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Subject: Electronic Filing - Dockets 060172-EU and 060173-EU

Attachments: Post-HearingComments.PB.JI.oct2.doc

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b. Docket Nos. 060172-EU and 060173-EU

In re: Proposed Rules Governing Placement of New Electric Distribution Facilities Underground, and Conversion of Existing Overhead Distribution Facilities to Underground Faciliites, to Address Effects of Extreme Weather Events and In re: Proposed Amendments to Rules Regarding Overhead Electric Facilities to Allow More Stringent Construction Standards Than Required by National Electric Safety Code.

c. Document being filed on behalf of the Towns of Palm Beach and Jupiter Island.

d. There are a total of 18 pages.

e. The document attached for electronic filing is Post-Hearing Comments of the Town of Palm Beach, Florida and the Town of Jupiter Island, Florida.

(see attached file: Post-HearingComments.PB.JI.oct2.doc)

Thank you for your attention and assistance in this matter.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Proposed Rules Governing Placement of New Electric Distribution Facilities Underground, and Conversion of Existing Overhead Distribution Facilities to Underground Facilities, to Address Effects of Extreme Weather Events.	)	DOCKET NO. 060172-EU
In re: Proposed Amendments to Rules Regarding Overhead Electric Facilities to Allow More Stringent Construction Standards Than Required by National Electric Safety Code.	)	DOCKET NO. 060173-EU
	)	FILED: OCTOBER 2, 2006

POST-HEARING COMMENTS OF THE TOWN OF PALM BEACH, FLORIDA AND THE TOWN OF JUPITER ISLAND, FLORIDA

The Town of Palm Beach, Florida, and the Town of Jupiter Island, Florida, collectively referred to herein as "the Towns," pursuant to the Commission's instructions at the conclusion of the hearing held in these proceedings on August 31, 2006 and also pursuant to the Case Assignment and Scheduling Record in these dockets, hereby submit these Post-Hearing Comments. In summary, the Towns support the Commission's proposed rules and offer these comments in support of specific proposed rule provisions and to provide commentary regarding certain implementation aspects of the rules.

BACKGROUND AND GENERAL COMMENTS

The Towns have been active participants in these proceedings since before they were docketed. Both Palm Beach

and Jupiter Island participated in the Commission's undocketed workshop in January, and have submitted written comments and participated actively at the workshops, agenda conferences, and hearings in these proceedings. The Towns are also participating in a substantial study of the life-cycle cost-effectiveness of underground ("UG") vs. overhead ("OH") distribution facilities, through a group of approximately 30 Florida municipalities that have come together to form, and to fund this cost-effectiveness study, through the Municipal Underground Utilities Consortium.

In summary, the Towns commend the Commission and the Commission Staff for their efforts and for the substance of the proposed rules, which can be expected to provide significant and meaningful improvements in electric service reliability, with concomitant increases in total economic value to Floridians, as well as corresponding reductions in electric utility operating and maintenance costs, including vegetation management and storm restoration costs.

COMMENTS ON SPECIFIC PROPOSED RULES

The Towns support the following specific provisions of the proposed rules.

The Towns support the provisions in proposed Rule 25-6.034, F.A.C., that require utilities to establish construction standards "guided by" the "extreme wind criteria" of the National Electrical Safety Code ("NESC").

The Towns support the provisions in proposed Rules 25-6.064(5), 25-7.078(2), and 25-6.115(9), F.A.C., that require that the cost of "hardened" OH facilities, i.e., facilities built to the new standards adopted pursuant to amended Rule 25-6.034, F.A.C., be used in computing any Contributions in Aid of Construction ("CIACs") for OH-to-UG conversions and for new UG installations. These provisions will provide for fairer CIACs for OH-to-UG conversions and new installations, and should be expected to produce more UG conversions and new installations, with their attendant reliability and cost-savings benefits that accrue to all customers.

The Towns support the provisions in proposed Rule 25-6.0341(3), F.A.C., that require utilities to locate distribution facilities in rights of way ("ROWs") where local government applicants satisfy the utilities' legal, financial, and operational requirements. This provision can be expected to significantly reduce both the complexity and the cost of OH-to-UG conversions, thereby promoting more UG conversions and new installations, with their attendant reliability and cost-savings benefits.

