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May 30, 2007

VIA HAND DELIVERY

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Docket No. 070299-EI –Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, Florida Administrative Code, submitted by Gulf Power Company

CMP Dear Ms. Cole:

COM

CTR Enclosed for filing on behalf of the Florida Cable Telecommunications Association (FCTA), please find the original and seven (7) copies of FCTA's Comments regarding Gulf's Storm Hardening Plan. Enclosed, you will also find a disk containing the Comments in electronic form (created by Adobe Acrobat Version 8.0 for Microsoft Windows).

OPC Please acknowledge receipt by stamping the enclosed duplicate copy of this letter and returning the same to me.

SCR

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Your assistance in this matter is greatly appreciated.

Sincerely,



Beth Keating
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ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Electric Infrastructure Storm Hardening Plans, filed in compliance with Rule 25-6.0342, F.A.C.

DOCKET NO. 070299-EI

Filed: May 30, 2007

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. REGARDING GULF POWER COMPANY'S 2007 STORM HARDENING PLAN, IN RESPONSE TO COMMISSION'S STAFF'S REQUEST FOR COMMENTS.

In response to the Commission Staff's request for comments, the Florida Cable Telecommunications Association, Inc. ("FCTA") hereby submits these comments concerning Gulf Power Company's 2007 Storm Hardening Plan, ("Plan") filed by Gulf Power Company ("Gulf Power") on May 4, 2007 in the captioned proceeding pursuant to newly adopted Rule 25-6.0342, of the Florida Administrative Code ("Rule 25-6.0342").

INTRODUCTION

FCTA's member cable operators¹ rely upon Florida's investor owned utility ("IOU") pole infrastructure to distribute video, voice and broadband services to over five million residents throughout the state of Florida.² As such, the storm hardening plans being developed in this and related storm hardening dockets, which require new procedures and increased investment to strengthen Florida's pole infrastructure, have the potential to impact significantly FCTA's member operators' ability to service their customers in a timely and cost-effective manner. The

¹ The FCTA members participating in these comments include Bright House Networks, Comcast Corporation and Cox Communications.

² Cable operators currently pass 95 percent of Florida homes and provides services to 78 percent of those homes. See William Taylor, Intermodal Competition and Deregulation in Florida, (Feb. 16, 2007), at http://www.purc.ufl.edu/documents/Taylor_presentation.pdf.

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storm hardening plans also threaten to undermine FCTA's member operators' federally protected rights to access utility poles on non-discriminatory, just and reasonable rates, terms and conditions.

This Commission recognized both the substantial impact that its storm hardening requirements would have on third party attachers, including cable operators, and the Federal Communication Commission's ("FCC") jurisdiction over third party pole attachments, in Rule 25-6.0342. The Commission thus required the IOUs, in developing their plans, to seek input from third party attachers and to address their concerns, and also recognized the limitations on the Commission's jurisdiction over pole attachments. FCTA's member operators thus welcome this opportunity to provide valuable input about each IOU's Storm Hardening Plan, consistent with the Commission's goal to cost effectively strengthen the electric pole infrastructure and reduce storm restoration costs and outage times for Florida residents in a manner that does not conflict with federal law governing pole attachments.

FCTA and its member cable operators recognize the importance of strengthening the state's electric pole infrastructure against extreme weather conditions and deploying strategies that will reduce storm restoration costs and delays associated with such conditions. Indeed, Florida's cable operators have first-hand experience with storm-related outages. When the 2004 and 2005 hurricane seasons struck, cable operators experienced significant service outages and damaged facilities and worked with Florida's utilities to resolve the outages and repair the damage, spending millions of dollars in the process. FCTA's members are therefore committed to ensuring that the state's electric pole infrastructure is hardened to better withstand storm damage, and in the event that such plant is damaged, that strategies are deployed to rapidly restore electric service as well as valued communication services to Florida residents.

While FCTA members strongly support the Commission's efforts to strengthen Florida's pole infrastructure, FCTA also wants to ensure that in meeting this objective, the storm hardening plans filed by the Florida IOUs comply with the requirements of Rule 25-6.0342. Specifically, Rule 25-6.0342 requires each storm hardening plan to describe *in detail* the IOU's construction standards, policies, practices and procedures ("Construction Standards"), as well as its deployment strategy, for the cost effective strengthening of the IOU's distribution and transmission infrastructure against extreme weather conditions and for reducing restoration costs and outages to end-use customers. In addition, the Rule requires each IOU to seek input from and attempt in good faith to incorporate the concerns of third party attachers, and to include in the plan an estimate of the costs and benefits of the utility's plan to third party attachers.³ Further, in meeting the desired objectives of enhancing reliability and reducing storm restoration costs and outage times, the IOU's were charged with employing *prudent, practical* and *cost-effective* standards and procedures.⁴ Finally, the standards, procedures and deployment strategies set forth in the Plans must not conflict with firmly established federal law governing the relationship of third party attachers and utilities.

Gulf Power's Plan, while commendable in many respects, does not yet fully comply with the requirements of the Rule.

