1988) ("Fourteen years later, the Florida Supreme Court dismissed the Commission's resurrected claim of jurisdiction over the regulation of pole attachment agreements between regulated telephone companies and cable television systems. *Teleprompter Corporation v. Hawkins*, 384 So.2d 648 (Fla. 1980)")

A. This argument is a "red herring" designed to circumvent the Supreme Court's decision in Hawkins. The Proposed Rules give the electric utilities the license to regulate all third-party attachments, not just those placed by ILECs. The federal Pole Attachment Act, in 47 U.S.C. § 224(c), clearly outlines what a state commission must do in order to regulate pole attachments placed by a cable television system or provider of telecommunications services on poles owned by utilities, including electric companies. Whether or not the FCC has jurisdiction over the rates ILECs pay for pole attachments does not change the fact that the Commission has not met the certification requirements of the federal statute and, thus, has no jurisdiction over pole attachments.

Q. ARE THERE OTHER REGULATORY DISTINCTIONS THE COMMISSION MUST CONSIDER WHEN IMPOSING NEW RULES TO GOVERN POLE ATTACHMENTS?

A. Yes. In addition to the jurisdiction issue I discussed above, the Commission should consider the rate-of-return vs. price-cap regulation distinction between the electric companies and most ILECs.

Q. PLEASE DESCRIBE THE DISTINCTION BETWEEN RATE-OF-RETURN REGULATED AND PRICE-CAP REGULATED INDUSTRIES AND

EXPLAIN WHY THE COMMISSION SHOULD CONSIDER THE DISTINCTION IN EVALUATING THE PROPOSED RULES.

A. At a high level, under rate-of-return regulation, a company is entitled to recover allowable operating costs and a "fair" rate of return. Conversely, under price-cap regulation, a company's prices are capped at a certain rate and these rates generally cannot be modified to recover operational costs. In Florida, electric utilities are rate-of-return regulated while the majority of the ILECs, like BellSouth, are price-cap regulated. This difference in regulation is not insignificant, especially as it relates to the Proposed Rules.

Specifically, the Proposed Rules do not take into account, that unlike the electric utility monopolies that can pass along to their customers any costs incurred in complying with the Proposed Rules via rate-of-return regulation, BellSouth is price-regulated and will be economically and competitively disadvantaged in adding such costs to the bills of its customers (assuming it even has the ability to raise its rates). Indeed, unlike the electric utilities, BellSouth must compete with regulated and unregulated companies for every customer it obtains in Florida. As Mr. Smith discussed in his testimony, the "passed-through" costs to BellSouth and other companies could be tremendous. The Commission needs to take into account these regulatory and competitive distinctions in

evaluating the impact of the Proposed Rules to ensure that they do not economically or competitively disadvantage a particular type of company.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

ORIGINAL

FLORIDA 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

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").

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 electrics 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 electrics, 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.

BELLSOUTH TELECOMMUNICATIONS, INC.

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FLORIDA PUBLIC SERVICE COMMISSION

Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events	)	Docket No. 060172-EU
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: August 4, 2006

COMMENTS OF EMBARQ FLORIDA, INC. REGARDING PROPOSED RULES 25-6.034, 25-6.0341 and 25-6.0342

INTRODUCTION

Pursuant to Order No. PSC-06-610-PCO-EU and Order No. PSC-06-0646-PCO-EU, Embarq Florida, Inc. ("Embarq") submits these comments and proposed rule changes for the rule hearing on these proposed rules scheduled for August 31, 2006.[1] At the hearing, representatives of Embarq will attend to present and answer questions about the legal, operational and cost issues Embarq raises regarding these proposed rules. In addition, Embarq incorporates and expands upon the comments previously filed by Embarq in its July 28, 2006 filings.[2]

While Embarq agrees that public safety is vital and that improvements to the electric infrastructure may be necessary to mitigate some affects of hurricane force winds

[1] While the Second Order on Procedure provides a due date for comments on Rule 25-6.034 (and other rules) of August 11, 2006, Embarq's comments on this rule are intertwined with its comments on Rule 25-6.0342. Therefore, Embarq is including its comments on Rule 25-6.034 in this filing.

[2] Letter from Embarq dated July 28, 2006 requesting a hearing and proposing lower cost regulatory alternative; Letter from Embarq dated July 28, 2006 providing post-workshop comments for the July 13, 2006 workshop, attached as Exhibit EQ-1.

ORIGINAL

Dorothy Menasco

From: Donovan, Chrystal D [LTD] [Chrystal.Donovan@embarq.com]
Sent: Friday, September 08, 2006 4:42 PM
To: Filings@psc.state.fl.us
Subject: 060512 Embarq Comments
Attachments: 060152 Embarqs Comments.pdf

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Docket No. 060512

Title of filing:Embarq Comments

Filed on behalf of Embarq
59 pages

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September 8, 2006

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

RE: Docket Nos.060512-EI
Embarq's Comments

Dear Ms. Bayò:

Embarq Florida, Inc. ("Embarq") previously filed comments related to Proposed Rules 25-6.034, 25-6.0341 and 25-6.0342, F.A.C., related to investor-owned utilities, in Docket Nos. 060172 and 060173. Proposed Rule 25-6.0343, F.A.C., contains identical language related to construction standards, location of facilities and attachment standards applicable to municipal electric utilities and rural electric cooperatives. Embarq is attaching its earlier-filed comments related to Rules 25-6.034, 25-6.0341 and 25-6.0342, F.A.C., as its comments on Embarq's issues and concerns with Proposed Rule 25-6.0343, F.A.C., in compliance with Order No. PSC-06-0632-PCO-EU.

Sincerely,

Susan S. Masterton

Attachments

Cc: Larry Harris, Esq., FPSC
Charles J. Rehwinkel
Interested Persons of Record

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FLORIDA PUBLIC SERVICE COMMISSION

Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events	)	Docket No. 060172-EU
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
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COMMENTS OF EMBARQ FLORIDA, INC. REGARDING PROPOSED RULES 25-6.034, 25-6.0341 and 25-6.0342

INTRODUCTION

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While Embarq agrees that public safety is vital and that improvements to the electric infrastructure may be necessary to mitigate some affects of hurricane force winds

[1] While the Second Order on Procedure provides a due date for comments on Rule 25-6.034 (and other rules) of August 11, 2006, Embarq's comments on this rule are intertwined with its comments on Rule 25-6.0342. Therefore, Embarq is including its comments on Rule 25-6.034 in this filing.

[2] Letter from Embarq dated July 28, 2006 requesting a hearing and proposing lower cost regulatory alternative; Letter from Embarq dated July 28, 2006 providing post-workshop comments for the July 13, 2006 workshop, attached as Exhibit EQ-1.

and flooding, Embarq is concerned with the proposed rulemaking that provides unilateral authority to electric utilities to establish construction standards and attachment criteria. This unilateral delegation of the Commission's rulemaking authority may significantly jeopardize Embarq's ability to provide quality and expedient service to its customers in a cost effective manner and may also affect the long standing joint use terms and conditions and operating standards currently in place today. In addition, Embarq believes that the proposed rules related to location of facilities from back-lot to front-lot are too broad in encompassing the relocation of facilities in certain situations. Embarq proposes that applying the rules only to new construction is a more practical and cost-effective approach.

RULES 25-6.034 AND 25-6.0342 RELATING TO CONSTRUCTION AND ATTACHMENT STANDARDS

The proposed rules are an invalid exercise of delegated legislative authority

The propoed rules improperly delegate the Commission's rulemaking authority to electric utilities

Rulemaking is a function of administrative agencies and can only be exercised if the authority to make rules has been specifically delegated to an agency by the Legislature. See, *Southwest Florida Water Management District v. Save the Manatee Club*, 773 So. 2d 594 (Fla. 1st DCA 2000) Delegation of agency rulemaking authority to private entities is unlawful. See, *Florida Attorney General Opinion 078-53*, issued March 28, 1978. In that opinion, the Attorney General responded to an inquiry from the Public Service Commission regarding its regulation of motor carriers. One of the questions the Commission asked concerned whether the submission of rates by private rate organizations to the Commission for approval was an unlawful delegation of the

Commission's statutory responsibility for rate setting. The Attorney General determined that it was not, because the Commission made the final determination regarding the appropriate rates.

The basis for the Attorney General's opinion was a Florida Supreme Court case relating to the investment of certain highway funds based on the recommendation of a board that did not consist entirely of "public" officers. See, *State of Florida v. State Road Department*, 173 So. 2d 693 (Fla. 1965). In that case, the Supreme Court ruled that there was no unlawful delegation, as long as the non-public board operated in an advisory capacity only and the final decision was made by a public official.

In sections 366.04 and 366.05, F.S., the Legislature has delegated to the Commission the authority to adopt rules establishing safety and reliability standards for electric utilities. In 2006, the Legislature expanded that authority by providing that as far as safety the NESC standards, as adopted by the Commission, are "minimum" standards and that as far as reliability the Commission has the ability to "adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service." See, sections 16 and 17 of chapter 2006-230, Laws of Florida attached as Exhibit EQ-2. Contrary to the express terms of the statute and Florida law, in Proposed Rules 25-6.034 and 25-6.0342 the Commission improperly delegates to electric utilities the rulemaking authority delegated to the Commission by the Legislature.

The Commission does not have jurisdiction to regulate pole attachments

The Commission does not have jurisdiction over pole attachments and, therefore, the Commission does not have the authority to adopt proposed Rule 25-6.0342 to the extent it regulates attachments. See, *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648 (Fla.

1980). Under 47 U.S.C. § 224, the FCC has jurisdiction over pole attachments unless a state commission certifies the following to the FCC: (1) that it regulates rates, terms, and conditions for pole attachments; and (2) that in so regulating such rates, term, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services. *See* 47 U.S.C. § 224 (c)(2). In *Hawkins*, the Commission notified the FCC that it had authority to regulate pole attachment agreements pursuant to 47 U.S.C. § 224. In response to a challenge of the Commission's jurisdiction, the Supreme Court ruled that the Commission did not have the authority under Florida law to regulate pole attachment agreements.

For electric utilities and incumbent local exchange companies, such as Embarq, attachment terms, conditions and rates are governed by long-standing agreements between the companies. These agreements provide the manner of attachments, for construction and attachment standards, and for cost sharing of the expenses associated with construction and attachments. The Commission's proposal to allow the electric utilities to unilaterally adopt standards, particularly standards for third-party attachments, without regard for the provisions of these agreements may constitute an impairment of private contracts in violation of the Florida Constitution. See, *United Telephone Company of Florida v. Public Service Commission*, 496 So. 2d 116 (Fla. 1986) (invalidating orders of the Commission because they interfered with the private contracts between telecommunications companies relating to jurisdictional separations). See also, *GTE and BellSouth v. Public Service Commission*, Case Numbers 99-5368RP & 99-5369-RP, Agency Final Order issued July 13, 2000 (invalidating rules of the Commission

because they interfered with private contracts between telecommunications companies and their customers).While hardening outside plant against storm damage is a worthwhile endeavor, the proposed rules indirectly impose changes to the rates, terms and conditions of long standing joint use agreements between electric utilities and telephone companies, exceeding the Florida Commission's lawful jurisdiction.

The proposed rules unreasonably affect Embarq's operations and costs as they relate to pole attachments and joint use facilities

Electric utilities should not be allowed to unilaterally set standards

The National Electrical Safety Code (NESC) sets forth the criteria for construction, attachments and joint use that historically have been negotiated and implemented by the electric and telecommunications industries. There is nothing in the rulemaking record that supports that the damage caused by the 2004 and 2005 hurricanes in Florida was the result of the inadequacy of the NESC standards. Exhibit EQ-3 includes revisions to proposed Rules 25-6.034 and 25-6.0342 that reflect Embarq's proposal that the rules incorporate only the NESC standards.

The construction standards currently used by Embarq for aerial and buried facilities were derived from industry-accepted standard processes, methods and procedures which included the personal, property, and electrical safety requirements established by ANSI, Bellcore (now Telcordia) and the NESC. The electric, telecommunications and cable industries have always worked cooperatively to set standards for joint use of poles and joint placement of facilities underground. The proposed rules unnecessarily turn this cooperative endeavor into an adversarial process by charging electric utilities with setting the standards and relegating telecommunications companies and cable companies to the role of challengers. The context of the proposed rules indicates that any challenges likely

will be resolved based solely on the effect of the standards relating to the provision of electric service, not telecommunications or cable service. This is patently unfair and not in the best interests of the state's consumers.

Allowing a single industry to set the standards for all is unreasonable, especially when inherently there is some measure of contention involved in setting these standards due to pole attachments and the cost-sharing and space allocation arrangements contained in existing joint use agreements. Construction standards significantly affect not only electric utilities but also affect local exchange companies, since both entities are both pole owners and attachers. Providing unilateral authority to electric utilities to set the standards without input from other pole owners places an unreasonable level of control with an industry that has historically been contentious toward non-electric companies, and, at times, has evidenced a disregard for the rights of the other pole owners.

For instance, a concern with allowing the electric utilities to define construction standards is the potential that a utility could establish shorter, e.g. 30'- 35' class 1 poles, as its standard, which would effectively eliminate attachment space on the pole for communication attachments. This decision would affect the telecommunications companies' ability to cost-effectively reach their customers and would violate established FCC rules. Third-party attachers might also be required to utilize electric-company-managed rights-of-way and easements to access electric company poles. Over the years, construction corridors have been significantly reduced by the various publicly and privately owned companies placing facilities. This situation would become yet another potential roadblock to the cost-effective provisioning of service to Embarq customers

should electric utilities deny or monopolize rights-of-way or seek unbalanced cost sharing for the use of their easements.

Allowing electric utilities to define construction standards also create the potential that telecommunications-company-owned poles that carry electric distribution facilities will not meet the electric utility hardening standards. In this scenario, the telecommunications company might be required to place a significantly larger class of poles or to place steel poles or concrete poles. Aside from the significant first-cost expense of the poles, additional expense would be required to maintain a unique inventory of materials and hardware used for attaching facilities, as well as specialized labor to place these types of poles. Existing agreements between the telecommunications company and the electric company would be voided and new agreements would be required, with no benefit to the telecommunications company or its customers. Again, the telecommunications company would face a potential, significant increase in cost that Embarq fears may be unrecoverable under the statutory price regulation scheme that governs Embarq's rates.

Standard for aerial and underground facilities

In the area of underground construction, accepted industry standards, based largely on the NESC standards, have been used to guide electric utilities and local exchange carriers in the construction and use of common trenches. (An example of these standards, applicable to Embarq, is attached as Exhibit EQ-4.) These industry standards for undergrounding have been very successful for many years and have not created any significant safety or customer-affecting concerns. Embarq is supportive of joint trench in

new construction and some rebuilds. However, the use of joint trench requires coordination and agreement between all parties to mitigate customer-affecting trouble.

In addition, the proposed rules would be more acceptable to Embarq if aerial construction standards were mutually designed and agreed upon among the pole owners and attachers and if the standards assume reasonable cost sharing. Any adopted rules should ensure plant design planning and construction use a combination of aerial and underground construction to meet "far-side" (both sides of the street) distribution and that planning and construction are done in a collaborative environment. Building separate outside plant networks or employing different methodologies to reach common customers will impose a greater cost on all of the current joint participants.

Any standards exceeding the NESC should be adopted by the Commission by rule

If the rulemaking record supports the implementation of any standards for pole construction, pole attachments or joint use of underground trenches that exceed the NESC, the Commission should adopt these excessive standards in the rules, giving all affected parties the opportunity to craft the standards in the most cost-effective and operationally sound manner, considering the impacts on all affected entities. Embarq is not aware of any NESC standards that should be exceeded, so it cannot provide an amended rule with these new standards at this time. However, to the extent the electric utilities or the Commission propose any standards in excess of the NESC standards, Embarq believes those standards should be explicitly set forth in the rules.

RULE 25-34.0341 RELATING TO THE LOCATION OF FACILITIES

The proposed rule unreasonably affects Embarq's operations and costs

Impacts of moving aerial from back to front

New construction

Initial, or new "front-lot" construction in planned, yet-to-be developed subdivisions would, as the Commission points out, provide some benefit (once the area is established) to the restoration of facilities following a severe weather event, due in part to the utility's ability to move from home to home, unencumbered by yard fencing, storage buildings, or swimming pools that remained intact following the weather event. Embarq has suggested that the proposed rule should apply only to these new facilities. Exhibit EQ-5 includes revisions to Proposed Rule 25-6.0341 that reflect Embarq's proposal that the rule apply only to new construction.

Aerial to aerial relocation

The ultimate cost of reconstructing existing aerial plant will be site and route specific with considerable variability. It is entirely predictable, however, that the costs of moving existing aerial plant from the rear of residential lots to the front will generate an extreme and costly construction environment. Reconstructing cables in existing neighborhoods will require significant disruption to customers, due to the tearing up of yards, trees, landscaping, fences, sidewalks, driveways, and streets. The cost of working in this environment is extremely high compared to doing work ahead of time as neighborhoods are initially constructed. While there are certainly benefits to underground plant and or having stronger overhead plant, it should be kept in mind that even this new plant will experience some failure during extreme hurricanes, and therefore the cost/benefit of re-constructing aerial plant is suspect and unquantified at this point.

If the electric utility reconstructs overhead facilities, moving aerial cable from back-lot to front is not a simple matter of moving an existing cable. It requires all new

facilities at the front, and scrapping the existing facilities at the back. Putting the cost of the cable work aside, the new investment in taller heavier poles placed along the road will bring a cost increase as well through higher attachment fees. Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so. Aside from additional labor and material costs of the pole-based facilities, as well as those attached to the customer's home, e.g. NID, drop, grounding protection, additional time and resources would be required to transfer active subscriber services from the back-lot facilities to the newly constructed front-lot facilities. In addition, facilities attached to the customer's home may have to be relocated to a completely new area of the home in order to receive service drops from the front-lot pole line.

Should front-line construction for electric companies be approved, Embarq might choose to purchase in-place electric company poles, cut to a height no greater than 30', and continue to utilize the back-lot provisioning of services. Aside from the "first cost" view of utilizing existing power poles, a benefit would be that telecommunication facilities are now constructed on poles with a higher class rating. An example is a 45 foot class 3 electric pole cut to 30 feet to support communications would in essence be rated as a "stronger" structure when it only supports facilities lower than 30 feet.

In the electric overhead-to-overhead replacement situation, if Embarq also remains overhead, the construction cost to rebuild its aerial line on new electric utility poles is estimated to fall in a range of $110k to $170k per mile, depending on whether the electric

utility attempts to charge the attacher for the cost of the new pole. If every mile of Embarq's shared overhead routes were rebuilt, the resulting cost estimates would range from $360 million to $560 million, which is an extreme result which obviously calls for a more granular definition and cost benefit analysis before a rule is adopted.