The Towns support the provisions in proposed Rule 25-6.115(11)(a), F.A.C., and also in proposed Rule 25-6.078(4), F.A.C., that require the value of O&M cost savings and storm

restoration cost savings to be included in computing any CIACs for OH-to-UG conversions. These provisions will provide substantial value to all utility customers in that they can be expected to produce additional UG conversions, with the attendant cost savings. This is because general O&M costs (including, significantly, vegetation management costs) and storm restoration costs are borne by all customers, either through base rates or through storm restoration surcharges.

As noted above, the Towns are participating, through the Municipal Underground Utilities Consortium, in a substantial study of the life-cycle cost-effectiveness of UG as compared to OH distribution facilities. Preliminary information obtained from Brunswick Electric Membership Corporation ("Brunswick" or "Brunswick EMC") in the course of this study is relevant here. Brunswick EMC recently converted approximately 88 miles of its OH distribution facilities on barrier islands within its southeastern North Carolina service area to UG facilities, completing the project in 2004. While this area has not experienced a major hurricane strike since 2004, it has been exposed to many less-severe storms that are similar to those that frequently occur in Florida. Preliminary results indicate that, in qualitative terms, the new UG facilities have produced the following results:

a. reduced the number and duration of outages due to lightning, animal contacts, and other contacts with distribution facilities;

b. eliminated problems associated with salt spray;

c. significantly reduced restoration times and costs on the barrier islands;

d. improved restoration times following storms experienced elsewhere on Brunswick's system, because the utility has been able to reallocate resources to inland overhead-served areas since it does not need as many restoration resources in its barrier island service areas;

e. nearly eliminated right-of-way trimming and clearing costs; and

f. eliminated all clearance and maintenance problems that had been associated with OH rear-lot-line construction.

In summary, it thus appears that Brunswick EMC is realizing additional savings that were not even accounted for in its original projections that justified the OH-to-UG conversion in this barrier island environment.

Additionally, preliminary results from Brunswick's experience with Tropical Storm Ernesto indicate the following. First, Ernesto was a direct strike, but not a major strike. Brunswick experienced about 4000 outages, all of which were on the overhead portion of their system. There were no major

outages on the underground portions of their system other than a small number of isolated services. Major restoration was completed in 12 hours, with cleanup work taking about 48 hours. The major cause of outages was trees and debris contacting overhead lines.

It follows, obviously and directly, from these observations that, as an implementation issue, savings in the form of avoided storm restoration costs will also include such cost-savings benefits realized in storms that are not named tropical storms, e.g., the thunderstorms and severe thunderstorms that frequently strike Florida, especially in the summer months, and also microbursts and tornadoes that are not associated with named tropical storms.

The Towns support the proposed treatment of "corporate overhead" costs per proposed Rule 25-6.115(11)(b), F.A.C. These provisions are important to prevent the utility from charging for "corporate accounting overheads" on work that the utility does not do. These "corporate overheads" can be significant, on the order of 20 percent of total project cost, and the Towns agree that, <u>if</u> the utility does the work, then they are appropriately included in the CIAC computations. However, where the utility does <u>not</u> perform the underground installation work, the applicants - such as the Towns here - should receive full credit for all costs that the utility would otherwise charge.

The proposed rules accomplish this, and the Commission and Staff are wise to incorporate these provisions into the rules. Otherwise, utilities could impose baseless charges that will impose disincentives and otherwise discourage undergrounding projects.

The Towns support the proposed provisions in Rules 25-6.064(7), 25-6.078(10), and 25-6.115(12), F.A.C., allowing for consideration and inclusion in CIAC calculations of additional benefits provided by UG facilities beyond just those that can be directly captured in utility accounting.

In the implementation stages of this long-term process, the Towns believe that all parties need to focus more on how to accomplish underground installations and conversions more cost-effectively and to achieve optimum reliability. This should include evaluations comparing OH facilities at different degrees of "hardening" with UG facilities, also at different degrees of hardening. For example, submersible, effectively "waterproof" UG switchgear and fuse-gear are available that can operate even if the UG facilities are inundated; this equipment should be evaluated against other facilities configurations in a range of conditions.