First, FCTA's members have not yet been provided sufficient detail regarding Gulf Power's Plan in order to provide the level of input contemplated by Rule 25-6.0342. Although FCTA appreciates that Gulf Power provided 3 separate draft versions of its Plan to FCTA for review and comment, and incorporated a few of FCTA's suggested revisions, the drafts lacked the kind of detail necessary for meaningful input. Although it is difficult to assess the Plan's full

³ Rule 25-6.0342(6).

⁴ Rule 25-6.0342(2).

impact on third parties at this point, and FCTA believes that attachers, in the long run, will likely benefit from the Plan, it is nevertheless clear that the Plan, in its current form, will also result in significant additional costs and delays for cable attachers and their customers. These potential costs and delays must be further examined and better developed with input from the cable industry before any Plan is adopted. FCTA believes that the appropriate place for receiving this input is in Commission sponsored workshops.

Second, Gulf Power's Plan contains many construction standards and procedures that can be described as prudent, practical or cost effective as required by the Rule, such as Gulf Power's vegetation management initiative, but other aspects of the Plan, including certain construction standards that exceed the National Electrical Safety Code ("NESC"), will add significant cost without providing any additional storm hardening benefit.⁵ As FCTA further addresses in Section III, members are also concerned about how Gulf Power intends to allocate the costs associated with its Plan. There are many other proven distribution power system initiatives and storm recovery preparations that can produce greatly increased electric service reliability, decreased storm damage, at reduced restoration time and expense. These alternative approaches, which FCTA explains in more detail below, should be further explored and developed for inclusion in the plans during Commission sponsored workshops.

Last, investor owned utilities are obligated under federal pole attachment law to provide cable operators and telecommunications carriers with non-discriminatory access to utility poles that they own or control,⁶ and must do so on just and reasonable rates, terms and conditions.⁷ The

⁵ Mr. Michael T. Harrelson, a registered Professional Engineer in the states of Georgia and Florida and a consultant to the cable television, telecommunications and electric utility industries, served as an engineering consultant to FCTA for these comments. A copy of his Curriculum Vitae is attached hereto as Exhibit 3.

⁶ See 47 U.S.C. § 224(f)(1),

⁷ See 47 U.S.C. § 224(b)(1).

federal Pole Attachment Act was passed to promote the cost-effective and efficient deployment of facilities-based competition throughout the United States. The Federal Communications Commission (“FCC”) has the authority, under the Pole Attachment Act, to ensure that attacher rights are fully protected, including to make determinations regarding whether utility safety and engineering standards and practices that affect third party attachers are just and reasonable. Nevertheless, some of the standards, procedures and deployment methods set forth in Gulf Power’s Plan conflict with or otherwise implicate federal laws governing pole attachments and the jurisdiction of the FCC to enforce such laws.

For example, Gulf Power requires attachers to provide 30 days advance written notice prior to overloading, even though the FCC has expressly ruled that such written notice is unreasonable. Gulf Power also requires a complete loading analysis for any type of activity an attacher seeks to perform on Gulf Power’s pole, including overloading, regardless of whether the overload increases the size or weight of the existing bundle, a requirement that is not just or reasonable under federal law. Moreover, Gulf Power’s Plan does not explain how it intends to allocate the costs of its Storm Hardening Plan to third party attachers. Federal law prescribes the manner in which costs must be allocated, if at all, to third party attachers. The specific items in Gulf Power’s Plan that conflict, or potentially conflict, with FCC jurisdiction are enumerated below. These areas of conflict, and how they should be navigated in developing utility storm hardening plans, could be addressed and possibly resolved in Commission sponsored workshops.

I. FCTA’s Member Operators Must Have A Further Opportunity To Provide Input Concerning Gulf Power’s Storm Hardening Plan and Attachment Standards And Procedures.

Rule 25-6.0342(6) requires Gulf Power to seek input from and attempt in good faith to accommodate concerns raised by third party attachers. “The new rules envision both the IOUs

and third-party attachers working together in good faith on the front end to establish the storm hardening plans.”⁸ In addition, each storm hardening plan must utilize such input to estimate the costs and benefits to third party attachers.⁹

Florida IOUs had ninety days from the adoption of Rule 25-6.0342, Florida Administrative Code, to develop their storm hardening plans and solicit and incorporate input from third party attachers. During this relatively short ninety day period, Gulf Power provided 3 separate drafts of its Plan to FCTA (the first on March 29, the second on April 9 and the last on April 19th). FCTA members commented on those drafts, but because the drafts were not very detailed, FCTA’s responded by asking a series of questions that, to date, remain unanswered. *See, e.g.*, Letter dated April 27, 2007 to Mr. Russell A. Badders, Esquire from Beth Keating. FCTA also participated in an April 13th teleconference with Gulf Power during which FCTA sought specifics regarding Gulf Power’s extreme wind projects, the details of which also are not fully flushed out in Gulf Power’s final proposal.