Aerial to underground relocation

If the electric utility places new underground facilities, they propose that the cost recovery of the highly-disruptive trench/bore situation be guaranteed to the electric utility through a combination local entity funding of seventy-five percent (75%) and electric rate increases of the remaining twenty-five percent (25%). Nowhere do the proposed rules address how the attacher, in this case Embarq, will recover its costs. As with sharing overhead facilities discussed above, the potential for the electric utility to inappropriately allocate to attaching parties such as Embarq the shared underground trenching costs which are already 100% recovered thru their 75%/25% proposal. Any costs passed to the attacher relative to joint electric utility and incumbent local exchange company (ILEC) underground construction should acknowledge that the electric utility already has included 100% recovery in their proposal.

In the electric overhead-to-underground replacement situation, if Embarq also buries facilities, the construction cost to retire aerial facilities and rebuild with buried is estimated to fall into a range of $190k to $260k per mile if Embarq has to pay for the trench. If every mile of shared overhead routes were to be buried, this would amount to $630 million to $860 million for Embarq. Assuming that the electric utilities' proposal to recover 100% of their costs from the combination of local government and electric rate increases results in a cost-free use of the joint trench, the estimated cost range in that

context is $90K to $120K per mile. Again extending this unit cost range to the entire potential population of existing aerial plant results in unworkable total cost estimates of $300M to $400M.

Additional cost considerations

In addition, Embarq is concerned with the added cost and construction of additional poles and material to provision customers living on the opposite side or "far side" of the main distribution facilities. Depending on plant/facility design, front-line construction could effectively triple the number of poles over the number used in back-lot construction.

Moving the back-lot leads to front-lot construction creates construction complexities and concerns not generally found in back-lot construction scenarios. Typically the water, gas and sewer lines all occupy the street side rights- of- ways (ROW) and/or cross the ROW on each side of the street to reach each home. New or replacement construction significantly increases the potential of damage to these existing utilities. In addition, repair activities by the water, sewer and gas companies, increases facility protection and maintenance costs for pole owners and pole attachers in areas where ground disturbance degrades the integrity of the pole. Despite required notification to one call location centers, accidents still occur.

The current back-lot construction methodology allows Embarq and others attached to the same poles the ability to reach twice the number of homes out of the single facility as front lot construction allows. The front-lot construction requires facilities to be placed on each side of the street or requires directional drilling of the street about every fourth home and requires pulling facilities under the street to a distribution point on the "far

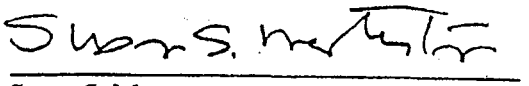
side", a process which must be replicated for the entire length of the street. Existing gas, water and sewer utilities create a somewhat perilous situation in that during the boring operation a nick in any one of those facilities would create a very costly and potentially deadly situation. Past history has shown that there have been instances across the country where just a nick in a natural gas line has destroyed property and taken lives.

CONCLUSION

Based on Embarq's comments as set forth above, Embarq requests that the Commission adopt changes to the proposed rules that:

- Adopt the NESC as the basis for electric utility construction and attachment standards in Proposed Rules 25-6.034 and 25-6.0342.
- Set forth the specific standards in excess of the NESC in Proposed Rules 25-6.034 and 25-6.0342, if standards in excess of the NESC are determined to be cost-effective and justified to increase electric utility safety and reliability,.
- Apply Proposed Rule 25-6.0341 only to new construction.

Respectfully submitted this 4th day of August 2006.



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July 28, 2006

Ms. Blanca Bayò, Director
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RE: Docket Nos.060172 & 060173-EI
Embarq's Request for Hearing and Proposal for Lower Cost Alternatives

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth Embarq's request for a hearing and its proposal for lower cost regulatory alternatives, in accordance with the Notice of Rulemaking issued June 28, 2006 (Order No. PSC-06-0556-NOR-EU) and ch. 120, F.S.

Request for Hearing

In accordance with s. 120.54(3)(c)1., F.S., and Rule 28-103.004, F.A.C. Embarq requests a hearing on Proposed Rule 25-6.034, F.A.C. Embarq also understands that Proposed Rules 25-6.0341, 6.0342 and 6.0343 are already set for hearing (See, Order No. PSC-06-0610-PCO-EU and Order No. PSC-06-0632-PCO-EU), but to the extent a formal request for hearing may be necessary for these rules this letter also serves as that request.

Embarq is affected by the proposed rules because Embarq is a lawful third-party attacher to electric utility poles under federal law and agreements entered into between Embarq and individual electric utilities. Embarq currently has in place an estimated 250,000 attachments with approximately 30 electric utilities in Florida. The rules proposed by the Commission will affect both the manner and costs of Embarq's attachments. Embarq is requesting a hearing so that it will have an opportunity to present information to the Commission regarding Embarq's legal, operational and cost concerns with the rules as they are currently proposed.

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Proposal for lower cost alternatives

In accordance with s. 120.541, F.S., Embarq proposes the following lower cost alternatives to the rules proposed by the Commission. Embarq is a "substantially affected person" because it is a lawful third-party attacher as described above and the rules will affect the manner and costs of Embarq's attachments. The Commission already has recognized that Embarq's interests are affected by the proposed rules by including a requirement that the electric utilities seek input from third-party attachers related to construction and attachment standards and location decisions (although Embarq believes these provisions are insufficient to protect Embarq's interests).

First, regarding Proposed Rules 25-6.034 and 25-6.0342, F.A.C., relating to standards for electric utility construction and standards for third-party attachments to electric utility poles (and those portions of Proposed Rule 25-6.0343 that contain similar language for municipal and rural cooperative electric utilities), Embarq proposes that the 2002 National Electric Safety Code (NESC) is the appropriate standard for electric company construction and for third-party attachments. Embarq believes the adoption of this standard by the Commission substantially accomplishes the goals of the statutes that are implemented by the rules. The goals of these statutes are, broadly, to establish standards that ensure the availability of adequate and reliable energy, ensure the safety of the public and ensure the availability of adequate services and facilities to those reasonably entitled to receive such services. (See, ss. 366.04 and 366.05, F.S.) During the 2006 legislative session the Legislature adopted ch. 2006-230, Laws of Florida, amending ss. 366.04 and 366.05, F.S., to allow the Commission to adopt standards that exceed the NESC standards; however, the only requirement the law imposes upon the Commission is to adopt the NESC standards. The Legislature specifically did not alter its earlier finding that compliance with the NESC standards constitutes adequate safety standards for the protection of the public.

The pole attachment agreements generally used within the industry provide that poles and attachments will be constructed in accordance with the NESC standards. In addition, the rulemaking record does not support the insufficiency of the NESC standards (particularly as they relate to attachments) as the cause of electric outages experienced during extreme weather events, nor does the record support that exceeding the NESC standards will result in fewer or shorter electric outages. In fact, the Commission itself does not know what additional standards might be necessary to achieve the statutory objectives and, so, has delegated to the individual electric utilities the ability to adopt standards in excess of the NESC, entirely at each utility's discretion.[1] The NESC provides uniform standards that allow third parties to plan for and place attachments throughout the state on a consistent basis. The proposed rules would allow electric utilities to adopt potentially widely varying standards that could significantly increase the operational difficulties and costs imposed on third-party attachers.

[1] Embarq believes that this is an unlawful delegation of the Commission's rulemaking authority and intends to raise this issue through the appropriate proceedings at the appropriate time.

The proposed rules leave the adoption of these "excessive" standards entirely within the discretion of the electric utilities (which Embarq believes is unlawful). While the proposed rules require the electric companies to "seek input" from third parties and allow disputes regarding the standards to be brought before the Commission, there is no clear mechanism for notice to third parties of the standards the electric utilities propose to adopt (in fact, the utilities have stated that much of this information is proprietary). Also, there are no clear guidelines for the Commission to decide whether a proposed excessive standard is appropriate. Because the proposed rules do not set forth specific standards in excess of the NESC or a specific process for developing or challenging these standards, Embarq is not able to accurately assess the cost impact of any additional standards, the administrative costs of providing "input" to the electric utilities in the development of the standards, or the costs Embarq would incur if it finds it necessary to file a challenge with the Commission. In addition, given that the Commission cannot know what the standards ultimately will be, the Commission cannot determine the added value of the rule or the additional costs that any new standards exceeding the NESC may engender. At least, setting forth the specific, fact-supported construction or attachment standards in the rules would be a lower cost alternative because it would provide Embarq a clear point of entry in the development of the standards and allow Embarq to assess, and perhaps ameliorate, the cost impacts associated with a particular standard.

Regarding Proposed Rule 25-6.0341, F.A.C., related to the location of electric utilities (and those portions of Proposed Rule 25-6.0343 that contain similar language for municipal and rural cooperative electric utilities), Embarq proposes that a lower cost alternative is to apply the rule only to the installation of new facilities. Embarq believes that a prospective application of the rule addresses the access issues that the Commission asserts are the basis for the proposed rule. A prospective rule would be a more cost-effective alternative, as well, in that it would avoid the considerable costs (as well as the disruption) associated with removing existing facilities currently located in the back of a customer's premises and placing new facilities in the front or in the public right-of-way.[2] Embarq believes these relocation costs and disruptions are likely to significantly outweigh any potential benefits of improved access to the facilities for restoration purposes.

In addition to this letter and to the cost estimates filed today under separate cover, Embarq intends to file comprehensive comments addressing Embarq's legal, operational and cost concerns with the proposed rules by the August 4, 2006 deadline set forth in Order No. PSC-06-0610-PCO-EU. In addition, Embarq intends to fully participate in the rulemaking hearing for Proposed Rules 25-6.0341 and 25-6.0342 scheduled for August 31, 2006, in the hearing for Proposed Rule 25-6.0343 scheduled for October 4, 2006 and in the hearing for Proposed Rule 25-6.034, F.A.C., whenever it is scheduled.

[2] Embarq has provided an estimate of the potential costs associated with Proposed Rule 25-6.0341, F.A.C., as requested at the July 13th staff workshop in a separate filing on this same day.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,

Susan S. Masterton

Cc: Larry Harris, Esq., FPSC
Charles J. Rehwinkel
Interested Persons of Record

CERTIFICATE OF SERVICE
DOCKET NO. 060172-060173

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28th day of July, 2006, to the following:

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Susan S. Masterton

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Exhibit: EQ-1

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July 28, 2006

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RE: Docket Nos.060172 & 060173-EU – Post July 13, 2006 Workshop Comments of Embarq

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth the post July 13, 2006 workshop comments of Embarq. These comments are filed in addition to the request for a hearing and proposal for lower cost regulatory alternatives filed by Embarq on this same date in accordance with the Notice of Rulemaking issued June 28, 2006.

The staff workshop held on July 13, 2006 was noticed as being for the purpose of allowing third party attachers to present data on the cost impact, if any, of proposed Rules 25-6.0341 and 25-6.0342, F.A.C., on their companies. While Embarq did not have cost data available to present at the workshop, the company has attempted to provide such data in these post workshop comments.

Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities.

Requirement for electric facilities to be placed adjacent to a public road, normally in front of the customer's premises

Up to this point, the proposed rulemaking lacks a sufficiently defined scope necessary to accurately estimate the potential cost impacts to third party attachers by requiring electric distribution facilities to be placed adjacent to a public road, normally in front of the customer's premises, to the extent practical, feasible and cost-effective. The electric utilities' filings have been vague as to the scope and volume of their planned re-construction of existing aerial plant and have instead simply made vague references to a ten year plan. A request for estimated cost, against this vague backdrop is ill-fated at the outset. The ultimate cost of reconstructing existing aerial plant will be a site- and route-specific result with

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considerable variability. It is entirely predictable however that the costs of moving existing aerial plant from the rear of residential lots to the front will generate an extreme and costly construction environment. Reconstructing cables in existing neighborhoods will require significant disruption to customers, due to the tearing up of yards, trees, landscaping, fences, sidewalks, driveways, and streets. The cost of working in this environment is extremely high compared to doing work ahead of time as neighborhoods are initially constructed. (Embarq is supportive of higher standards in initial construction situations.) While there are certainly benefits to underground plant and or having stronger overhead plant, it should be kept in mind that even this new plant will experience some failure during extreme hurricanes, and therefore the cost/benefit of re-constructing aerial plant is suspect and unquantified at this point.

Requirement for electric facilities to use easements and road rights-of-way for all new and replacement electric overhead distribution facilities

If the electric utility reconstructs overhead facilities, moving aerial cable from back-lot to front is not a simple matter of moving an existing cable. It requires all new facilities at the front, and scrapping the existing facilities at the back. Putting the cost of the cable work aside, the new investment in taller heavier poles placed along the road will bring a cost increase as well through higher attachment fees. Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so.

In the electric overhead-to-overhead replacement situation, if Embarq also remains overhead, the construction cost to rebuild its aerial line on new electric utility poles is estimated to fall in a range of $110k to $170k per mile, depending on whether the electric utility attempts to charge the attacher for the cost of the new pole. Again, given the current complete lack of scope, Embarq can only report at this time that if every mile of its shared overhead routes were rebuilt, the resulting cost estimates would range from $360 million to $560 million which is an extreme result which obviously calls for a more granular definition and cost benefit analysis before being allowed to proceed.

Requirement for electric facilities to use front-lot easements provided by the applicant for all new and replacement electric underground distributions facilities.

If the electric utility places new underground facilities, they propose cost recovery of the highly-disruptive trench/bore situation be guaranteed to the electric utility through a combination local entity funding of (75%) and electric rate increases of the remaining (25%). Nowhere does the electric utility industry's proposals address how the attacher, in this case Embarq will recover its costs. As with sharing overhead facilities discussed above, the potential for the electric utility to

inappropriately allocate to attaching parties such as Embarq the shared underground trenching costs which are already 100% recovered thru their 75/25% proposal. Any costs passed to the attacher relative to joint electric utility and incumbent local exchange company (ILEC) underground construction should acknowledge that the electric utility already has included 100% recovery in their proposal.

In the electric overhead-to-underground replacement situation, if Embarq also buries facilities, the construction cost to retire aerial facilities and rebuild with buried is estimated to fall into a range of $190k to $260k per mile if Embarq has to pay for the trench. Again lacking necessary definition of scale and scope, Embarq is left to report that if every mile of shared overhead routes were to be buried, this would amount to $630 million to $860 million for Embarq. Assuming that the electric utility's proposal to recover 100% of their costs from the combination of local government and electric rate increases results in a cost-free use of the joint trench, the estimated cost range in that context is $90K to $120K per mile. Again extending this unit cost range to the entire potential population of existing aerial plant results in unworkable total cost estimates of $300M to $400M.

Requirement for electric facilities to use road rights-of-way for conversions of overhead to underground facilities requested by a local government.

Embarq's input for this scenario would be the same as for the previous aerial to underground scenario described above.

Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.

Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

Rule 25-6.0342 Third-Party Attachment Standards and Procedures.

Requirement for electric facilities to establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles.

Due to a lack of necessary information the cost of following new written standards issued by the electric utility can not be quantified at this time. The

responses to the questions above attempt to provide some understanding for unit costs and potentially extremely costly outcomes were these rules to go forward.

Impact and estimated incremental cost of requiring the Attachment Standards and Procedures to meet or exceed the National Electric Safety Code and other applicable state and federal laws.

The cost of the not yet defined higher standards for new facilities cannot be quantified. However, the cost of changing standards on existing facilities is potentially prohibitive and warrants further cost/benefit analysis as explained above.

Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.

The proposed rule requirement that would have each electric utility seek input from third-party attachers in establishing its Attachment Standards and Procedures and have disputes resolved by the Commission does not address the concerns of Embarq. Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

These comments are submitted specifically to address the questions from the July 13 workshop regarding quantification of cost impacts to Embarq of the proposed rules. Embarq will file additional comments on the proposed rule on August 4, 2006 as required by the pre-hearing order.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,

Susan S. Masterton

cc: Larry Harris, Esq., FPSC
Charles J. Rehwinkel
Interested Persons of Record

CERTIFICATE OF SERVICE
DOCKET NO. 060172 & 060173-EU

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28th day of July, 2006, to the following:

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9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under s. 220.192.

13. The amount taken as a credit for the taxable year under s. 220.193.

Section 15. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.—

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c)~~(b)~~ The anticipated environmental impact of each proposed electrical power plant site.

(d)~~(c)~~ Possible alternatives to the proposed plan.

(e)~~(d)~~ The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f)~~(e)~~ The extent to which the plan is consistent with the state comprehensive plan.

(g)~~(f)~~ The plan with respect to the information of the state on energy availability and consumption.

Section 16. Subsection (6) of section 366.04, Florida Statutes, is amended to read:

366.04 Jurisdiction of commission.—

(6) The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall, at a minimum:

(a) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and

(b) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2).

The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 17. Subsections (1) and (8) of section 366.05, Florida Statutes, are amended to read:

366.05 Powers.—

(1) 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.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action

taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 18. Section 366.92, Florida Statutes, is created to read:

366.92 Florida renewable energy policy.—

(1) It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and at the same time, minimize the costs of power supply to electric utilities and their customers.

(2) For the purposes of this section, "Florida renewable energy resources" shall mean renewable energy, as defined in s. 377.803, that is produced in Florida.

(3) The commission may adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable energy resources. The commission may change the goals. The commission may review and reestablish the goals at least once every five years.

(4) The commission may adopt rules to administer and implement the provisions of this section.

Section 19. (1) The Florida Public Service Commission shall direct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine the hardening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007.

(2) The commission shall conduct a review to determine what should be done to enhance the reliability of Florida's transmission and distribution grids during extreme weather events, including the strengthening of distribution and transmission facilities. Considerations may include:

(a) Recommendations for promoting and encouraging underground electric distribution for new service or construction provided by public utilities.

(b) Recommendations for promoting and encouraging the conversion of existing overhead distribution facilities to underground facilities, including any recommended incentives to local governments for local-government-sponsored conversions.

(c) Recommendations as to whether incentives for local-government-sponsored conversions should include participation by a public utility in the conversion costs as an investment in the reliability of the grid in total, with such investment recognized as a new plant in service for regulatory purposes.

(d) Recommendations for promoting and encouraging the use of road rights-of-way for the location of underground facilities in any local-government-sponsored conversion project, provided the customers of the public utility do not incur increased liability and future relocation costs.

(3) The commission shall submit its review and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2007.

(4) This section does not limit the existing jurisdiction or powers of the commission. It may not be construed to delay or defer any activities that are currently docketed which relate to matters to be addressed by the study required by this section, nor may it be construed to delay or defer any case or proceeding that may be initiated before the commission pursuant to current statutory powers of the commission.

