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Docket No. 060512-EU
Proposed Adoption of New Rule 25-6.0323, F.A.C., Standards of Construction - Municipal Electric Utilities and Rural Electric Cooperatives

Filed on behalf of:

Lee County Electric Cooperative, Inc.

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FPSC-COMMISSION CLERK

9/7/2006

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

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

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 contrast 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:

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by regular United States Mail, this 7th day of September, 2006.

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