Despite the efforts of both parties, the final Plan still does not have the level of detail required to enable third party attachers to provide valuable input in these comments, particularly regarding the requisite cost/benefit analysis, as Gulf Power readily admits. *See* Plan at p. 28 (“Due to a lack of data at this time, Gulf Power cannot estimate the reductions in storm restoration cost and outages that will result from the proposed storm hardening initiatives.”) FCTA understands that the utilities were under severe time constraints in developing their storm hardening plans and, as a result, may not have included the kind of detail in their drafts or final plans that might have been possible with more time. Indeed, Gulf Power “views [its] plan as a starting point of an ongoing process to identify ways to minimize future storm damages and

⁸ Nov. 21, 2006 Staff Recommendation in Dockets 060172-EU and 060173-EU.

⁹ Rule 25-6.0342(4)(e).

customer outages.” Plan at p. 5.

Florida’s cable operators are mature, well-established multi-state corporations with over forty years of experience in attaching their facilities to utility poles in the State of Florida. FCTA’s member cable operators have attachments on tens of thousands of Gulf Power poles alone. Pursuant to Gulf Power’s Plan, the utility proposes to invest millions of dollars in hardening its distribution and transmission infrastructure, including joint use poles to which cable operators are attached. While Gulf Power’s Plan does not explain whether, how or to what extent it will seek to recover this investment from third party attachers, it appears that Gulf’s storm hardening efforts will result in increased costs for cable operators. For example, the investment and carrying charges upon which cable operator pole attachment rents are based may increase resulting in an increase in the annual pole attachment rental fees. Moreover, cable operators anticipate that as inspections and loading analyses are completed, utilities will assign responsibility for non-compliance to third party attachers (whether or not they are in fact responsible) and seek to allocate certain direct charges to cable operators. In addition, the application processes being proposed could add significant additional time to the attachment process, and thus result in delays in the provision of service to cable subscribers.

Pursuant to Rule 25-6.0342(3), each plan must show the extent to which it complies with the NESC, adopts extreme wind standards, mitigates damage from flooding and storm surges and provides for placement of new and replacement distribution facilities. Rule 25-6.0342(4) further requires that each plan shall describe the facilities affected, list communities impacted and critical infrastructure, extent to which joint use facilities affected, and estimate of costs and benefits to the utility and to third party attachers. FCTA member input into the utilities’ storm hardening plans is essential to ensure that the plans achieve the Commission’s goals in this

proceeding in a manner that is practical and cost-effective, and, thus, sustainable for the long term.

In this case, Gulf Power's Plan does not yet include certain critical information that is necessary for third party attachers to provide detailed input. For example:

- FCTA needs more details concerning Gulf Power's plans for overhead and underground storm hardening, particularly with regard to Gulf Power's plan to harden interstate crossings, before it can comment on whether these are prudent, practical and cost effective as required by the Rules.
- While FCTA agrees with Gulf Power's intent to apply extreme wind loading standards to targeted facilities serving critical loads, FCTA needs more information about the specific projects as details become available and cannot comment on the standards at this time.
- FCTA generally agrees with Gulf Power's Plan to conduct an engineering analysis on a sample of joint use poles to determine the extent of overloading, if any. FCTA needs to see further details of the Plan, including the potential cost, however, before it can fully support Gulf Power's approach and provide costing information.
- FCTA also fully supports Gulf Power's plans to incorporate an enhanced vegetation management initiative in its Plan. That said, there is no indication in the Plan regarding how or whether Gulf Power intends to charge attachers for its vegetation management initiative.

These are just a few examples of information that is both missing and necessary for third party attachers to provide meaningful input about Gulf Power's Plan.

In sum, FCTA appreciates the monumental task undertaken by Gulf Power, and other Florida IOUs, in seeking to develop detailed storm hardening plans for their electric transmission

and distribution systems in a relatively short period of time. As a result of the time constraints, the plans lack certain essential information; and, many details need to be more fully developed. Consequently, FCTA's member operators have found it difficult, if not impossible in some instances, to provide specific cost and benefit information and other crucial feedback with regard to the plans, which further exacerbates the undeveloped, elemental nature of the plans themselves. FCTA has engaged (and will continue to engage) in dialogue with each of the IOUs regarding their plans. Generally, this type of dialogue has been beneficial, and FCTA fervently believes that additional gains can be made by maintaining and facilitating continued, open discussions on storm hardening. Accordingly, FCTA recommends that the Commission delay approving any of the plans and allow the parties to continue their dialogue in Commission sponsored workshops.

II. Gulf Power's Plan Should Continue To Be Developed To Ensure That Its Construction Standards, Deployment Strategies And Attachment Standards And Procedures Are Prudent, Practical And Cost Effective.

Pursuant to Rule 25-6.0342(2), IOU storm hardening plans must meet the desired objectives of enhancing reliability and reducing storm restoration costs and outage times in a *prudent, practical* and *cost effective* manner to the affected parties. While it might be attractive on the surface that a utility is requiring joint-use construction techniques that exceed the NESC, this fact alone will not ensure that its pole infrastructure is more likely to better withstand hurricane conditions.