Section 20. Subsections (5), (8), (9), (12), (18), (24), and (27) of section 403.503, Florida Statutes, are amended, subsections (6) through (28) are renumbered as (7) through (29), respectively, and new subsections (6) and (16) are added to that section, to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.—As used in this act:

(5) "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding and shall include the documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program~~.

(6) "Associated facilities" means, for the purpose of certification, those facilities which directly support the construction and operation of the electrical power plant such as fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

(8) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, and ~~but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(9) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for

PART III

GENERAL MANAGEMENT REQUIREMENTS

25-6.034 Standard of Construction.

(1) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all investor-owned electric utilities. ~~The facilities of the utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.~~

(2) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. ~~The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard Requirements, Terminology and Test Code for Instrument Transformers, ANSI 57.13, and has found them to contain reasonable standards of good practice. A utility that is in compliance with the applicable provisions~~

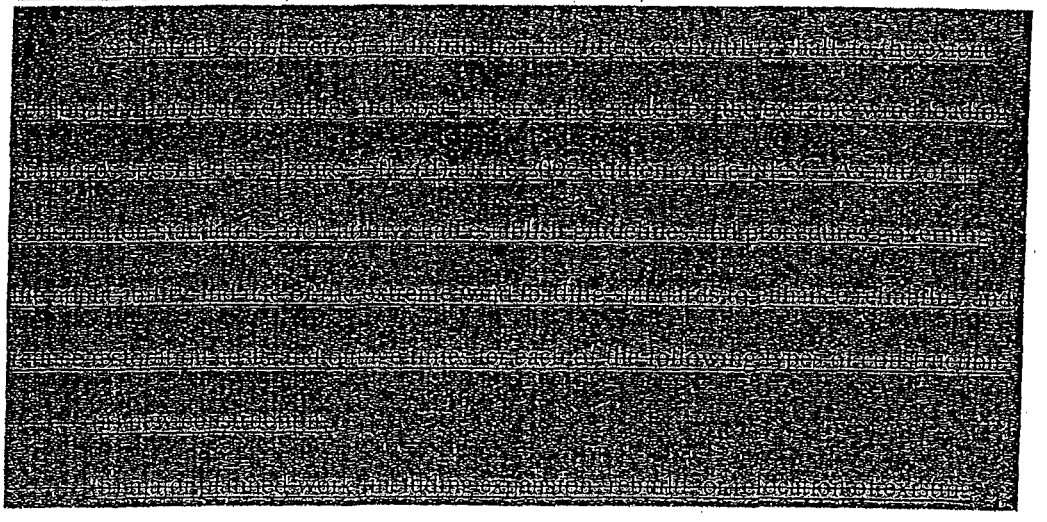
~~of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices.~~

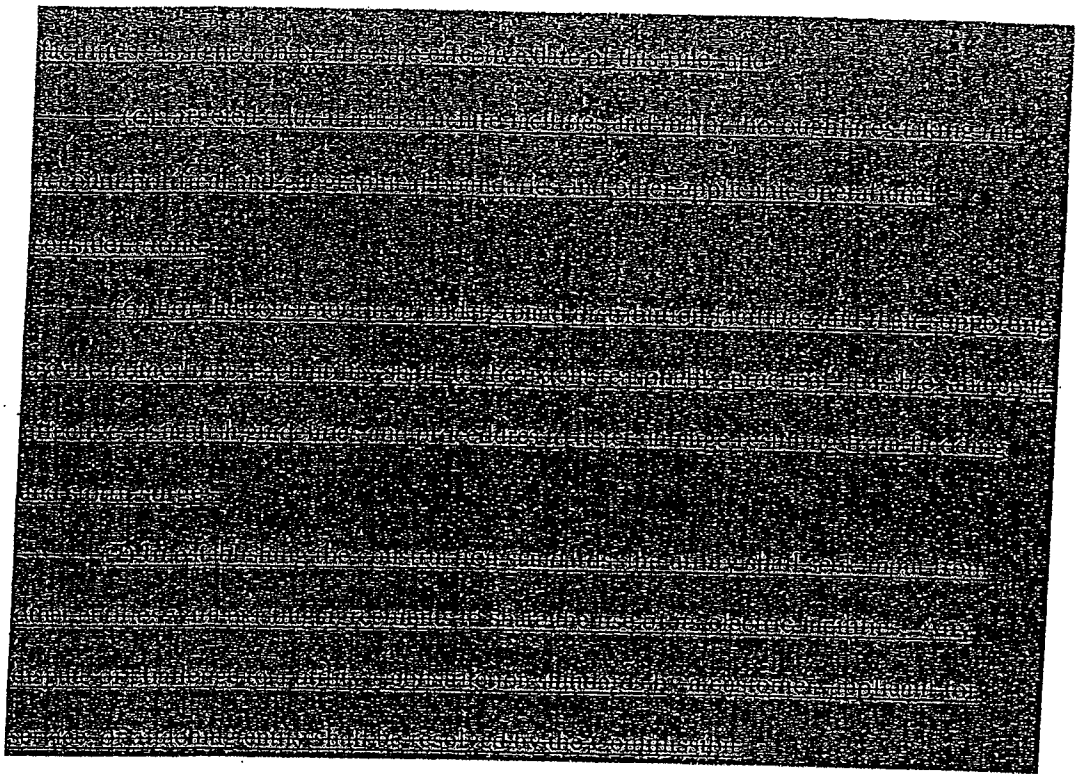
(3) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(4) Each utility shall [redacted] comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 2001. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(b) Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.





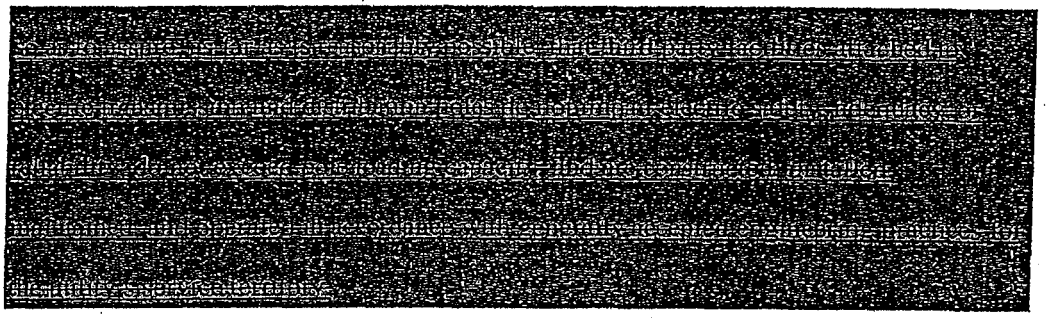
Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 366.04(2)(c)(f), (5)(6), 366.05(1)(7)(8) FS.

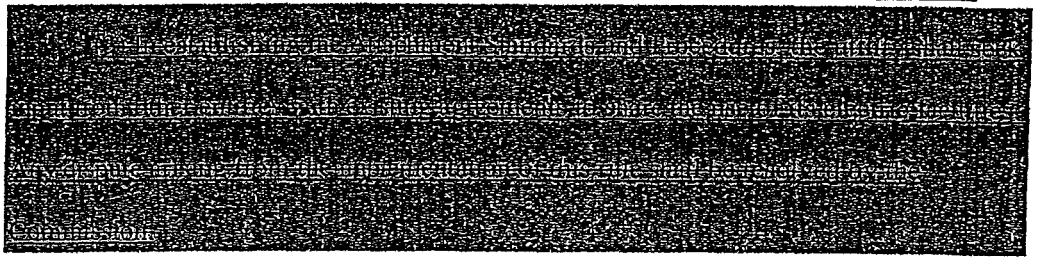
History–Amended 7-29-69, 12-20-82, Formerly 25-6.34, Amended _____.

25-6.0342 Third-Party Attachment Standards and Procedures.

(1) As part of its construction standards adopted pursuant to Rule 25-6.034, F.A.C., each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet [redacted] the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection 25-6.034(4) and other applicable standards imposed by state and federal law.



(2) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures.



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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History New _____.

Sprint Local Exchange Carrier (Sprint - LEC)
Plant and Engineering Series

Section 629-090-201
Issue 4: February 2004

JOINT BURIED UTILITIES INSTALLATION PROCEDURES AND PRECAUTIONS

Contents *Page*

1. GENERAL

1.01 The purpose of this practice is to provide direction when working with joint trench applications.

1.02 Division of costs must be agreed upon in writing by all parties prior to the beginning of any work. A sample is included as Exhibit A. Local field teams will prepare their own agreement following example. This document must be approved by the Legal Department before agreement is finalized and returned to all parties.

1.03 The separations of telephone and power supply circuits shown are based on the National Electrical Safety Code. Where more stringent requirements are prescribed by state or local regulatory bodies, these requirements must be observed.

1.04 Other utilities will be placed jointly in the same trench with telephone cables when a mutual agreement is agreed to by all parties involved. Required trenching is normally provided by the developer or the power supply company or their contractor. The cost is usually shared between trench occupants.

1.05 This practice is oriented primarily toward rear-lot construction; however, other locations not illustrated in this practice may be used.

1.06 For the purpose of identifying the types of joint plant construction involved, the following definitions are provided:

(a) Main trench is that trench in the easement or public right-of-way that accommodates CATV, power primary and secondary circuits, and telephone distribution cable and service wires. The placement of gas lines in trench and its location must be agreed upon by all parties.

(b) Service trench is that trench which extends from the terminal facilities to the customer's residence or building.

(c) Pedestals are placed side by side. An ***American Wire Gauge (AWG) #6 bare solid copper wire*** should bond the ground between each terminal. Pedestals should be placed 12" from the side and rear property lines.

(d) Road crossings are to maintain 36" minimum depth.

2. EFFECTIVE DATE

2.01 This practice is effective upon receipt.

3. SUPERSESSION

3.01 ***This practice cancels and supersedes Plant and Engineering Practice, Section 629-100-201, Issue 3, August, 1998. This practice has been revised to change subparagraph 1.06(c) and paragraph 9.04. Changes and additions are typed in bold italics.***

4. CLASSIFICATION

4.01 This practice is mandatory as written unless superseded by local regulatory conditions or requirements.

5. RESPONSIBILITIES

5.01 The telephone and other utility companies shall coordinate the planning of joint-use installations and determine which company will be responsible for trenching and whether a contractor will be used for the trenching operation.

5.02 The company responsible for trenching will secure from the developer a signed agreement specifying final grades.

NOTE: In new developments all companies concerned will obtain the necessary easements.

5.03 All concerned utility companies should specify on work drawings or work activities the location and depth of the trench for final grades and show proposed grade changes by developer, if any, and location of all splices, terminals, transformers, etc.; also whether the installation is to be on a separate trench, vertical or random separate losses.

6. PRELIMINARY WORK PLANS

6.01 The company responsible for trenching shall formulate plans for doing the work after sufficient field inspection by all concerned companies to establish what work is required and how it can best be accomplished. In making such plans the requirements of all companies must be considered, as well as the date on which service is required. Requirements must be specified on the work activity.

6.02 Plan all work so that backfilling can be completed on the same day if practicable. Pipe pushing should be completed prior to the installation of cables and/or pipes. Where conduits are required for any condition in joint buried distribution systems, separate conduits for CATV, power and telephone wires and/or cables must be provided.

NOTE: Arrangements should be made with the developer to clear and grade the terrain to within 6 inches of final grade so that cables will be at the specified depth after final grading is completed.

6.03 All conduits or pipe pushes must be placed prior to placement of cables. Where conduits are required for any specific condition in a joint trench, separate conduits for power supply and communications cables must be provided.

6.04 Each company is responsible for timely delivery of reels of cable, wire, pipe and other materials and should observe necessary precautions in safeguarding such materials after delivery.

6.05 OSP engineer shall specify on the work activity and coordinate with the power company engineer all connections between the power supply mutli-grounded neutral and the communications cable shield(s).

7. TRENCHING - MAIN TRENCH

7.01 The main trench should provide at least 24" of cover over telephone facilities and 4" of width. The bottom of the trench should be smooth and free of rocks and/or other objects that could damage the cable.

NOTE: When gas lines are present additional trench width may be required.

7.02 When random separation has been determined to be used and agreed upon by all parties, all CATV, power and telephone cables and wires shall be placed in the bottom of the trench. Be sure that the cables and wires are in the trench and not lodged against the sides (see Figure 1). Figure 2 shows typical horizontal separation and Figure 3 shows vertical separation. In those areas where it cannot be mutually agreed to perform random separation, due to potential employee, customer and foreign worker safety issues, it is recommended that the power cable be placed on the bottom of the trench and separated by 6-12 inches of compacted earth.

7.03 Figures 4 through 7 illustrate typical locations of a main trench in relation to a Power Transformer Pads. Depending on the width of the right-of-way or easement in relation to the trench, the transformer may vary.

8. TRENCHING - SERVICE TRENCH

8.01 The service trench should provide at least 12" of cover. The bottom of the trench should be smooth and free of rocks and/or other objects that could damage the cable.

NOTE: When gas lines are present additional trench width may be required.

8.02 The service trench may be dug before or after the main trench. If it is dug after the cables are installed in the main trench, then the last 18" at the service trench end should be dug by hand with extreme caution due to possible damage to the main cables.

9. CABLE AND PEDESTAL INSTALLATION

9.01 Methods used in placing cables in joint use trenches will depend on the location of the route, obstructions, terrain, and soil conditions. Three suggested methods of cable placing are as follows:

(a) When soil conditions are such that the trench will not cave in, cables may be placed by pulling them out along the ground from reels located at the end of the section or at some intermediate point. The cables may be laid in the trench individually or together. Reel ends must be brought back to lot line or the previous pedestal location.

(b) When sand or fluid soil is encountered and the trench sides are unstable, the cable must be placed as soon as possible after trenching. This can be done by laying the cables out along the route in advance of the trenching operation and placing them in the trench as soon as the trencher passes. All of the cables to be installed should be in position before the trenching is started.

(c) When conditions and equipment warrant direct burial, telephone and power cables should be plowed in place with the power cable feeding out of the bottom tube of the plow, provided adequate separation is possible.

9.02 To facilitate separating cables and wires for maintenance reasons, avoid entwining power and telephone cables.

9.03 Pedestals should be placed at locations shown on the work print. The pedestals should be placed prior to the backfilling of the trench to avoid damage to the cables.

9.04 When pedestals are installed within 6 feet of each other or power, they must be tied together with *a (AWG) #6 bare solid copper wire* for bonding purposes. These pedestals should be in line with the trench.

9.05 Backfilling should be done as soon as possible after the cables are in the trench. Rock or other debris should not be replaced in the trench as it may damage the cables and cause problems when reentry is required.

10. BONDING

10.01 Attachment of the bonding wire to the power neutral ground wire should be made in accordance with local procedures. The telephone shield and the power neutral shall be bonded together at all telephone terminals and at all transformer locations or where the work prints specify otherwise.

10.02 To minimize the hazard in joint buried cable plant, the telephone cable shield should be bonded to the electric companies multi-neutral ground at every transformer location or every 1000' whichever results in the greater number of bonds.

10.03 At customer service entrances a common ground should be provided to an approved ground electrode.

10.04 When cable is buried in the same easement with or along side an aerial power line, bond the cable shield or closure to the power-neutral-ground wire at or near both ends of the exposure and at least once every mile. If the cable is buried on the opposite side of a highway, street, alley, etc. from an aerial power line, bond the cable shield or closure to the power-neutral-ground wire at all convenient locations where either the power line or telephone plant crosses the highway, street, or alley except that it will not be necessary to place such bonds at more frequent intervals than 1/2 mile separation. It is desirable to have at least one bond per mile in such situations. When a cable closure is placed on a pole having a vertical neutral ground wire, bond the closure to the ground.

11. SAFETY

11.01 Before engaging in any work which will endanger the public, warning devices must be placed, conspicuously, to alert traffic or pedestrians. Where further protection is required, use suitable barriers for guards.

11.02 Prevent all unauthorized persons from approaching or working in a potentially hazardous area, as far as is practical.

11.03 Communications employees must use a voltage tester, high voltage rubber gloves, rubber blanket, goggles and insulated hand tools when working around energized power supply lines or equipment. Before commencing any work, these safety devices must be carefully inspected to ensure safe and effective operating condition.

11.04 Communications employees must remove all metal articles or jewelry when working around energized power supply lines or equipment; i.e., rings, necklaces, watches, etc. Clothes with rivets can also pose a hazard as they will conduct electricity.

NOTE: REMEMBER: "NO JOB IS SO IMPORTANT AND SO SERVICE IS SO URGENT THAT WE CANNOT TAKE TIME TO PERFORM OUR WORK SAFELY."

11.05 Working in Excavations - Special precautions shall be taken when employees are working in excavations/trenches. General precautions to take include:

(a) A "competent" person needs to inspect and evaluate the hazards of an excavation/trench daily and when conditions of the excavation/trench change.

NOTE: A "competent" person is one who is capable of identifying existing and predictable hazards in the surrounding work area and has the authority to take prompt corrective measures to eliminate them.

(b) Protective systems; i.e., shoring, sloping benching, and trench boxes, shall be in place for the excavation/trench if it is deeper than 5 feet or shallower when conditions warrant; i.e., soil cohesiveness, water, traffic, disturbed soil.

11.06 More information on excavation and trench safety can be obtained from your local business unit safety professional or by ordering safety training booklet A-MS20-0072, from Forms Management.

11.07 Direct buried power supply cables with insulated concentric neutral wires are very easily mistaken for communications cables. Some power supply cables have three red strips separated at 120 degrees for the entire length of the cable, some have one red stripe. These may be indistinguishable at times. Extreme care must be taken whenever working around power supply cables.

12. TESTING AND MAINTENANCE

12.01 Sheath fault testing must be performed upon completion of backfill. Appropriate action must be taken immediately to correct any faults.

12.02 Locate sheath damage and depth of the communications cable(s). This may be accomplished by utilizing standard locating equipment, i.e., the Dynatel 573 or 573A. Refer to Figure 4 for detailed drawing.

12.03 To determine the proper cable to enter for repairs, and to avoid damaging another or cutting into an energized power supply cable, isolate a pair in the desired cable, short the pair and strap it to the cable shield. (DO NOT strap to the ground lug as this will cause tone to spread to other existing facilities.) At the other end or pedestal, place the 573 or 573A transmitter red clip onto the isolated pair tip and ring, connect the black clip to the cable shield. (Not the ground lug.) Place the transmitter switch on "cable locate" mode (R.F. for sections up to one mile in length) place the dyna-coupler into the receivers external jack, place the receiver switch to the peak mode. Place the dyna-coupler around each cable in question (one at a time). The cable with the peak strength signal (tone) is the desired cable.