This is also particularly important in light of what appears to be the widely accepted fact that it is probably not possible to construct even hardened OH facilities to withstand the impacts of stronger windstorms, e.g., Category 4 or 5 storms, and possibly even less strong windstorms,[1] because of the damage done to OH facilities by wind-blown debris. By comparison, except for the most extreme flooding or storm surge conditions, UG facilities will withstand Category 4 and 5 conditions where even super-hardened OH facilities will not.

The decisions facing the Commission, Florida's utilities, Florida's local government officials, and other potential applicants for underground electric service are critical and of great importance. These decisions necessarily involve informed judgments by all involved. The Towns believe that, at a minimum, it is generally wiser and better public policy to err on the side of more protection of the public, which the Towns

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[1] For example, Dr. Lawrence M. Slavin, an experienced engineer who has served on the NESC subcommittee that deals with the extreme wind loading criteria, spoke on behalf of Verizon at the August 31 rule hearing. Dr. Slavin stated in response to questions posed by the Towns' attorney that flying debris would knock down poles anyway when winds were "in the range of, say, 75 miles an hour to maybe 85 miles an hour, that kind of range for three-second gusts." Rule Hearing Transcript at 63. Recognizing that the speed of gusts can be 20 percent greater than sustained winds, this implies that Dr. Slaving believes that debris can be a significant problem even in tropical storm conditions and minimal category 1 storms on the Saffir-Simpson scale. Id.

believe will lead to decisions to harden OH facilities, to install new UG facilities, and to convert existing OH facilities to UG facilities.

Additionally, these decisions need to be informed by consideration of all benefits provided by the enhanced reliability provided by UG (and hardened OH) facilities. As previously described in the Towns' comments in these rulemaking proceedings, it is well known that customers actually value electricity - i.e., not being interrupted or blacked out - at values much greater than the retail price of electricity. Values attached by residential customers to not being blacked out range from $1 to $10 per kWh not interrupted to as much as $30 per kWh not interrupted for commercial and industrial customers. Other sources support this range. While there may be some argument about the magnitude of the overall economic benefits of increased reliability and reduced electric service interruptions, there can be no doubt that the total value to Florida and Floridians of avoiding blackouts, or of reducing their scope, duration, and severity is tremendous.

And thus, consistent with these considerations, the Towns support the Rules' inclusion in proposed Rules 25-6.064(7), 25-6.078(10), and 25-6.115(12), F.A.C., of the opportunity to demonstrate additional benefits in the public interest beyond just those that can be directly captured in utility accounting.

JURISDICTION OVER SAFETY AND RELIABILITY STANDARDS APPLICABLE TO POLE ATTACHMENTS

It is clear that the Florida PSC has jurisdiction to set safety standards applicable to pole attachments, and that the Federal Communications Commission ("FCC") recognizes this jurisdiction. In the FCC's Order On Reconsideration of its Local Competition Order, the FCC reaffirmed that "the Commission [the FCC] will presume state and local requirements affecting pole attachments to be reasonable, and are entitled deference even if the state has not sought to preempt federal regulations under section 224(c)" (of the Communications Act of 1934, as amended in 1996). In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Federal Communications Commission, October 26, 1999. Thus, while the FCC may ultimately decide issues as to whether proposed pole attachment standards are unreasonable or discriminatory, the FCC will clearly give deference to state-imposed safety and reliability standards affecting pole attachments.

In this context, it appears somewhat obvious to the Towns that the PSC's rules should require the same standards for all OH facilities to ensure that they are safe and reliable.

Naturally, this will be in the context of some established criteria applicable to the conditions to which the distribution facilities will be subject. Thus, it seems obvious that the electric utility's facilities should be constructed to meet those criteria, and that any attached telecommunications or cable television facilities should meet the same standards.

The Towns continue to believe that undergrounding all facilities will provide maximum protection against all windspeed conditions[2] and against all but the most extreme storm surge or flooding conditions.

Finally, the Towns believe that it is inconceivable that the Federal Communications Commission would find enhanced reliability standards imposed by Florida - or by Louisiana, Mississippi, Alabama, Texas, North Carolina, South Carolina, Georgia, or any other state impacted by hurricanes or other weather events comparable to those that struck the southeastern United States in 2004 and 2005 - to be unreasonable. Accordingly, the PSC should go forward confident that the FCC will give due deference to pole attachment provisions in the PSC's rules applicable to the safety and reliability of electric distribution facilities.