For example, Section 250C of the 2007 NESC prescribes extreme wind loading standards only for poles that are over 60 feet tall.¹⁰ Applying these standards to shorter poles has not been demonstrated to be effective for sustaining reliability in hurricane conditions. Consider the

¹⁰ NESC Rule 250C and Tables 250-2 (a) through (d) (2007 ed.).

remarks of Mr. Nelson G. Bingell of Osmose Utility Services and a member of the 2007 NESC standards subcommittee on overhead lines strength and loading. At the April 17, 2006 Rule Development Workshop, which considered the issue of extreme wind loading, Mr. Bingell concluded that extending these standards to poles shorter than 60 feet could not be justified because of the “uncertainty of the improved reliability” and the fact that many of the failures that occurred in the 2004-2005 hurricane seasons were the result of trees and flying debris hitting the lines – a situation which would not be improved by increased resistance to sustained wind gusts.¹¹ Commenting further on his meeting with the NESC subcommittee evaluating wind loading, Mr. Bingell noted that “the general feeling was that once debris starts flying around in a storm, that’s when the wind-only loading criteria kind of aren’t adequate. It’s hard to design for tool sheds running into lines.”¹²

At the same workshop, David McDonald, director of Distribution Asset Management and System Storm Coordinator for Progress Energy, noted that the 2007 NESC subcommittee responsible for evaluating loading considered and recommended against extreme wind loading on poles under 60 feet.¹³ Mr. Regan Haines, director of Energy Delivery Engineering and Field Services for Tampa Electric Company stated at the same workshop, “improving the vegetation management program that we have and our maintenance program is probably dollars better spent than investing in a higher construction standard.”¹⁴

Similarly, NESC prescribed standards for clearances should be the standard by which decisions to replace poles are measured. The NESC required clearances between power and

¹¹ Transcript of April 17, 2006 Rule Development Workshop, at 53-54. (hereinafter “Transcript”)

¹² Transcript at 53.

¹³ Transcript at 45. *See also* Remarks of Nelson Bingell, Transcript at 53 (“So that was the effort of the [NESC task force on wind loading], to say, hey, if we really want to increase reliability and safety, we can only go up to the point where debris starts to fly around, because it would be very difficult to design for those conditions.”).

¹⁴ Transcript at 68.

communications attachments should be the ultimate *minimum* spacing acceptable. While it may be prudent to require greater clearances on new or existing poles when space is available, clearances may be reduced to NESC standards as the pole gets filled up when, for example, power companies add attachments such as transformers, electric services and street light fixtures. Using NESC clearances as a minimum standard will ensure that attachments are not unnecessarily relocated or poles unnecessarily changed out, and thus is a more cost effective and practical result.

While Gulf Power has decided to adopt extreme wind loading standards for targeted facilities serving critical loads, it does not intend to apply this standard to all new construction on distribution facilities. FCTA agrees that Gulf Power's targeted approach is reasonable and understands that Gulf, in any event, currently "lacks the data to support the benefits associated with applying extreme loading standards to distribution poles in a wide-spread manner." Plan at 23. FCTA also commends Gulf Power for its vegetation management initiative. FCTA agrees that vegetation management is one of the most cost-effective ways to reduce storm damage and outages.¹⁵ *See Id.* at 2.1.

In addition, many other proven distribution power system initiatives and storm recovery preparations can produce greatly increased electric service reliability, decreased storm damage, and reduced restoration time and expense. Storm hardening initiatives for overhead electric power distribution lines which are prudent, practical and cost effective should include:

- Small conductor replacement projects to decrease line breakage during storms. Indeed, many more outages in hurricanes involve broken wires than broken poles, especially in the impacted areas outside the central path of strong storms. These projects should be

¹⁵ *See also* Section III and Exhibit 2 for further cost allocation concerns set forth in greater detail.

coordinated with pole inspections and vegetation management and include major maintenance and guying improvements.

- Right of way access improvement projects for lines which are inaccessible, including removing or providing access across strategic obstacles to line sections.
- The use of specialized equipment and or contractors for work in difficult right of way conditions such as back lot line, off road or swampy area lines for more efficient restoration.
- Pole inspection with strengthening or replacement or guying of deteriorated or overloaded poles. All deteriorated, broken or missing guys should be replaced. All buried anchor heads should be extended to above grade or water levels to prevent guy wires from rusting off.
- Installation of storm guying projects for line segments where it is feasible, including lines where poles are subject to lean over in soft soil during high winds. Larger poles do little to solve the problem of leaning in soft soil without guying.
- Adding line segment sectionalizing switches, breakers and fuses as needed to isolate sections of line which sustain heavy storm damage. This can greatly improve time to restore power to lightly damaged main line segments before all major storm damage in an area is repaired.
- Updating automatic electric primary circuit coordination of breakers and line sectionalizing fuses, and adding devices as appropriate to assure automatic line sectionalizing initially and facilitate power restoration after storms pass.
- Converting selected distribution systems' voltage from 12 or 13 kV to 25 kV. Four times the electric power can be delivered by the same circuit if the voltage is doubled. Higher

distribution voltage decreases the need for larger primary wire sizes and multiple circuits as electric system load grows. The long-term effect on wind loading is positive, and there are many other economic benefits of 25 kV systems.