NOTE: The cable shield under test must be isolated from ground at both ends of the section under test. See Figure 4 for drawing detail.

12.04 DO NOT use mechanized equipment to excavate in close proximity to cables or other buried facilities, until the actual depth is determined and all joint facilities have been exposed.

Mechanized equipment may then be used only to a depth of two (2) feet above the facility closest to the ground surface. This will minimize the possibility of accidental contact with any buried cable.

13. REPAIRS IN JOINT TRENCH

13.01 Locate damaged sheath conductors utilizing standard trouble locating equipment.

13.02 Request location of other facilities through a call to the area one call center. Always notify the appropriate one call center before digging. During emergency situations or rehab procedures, maintenance crews must call the one call center.

13.03 Notify the operating power supply company of the need to expose the cable for repairs.

13.04 Locate and expose the communications cable. Dig down along side the cable until parallel, then dig into the trench to expose the cable. If necessary expose the power supply cable, only for assurance of location and that proper cable has been isolated for repair. Use of insulated or wood handled hand tools is imperative, for employee's safety. High voltage rubber gloves must be used wherever a voltage hazard exists.

13.05 When the cable shield under repair is opened, it must be bonded across the opening to prevent currents from entering the repair opening, (use "B" bond connection). This will also prevent differing potentials from building up on each side of the opening.

13.06 When safety concerns are raised as to the safety of employees working in a joint trench making repairs, the power company must be contacted for assistance to insulate or isolate, if possible, the section under repair. The expenses incurred by this operation could be billed to the communications company.

13.07 The use of rubber blankets will be necessary to insulate employees from suspected ground faults. Place the blankets in the trench in the work area. Wood board and plywood sheeting will be used to provide added mechanical protection.

NOTE: In very wet conditions or when rubber blankets become overlaid with mud, the blankets will not provide adequate electrical protection. Check with the power supply company, if ground faults are suspected.

13.08 The economics of these type repairs must be considered along with section replacement via directional boring, prior to start of any excavations.

