

ORIGINAL

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Subject: "Comments of Time Warner Telecom for Proposed Rules Regarding Pole Attachments"
Attachments: Comments For Proposed Rules 05-25-06.doc

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5/26/2006

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rules governing the placement of new electric distribution facilities underground, and the conversion of existing overhead distribution facilities to underground facilities, to address the effects of extreme weather events.

DOCKET NO. 060172-EU
FILED: May 3, 2006

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.

DOCKET NO. 060173-EU
FILED: May 3, 2006

COMMENTS OF TIME WARNER TELECOM FOR PROPOSED RULES REGARDING POLE ATTACHMENTS

COMES NOW, Time Warner Telecom ("TWTC") and files these supplemental comments and suggestions to the proposed rules in the above-styled dockets addressing underground distribution standards and procedures and would show the following:

1. Time Warner Telecom has participated in the two rule development hearings regarding the above-styled dockets. Time Warner Telecom is concerned with the comments of the electric companies with regard to pole attachment standards and procedures.

2. Time Warner Telecom generally is in agreement with the Commission's aim of establishing higher standards both for overhead and underground electric distribution facilities in order to promote public safety and to minimize disruption of electric distribution and communications infrastructure during and after storm events. These goals will ultimately result in less disruption in the lives of the public and less disruption to the economic well being of Florida. The economy of Florida will benefit through minimal disruption of electric power and

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communications as well as gains in efficiency through less need for reconstruction of infrastructure and repair after storm events.

3. Time Warner Telecom is concerned with the Joint Supplemental Comments of the electric power companies with regard to suggestions that the commission delegate to the electric companies an 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.

4. Granting to the electric utilities such 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.

5. The proposed rules of the electric utilities also provide 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.

6. Time Warner Telecom states that should the commission adopt standards similar to those 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.

7. Time Warner Telecom also states that the proposal by the joint electric companies does not provide any type of mechanism for resolving any disputes or complaints raised by competitive communications companies or incumbent communications companies who may differ with the utility over the standards or the exercise of the discretion in implementing those standards.

8. Commission staff had asked Time Warner Telecom specifically at the Rule Development Workshop whether or not Time Warner Telecom was comfortable with the consumer complaint process suggested for utilization in resolving disputes. Time Warner Telecom would note that Rule 25-22.032 as suggested for a mechanism is a customer complaint mechanism that does provide due process and provides for involvement of Public Service Commission staff, general counsel staff, and representatives from the Division of Consumer Affairs. While such a process would offer due process and can be utilized by companies, Time Warner Telecom believes that a similar process with some streamlining might be more appropriate for use by telecommunications companies and utility companies. The consumer complaint process is designed more for utilization of the consuming public who may not have access to the attorneys and other resources that communications and electric companies may utilize. However, in the absence of any other process, this consumer complaint process could be utilized.

9 Time Warner Telecom suggests that the proposed rules should be amended or revised to reflect that for purposes of utilizing the customer complaint rule that a competitive telecommunications company is considered a “customer” for purposes of utilizing the customer complaint rule in disputing both the construction in aid of contribution, pole attachment issues or other rules as suggested for revision under these two dockets.

10. Time Warner Telecom further asserts its concurrence with staff that the costs of hardening above ground facilities and the costs of moving to underground facilities are appropriately charged as a part of the rates for ultimate recovery by the utilities. The calculations for contributions in aid of construction also appear appropriate.

11. Time Warner Telecom would state that it is in agreement with comments filed in these dockets by the Florida Cable Telecommunications Association with regard to pole attachment issues. Comments regarding Federal Communications Commission rulings and the exercise of jurisdiction by the Florida P.S.C. in this area of pole attachments made by the Florida Cable Telecommunications Association are hereby adopted as if submitted by Time Warner Telecom in these dockets.

12. Time Warner Telecom would also submit to the Public Service Commission that these requirements regarding underground installation and hardening of above ground installations should be accomplished in a manner that will benefit the public on an economic basis to the greatest extent possible. Where facilities are to be located underground, Time Warner Telecom asserts that the Public Service Commission should encourage utilities, telecommunications companies and other pole attachers to work closely to co-locate facilities where possible. Just as utilizing current utility poles prevents multiplicity of poles, co-location in a common underground facility would also benefit all utilities by saving on the cost of the

multiple initial installation of these facilities. To the extent co-location could be achieved on a technology and safety basis, the Commission should encourage this in order to prevent disruption to the public, additional costs to the public, and additional burden on current infrastructure with regard to excavation and installation of new underground facilities.

Respectfully submitted this _____ day of May, 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.

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