- Develop an improved procedure to avoid cutting of fiber optic cables by debris clearing and electric repair crews. In many instances fiber optic circuits have survived the hurricanes, still functional, but on the ground in places only to be cut repeatedly by others' restoration efforts.

These types of specific engineering issues could and should be addressed in Commission sponsored workshops.

Although FCTA agrees with many aspects of Gulf Power's Plan, other elements of the Plan exceed the NESC in ways that are not prudent, practical and cost effective. For example:

- In Appendix 7, Plate C-1, Gulf Power requires a 12 inch clearance requirement between J-Hooks used for communications service drops. *See* "Dimension Letter D." The NESC does not require any such clearance. Indeed, to save time and money, multiple service drops are routinely attached to the same J-Hook. Adopting a larger, but unnecessary, clearance requirement will only add additional costs to third party attachers in the form of make-ready, including unnecessary pole change-outs, but will not contribute to the hardening of the infrastructure.
- On Plate C-2 of Appendix 7, "Note 3" erroneously requires a 6 inch separation between cables in the span. The NESC requires a 4 inch separation. Therefore, Note 3 should be revised to accord with the NESC.
- With regard to Plate C-3, Note 6, the NESC requires 4, not 6 inches of separation between communications cables in the span. *See* NESC rule 235H2.

- Plate C-4 requires a 12 inch space between a light drip loop and a communications cable. NESC Rule 238D, however, allows such clearance to be reduced to 3 inches if the loop is covered by a suitable nonmetallic covering that extends at least 2 inches beyond the loop. The NESC Rule 238D exception should be referenced on Plate C-4 and included in Gulf Power's standards because there is no additional safety benefit gained from excluding this exception. On the other hand, including the exception will ensure that attachers do not have to expend unnecessary make-ready costs.
- Plate C-5 requires a 40 inch separation between a communications cable and Gulf Power's neutral, while the NESC requires only a 30 inch separation in some cases. *See* NESC Rule 235C.1. and Table 235-5, footnote 5. FCTA would agree to the 40 inch Gulf Power separation standard if space is available on new or existing poles. This practice will ensure economic use of available pole space consistent with needs of the pole owner, the third-party attacher and the NESC. This standard should be developed pursuant to stakeholder workshops.
- Plate C-6 requires that "all [CATV] service drops . . . be made no less than 24" either direction from the center line of the pole. This service drop requirement is not contained in the NESC and should therefore be referenced as a guideline.
- Plate C-7, Dimension (Letter) A requires that Gulf Power span guys be 40 inches from a communications cable. This requirement is far in excess of NESC Rule 235E and Table 235-6, which require only a 6 inch separation. Allowing Gulf Power to adopt this rule would force attachers to incur significant costs and delays due to increased make-ready requirements. Dimension (Letter) A should therefore reference the NESC rule instead.

Dimension (Letter) B, which requires certain spacing between down guys, should be referenced as a guideline. The NESC requires no minimum distance between down guys.

- Plate C-8 incorporates a newly adopted NESC rule (*i.e.*, adopted in the 2007 Edition) that requires a 40 inch separation between the top of the communication bracket and the top of the riser shield or the bottom of the Gulf Power conductor, whichever is lower.

Because NESC grandfathers existing attachments that were compliant under earlier versions of the NESC, for clarification purposes and to avoid unnecessary make-ready costs, this Plate should further note that “installations made prior to the 2007 Edition of the NESC are subject to the NESC Edition in effect at the time the attachment was installed.”

- Plate C-9 shows only one method of installing a CATV power supply, even though this method is not required by the NESC and power supplies could be installed in different, more cost-effective ways. Therefore, this diagram should include a note stating that this is Gulf Power’s preferred power supply installation method when space is available, but that Gulf Power will allow additional installation methods and configurations, which also comply with the NESC and NEC when space is not available.

Gulf Power has not demonstrated that exceeding the NESC in these instances will achieve the Commission’s storm hardening goals in a cost-effective, prudent and practical way. Indeed, several of Gulf Power’s construction standards are likely to cost attachers (and ratepayers) significant expense without an increased safety or reliability benefit and thus should be rejected by the Commission.

III. Gulf Power’s Plan Should Be Further Developed To Ensure That It Does Not Conflict With Federal Laws Governing Pole Attachments

While each IOU’s Storm Hardening Plan will inevitably impact third party attachers, the

Commission must ensure that the Plans do not “conflict with Title 47 U.S.C. Section 224, relating to Federal Communications Commission jurisdiction over pole attachments,” consistent with Rule 25-6.0342(8). As the FCTA explained in a comprehensive memorandum of law submitted August 31, 2006, 47 U.S.C. § 224 authorizes the FCC “to regulate pole attachment matters, including denials of access for safety related reasons, as well as the rates, terms and conditions of attachments. . . .”¹⁶ Pursuant to this authority, over the past 30 years, the FCC has developed a comprehensive set of pole attachment rules, in the form of regulations,¹⁷ pole attachment orders¹⁸ and case law, involving a wide variety of joint-use issues, including engineering and safety issues.¹⁹