14. LOCAL EXCEPTIONS

14.01 Mid-Atlantic Operations

(a) None

14.02 North Central Operations

(a) None

14.03 Southern Operations

(a) None

14.04 Western Operations

(a) None

Figure 1

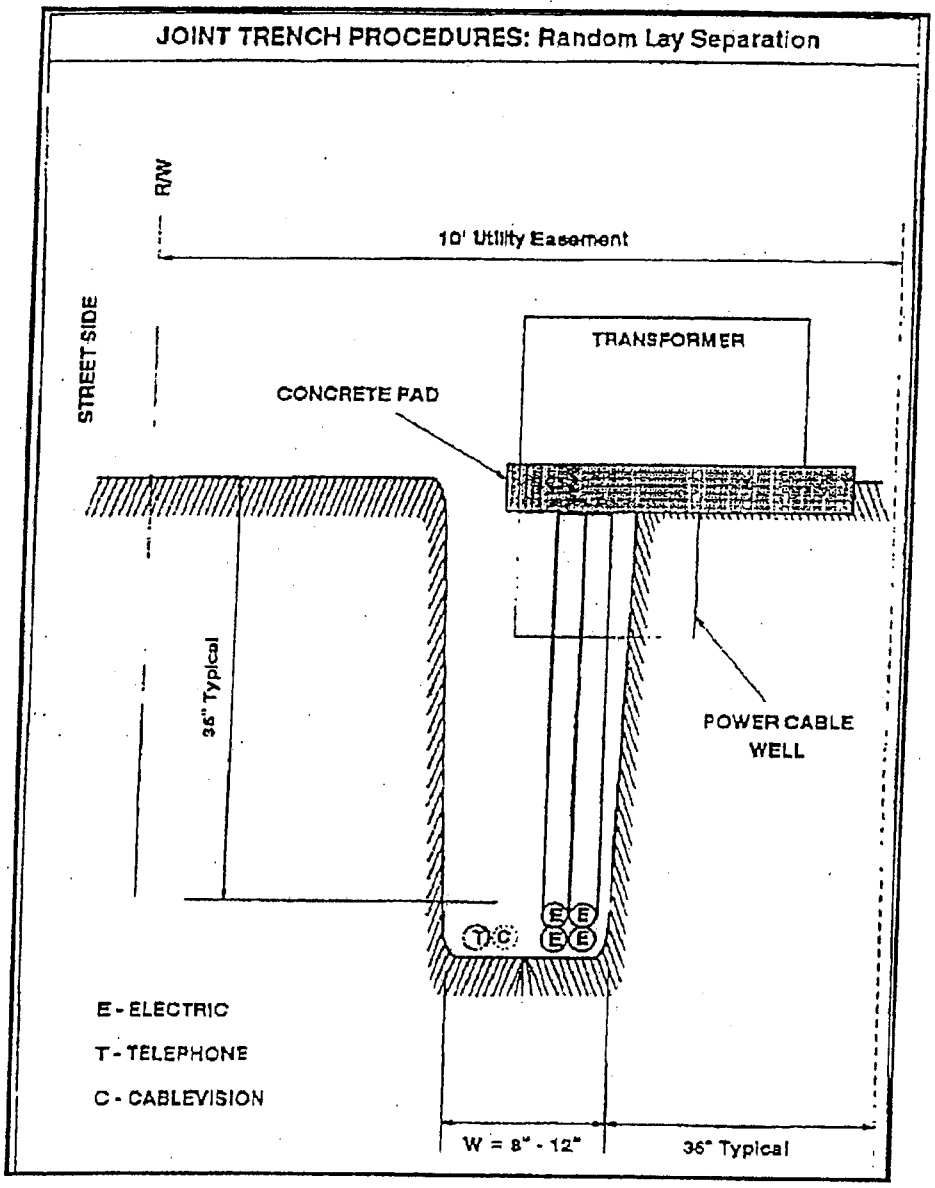


Figure 2

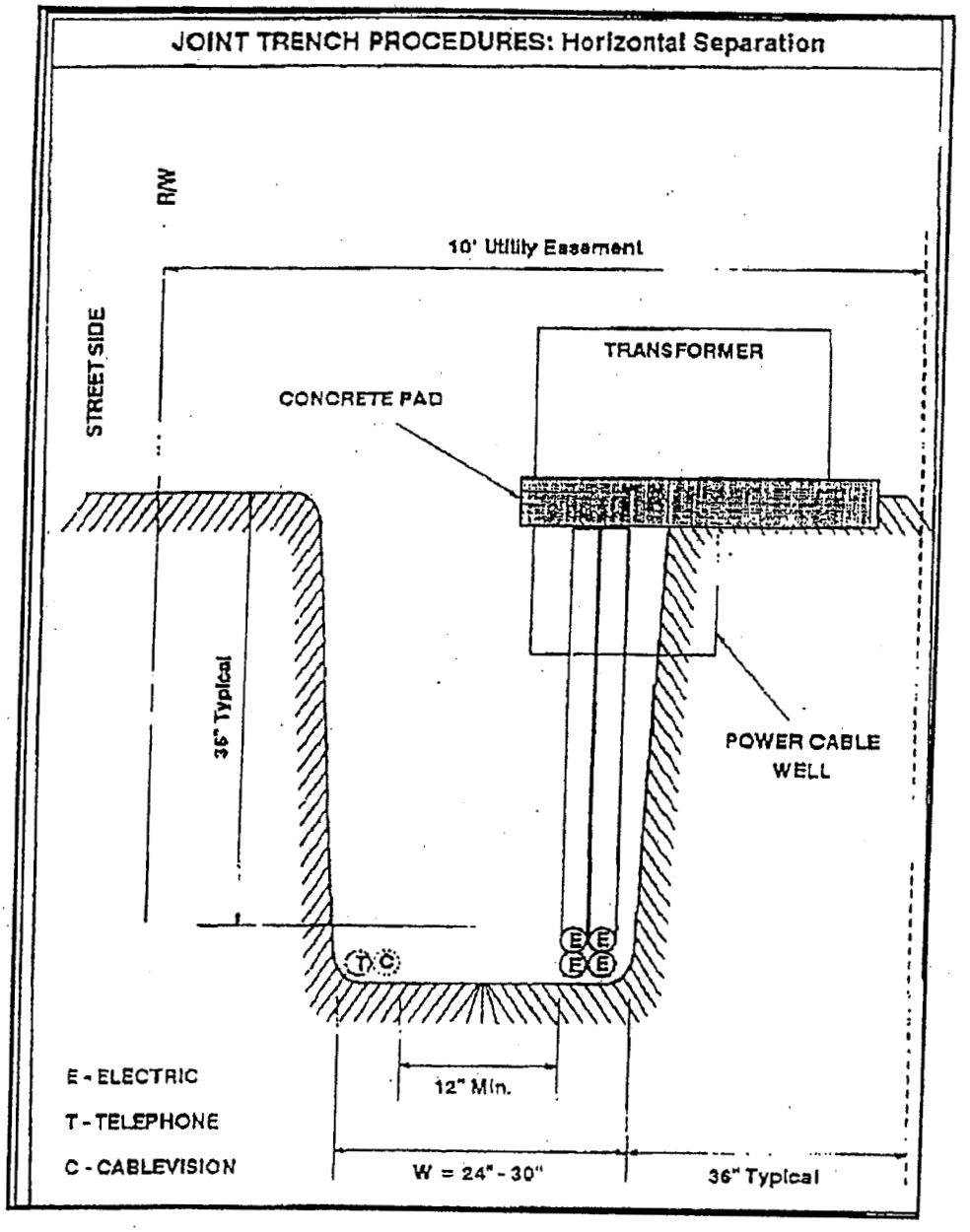


Figure 3

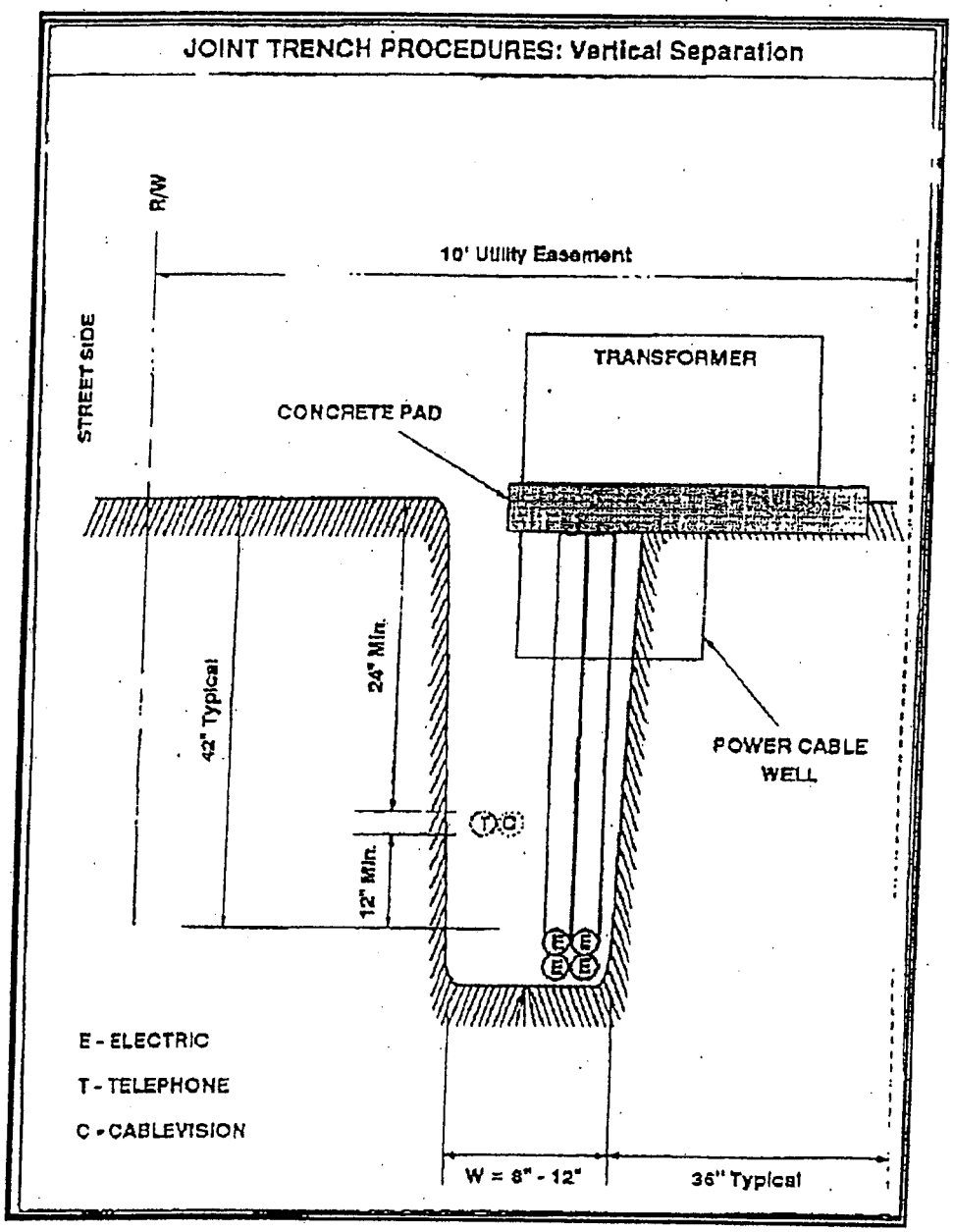


Figure 6

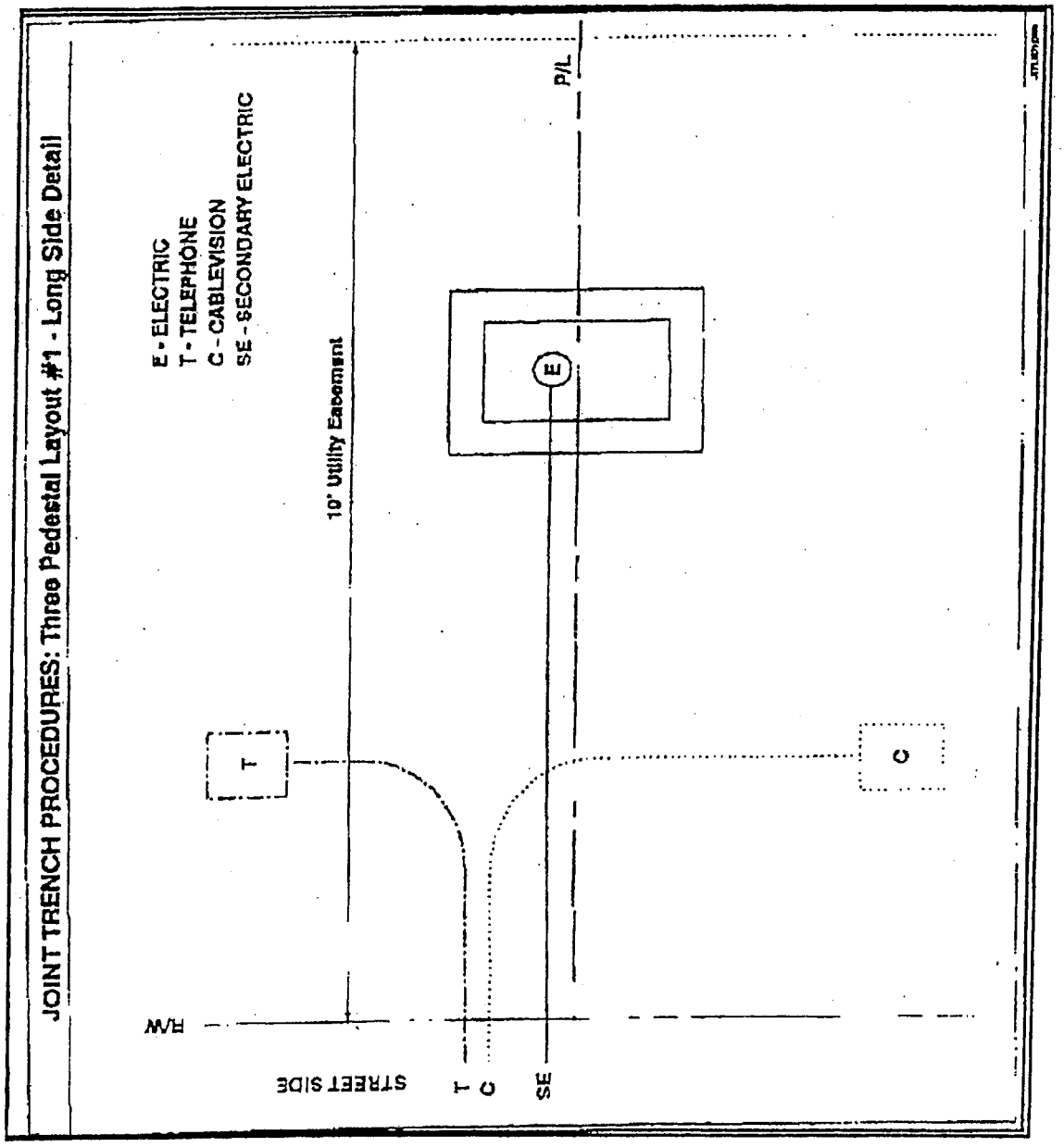


Figure 7

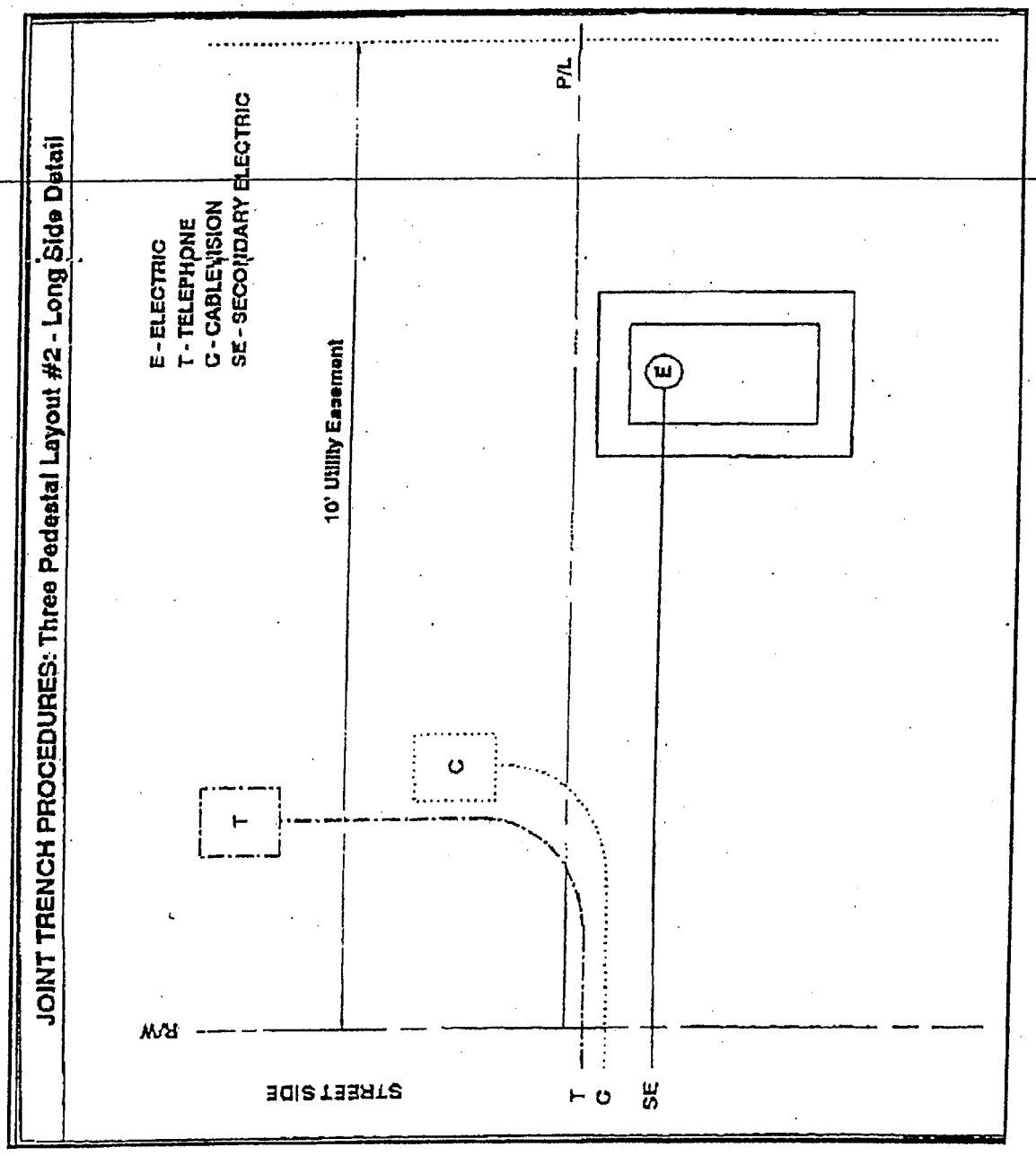


EXHIBIT A
JOINT TRENCH INSTALLATION PROJECT AGREEMENT

Project Name: _____

XYZ's Work Order Number: _____

Sprint's Work Order Number: _____

Project Description: _____

_____

IN ACCORDANCE WITH the Joint Trench Installation Master Agreement which was executed by XYZ Power and Light Company and Sprint on the _____ day of _____, 1997, and in accordance with Joint Trench Prices mutually agreed upon by the respective local managements, Sprint shall pay the total sum of $_____ to XYZ Power and Light Company for joint trench work performed by XYZ Power and Light Company on the above named project.

The terms and conditions of the Joint Trench Installation Master Agreement shall apply in full to this Joint Trench Installation Project Agreement and are incorporated herein.

Accepted:		Accepted:	
for XYZ	(Date)	for Sprint	(Date)
Print Name		Print Name	
Print Title		Print Title	

EXHIBIT B (CONT.)
JOINT TRENCH INSTALLATION MASTER AGREEMENT

c) provide an "as built" copy of Sprint's construction drawings upon completion of the project if Sprint's facilities are installed by XYZ,

5. The lump sum price for trench work performed by XYZ shall be calculated in accordance with joint trench prices that are mutually agreed upon by XYZ's and Sprint's local management from time to time.

6. This Agreement is subject to XYZ's Tariff, Sprint's Tariff, and the Rules of the Florida Public Service Commission.

7. General Terms and Conditions:

a) Limitations of Liability. Neither party shall be liable to the other party for any indirect or consequential damages resulting from performance, nonperformance, or delay in performance under this Agreement, and/or termination of this Agreement, excluding payment for work performed

b) Default and Termination. Each party may terminate this Agreement upon default of the other to comply with any of the provisions of Agreement or default in any of its obligations under this Agreement. Either party may terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other. All obligations for payment, including indemnity, survive termination.

c) Non-assignment. This Agreement shall not be assigned by either party.

IN WITNESS WHEREOF the parties represent and warrant that they have authority to execute this Agreement and hereto have caused this Agreement to be duly executed to be effective as this day and year written above.

25-6.0341 Location of the Utility's Electric Distribution Facilities.[1] In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(1) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(2) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(3) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(4) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third party facilities, the electric utility shall, to the extent practical, coordinate the construction of its facilities with the third party facility.

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

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History– New.

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[1] See pages 8-13 of Embarq's Comments for an explanation the shaded changes.

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July 28, 2006

Ms. Blanca Bayò, Director
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RE: Docket Nos.060172 & 060173-EU – Post July 13, 2006 Workshop Comments of Embarq

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth the post July 13, 2006 workshop comments of Embarq. These comments are filed in addition to the request for a hearing and proposal for lower cost regulatory alternatives filed by Embarq on this same date in accordance with the Notice of Rulemaking issued June 28, 2006.

The staff workshop held on July 13, 2006 was noticed as being for the purpose of allowing third party attachers to present data on the cost impact, if any, of proposed Rules 25-6.0341 and 25-6.0342, F.A.C., on their companies. While Embarq did not have cost data available to present at the workshop, the company has attempted to provide such data in these post workshop comments.

Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities.

Requirement for electric facilities to be placed adjacent to a public road, normally in front of the customer's premises

Up to this point, the proposed rulemaking lacks a sufficiently defined scope necessary to accurately estimate the potential cost impacts to third party attachers by requiring electric distribution facilities to be placed adjacent to a public road, normally in front of the customer's premises, to the extent practical, feasible and cost-effective. The electric utilities' filings have been vague as to the scope and volume of their planned re-construction of existing aerial plant and have instead simply made vague references to a ten year plan. A request for estimated cost, against this vague backdrop is ill-fated at the outset. The ultimate cost of reconstructing existing aerial plant will be a site- and route-specific result with

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considerable variability. It is entirely predictable however that the costs of moving existing aerial plant from the rear of residential lots to the front will generate an extreme and costly construction environment. Reconstructing cables in existing neighborhoods will require significant disruption to customers, due to the tearing up of yards, trees, landscaping, fences, sidewalks, driveways, and streets. The cost of working in this environment is extremely high compared to doing work ahead of time as neighborhoods are initially constructed. (Embarq is supportive of higher standards in initial construction situations.) While there are certainly benefits to underground plant and or having stronger overhead plant, it should be kept in mind that even this new plant will experience some failure during extreme hurricanes, and therefore the cost/benefit of re-constructing aerial plant is suspect and unquantified at this point.

Requirement for electric facilities to use easements and road rights-of-way for all new and replacement electric overhead distribution facilities

If the electric utility reconstructs overhead facilities, moving aerial cable from back-lot to front is not a simple matter of moving an existing cable. It requires all new facilities at the front, and scrapping the existing facilities at the back. Putting the cost of the cable work aside, the new investment in taller heavier poles placed along the road will bring a cost increase as well through higher attachment fees. Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so.

In the electric overhead-to-overhead replacement situation, if Embarq also remains overhead, the construction cost to rebuild its aerial line on new electric utility poles is estimated to fall in a range of $110k to $170k per mile, depending on whether the electric utility attempts to charge the attacher for the cost of the new pole. Again, given the current complete lack of scope, Embarq can only report at this time that if every mile of its shared overhead routes were rebuilt, the resulting cost estimates would range from $360 million to $560 million which is an extreme result which obviously calls for a more granular definition and cost benefit analysis before being allowed to proceed.

Requirement for electric facilities to use front-lot easements provided by the applicant for all new and replacement electric underground distributions facilities.

If the electric utility places new underground facilities, they propose cost recovery of the highly-disruptive trench/bore situation be guaranteed to the electric utility through a combination local entity funding of (75%) and electric rate increases of the remaining (25%). Nowhere does the electric utility industry's proposals address how the attacher, in this case Embarq will recover its costs. As with sharing overhead facilities discussed above, the potential for the electric utility to

inappropriately allocate to attaching parties such as Embarq the shared underground trenching costs which are already 100% recovered thru their 75/25% proposal. Any costs passed to the attacher relative to joint electric utility and incumbent local exchange company (ILEC) underground construction should acknowledge that the electric utility already has included 100% recovery in their proposal.

In the electric overhead-to-underground replacement situation, if Embarq also buries facilities, the construction cost to retire aerial facilities and rebuild with buried is estimated to fall into a range of $190k to $260k per mile if Embarq has to pay for the trench. Again lacking necessary definition of scale and scope, Embarq is left to report that if every mile of shared overhead routes were to be buried, this would amount to $630 million to $860 million for Embarq. Assuming that the electric utility's proposal to recover 100% of their costs from the combination of local government and electric rate increases results in a cost-free use of the joint trench, the estimated cost range in that context is $90K to $120K per mile. Again extending this unit cost range to the entire potential population of existing aerial plant results in unworkable total cost estimates of $300M to $400M.

Requirement for electric facilities to use road rights-of-way for conversions of overhead to underground facilities requested by a local government.

Embarq's input for this scenario would be the same as for the previous aerial to underground scenario described above.

Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.

Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

Rule 25-6.0342 Third-Party Attachment Standards and Procedures.

Requirement for electric facilities to establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles.

Due to a lack of necessary information the cost of following new written standards issued by the electric utility can not be quantified at this time. The

responses to the questions above attempt to provide some understanding for unit costs and potentially extremely costly outcomes were these rules to go forward.

Impact and estimated incremental cost of requiring the Attachment Standards and Procedures to meet or exceed the National Electric Safety Code and other applicable state and federal laws.

The cost of the not yet defined higher standards for new facilities cannot be quantified. However, the cost of changing standards on existing facilities is potentially prohibitive and warrants further cost/benefit analysis as explained above.

Requirement for electric facilities to seek input from and to coordinate the construction of electric distribution facilities with third-party attachers.

The proposed rule requirement that would have each electric utility seek input from third-party attachers in establishing its Attachment Standards and Procedures and have disputes resolved by the Commission does not address the concerns of Embarq. Opportunities for input and coordination are certainly helpful and beneficial but would be insufficient in and of themselves in fully addressing third party attachers concerns as to cost sharing issues. Unlike the federal statutes which define the rate charged to cable and CLEC attachers, ILECs such as Embarq enjoy no similar definitions or protections. Given the proposed rules requiring hardening are certain to drive cost increases, the likelihood for attachment rate disputes is a predictable risk.

These comments are submitted specifically to address the questions from the July 13 workshop regarding quantification of cost impacts to Embarq of the proposed rules. Embarq will file additional comments on the proposed rule on August 4, 2006 as required by the pre-hearing order.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,

Susan S. Masterton

cc: Larry Harris, Esq., FPSC
Charles J. Rehwinkel
Interested Persons of Record

CERTIFICATE OF SERVICE
DOCKET NO. 060172 & 060173-EU

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28th day of July, 2006, to the following:

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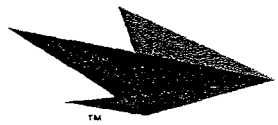

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September 29, 2006

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RE: Docket No. 060512-EI, Embarq's Reply Comments

Dear Ms. Bayó:

Embarq Florida, Inc. ("Embarq"), in accordance with Order No. PSC-06-0793-PCO-EI, files through this letter its Reply Comments to the Florida Electric Cooperatives Association's (FECA's) Supplemental Comments filed on September 15, 2006.

As Embarq understands FECA's alternative proposal, the revised rule would require municipal electric utilities and rural electric cooperatives to report to the Commission concerning actions taken by those utilities to storm harden their facilities. Embarq does not object to the alternative rule proposed by FECA in its supplemental comments, as long as the rule is not construed in any way as a mandate by the Commission that municipal electric utilities or rural electric cooperative utilities implement any specific construction or attachment standards.

Sincerely,

Susan S. Masterton

Attachments

cc: Larry Harris, Esq., FPSC
Charles J. Rehwinkel
Interested Persons of Record

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CERTIFICATE OF SERVICE
DOCKET NO. 060512-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 29th day of September, 2006 to the following:

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Susan S. Masterton

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BEFORE THE FLORIDA 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 8, 2006

INITIAL COMMENTS OF VERIZON FLORIDA INC.
CONCERNING PROPOSED RULE 25-6.0343

Verizon Florida Inc. ("Verizon") submits these Initial Comments in compliance with the Commission's Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing a New Docket issued on July 27, 2006. In support of these comments, Verizon also is filing the affidavits of Dr. Lawrence M. Slavin and Steven R. Lindsay. For the reasons stated below, proposed Rule 25-6.0343 should not be adopted in its current form.

A. Introduction

As a company that has made substantial investments in utility poles and attachments in Florida, Verizon shares the Commission's concern about network reliability and storm readiness. Verizon owns approximately 107,863 poles in Florida, almost 30,000 of which bear attachments by electric utilities.[1] Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of poles Verizon owns.[2] Verizon's affiliates MCImetro Access Transmission Services LLC d/b/a Verizon Transmission Services and MCI Communications Services, Inc. attach to

[1] Lindsay Aff. ¶ 2.
[2] *Id.*

an additional 3,000 electric utility poles.[3] Verizon already has placed a substantial part of its Florida network underground and is rapidly installing additional facilities below ground as part of its FiOS project.[4] FiOS, which provides fiber to customers' homes, is provisioned almost entirely underground, protecting it from storms.[5] Verizon thus has made, and continues to make, significant strides toward a storm-hardened network.

Although Verizon shares the Commission's goal of network reliability, proposed Rule 25-6.0343 as currently drafted could potentially harm Verizon and its customers in several ways. First, for example, depending on how the municipal electric utilities and rural electric cooperatives ("electric utilities") exercise the discretion that would be given them, Verizon could be forced to incur substantial costs, such as paying increased rent for additional poles or paying to migrate facilities underground.[6] Because Verizon attaches to so many electric poles in Florida, these increased costs could be enormous.[7] Second, the proposed rule threatens to divert Verizon's resources from the FiOS project it is rolling out to meet the intense competition it faces in its Florida market.[8] Third, the proposed rule would authorize electric utilities to establish standards for pole attachments varying from the National Electrical Safety Code ("NESC"), which could require Verizon to upgrade, rearrange or even remove its attachments from electric utility poles. Not only might such standards conflict with Verizon's joint use and

[3] *Id.*
[4] *Id.* ¶ 3.
[5] *Id.* ¶¶ 3, 8.
[6] *Id.* ¶ 5. Whether Verizon would have to pay additional rent would depend on the terms of the applicable joint use agreement.
[7] *Id.* ¶¶ 5-7.
[8] *Id.* ¶ 8.

license agreements, but they could increase its rental rates and impose additional financial and operational burdens.[9]

Verizon addresses its concerns with the subparts of proposed Rule 25-6.0343 in more detail below.

B. Proposed Amendments to Rule 25-6.0343(1)

Proposed Rule 25-6.0343(1) would vest electric utilities with the authority to establish construction standards for overhead and underground electrical transmission and distribution facilities. The electric utilities would be required to develop these standards within 180 days, after seeking input from other entities with joint use agreements, but without any requirement that the electric utilities accepting any of the input they receive.[10] No prior Commission approval of the standards is contemplated, whether for the initial standards or any subsequent revisions, nor would the electric utilities be required to provide the Commission with access to a copy of the standards unless the Commission so requested. Only broad guidance is provided as to what requirements the standards must meet – each electric utility "at a minimum" must comply with the 2002 version of the NESC, but the electric utility is free to impose whatever additional standards it chooses. An attacher or other party that is dissatisfied with an electric utility's standards may challenge them before the Commission, but the disputed standards apparently would remain in effect until the Commission resolved the dispute.

[9] *Id.* ¶ 9. Again, whether Verizon would be required pay additional pole would depend on the terms of the applicable joint use agreement.
[10] *See* proposed Rule 25-6.0343(4).

Proposed Rule 25-6.0343(1) would give far too much discretion to the electric utilities to determine construction standards. There is a significant risk that electric utilities could abuse their discretion by adopting construction standards that could harm attachers, for example, by potentially increasing pole costs that the electric utilities could attempt to pass through to the attachers.[11] The standards adopted by electric utilities under the proposed rule apparently would remain in place until the completion of a dispute resolution proceeding, which could take several months, if not a year or more. As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers. The attachers would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. In short, giving electric utilities broad discretion to define and implement their own standards should not be permitted.

The discretion afforded electric utilities is particularly troublesome with respect to extreme wind loading. Rule 25-6.0343(1)(e) would call for electric utilities to be guided by the extreme wind loading standards, "to the extent reasonably practical, feasible, and cost-effective" for the construction of distribution facilities. Electric utilities would be required to include in their construction standards guidelines and procedures governing the use of extreme wind loading standards for "new construction," "major planned work, including expansion, rebuild, or relocation of existing facilities," and "targeted critical infrastructure facilities and major thoroughfares." In other words, electric utilities arguably would be free to apply extreme wind loading standards to almost any

[11] Whether electric utilities could actually pass through such costs would depend on the terms of the applicable joint use agreements.

distribution facilities they wish, regardless of pole grade and height. As outlined in the report attached to the Affidavit of Lawrence M. Slavin, applying the extreme wind loading standards in this manner would constitute a radical departure from the NESC, and could result in dramatically higher pole costs as well as significant unintended consequences.

As Dr. Slavin explains, to determine pole strength requirements for Grade B and C poles,[12] the NESC requires that two types of storms be taken into account: (i) combined ice and wind storms, governed by NESC Rule 250B; and (ii) extreme wind storms, governed by NESC Rule 250C. The combined ice and wind storm standards apply to Grade B and C poles regardless of their height, so all such poles, including distribution poles, must meet the standards outlined in Rule 250B.[13] Because the extreme wind loading standards only apply to poles that are at least 60 feet high, on the other hand, Rule 250C does not apply to most distribution poles, which typically are shorter than 60 feet.[14] Indeed, the NESC Committee has studied this issue carefully and has chosen this height exclusion so that the extreme wind loading standards would not apply to distribution poles.[15] Proposed Rule 25-6.0343(1)(e), which would require that electric utilities be guided by extreme wind loading standards when constructing distribution facilities, thus would mark a major departure from the NESC.[16]

[12] Grade B and C poles carry primary power (more than 750 volts). Most distribution poles carrying primary power are Grade C poles, with the Grade B classification applying when greater reliability is required, such as at railroad crossings. Grade N applies to poles if they carry secondary power (less than 750 volts) or only support telecommunications cables, corresponding to the lowest level of reliability. Slavin Affidavit, Appendix 1 ("Slavin Report") § 2.3.

