Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA ELECTRONIC AND HAND DELIVERY

July 28, 2006

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

RE: Docket No. 060512-EU - Proposed Adoption of New Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives

Dear Ms. Bayo:

Enclosed is the Florida Cable Telecommunications Association, Inc.'s Request for Public Hearing pursuant to Section 120.54(3)(c)1, Florida Statutes, and Rule 28-103.004, Florida Administrative Code, as to Rules 25-6.034, 25-6.0341, 25-6.0342, 25-6.0343, 25-6.064, 25-6.078 and 25-6.115. This Request for Hearing is being filed in this docket as well as Docket No. 060172-EU, due to the fact that the original Notice of Right to Request Hearing, including the right to request hearing on Rule 25-6.0343, was issued in Docket Nos. 060172-EU and 060173-EU, but this new docket, Docket No. 060512-EU, has been established for proposed Rule 25-6.0343.

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

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

Sincerely,

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

Enclosure

246 East 6th Avenue • Tallahassee, Florida 32303 • (850) 681-1990 • FAX (850) 681-9676 • www.fcta.com

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

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[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

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[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.

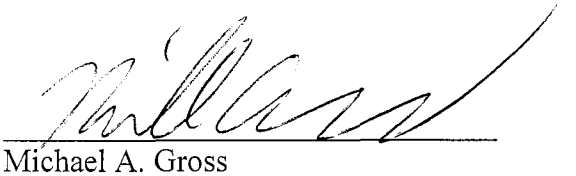
35. The subject matter of the proposed actions is within the FCTA's general scope of interest and activity, and the relief requested by the FCTA, i.e., incorporation by the Commission of the FCTA's suggested changes to the proposed rules, is the type of relief appropriate for the FCTA to receive on behalf 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.



Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Association
246 E. 6th Avenue
Tallahassee, FL 32303
Tel: 850/681-1990
Fax: 850/681-9676

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.

Lawrence Harris
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ausley Law Firm (TECO)
Lee Willis
Jim Beasley
P.O. Box 391
Tallahassee, FL 32302

BellSouth Telecommunications, Inc.
James Meza I11
E. Earl Edenfield, Jr.
c/o Ms. Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Embarq
Charles J. Rehwinkel
3 15 S. Calhoun St., Ste. 500
Tallahassee, FL 32301

Beggs & Lane Law Firm (GPC)
Russell Badders
P.O. Box 12950
Pensacola, FL 32576-2950

Boca Woods Emergency Power Committee
Alan Platner
11379 Boca Woods Lane
Boca Raton, FL 33428

Florida Power & Light Company
Natalie F. Smith
John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408

Florida Municipal Electric Association, Inc.
Frederick M. Bryant Donald Schleicher
Jody Lamar Finklea William Hamilton
Post Office Box 3209
Tallahassee, FL 323 15-3209

Lee County Electric Cooperative, Inc.
P. 0. Box 3455
North Fort Myers, FL 33918-3455

H. M. Rollins Company, Inc.
H. M. Rollins
P.O. Box 3471
Gulfport, MS 39505

Treated Wood Council
Jeff Miller
11 11 19th Street, NW, Suite 800
Washington, DC 20036

North American Wood Pole Council
Dennis Hayward
7017 NE Highway 99, Suite 108
Vancouver, WA 98665

Pennington Law Firm (Time Warner)
Howard E. (Gene) Adams
P.O. Box 10095
Tallahassee, FL 32302-2095

Southern Pressure Treaters Association
Carl Johnson
P.O. Box 3219
Pineville, LA 7 1360

Tampa City Council

Councilwoman Linda Saul-Sena
3 15 East Kennedy Boulevard, 3rd Floor
Tampa, FL 33602

TDS TelecodQuincy Telephone
Mr. Thomas M. McCabe
P. 0. Box 189
Quincy, FL 32353-0189

Town of Jupiter Island
Donald R. Hubbs, Asst Town Mgr
P.O. Box *7*
Hobe Sound, FL 33475

Town of Palm Beach
Thomas G. Bradford, Deputy Town Mgr
P.O. Box 2029
Palm Beach, FL 33480

Verizon Florida Inc.
Dulaney L. O'Roark I11
Six Concourse Parkway, Suite 600
Atlanta, GA 30328

Western Wood Preservers Institute
Todd Brown
7017 NE Highway 99, Suite 108
Vancouver, WA 98665

Young Law Firm
R. Scheffel Wright
John LaVia
225 South Adams Street, Suite 200
Tallahassee, FL 32301

Michael A. Gross

A. Unreasonable Billing Practices by Utilities

1. Double Billing:

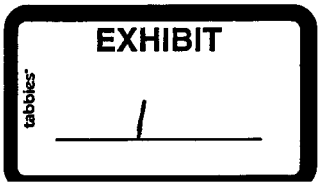
- Collected money from attachers for unnecessary, duplicative, or defective make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 26 (2003) (identifying at least 29 examples of engineering errors or duplicative charges that Georgia Power unreasonably forced 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.