Despite the FCC’s comprehensive authority over pole attachments, some aspects of Gulf Power’s Plan directly conflict with significant FCC precedent or otherwise undermine FCTA members’ Section 224 rights. For example:

- *Pole Strength and Loading Calculations*

According to Section 11.1 of Gulf Power’s Plan, “Pole Strength and Loading Engineering calculations will be performed . . . before *any* pole, tower or structure is attached to, or any existing cables are upgraded or overlashed.” Plan at 11.1 (emphasis added). While FCTA

¹⁶ Memorandum of Law in Support of the Florida Cable Telecommunications Associations’ Suggested Rule Changes, In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, 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-E (August 31, 2006).

¹⁷ 47 C.F.R. § 1401, *et seq.*

¹⁸ *See, e.g., Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,103 (2001) (*hereinafter* “May 25th Order”), *aff’d Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002).

¹⁹ Indeed, just last year, the FCC “confirmed that it has jurisdiction to review and reject [] challenged engineering standard[s] or practice[s] as unjust or unreasonable under section 224, even where the standard or practice complies with state and local engineering standards that are inconsistent with [the FCC’s] rules and policies.” *Arkansas Cable Telecom. Ass’n v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, ¶¶ 8-11 & n. 37 (2006) (internal citations omitted).

members agree that any attachment, upgrade or overlash must be compliant with applicable safety codes, FCTA does not believe that pole loading studies are necessary or reasonable in every case. In most cases, make-ready issues that do arise pursuant to a request for attachment involve clearance issues, not loading issues, and can be identified without costly studies. As a result, the FCC would consider the requirement to perform a pole loading study for every new attachment, upgrade and overlashing as unnecessary engineering and would prohibit Gulf Power from forcing the attacher to incur these costs.²⁰

- *Overlashing*

Gulf Power also requires attachers to provide 30 days advance written notice of overlashing to allow for the performance of the pole loading study. Plan at Appendices 2 and 4. The FCC has ruled, however, that an attacher does not need pole owner approval prior to overlashing and that prior notice is not even required.²¹ Gulf Power's overlash notification process far exceeds what the FCC allows with regard to overlashing. The FCC, which has considered this issue repeatedly, considers overlashing to be a cost-effective way to deploy cable plant.²²

²⁰ *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion and Order, 18 FCC Rcd 24,615, ¶ 26 (2003) ("Utilities are entitled to recover their costs from attachers for reasonable make-ready work necessitated by requests for attachments.") (hereinafter "*Knology*").

²¹ *May 25th Order* at ¶ 75 ("[N]either 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."), *aff'd Southern Company Services, Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) ("Overlashers are not required to give prior notice to utilities before overlashing. However, FCC rules do not preclude owners from negotiating with pole users to require notice before overlashing In short, the [FCC's] overlashing rules show due consideration for the utilities' statutory rights and financial concerns. The record shows that these matters played a role in the FCC's decision, but petitioner's concerns were balanced with the efficiency gains that overlashing brings the industry.") *See also Cable Television Ass'n of Ga. v. Ga. Power Co.*, 18 FCC Rcd. 16,333, ¶ 13 (2003) (rejecting a pole attachment agreement provision that required the utility's "written consent to overlashing, which the utility may take up to 30 days to grant or deny" as "unjust and unreasonable on its face" and ordering the "to negotiate in good faith a reasonable provision consistent with FCC precedent.")

²² *May 25th Order* at ¶ 73 ("Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand capacity of existing communications facilities, by tying communications conductors to existing, supportive strands of cable on poles. The 1996 Act was designed to accelerate rapid deployment of telecommunications and other services, and to increase competition among providers of these services. Overlashing

In order to ensure that poles to be overlashed are not over-loaded or otherwise out of compliance, FCTA members suggest that the stakeholders work together to develop an overlash standard, similar to the one adopted in a recent New York State Public Service Commission (“NYPSC”) pole attachment rulemaking. In that case, the NYPSC ruled that “a predetermined limited amount of overlashing, that is not a substantial increase to existing facilities, shall be allowed,” without notification and allows the attacher itself to make the determination.²³ Specifically, “[a]n Attacher, [sic] whose facility has a pre-existing NESC calculated span tension of no more than 1,750 lbs., shall be allowed to overlash a pre-determined maximum load of not more than 20% to the existing communications facility. Existing facilities with an NESC calculated span tension of less than 1,000 lbs. shall be allowed a pre-determined overlash of up to 40% of such pre-existing facilities.”²⁴ If the attacher “determines that the addition of equipment and loading is greater than the pre-determined limits, further assessment of the overlashed facility for its impact on the overall pole loading is required to assure that the pole limits are not exceed.”²⁵ In those cases, the attacher would be required to “provide the pole Owner with a ‘worst case’ pole analysis from the area to be overlashed, to be sure that the additional facilities will not excessively burden the pole structures.”²⁶

existing cables reduces construction disruption and associated expense.”); *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 62 (1998) (“We believe overlashing is important to implementing the 1996 Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition [and helps] provide diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace.”).