[13] Slavin Report § 2.1.
[14] *Id.* § 2.2.
[15] *Id.* § 3.1
[16] *Id.*

To the extent electric utilities determine that applying the extreme wind loading standards of NESC Rule 250C would be "reasonably practical, feasible and cost-effective," and thus decide to be guided by them, one result would be a substantial increase in pole size (or stronger poles made of different materials) or in the number of poles, which would dramatically increase costs.[17] Stouter or more numerous poles also would lead to a number of unintended consequences, including an increase in the number or severity of traffic accidents.[18] Obviously, the more poles there are, the greater the likelihood there is that an automobile will collide with one and the driver will experience bodily harm or death. Moreover, increasing the number of poles can multiply the number of poles that are knocked down by flying debris during high wind storms, making the recovery process much more difficult and time consuming.[19] And the complexity of applying the high wind loading standards will lead to confusion and delay, and possible errors in implementation, to the detriment of consumers.[20] The Commission thus should proceed with great caution when it considers substituting its judgment for that of the NESC Committee, which has carefully taken these factors into account.

Because proposed Rule 25-6.0343(1)(e) represents such a dramatic change that could result in serious negative consequences, the best course of action would be for the Commission not to adopt this proposed amendment to Rule 25-6.0343(1)(e).[21] If the Commission nonetheless determines that it wishes to make changes, then at the least it should attempt to reduce the dramatic impact of the changes by making the

[17] *Id.* § 4.1.
[18] *Id.* § 4.2.
[19] *Id.*
[20] *Id.*
[21] *Id.* § 5.

following modifications: (i) it should make clear that extreme wind loading standards do not apply to Grade N poles (to which neither NESC Rule 250C nor NESC Rule 250B apply); (ii) the application of Rule 250C should be modified to lessen its impact, for example by using the reduced loads for Grade C poles from the 2007 edition of the NESC; and (iii) the changes should be applied on a trial basis and initially limited to a geographic area and a defined period, such as one to two years.[22]

C. Proposed Rule 25-6.0343(2)

Proposed Rule 25-6.0343(2) states as a general principle that "to the extent practical, feasible, and cost-effective," electric distribution facilities normally should be placed in front of customers' premises, adjacent to public roads. Three subsections apply this principle to scenarios involving (1) construction of overhead facilities; (2) installation of underground facilities; and (3) conversion of overhead facilities to underground facilities. In the third scenario, a local government requesting the conversion must meet the electric utility's financial and operational requirements before the electric utility must place facilities in road rights of way. When the projects described in proposed Rule 25-6.0343(2) affect third-party attachments, the electric utility must seek input from the third-party attachers, but it is not required to take any action based on the input it receives.[23] The electric utility also must, "to the extent practical, coordinate the construction of its facilities with the third-party attacher," but the timing and extent of the required coordination are not specified.[24]

[22] *Id.*
[23] *See* proposed Rule 25-6.0343(4).
[24] *See id.*

Proposed Rule 25-6.0343(2) fails to take into account sufficiently the burdens that could be placed on third-party attachers by electric utility construction, installation and migration projects. For example, by failing to specify the amount of notice that must be given or the extent of the coordination that must be afforded in connection with such projects, the proposed rule leaves electric utilities free to move forward with little regard for the operational disruption that could result to attachers. As noted above, Verizon is in the midst of a massive project to bring its FiOS network to customers' homes. To the extent electric utilities were to rely on this proposed rule to install or move their own facilities, Verizon would require extensive notice (at least 12 months) and effective coordination so Verizon could make any necessary adjustments to its plans. For instance, Verizon would want to avoid relocation of copper facilities when its plans call for replacing those facilities with fiber in the near future. With effective coordination, such costly duplication of effort could, at least to some extent, be avoided. Further revisions to the rule are necessary to ensure that the required notice is specified and the duty to coordinate is described in detail.

The proposed rule also does not address the costs that would be incurred by third-party attachers. To the extent electric utilities add poles when moving them from the back property line to the front, the additional costs to attachers could be enormous. If Verizon were required to place attachments on 10% more poles, its costs would increase by some $20 million, most of which would be one-time engineering and transfer costs.[25] If the number of poles to which Verizon attaches were increased by

[25] Lindsay Aff. ¶ 6 and Attachment 1. Note that this figure represents the costs that would be experienced during the first year after installation. This figure assumes an increase to attachment fees, which, if imposed under the applicable joint use agreement, would continue on a recurring basis, raising Verizon's costs further still.

50%, Verizon's cost would be $50 million.[26] Moving facilities underground also entails tremendous costs. In a feasibility study Verizon conducted to determine the cost of moving the existing copper network underground on Davis Islands, it determined the cost to be $4,000 per household.[27] Placing copper facilities underground would be particularly expensive and wasteful for Verizon because of its plans to install underground fiber facilities. If, on the other hand, Verizon decides not to migrate its facilities, it may be required to buy the poles that have been abandoned and pay for easement rights.[28] Although the proposed rules provide compensation to the electric utilities, no similar provision is made for attachers, nor are attachers given any right to object to electric utilities' plans to migrate facilities. Proposed Rule 25-6.0343(2) should be revised to take into account the costs that would be imposed on third-party attachers.

Proposed Rule 25-6.0343(2) also raises serious concerns with respect to Verizon's carrier-of-last resort obligations under Florida law, which among other things require local exchange telecommunications companies, until January 1, 2009, "to furnish basic local exchange telecommunication service within a reasonable time period to any person requesting such service within the company's service territory." Fla. Stat. § 364.025(1). To the extent that standards under the proposed rule disrupt Verizon's ability to fulfill its carrier-of-last-resort obligations, the standards would conflict with Florida law. The proposed rule should be revised to prevent such a conflict.

[26] The potential for increasing the number of pole attachments by 50% or even more becomes greater when the extreme wind loading standards addressed in proposed Rule 25-6.0343(1)(e) are taken into account.
[27] Lindsay Aff. ¶ 7.
[28] *Id.* ¶ 5.

D. Proposed Rule 25-6.0343(3)

Proposed Rule 25-6.0343(3) requires electric utilities to include in their construction standards "safety, reliability, pole loading capacity, and engineering standards and procedures for" third-party attachments. Thus, electric utilities would be required to develop these standards within 180 days, after seeking input from other entities with joint use agreements, but without any requirement that the electric utilities accept any of the input they receive and without prior Commission approval. Only broad guidance is provided as to what requirements the third-party attachment standards must meet. They are required to "meet or exceed" the applicable edition of the NESC, as well as other applicable standards under state and federal law to ensure "as far as reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." Disputes concerning the attachment standards are to be resolved by the Commission.[29]

As a threshold matter, the Commission lacks jurisdiction to regulate the rates, terms and conditions of pole attachments. Under federal law, the FCC has such jurisdiction unless "such matters are regulated by a State." 47 U.S.C. § 224 (b)(1) and (c)(1). Whether a state may be said to regulate such rates, terms and conditions is not left in doubt, because a state that regulates pole attachments is required to file a certification to that effect with the FCC. 47 U.S.C. § 224 (c)(2). There can be no dispute, therefore, that the Florida legislature has not authorized the Commission to

[29] *See* Proposed Rule 25-6.0343(4).

regulate pole attachments. When the Commission issued an order more than 25 years ago certifying that it had such authority, the Florida Supreme Court quashed the order. *Teleprompter Corp. v. Hawkins*, 384 So.2d 648 (Fla. 1980). To Verizon's knowledge, the Commission has not issued any subsequent order certifying its authority to regulate pole attachments, and no party to this docket has asserted otherwise. Thus, only the FCC may regulate the rates, terms and conditions of pole attachments in Florida, and to the extent proposed Rule 25-6.0343(3) would regulate such rates, terms and conditions, it would stand on infirm ground.

Proposed Rule 25-6.0343(3) also is problematic because it gives far too much discretion to the electric utilities to determine third-party attachment standards.[30] There is a significant risk that electric utilities could abuse that discretion by adopting standards that could harm attachers by requiring them to upgrade, rearrange or remove their attachments. The standards adopted by electric utilities apparently would remain in place until the completion of a dispute resolution proceeding, which could take several months, if not a year or more. As the pole owners, the electric utilities would be in a position to interpret and implement the standards, which could give rise to additional disputes with the attachers. The attachers also would be at a disadvantage because as a practical matter electric utilities would be able to enforce their interpretations until dispute resolution proceedings were completed. In short, giving electric utilities broad discretion to define and implement their own standards is particularly inappropriate in this context and should not be permitted.

[30] Although SB 888 authorized the *Commission* to adopt construction standards that exceed the NESC, it did not authorize the Commission to permit electric utilities to establish those standards.

Verizon's pole attachment rates in Florida already are the highest of any operating company in the Verizon West (former GTE) footprint, and those rates are increasing at an alarming pace.[31] Proposed Rule 25-6.0343(3) threatens to accelerate the rate of increase by imposing even greater costs on attachers. Unlike rate-regulated electric utilities, telecommunications carriers cannot simply pass these cost increases on to their customers. The cost impact of the proposed rule to third-party attachers should be taken into account before any final rule is adopted.

For the foregoing reasons, Verizon respectfully submits that proposed Rule 25-6.0343 should not be adopted in its current form. Further consideration of the interests and concerns of third-party attachers and other interested parties should be given before final rules are adopted.

Respectfully submitted on September 8, 2006.

By: s/ Dulaney L. O'Roark III
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6 Concourse Parkway, Suite 600
Atlanta, Georgia 30328
Phone: (770) 284-5498
Fax: (770) 284-5488
Email: de.oroark@verizon.com

Attorney for Verizon Florida Inc.

[31] Lindsay Aff. ¶ 10.

ORIGINAL

BEFORE THE FLORIDA 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 8, 2006

AFFIDAVIT OF STEVEN R. LINDSAY

The undersigned, being duly sworn, states as follows:

1. I am employed by Verizon as a Staff Consultant – Network Engineering with responsibility for the negotiation and administration of joint use contracts with electric power companies, competitive local exchange carriers, cable TV companies, railroads, and governmental entities in the states of Florida, North Carolina, and South Carolina. My background in the telephone industry spans 26 years. I have worked as a cable splicer and an outside plant construction supervisor, and have held various other positions in outside plant engineering, most recently as a staff consultant negotiating joint use contracts. I was a Director on the Oregon Joint Use Association (OJUA) in 2005-06 prior to coming to Florida. I represented both Verizon and the OJUA in the Oregon joint use workshops and Commission formal and informal hearings concerning safety and joint use rule making. I have a Bachelors degree in Business Management from Nova University in Florida.

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OTH

2. Verizon Florida Inc. ("Verizon") owns 107,863 poles in Florida, about 29,632 of which bear electric utility attachments. Verizon attaches to approximately 381,000 electric utility poles in Florida, almost four times the number of poles that it owns. In addition, Verizon's affiliates, MCImetro Access Transmission Services LLC

d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc., are attached to approximately 3,000 power poles under separate agreements.

3. Verizon actively maintains its network and invests heavily to ensure network reliability. A substantial portion of Verizon's Florida network already has been placed underground and through its FiOS project, Verizon is aggressively spending hundreds of millions of dollars to install its new, storm-hardened, fiber network, 99.9% of which is underground. This new passive optical (PON) network is virtually impervious to storm damage, flooding, and lightening strikes, and improves the survivability and recovery of the network. Unlike copper networks, a PON network does not employ live electronic signals; instead, fiber emits refracted light waves from point A to point B. Moreover, there are significant operational benefits with fiber that enables faster recovery and restoration. Verizon has passed 600,000 Florida households to date and has placed more than 26 million feet of fiber in the state. Verizon has made a $550 million investment in Florida so far and the project is moving ahead full speed. As the FiOS project is further deployed, it is Verizon's intention to migrate existing customers served by copper facilities to fiber facilities.

4. Proposed Rule 25-6.0343 threatens significant harm to Verizon, both financially and operationally. Below I address three of the potential problems that implementation of these rules could pose.

5. First, proposed Rule 25-6.0343, as drafted, could lead to dramatically increased costs for pole attachers. For example, if electric utilities increase the number of poles in service, move their facilities to new poles or relocate facilities underground,

third-party attachers will be affected.[1] Not only must they pay engineering and transfer expenses when poles are added or replaced with stronger poles, but under their joint use agreements they may be required to pay increased attachment fees.[2] And when an electric utility elects to move or relocate facilities Verizon may have to pay to acquire the abandoned facilities and pay for easement rights. While the proposed rules provide for the compensation of the electric utilities making these changes, they do not provide for the compensation of third-party attachers, and the electric utilities would have no incentive to take the carriers' costs into account.

6. Appendix 1 to my affidavit projects estimated costs associated with proposed storm hardening requirements.[3] Assuming that Verizon is required to place 10% more poles in its network to comply with the electric companies' yet-to-be-defined standards, the additional cost experienced during the first year after installation would be approximately $20 million, most of which would be from one-time engineering and transfer costs. This figure assumes an increase to attachment fees, which would continue after the first year, raising Verizon's costs further still. Making another equally valid assumption that 50% more poles would be required,[4] Verizon's first-year cost would be $100 million.

7. The relocation of aerial facilities underground brings additional complexities and costs to the forefront that affect industry participants as well as customers. For example, Verizon participated in a multiple-phase project to investigate

[1] Proposed Rule 25-6.0343(1)(e), which concerns extreme wind loading and is discussed in the Affidavit of Dr. Lawrence M. Slavin, could have this kind of cost impact, by resulting in an increased number of poles to shorten span lengths or an increase in pole sizes.
[2] Whether Verizon must pay electric utilities additional attachment fees in a particular case will depend on the applicable joint use agreement.
[3] The number of poles used represents 4% budgeted over actual number of poles placed.
[4] This assumption becomes more probable when the extreme wind loading standards addressed in proposed Rule 25-6.0343(1)(e) are taken into account.

the feasibility of converting overhead utilities to underground facilities on Davis Islands located in Tampa, Florida. The project identified several benefits, including disaster preparedness and recovery. Verizon estimated that it would cost approximately $10 million or $4,000 per household to relocate its facilities in a scenario that included close coordination and cooperation with other utilities. The effort made it clear that undergrounding brings physical and legal complexities, including damage and disruptions caused by excavation, high costs associated with relocation, cost recovery issues, right-of-way issues, and negotiation of easements.

8. Second, proposed Rule 25-6.0343 threatens to divert Verizon's resources from its capital-intensive FiOS project, which Verizon is rolling out to meet the heated competition it faces in its Florida market. FiOS brings fiber to customers' homes, providing them with telephone, broadband and television services, and enabling Verizon to compete head to head with cable companies and other service providers. To the extent Verizon is forced to expend resources coordinating with electric utilities' projects undertaken under the proposed rules, the FIOS rollout will be impeded, to the detriment of Florida consumers.

9. Third, if Rule 25-6.0343 were adopted as currently proposed, Verizon would have to comply with the construction and maintenance standards set by the electric utilities. Because these new standards may differ from the existing, uniform national NESC standards, they could require Verizon to upgrade or rearrange its attachments to electric utility facilities, or even to remove them. To the extent new standards are imposed on Verizon through the proposed rule, they may also conflict with Verizon's joint use and license agreements that govern Verizon's attachments to

electric facilities. Among other things, the new standards could dramatically affect Verizon's rental rates (depending of the terms of applicable joint use agreements) and impose additional financial and operational burdens that are not contemplated under the existing contracts.

10. Verizon's pole attachment rates are already increasing at an alarming rate and proposed Rule 25-6.0343 as currently drafted would accelerate this pace. Florida pole attachments rates are the highest of any other operating company in the Verizon West (former GTE) foot print. As an example, Verizon received a proposed attachment rate increase of 21% covering 2005 to 2006 from one electric utility. This proposed increase equals $781,986 per year. The reason cited for the larger than anticipated increase is the utility's rising pole and maintenance costs, including costs from the 2004 storm season not recoverable from its rate payers. This utility also indicated that as a result of Florida legislation additional improvements will be made and costs will be reflected for the first time in the 2006 FERC data used to calculate charges.

Further Affiant sayeth naught.

Steven R. Lindsay

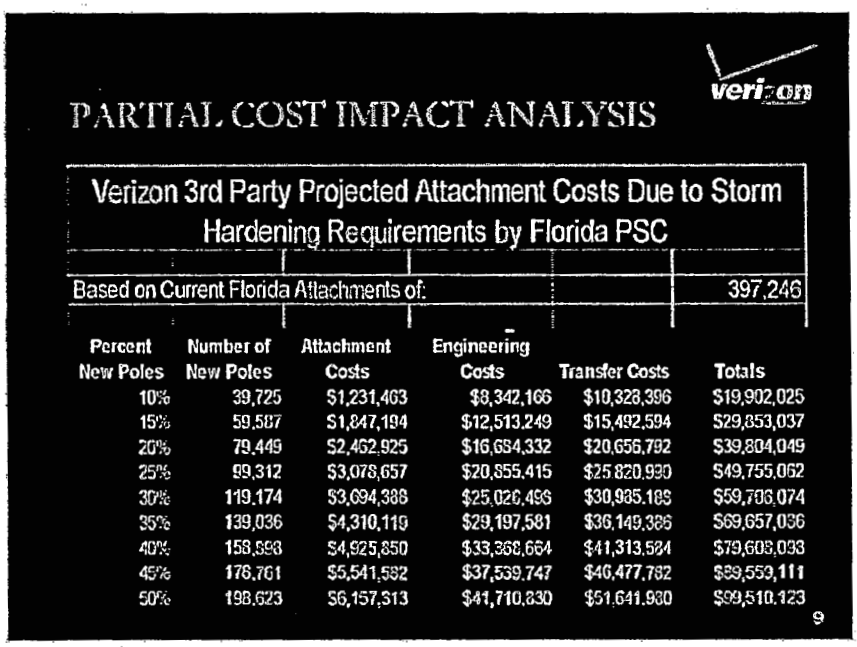
Subscribed and sworn to before me this 7 day of SEPTEMBER, 2006 (MWH)

Notary Public, State of Florida

My commission expires: 12/8/2007

MELINDA AMOROSO
MY COMMISSION # DD 273573
EXPIRES: December 8, 2007
Bonded Thru Notary Public Underwriters

Appendix 1



verizon

PARTIAL COST IMPACT ANALYSIS

Verizon 3rd Party Projected Attachment Costs Due to Storm Hardening Requirements by Florida PSC

Based on Current Florida Attachments of: 397,246

Percent New Poles	Number of New Poles	Attachment Costs	Engineering Costs	Transfer Costs	Totals
10%	39,725	$1,231,463	$8,342,166	$10,328,396	$19,902,025
15%	59,587	$1,847,194	$12,513,249	$15,492,594	$29,853,037
20%	79,449	$2,462,925	$16,684,332	$20,656,792	$39,804,049
25%	99,312	$3,078,657	$20,855,415	$25,820,990	$49,755,062
30%	119,174	$3,694,388	$25,026,498	$30,985,188	$59,706,074
35%	139,036	$4,310,119	$29,197,581	$36,149,386	$69,657,086
40%	158,898	$4,925,850	$33,368,664	$41,313,584	$79,608,098
45%	178,761	$5,541,582	$37,539,747	$46,477,782	$89,559,111
50%	198,623	$6,157,313	$41,710,830	$51,641,980	$99,510,123

9

ORIGINAL

BEFORE THE FLORIDA 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 8, 2006

AFFIDAVIT OF DR. LAWRENCE M. SLAVIN

The undersigned, being duly sworn, states as follows:

1. I am currently Principal of Outside Plant Consulting Services, Inc. Previously, I had an extensive career at Lucent (formerly AT&T), Bell Telephone Laboratories and Telcordia Technologies (formerly Bellcore). My career at Bell Laboratories, at which I was selected to be a Distinguished Member of Technical Staff, spanned more than 28 years (1961-1989), primarily in telecommunications product design and development. During the subsequent 12 years (1990-2001), I was a member of Telcordia's research and professional service organizations, and served as Director of the Network Facilities, Components, and Energy Group, responsible for requirements, testing, and analysis of outside plant media, components, and powering for telecommunications applications, as well as related installation and construction guidelines.