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[2] See the note above citing Dr. Slavin's statements at the rule hearing. Those statements appear to indicate that OH facilities are vulnerable to even lower windspeeds than had previously been discussed in the rule workshops in these dockets.

COSTS TO TELECOMMUNICATIONS AND CABLE TELEVISION COMPANIES OF SATISFYING STRONGER RELIABILITY STANDARDS FOR POLE ATTACHMENTS

Some telecommunications interests have asserted that the costs of complying with enhanced safety and reliability standards applicable to pole attachments should be borne by the investor-owned utilities, apparently because the electric utilities still have recourse for cost recovery through conventional utility rate regulation. See, e.g., Comments of Time Warner Telecom on Proposed Rules, dated May 3, 2006 but submitted on July 12, 2006, at 2. Those comments stated the following:

> With the entry of power companies into competition or a concentrated effort by a competing telephone company which maintains poles, an anti-competitive effort could directly result from a utility suddenly deciding to bury large amounts of its distribution network or convert large amounts of its overhead to underground distribution. Such a move could put competitive carriers at a significant competitive disadvantage by forcing the current pole attachers to move underground and spend mass amounts of capital without the ability to recover these capital costs unless the Commission specifically states the cost of undergrounding these attached utilities are to be borne by the pole owners or their rate payers.

See also the July 28, 2006 letter comments submitted by Embarq, at page 2.

> Because of joint use agreements, new poles carry the threat that the attacher will be asked to pay for them through make-ready costs. Any costs passed to

> the attacher in reconstructing the overhead facility should acknowledge that the electric utility already has the ability to recover these costs through rates and has stated its intent to do so.

In its comments, BellSouth argues that it should not pay for even a portion of the costs of upgrading to stronger poles, and raises the specter that electric utilities' actions "could affect existing joint use and pole attachment agreements that already govern this subject matter." Letter comments of BellSouth, July 28, 2006, at 12-13.

The Towns believe that this suggestion is misplaced at best. The telecommunications companies generally operate in a competitive industry by their own choice. As such, they have opportunities and disadvantages associated with their competitive status. The fact that they may have to bear additional costs pursuant to pole attachment agreements or pursuant to regulations promulgated to enhance the safety and reliability of electric service is simply part of their economic "facts of life."

Moreover, the suggestion that they do not benefit from stronger poles and other facilities is misplaced. It seems reasonable, if not obvious, that sturdier telecommunications facilities - and especially undergrounded telecommunications facilities, which are clearly the preferred standard of service[3] - will provide additional benefits both to the telecommunications companies and to their customers. In this regard, it is entirely reasonable to expect that the economic value of telecommunications service that is maintained following storm events through UG facilities would, like the economic value of electric service, be tremendous.

[3] Commission Rule 25-4.088(1), F.A.C., promulgated in 1971, provides that:

(1) Extensions of telephone distribution lines applied for after the effective date of these rules, and necessary to furnish permanent telephone service to all structures within a new residential subdivision, or to new multiple-occupancy buildings, shall be made underground; except that the utility may not be required to provide an underground distribution system in those instances where the applicant has elected to install an overhead electric distribution system.

CONCLUSION: RULE IMPLEMENTATION

The PSC's rules implementing higher standards for OH facilities in new construction, in replacement, refurbishment, relocation, and upgrade situations, and for OH-to-UG conversions should be implemented as soon as practicable. The Commission, the affected utilities, and others should proceed as quickly as practicable to strengthen Florida's electric distribution infrastructure and to make the rules' provisions applicable to CIACs fairer. The proposed rules will provide significant and meaningful improvements in electric service reliability, as well as corresponding reductions in electric utility operating and maintenance costs, including vegetation management and storm restoration costs, that will benefit all utility customers.

Additionally, strengthening the distribution infrastructure, and especially undergrounding, will provide concomitant increases in total economic value to Floridians due to the significant economic costs avoided when outages are reduced and avoided by underground distribution facilities.

The Town of Palm Beach and the Town of Jupiter Island sincerely appreciate the opportunity to submit these comments and the Commission's consideration of them, and the Towns look forward to continuing active participation in these important rulemaking proceedings.

Respectfully submitted this 2nd day of October, 2006.

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CERTIFICATE OF SERVICE
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