²³ *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachment, 2004 N.Y. P.U.C. LEXIS 306, *28-31 (N.Y. P.U.C. rel. Aug., 6, 2004).

²⁴ *Id.* at *30.

²⁵ *Id.*

²⁶ *Id.*

FCTA is hopeful that the workshops will allow the parties to develop a similar, reasonable standard that would accord with FCC precedent.

- *Post-Construction Inspections*

According to Section 11.1 of the Plan, Gulf Power intends to perform post-construction inspections on every attachment, upgrade and overlash, at the attacher's cost. Gulf Power includes no details regarding when these post-constructions will occur following installation or what type of information will be gathered. While the FCC does not prohibit the performance of post-construction inspections, they must be conducted in a just and reasonable manner in accordance with Section 224. Moreover, the FCC prohibits a utility from charging an attacher for any post-construction inspection that does not relate solely to that attacher's attachment and for untimely post-construction inspections.²⁷ These are essential details that are normally worked out during pole attachment agreement negotiations, but could be worked out during the workshops.

- *Pole Inspections and Audits*

Each of the Plans includes references to the performance of additional pole inspections and audits, but do not give specifics on cost allocation and recovery.²⁸ For example, Gulf Power plans to conduct a random sampling of each of its poles with three or more third party attachments that are more than 20 years old, (*see* Plan at pp. 12-13), create an enhanced vegetation management plan, (to include an annual inspection) and perform other inspections, but does not explain how these costs will be recovered. While FCTA supports Gulf Power's

²⁷ *Knology* at ¶¶ 34-35 (2003) (“[W]e conclude that the post-attachment inspection of Knology’s attachments occurred (at least in part) more than one year after Knology installed its cables and equipment on Georgia Power’s poles. We further conclude . . . that Georgia Power’s post-attachment inspection was not related solely to Knology’s attachments, but, instead, constituted a routine inspection. . . . Consequently, we find that charging Knology the cost of a post-attachment inspection occurring one year or more after installation of Knology’s equipment is an unreasonable terms and condition of attachment.”).

random sampling inspections and believes vegetation trimming is key to maintaining reliable plant, the costs attendant to any type of inspection must be allocated in accordance with FCC rules.

Specifically, the FCC has consistently held that “[a] rate based on fully allocated costs,” such as the rental rate paid to Florida pole owners, “by definition encompasses all pole related costs and additional charges are not appropriate.”²⁹ As a result, the “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.”³⁰ For example, FERC Account 593 includes the expenses for inspection and maintenance of overhead distribution lines and is factored into the carrying charges that make up an electric utility’s annual rent, including tree-trimming expenses.³¹

Moreover, it remains to be seen whether, how and to what extent Gulf Power might attempt to assign responsibility (and thus correction costs) for non-compliant poles or attachments discovered pursuant to routine inspections. Utilities are “prohibited from holding [an attacher] responsible for costs arising from the correction of safety violation of attachers

²⁸ Attached hereto as Exhibit 2 is list of numerous FCC cases addressing utility collection of costs from attaching entities

²⁹ *Texas Cable & Telecom. Ass’n v. Entergy Services, Inc.*, 14 FCC Rcd 9138, ¶ 10 (1999).

³⁰ *See, e.g., Cable Tel. Ass’n of Ga. v. Ga. Power Co.*, 18 FCC Rcd. 16,333, ¶ 16 (2003).

³¹ *See* 18 C.F.R. pt. 101 (describing Account 593 to include “the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures . . . [including] [t]rimming trees and clearing brush.”). The FCC has also ruled “that utilities may not hold attaching entities responsible for sharing in the direct costs of government mandated pole modifications that would be required without the presence of attachers.” *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, 14 FCC Rcd 18,049, ¶ 106 (1999) *aff’d Southern Co. v. FCC*, 293 F.3d 1338, 1352 (11th Cir. 2002) (“Finally, it is reasonable to mandate that utilities bear the costs of modifying their facilities in response to local government mandates, given that they would bear these costs in any event. Attaching entities are not given a free ride, as incremental costs associated with moving the attachment can be factored into the standard rent utilities charge to attachers.”)

other than the [the attacher.”].³² These types of issues, which clearly implicate FCC jurisdiction, should be further addressed in workshops so that third party attachers can provide appropriate input to ensure that their federal rights are protected.

In sum, many of the cost allocation issues are left unresolved in the utilities’ storm hardening plans. Whether the costs for pole loading studies, pole replacements, safety violation corrections, inspections and the like will be sought directly from attachers, recovered in the rent or not passed through at all directly implicates the FCC’s jurisdiction. For the Commission’s reference, attached hereto as Exhibit 2 is a description of FCC cases addressing utility collection of costs from attaching entities.