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ECR
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OTH

2. I received my Ph.D in mechanical engineering from New York University in 1969, my Master of Science in engineering mechanics from New York University in 1963 and my Bachelor of Science in mechanical engineering from The Cooper Union for the Advancement of Science & Art in 1961.

3. I have been an active member of NESC Subcommittee 5 since 1998, and in that capacity helped to develop the 2002 edition of the NESC and the recently issued

2007 edition. Subcommittee 5 (Overhead Lines – Strength & Loading) is directly responsible for specifying the storm loads and associated structural strength requirements referenced by the PSC. I am Chair of Working Group 5.7 (Seminars and Presentations; Subcommittee 5), and have served on Working Group 5.2 (Complete Revision of Sections 25 and 26; Subcommittee 5), and on the immediately relevant Working Group 5.8 (Application of Extreme Wind to All Structures; Subcommittee 5). I have also been Chair of Working Group 4.10 (New Ice Loads and Clearances; Subcommittee 4, Overhead Lines – Clearances), and serve on as the Accredited Standards Committee ASC-O5 (responsible for *ANSI O5.1, Wood Poles, Specifications and Dimensions*).

4. As Chair of WG 5.7, I have been responsible for organizing and coordinating the following industry information sessions, as well as providing some of the associated technical presentations:

- ***Panel Session: Structural Reliability-Based Design of Utility Poles and the National Electrical Safety Code*, 2003 IEEE Transmission & Distribution Conference and Exposition, 2003**
- ***Panel Session on National Electrical Safety Code (NESC), 2002 Edition, ANSI C2*, 2001 IEEE Transmission & Distribution Conference and Exposition, 2001**
- ***Panel Session on Proposed Changes to Strength & Loading Requirements for the 2002 Edition of the National Electrical Safety Code (NESC)*, IEEE Power Engineering Society, Towers, Poles & Conductors (TP&C) Subcommittee Meeting, 2000**

I will be chairing a panel session regarding the strength and loading requirements of the 2007 edition of the NESC, and presenting related technical information, at the TP&C Subcommittee Meeting in January 2007.

5. Appendix 1 attached to this Affidavit is a report I have prepared concerning proposed Rule 25-6.034 that is being considered in a related proceeding concerning investor owned electric utilities. Because proposed Rule 25-6.0343(1)(e) is substantially the same as proposed Rule 25-6.034 (except that it applies to municipal electric utilities and rural electric cooperatives instead of investor owned electric utilities), my report applies with equal force to proposed Rule 25-6.0343(1)(e). As I discuss in detail in the report, the proposed rule's requirement that electric utilities be guided by the extreme wind loading standards specified in the 2002 edition of the NESC could result in substantially higher facilities costs and lead to significant unintended consequences. Accordingly, I recommend that this requirement not be included in the proposed rule, or (if this recommendation is not accepted), that certain limitations be adopted.

6. Appendix 2 attached to this Affidavit provides more detailed information concerning my career in the telecommunications and related utility industries, including my activities in relevant professional organizations, such as the Main Committee and several Subcommittees for the NESC.

Further Affiant sayeth naught.

Lawrence M. Slavin

Subscribed and sworn to before me this 7 day of SEPTEMBER, 2006.

Notary Public, State of N.J.

My commission expires:

Sworn to and subscribed before me this 7 day of Sep., 2006

DARRELL MCMILLAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 6/20/2010

APPENDIX 1

Report Concerning Proposed Rule 25-6.034 As It Relates to Extreme Wind Loading Requirements

1. Introduction

This note provides comments regarding the proposed Florida Public Service Commission (PSC) Rule 25-6.034 to require that the extreme wind loading of the 2002 edition of the National Electrical Safety Code (NESC) be reflected in the design of electric utility-owned poles, including those with third-party (telecommunications) attachments. In particular, NESC-2002 Figure 250-2(d), part of NESC Rule 250C, is cited as a guide. The stated objective of the PSC is to "enhance reliability and reduce restoration costs and outage times" due to hurricane events, such as recently experienced during Hurricane Wilma. The present comments discuss the NESC rules (2002 edition), as applicable to the State of Florida, recent relevant discussions and decisions within the NESC Committee, and the impact of adopting the Extreme Wind Loads of Rule 250C throughout Florida.

2. NESC-2002

The NESC is an American National Standards Institute (ANSI) standard based upon a consensus of those substantially concerned with its scope and provisions, including the Institute of Electrical and Electronic Engineers (IEEE), which also acts as the Secretariat. Other members of the NESC Committee include organizations representing providers of electric power or communications service, their suppliers, and other affected or interested parties. The NESC includes various provisions for the safeguarding of persons from hazards from the installation, operation, and maintenance of electric supply and communication lines and equipment. The rules contain the basic provisions that are considered necessary for the safety of employees and the public.

In general, adherence to the NESC is voluntary; however, many commissions throughout the United States routinely adopt the latest edition, or specific editions, for application within their jurisdictions. For example, the Florida PSC has adopted the 2002 edition.

Sections 25 and 26 of the NESC provide the required strengths and loadings of utility poles and other structures. Section 25 specifies the type storm loads that Grade B or C utility lines are required to withstand. ("Grades of Construction" are discussed below.) Section 26 specifies the required strengths of the structures, as subject to the storm loadings specified in Section 25. (Most of Section 26 -- *e.g.*, Rule 261 -- applies to Grade B or C construction.) Two types of storms are specified -- (1) Combined Ice and Wind Loading (Rule 250B) and (2) Extreme Wind Loading (Rule 250C).

2.1 Combined Ice and Wind (Rule 250B)

Rule 250B refers to the Loading District map, NESC Figure 250-1, reproduced below. The three loading districts in the United States (Heavy, Medium and Light) specify the amount of radial ice buildup and a concurrent wind pressure. The Heavy and Medium districts in the north and central portions of the United States are subject to ½ and ¼ -

inch radial ice buildup, respectively, on all power and communications wires, cables, and conductors, and a concurrent wind pressure corresponding to 40 m.p.h.. The Light district in the southerly portion of the country, including Florida, is assumed to experience no ice buildup, but a wind pressure corresponding to 60 m.p.h. The latter wind speed, although only 50% greater than that assumed in the rest of the country, corresponds to a wind pressure of more than twice that in the Heavy or Medium districts, due to the strong (non-linear) dependence of the wind force on wind speed.[1] However, the lower pressure in the Heavy or Medium district is applied to a greater "sail area" due to the ice buildup on the wires and conductors. Depending upon the wire or conductor diameters, and the ice buildup levels, the resultant transverse loads in the "Light" district may exceed that in the so-called "Heavy" or "Medium" areas. In addition, the application of Rule 250B requires "overload" factors to be applied to the calculated wind forces to provide a conservative margin of safety when selecting appropriate pole sizes. A factor of 2-to-1 is applied to the common Grade C construction, and a factor of 4-to-1 is applied to Grade B construction, where required.[2] (See Section 2.3.) This procedure results in a fairly robust design that experience has shown to provide reliable, safe service.

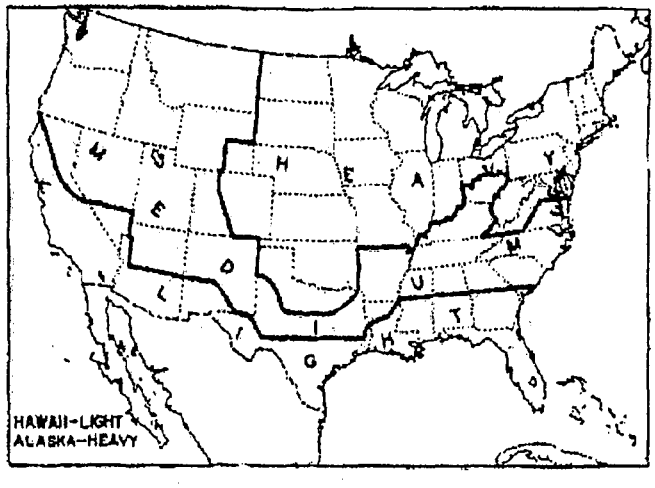

Fig. 250-1
General Loading Map of United States
with Respect to Loading of Overhead Lines

[1] The wind pressure, or force, is proportional to the square of the wind speed.
[2] The present discussion assumes "tangent" pole lines, without significant corner angles where guys may be required. For such tangent lines, the transverse wind loads typically represent the critical design condition.

Rule 250B applies to all Grade B or C structures, regardless of height, and is typically used by most utilities to determine the strength requirements for distribution poles.

2.2 Extreme Wind (Rule 250C)

NESC Rule 250C refers to various wind maps, of which Figure 250-2(d), including the state of Florida, is reproduced below. The wind speeds[3] vary from approximately 95 m.p.h. (interpolated) in the north of the state to as much as 150 m.p.h. at the southern tip. The minimum 95 m.p.h. speed corresponds to a wind pressure of 2½ times that of the 60 m.p.h. wind assumed in the Light loading district. The maximum 150 m.p.h. speed corresponds to a wind pressure of more than six times that due to the 60 m.p.h. wind. However, the corresponding overload factors for Rule 250C are lower than that of Rule 250B, somewhat reducing the wide divergence in pole strength requirements. Nonetheless, if applicable, the impact on pole strength and sizes in Florida, and on utility construction practices and costs, would be major, as discussed in detail in Section 4. For various reasons, as discussed in Section 3.1, the NESC only applies Rule 250C to structures exceeding 60 feet in height above ground. This effectively exempts the vast majority of distribution poles. For cases where both Rule 250B and 250C apply, the larger effective loads would determine the required pole strength.

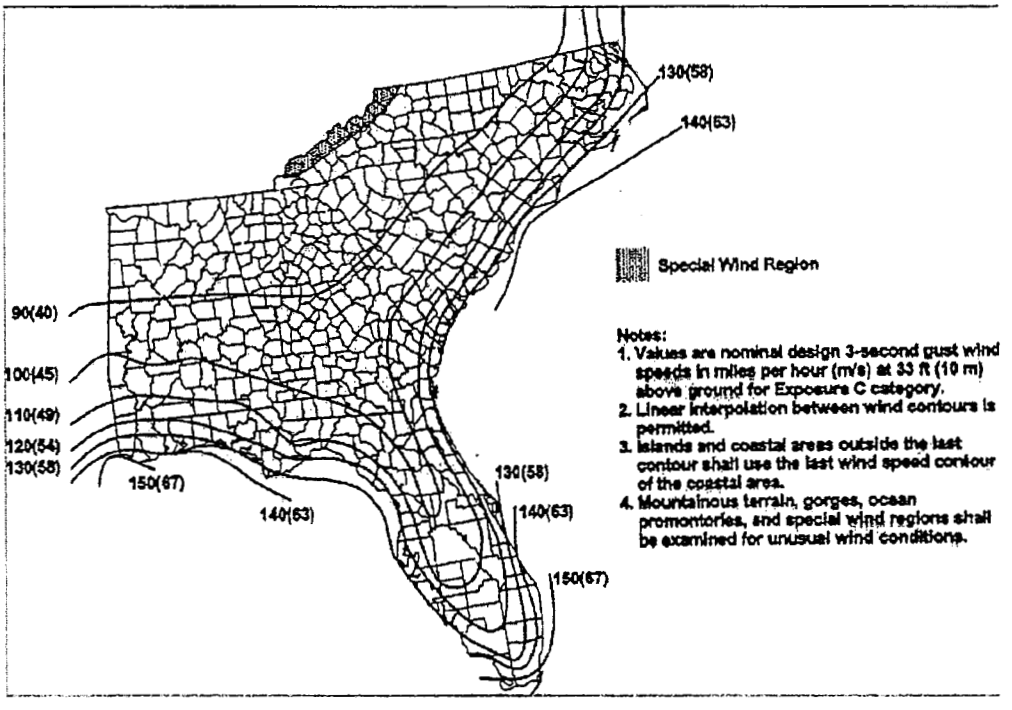

Fig 250-2(d)
Eastern Gulf of Mexico and Southeastern US Hurricane Coastline

[3] Figure 250-2(d) refers to "3-second gust wind speeds", which is approximately 20% greater than the 1-minute average wind speed used as the basis for categorizing hurricane levels by the Saffir-Simpson Hurricane Scale.

2.3 Grades of Construction

Section 24 of the NESC defines three Grades of Construction intended to distinguish between various situations, requiring varying levels of reliability, as implemented by the overload factors described above. In general, these grades depend upon the combination of voltage levels present in the power and communications conductors supported on the same poles, as well as various details, as specified. Most distribution poles carrying "primary power" (> 750 volts) at the upper portion of the pole, and communications cables below, are in the Grade C category. If the adjacent lines cross railroads tracks or limited access highways, a greater reliability level is required, corresponding to Grade B. Most power utility-owned poles are in the Grade C category.

The third grade of construction is Grade N, and applies if the voltages do not exceed 750 volts, corresponding to the lowest level of reliability.[4] This includes joint-usage poles supporting only "secondary power" (< 750 volts) or poles supporting only telecommunications cables.

The NESC does not provide specific storm loading or strength requirements for Grade N structures. NESC Section 25 (Loadings for Grades B and C) is not applicable to Grade N, and Section 26 (Rule 263) only states that "[t]he strength of Grade N construction need not be equal to or greater than Grade C" and that "[p]oles used for lines for which neither Grade B nor C is required shall be of initial size or guyed or braced to withstand expected loads, including line personnel working on them." This lack of specificity for Class N poles allows wide variability in application with respect to selecting appropriate pole strengths to withstand storms.

2.4 Required Strength & Pole Class

Based upon the wind pressures corresponding to the storm loads, as applicable, an appropriate strength pole may be selected. Wood pole sizes and strengths are specified in *ANSI O5.1, Wood Poles, Specifications and Dimensions*. ANSI-O5.1 provides a pole classification system based upon the ability of a pole to withstand lateral loads placed near the top of the pole, in a cantilever situation, such as may correspond to transverse wind loads on a pole with attachments. For example, a popular size Class 4 pole would typically (on the average) withstand a lateral load of 2,400 lbs applied 2 feet from the tip of the pole. A Class 3 pole is stronger, and would withstand 3,000 lbs. Within poles of Class 1 - 10, lower class number poles correspond to stronger (*i.e.*, larger diameter) poles. (Poles of strength greater than Class 1, are classified as H1, H2, and so on) with strength increasing with the H-number.)

Thus, a pole may be described as that supporting a specific "grade" of construction, corresponding to a level of required reliability (Grade B or C), or by a "class" size which is selected to match the strength needed to achieve the required reliability level. The strength is determined and calculated based upon the specified loading details (ice buildup and/or wind speed), the number and size (diameter) of the attachments to the pole, the span length between adjacent poles, and the grade of construction (via the overload factors discussed above).

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[4] Grade B applies if the adjacent lines cross railroads tracks or limited access highways.

3. Upcoming and Future Editions of NESC

The 2007 edition of the NESC has recently been issued (August 2006) and is effective as of February 2007. Regarding storm loadings, several significant changes were introduced. Although Rule 250B was left unchanged, a new Rule 250D was added: "Extreme Ice with Concurrent Wind Loading." Similar to Rule 250C, Extreme Wind Loading, Rule 250D would only apply to structures exceeding 60 feet in height, exempting most distribution poles. In any case, this storm load would not have an impact in Florida due to the low associated ice (0-in.) and concurrent wind (30 m.p.h.) loads.

It is particularly interesting that Rule 250C has been modified for the common Grade C construction applications. In previous editions, the overload (design) factors for Grade B and C construction were the same, in spite of the greater implied reliability for the Grade B situations. This inequity was corrected in the 2007 edition by a *reduction* of as much as 25% in the effective design loads for Grade C construction. Thus, in contrast to possibly extending the Extreme Wind Loading to a larger category of structures and applications (*e.g.*, poles ≤ 60 feet height) the NESC requirements, where applicable, have been reduced. Nonetheless, there had been extensive effort and discussions regarding the possible extension of Rule 250C to structures of all heights, as described below.

3.1 Extreme Wind Loading -- Discussions

There is a seemingly eternal debate within the NESC Committee to consider eliminating the 60-foot exemption -- so that poles of all heights would then be subject to extreme wind loading. Such a revision was discussed within the NESC Committee with regard to the 2007 edition but, once again, was rejected. In fact, as described above, where applicable -- *i.e.*, poles taller than 60 feet -- the design requirement for Extreme Wind was actually reduced in severity for Grade C construction.

