ORIGINAL

Timolyn Henry

From: terry.scobie@verizon.com
Sent: Friday, September 08, 2006 2:10 PM
To: Filings@psc.state.fl.us
Cc: de.oroark@verizon.com; David Christian; frank.app@verizon.com
Subject: Docket 060512-EU - Initial Comments of Verizon Florida Inc. Concerning Proposed Rule 25-6.0343

Attachments: 060512 VZ FL Initial Comments 9-8-06.pdf

)60512 VZ FL Initial Comments ...

The attached filing is submitted in Docket No. 060512-EU on behalf of Verizon Florida Inc. by

Dulaney L. O'Roark III
Six Concourse Parkway
Suite 600
Atlanta, Georgia 30328
(770) 284-5498
de.oroark@verizon.com

The attached .pdf document contains 38 pages - transmittal letter (1 page), certificate of service (1 page), service list (1 page), Initial Comments (12 pages), Affidavit of Steven R. Lindsay (6 pages) and Affidavit of Lawrence M. Slavin (17 pages).

(See attached file: 060512 VZ FL Initial Comments 9-8-06.pdf)

Terry Scobie
Executive Adm. Assistant
Verizon Legal Department
813-483-2610 (tel)
813-204-8870 (fax)
terry.scobie@verizon.com

CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC 1
OTH kym P.

Slavin Aff.
DOCUMENT NUMBER-DATE
08229 SEP-8 06
FPSC-COMMISSION CLERK

Lindsay Aff.
DOCUMENT NUMBER-DATE
08228 SEP-8 06
FPSC-COMMISSION CLERK

Comments
DOCUMENT NUMBER-DATE
08227 SEP-8 06
FPSC-COMMISSION CLERK

ORIGINAL

Dulaney L. O'Roark III
Vice President & General Counsel, Southeast Region
Legal Department

verizon

Six Concourse Parkway
Atlanta, Georgia 30328

Phone: 770-284-5498
Fax: 770-284-5488
de.oroark@verizon.com

September 8, 2006 – **VIA ELECTRONIC MAIL**

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
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 are the Initial Comments of Verizon Florida Inc. Concerning Proposed Rule 25-6.0343 for filing in the above matter. Also enclosed are the Affidavits of Dr. Lawrence M. Slavin and Steven R. Lindsay. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 770-284-5498.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent via U.S. mail on September 8, 2006 to the parties on the attached list.

s/ Dulaney L. O'Roark III

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

BellSouth Telecomm.
James Meza III
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Beggs & Lane Law Firm
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

Embarq Florida, Inc.
Charles J. Rehwinkel
FLTLHZ0501
315 S. Calhoun Street
Suite 500
Tallahassee, FL 32301

Florida Cable Telecomm. Assn.
Michael A. Gross
246 E. 6th Avenue
Suite 100
Tallahassee, FL 32303

Florida Electric Cooperative Assn.
Bill Willingham
2916 Apalachee Parkway
Tallahassee, FL 32301

Florida Municipal Elec. Assn.
Frederick M. Bryant/
Jody Lamar Finklea
P. O. Box 3209
Tallahassee, FL 32315-3209

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

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

Lee County Elec. Coop. Inc.
Donald Schleicher
William Hamilton
P. O. Box 3455
North Fort Myers, FL 33918

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

Pennington Law Firm
Howard E. Adams
P. O. Box 10095
Tallahassee, FL 32302-2095

Southern Pressure Treaters
Association
Carl Johnson
P. O. Box 3219
Pineville, LA 71360

TDS Telecom/Quincy Telephone
Thomas M. McCabe
P. O. Box 189
Quincy, FL 32353-0189

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

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

Treated Wood Council
Jeff Miller
1111 19th Street, NW
Suite 800
Washington, DC 20036

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

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

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

Dulaney L. O'Roark III
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.