The rationale for rejecting consideration of extreme winds for "distribution" poles (*i.e.*, poles < 60 feet tall) is that the vast majority of industry experiences indicate that almost all damage to such lines is caused by wind-blown debris such as falling branches, and not by the wind forces acting directly on the wires and poles. In that case, little would be gained by attempting to design such poles to withstand the direct hurricane wind forces. The NESC Loading Section (NESC Section 25) does not explicitly use the term "distribution" when referring to these applications, but the 60-foot height threshold was chosen intentionally to exclude the vast majority of such poles. (In contrast, taller structures, such as critical transmission towers, would benefit from such a requirement.) In addition, to the best of my knowledge, the NESC Committee has never discussed extending any of the storm loads of Section 25 of the NESC (*i.e.*, Combined Ice and Wind or Extreme Wind) to Grade N applications, including telecommunications-only poles or joint-use poles with only secondary power (< 750 volts). Thus, the proposal of the PSC to extend Rule 250C to all distribution poles, regardless of height or grade of construction, would appear to be a major departure from present considerations in the NESC Committee, or industry in general. Thus, it would not appear to be "reasonably practical, feasible, and cost-effective" (to quote from proposed Rule 25-6.034(5)) to attempt to apply Rule 250C to Grade N joint-use distribution poles.

Related discussions within the NESC Committee to extend the Extreme Wind loading to structures of all heights (including distribution poles), focused on a particular change proposal, developed within Working Group 5.8, that would limit the impact of such an otherwise potentially dramatic change. In particular, for the Light Loading District portion of the country, which includes Florida, there would be no impact for distribution structures. However, based upon a multitude of industry comments objecting to even this diluted version of an Extreme Wind requirement for distribution poles throughout the country, this proposed change was not incorporated into the 2007 edition. It may be expected that this (rejected) change proposal will serve as a starting point for similar considerations for the 2012 edition of the NESC.

3.2 Future NESC Meetings (2012 Edition)

Although the 2007 edition of NESC is being issued essentially as this report is being written, efforts on the development of the subsequent 2012 edition are already being anticipated by Subcommittee 5. Due to the general interest in the effects of storm loads, such as hurricanes, and the effort required to properly consider the various aspects, Subcommittee 5 typically begins its meetings considerably earlier in the code cycle than most other subcommittees. Thus, initial meetings for development of the 2012 edition probably will begin in 2007. As a precursor, Working Group 5.7 of Subcommittee 5 (chaired by myself) will hold a panel session in January 2007 for the benefit of interested members of the power industry (IEEE Power Engineering Society, TP&C Subcommittee). The panel session will address the changes adopted in the 2007 edition, but will also discuss some of the proposals that were not accepted. The proposed (rejected) changes to Rule 250C, including the proposed extension to distribution structures, will be of particular interest, and will likely generate comments to be considered in the development of the 2012 edition.

4. Impact of Extending Rule 250C

The unlimited application of Rule 250C to all poles would have a major impact on the cost and operations of the utilities and the third party attachers, and would likely significantly affect the system reliability and restoration efforts, as well as public safety -- albeit not necessarily in the manner expected by the PSC.

4.1 System Cost

For electric utility-owned joint-use Grade N, Grade B or Grade C pole applications, the additional pole costs will depend upon the extent to which the proposed Extreme Wind load would exceed "reasonable" (albeit non-mandated) Grade N loads, and the already required Combined Ice and Wind load for Grade B or C applications for poles not exceeding 60 feet in height. Any increased strength requirement leads to stronger (larger diameter) poles, or a correspondingly greater number of poles (resulting in shorter span lengths), both of which would obviously be more expensive.

Figure 1 illustrates the relative pole strength in comparison to that currently required for the common Grade C joint-usage distribution application; *e.g.*, including primary power

(> 750 volts) with telecommunications cables mounted below the power cables.[5] Assuming the pole does not exceed 60 feet in height (65 feet in length[6]), such a pole must be designed to the present Combined Ice and Wind Loading (NESC Rule 250B, Figure 250-1, Tables 250-1, 253-1 and 261-1A). For present purposes, a tangent line (no corner angles) is assumed, for which the design is based upon the ability to withstand the transverse wind loading. For Florida, located in the NESC Light Loading District (Figure 250-1), this corresponds to a wind speed of approximately 60 m.p.h., but with an additional overload/design factor of approximately 2-to-1 for Grade C, and 4-to-1 for Grade B. For Grade N, a 1-to-1 design factor is conveniently ("reasonably") assumed. For the proposed application of Extreme Wind requirements (NESC Rule 250C), the wind-speed for Florida ranges from less than 100 m.p.h. (assumed to be 95 m.p.h.) in north-central area, to as much as 150 m.p.h. at the southern tip.[7]

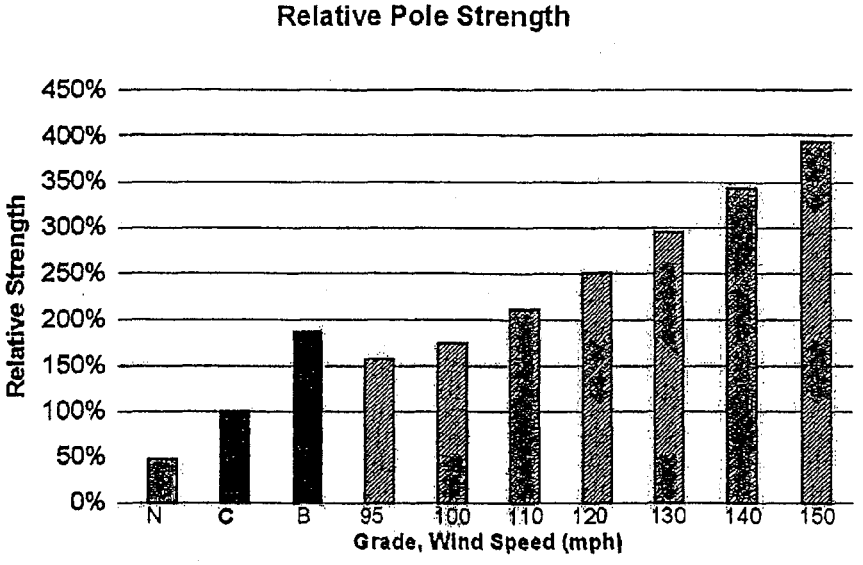

Figure 1
Relative Distribution Pole Strength vs. Typical Grade C Strength Requirements (NESC-2002)

The three solid bars to the left side of Figure 1, labeled "N", "C" and "B", depict the relative magnitude of the present required pole strength for a Grade N, Grade C, or

[5] Grade B construction would typically be limited to special situations (such as railroad crossings and limited access highways).
[6] Wood poles are available in 5 foot increments, and are buried at a depth of 10% the length plus 2 feet, with a slightly greater depth for poles shorter than 40 feet; *e.g.*, a 40-foot pole is buried at a depth of 6 feet, resulting in a 32 feet height above ground. (See ANSI-O5.1 wood pole standard.)
[7] A pole length of 40 feet is assumed. This parameter has only a minor effect on the results.

Grade B application. The seven cross-hatched bars to the right depict the relative magnitude of the required pole strength (which under the proposed rule would be the same for Grade N, C and B poles) due to Extreme Wind loads, at the wind speed indicated, should Rule 250C be directly extended to such applications. The results in Figure 1 thus show that the increased loading for an otherwise Grade C pole may be *increased* by a minimum of 50% (95 m.p.h.) or possibly as much as 300% (150 m.p.h.). In other words, the required strength, or number of poles, would be at least 1½ times -- and possibly as much as four times -- that currently required. For a Grade N pole application, the required strength would be at least three times -- and possibly as much as eight times -- a present reasonable design requirement. For the less common Grade B applications, the impact would not be realized for wind speeds less than 110 m.p.h.. Nonetheless, significant strength increases would be required for wind speeds exceeding 110 m.p.h., which are characteristic of significant portions of Florida, as shown in Figure 250-2(d).

Figure 2 illustrates the corresponding pole class that would be required, assuming a Class 4 pole is necessary for the reference Grade C application, and the same number of poles (or span length) is maintained. Similar to Figure 1, the three solid bars to the left side of Figure 2 depict the representative pole class for a Grade N, Grade C, or Grade B application. The seven cross-hatched bars to the right depict the required class pole corresponding to the PSC proposed application of the Extreme Wind loads (which would be the same for Grade N, C and B poles). A minimum increase of three class sizes (to Class 1) for Grade C would be required for the minimum 95 m.p.h. wind, and as much as eight class sizes (to Class H5) for the 150 m.p.h. case. A Class 7 pole would otherwise suffice for the Grade N construction. As above, the Grade B applications would be affected to a lesser degree, but the increased size would still be significant for wind speeds above 110 m.p.h.

The increased pole material costs, including shipping and storage, are directly related to the number of poles or pole size (class). For larger, stronger poles, increased installation costs for the heavier poles may also be anticipated. Furthermore, the availability of such larger size (diameter) poles may be an issue.

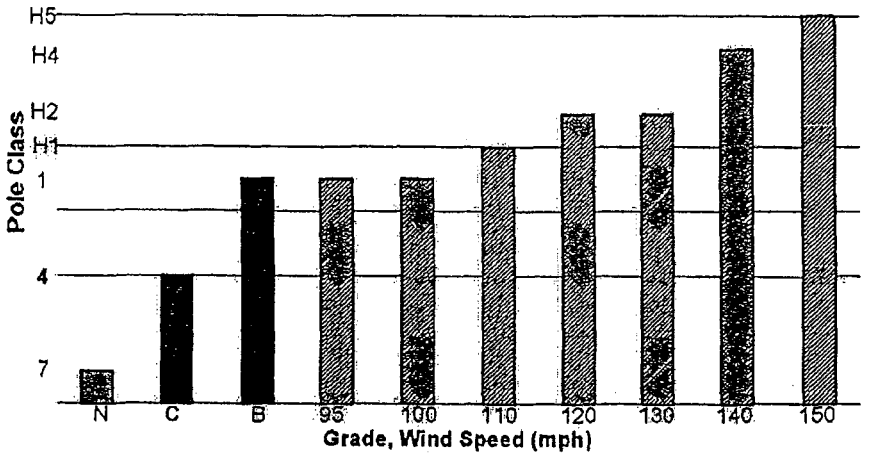

Figure 2
Required Distribution Pole Class vs. Typical Grade C Strength Requirements (NESC-2002)

4.2 Unintended Consequences

The imposition of the Extreme Wind requirement may result in unfortunate "unintended consequences," as sometimes occurs when changing long-standing practices that have generally been deemed successful. For example, as discussed above, the increased pole strength requirement would result in significantly stronger (stouter) poles or a larger number of more conventional size poles, corresponding to shorter spans. Such a practice would have a direct and negative impact on vehicular safety, and conflict with the objectives of the U.S. Department of Transportation, and presumably that of the DOTs of many states. The U.S. DOT is attempting to minimize the number of utility poles in order to reduce the incidence and severity of vehicular accidents. A greater number of poles, or stouter poles, would be contrary to such objectives. Thus, an attempt to modify a national safety code (*i.e.*, the NESC) to accomplish one objective may actually compromise public safety.

Other unintended consequences may also result from the introduction of the proposed Extreme Wind loading, due to a possible significant increase in the number of installed distribution poles along a given route. The June 8, 2006 Florida PSC Memorandum (page 5, Rollins) describes the likelihood that the supposedly less loaded individual poles would nonetheless be damaged in a hurricane, caused by the wind-blown debris and branches, resulting in the much more difficult, and time-consuming, recovery process to repair or reinstall many more poles.

Still another negative consequence relates to the engineering support associated with the implementation of the proposed Extreme Wind loads. The determination of the corresponding wind force is considerably more complicated than that of the existing transverse wind force based upon the present required Combined Ice and Wind loading. While such calculations are generally within the capability of experienced transmission engineers, with civil engineering training, they are beyond that of most distribution engineers. Indeed, one of the change proposals submitted for the 2007 edition was an attempt to simplify the engineering implementation of the Extreme Wind loads for even the applicable transmission applications. Although new or available software packages may alleviate the burden, there will be inevitable confusion and delays -- as well as possible errors in implementation -- in the design and installation of new facilities (including Verizon's fiber-optic networks), to the detriment of the consumers.

5. Recommendations

My primary recommendation is that the Commission not alter the manner in which the NESC's extreme wind loading standards are applied. The NESC is a well-respected document that is generally recognized as having served the industry and public well. For this reason, the NESC Committee (*e.g.*, Subcommittee 5, Strength & Loading) generally attempts to introduce significant changes in a gradual, evolutionary manner, in order to avoid or minimize the potential impact, including unintended negative consequences such as described above (Section 4.2). Thus, previous discussions within the NESC Committee (see Section 3.1 above) to extend the Extreme Wind loading to structures less than 60 feet tall (distribution poles), focused on a particular change proposal, developed within Subcommittee 5, that would limit the impact of such an otherwise potentially dramatic change. In particular, for the Light Loading District portion of the country, which includes Florida, the impact would have been insignificant. Nonetheless, based upon a multitude of industry comments objecting to even this diluted version of an Extreme Wind requirement for distribution poles throughout the country, this proposed change was not incorporated into the 2007 edition of the NESC.

Ideally, the Florida PSC should wait until the next code cycle of the NESC (2012 edition) before encouraging or requiring consideration of the NESC Extreme Wind loading. The related discussions within the NESC Committee during the development process would take into account the experiences during Hurricane Wilma, as well as other recent serious storms. Florida Power & Light, in particular, is well-represented on NESC Subcommittee 5. If the Florida PSC decides to change how the NESC's Extreme Wind loading standards are applied, it should be very cautious in the manner in which such a dramatic, controversial change is introduced. At the least, the Commission should attempt to limit the otherwise dramatic impact to as small a category of facilities as possible, or to reduce the magnitude of the impact. Thus, my alternative recommendation, in the event the Commission moves in this direction, is as follows:

- The proposed PSC rule should limit its scope to Grade B or Grade C applications of electric-only or joint-use poles owned by the electric utilities. Thus, Grade N applications -- which include joint-use poles with only secondary power (< 750

volts), as well as several categories of electric-only poles -- should be explicitly excluded from the proposed application of Rule 250C.

- The application of the NESC Extreme Wind load, as presently specified in NESC-2002, Rule 250C, should be modified to limit the quantitative impact to the affected distribution poles. For example, the reduced loads for Grade C construction incorporated into the latest (2007) edition of the NESC should be explicitly cited as consistent with the intent of PSC Rule 25-6034. For Grade C construction, the corresponding wind forces are reduced by as much as 25% compared to NESC-2002. NESC-2007 is being issued in August 2006, and is effective within six months (February 2007).
- The proposed PSC rule, preferably as modified above, should be applied on a trial basis, initially limited to a specified geographic area and a defined period (*e.g.*, 1-2 years), in order to better understand the potential benefits and consequences of such a rule.

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APPENDIX 2
About Outside Plant Consulting Services, Inc. (OPCS)
(Dr. Lawrence M. Slavin)

Outside Plant Consulting Services, Inc. (OPCS) was established in the year 2002 to help meet the needs of the telecommunications and power industries in establishing standards, guidelines and practices for outside plant facilities and products. The OPCS Group provides related support services for field deployment, and product evaluation and analysis. Dr. Lawrence (Larry) M. Slavin, Principal of OPCS, has extensive experience and expertise in such activities, based upon his many years of service at AT&T/Lucent Bell Telephone Laboratories (Distinguished Member of Technical Staff) in telecommunications product design and development, followed by a career at Telcordia Technologies (Bellcore) in its research and professional service organizations.

As Principal Consultant and Manager/Director of the Network Facilities, Components, and Energy Group at Telcordia, Dr. Slavin was responsible for professional services related to the telecommunications industry. These activities included technical leadership in developing installation and construction practices and "generic requirements" documents, introducing new construction methods, and performing analyses on a wide variety of technologies and products (such as poles, duct, wire and cable, electronic equipment cabinets, flywheel energy storage systems and turbine-generators). Throughout his long career, he has had a leading role in the evolution of many telecommunications related fields and disciplines – including aerial and buried plant design and reliability; advanced construction and cable and duct placement techniques; copper pair, coaxial, and fiber-optic technology; flywheel energy storage systems; physical design and development of hardware and electronic and electro-optic systems (such as the "SLC 96" digital loop carrier); cable media and equipment reliability studies; exploratory fiber-optic hardware development; and systems engineering.

Dr. Slavin is a member of several subcommittees of the National Electrical Safety Code Committee, responsible for specifying safety standards for aerial and buried telecommunications and power facilities in the United States. He is also an active member and participant on the Accredited Standards Committee ASC-O5 ("ANSI-O5") for wood poles and products, as well as on several related committees of the American Society of Civil Engineers. In addition, Dr. Slavin is a Charter Member of the North American Society for Trenchless Technology, has been instrumental in the development of directional drilling standards, and directly supports training activities for the directional drilling industry at the Center for Underground Infrastructure and Research and Education (CUIRE) at Michigan State University. Specific present and recent industry activities are listed below.

Industry Activities

- **National Electrical Safety Code Committee**
  - Represents the national telephone industry, via Alliance for Telecommunications Industry Solutions, ATIS
  - Executive Subcommittee
  - Main Committee
  - Subcommittee 4 (Overhead Lines – Clearances)
  - **Subcommittee 5 (Overhead Lines – Strength & Loading)**
  - Subcommittee 7 (Buried Lines)
- **Accredited Standards Committee ASC-O5**
  - ***ANSI O5.1, Wood Poles, Specifications and Dimensions***
  - *ANSI O5.2, Wood Products, Structural Glued Laminated Timber for Utility Structures*
  - *ANSI O5.3, Wood Products, Solid Sawn-Wood Products and Braces*
- **Pole Reliability Based Design (RBD) Committee, ASCE**
  - ***Reliability-Based Design of Utility Pole Structures***
- **Distribution Pole Standard Committee, ASCE**
- Committee F17 on Plastic Piping Systems, ASTM
  - Subcommittee F17.67 on Trenchless Plastic Pipeline Technology
  - Task Group Leader for development of HDD Standard ASTM F1962
  - *ASTM F1962, Standard Guide for Use of Maxi-Horizontal Directional Drilling for Placement of Polyethylene Pipe or Conduit Under Obstacles, Including River Crossings*
- Trenchless Installation of Pipelines (TIPS) Committee, ASCE
  - *ASCE Manual of Practice for Pipe Bursting Projects*
- Center for Underground Infrastructure and Research and Education (CUIRE) at Michigan State University
  - Industry Advisory Board
- Trenchless Technology Center, Louisiana Tech University
  - Industry Advisory Board
- North American Society for Trenchless Technology (NASTT)
  - Charter Member
  - Chair of Directional Drilling Subcommittee
- Missouri Western State College
  - HDD Steering Committee

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 subsections (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 address the ability of transmission and distribution facilities to mitigate damage caused by extreme weather 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] for electrical facilities constructed on or after February 1, 2007. The 2007 NESC shall apply. Electrical facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC in effect at the time of the facility's initial construction. A copy of the 2007 NESC ISBN number 0-7381-4893-8, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(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

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Witness: Rule Language
Date: 10-04-06

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_____.

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(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_____.

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