IV. The Commission Should Have Ongoing Workshops To Further Develop Utility Plans

FCTA member operators will benefit from the implementation of effective and prudent storm hardening plans, and would like to continue to work with the IOUs and the Commission towards the development of comprehensive storm hardening plans that increase the ability of IOU distribution pole infrastructure to better withstand extreme significant weather events and that improve the coordination of service restoration efforts. Further development and discussion of these plans is especially important given the potential cost impact on third party attachers as well as the potential that aspects of these plans will impact FCTA members’ federally protected pole attachment rights.

So far, dialogue has been beneficial, and FCTA strongly believes that significant benefit

³² *Cavalier Tel., LLC v. Virginia Elec. and Power Co.*, 15 FCC Rcd 9563, ¶ 17 (2000), *vacated by settlement, Cavalier Tel. Settlement Order*, 17 FCC Rcd 24,412 (2002) (stating the vacateur did “not reflect any disagreement with or reconsideration of any of the findings or conclusions contained” in the original order issued in 2000.”); *see also Knology* at ¶ 37 (finding that “it is an unjust and unreasonable term and condition of attachment, in violation of Section 224 of the Act, for a utility pole owner to hold an attacher responsible for the costs arising from the correction of other attachers’ safety violations.”)

can be gained by maintaining and facilitating continued, open discussions on storm hardening. Thus, the best course of action to address the standards set forth under Storm Hardening Proposals is for the Commission to facilitate this ongoing dialogue between the utilities and interested attaching parties in the form of Commission sponsored workshops.

To date, the FCTA has been proactive in its participation in meetings with the Companies and has provided feedback on all available plans. In accord with the Commission's intent that "the new rules envision both the IOUs and third-party attachers working together in good faith on the front end to establish storm hardening plans," the FCTA has submitted feedback to each utility including Gulf Power at every step of this process.³³ This input is important because third-party attachers have more than forty years of experience in attaching their facilities to utility poles in the state of Florida, are the most knowledgeable about their own attachments, and currently contribute to pole improvements.³⁴ Furthermore, cable operators provide important services that can be crucial in emergency situations, including 911 services. Thus, the impact that implementation of these plans can and will have on cable operators should not be discounted. By the same token, FCTA's member operators have every incentive and desire to work with the IOUs towards the further development of these plans.

Due to the complexity of the issues and the uncertain amount and level of detail that has been captured by the plans, it is appropriate to contemplate further incremental steps to implement and establish storm hardening standards. To that end, FCTA members strongly recommend that a collaborative process, which would include Commission workshops, is the optimal approach for the development of truly comprehensive storm hardening plans. Through

³³ Staff Recommendation, issued Nov. 21, 2006, in Dockets Nos. 060172-EU and 060173-EU.

³⁴ Specifically, in making poles ready for attachment, cable operators often guy the pole, or pay to have a pole changed out with a new pole. Even though the new pole is owned by the utility, cable continues to pay rent.

workshops, all stakeholders will have the opportunity to develop and discuss essential details of the storm hardening plans, which will enable third party attachers to provide additional, more detailed input. Such workshops would also allow third party attachers an opportunity to identify any additional facilities that they believe should be included as critical infrastructure and/or targeted poles. The development of such details, as well as the attendant opportunity for more specific input from third party attachers, will result in more comprehensive and effective plans, thereby bolstering the Commission's efforts to ensure the availability of power and communications services for all Florida consumers in extreme weather situations.

The Commission has used workshops in the past to develop infrastructure hardening rules, to assess research in electric utility infrastructure hardening, and to address the role of vegetation management. These workshops have provided appropriate forums for representatives from responsive entities to share ideas, promote shared interests and to receive detailed information. Elsewhere, workshops have provided a forum for addressing similar issues and have yielded positive outcomes through ongoing dialogue and coordination amongst all stakeholders. For instance, after nearly a decade of dispute concerning Pole Access in Oregon, in April 2007, the Oregon Public Utilities Commission adopted an Order that established comprehensive pole attachment rules.³⁵ This successful resolution was due in no small part to multiple workshops and hearings at which many of the most contentious issues were identified and explored by all stakeholders.

Commission approval of the Gulf Power Plan, in its current, incomplete state, would be premature. Workshops would promote the continued development of the Gulf Power Plan and other IOU plans in a productive atmosphere under the guidance of the Commission and its

³⁵ Oregon is certified to regulate pole attachments pursuant to 47 U.S.C. § 224.

professional staff. Thus, FCTA respectfully suggests that the Commission take action with regard to each of the utility's plans by implementing a collaborative process for the further development of these plans and by scheduling workshops for that purpose. If, however, the Commission determines that it must affirmatively act to approve or reject the plans at this time, FCTA strongly recommends that the Commission consider approving the plans on a limited, experimental basis only, subject to further clarification, input, and revisions, and include a statement that any approval is not intended to conflict with federal pole attachment law. Thereafter, the collaborative process discussed herein should be implemented in order to develop further details and third party attacher input contemplated by Rule 25-6.0342 and the Commission's Order.

Respectfully submitted this 30th day of May, 2007.

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EXHIBIT 1

History of 224

Utilities possess monopoly ownership of poles on which cable operators must rely to provide their services.³⁶ Local franchises, environmental restrictions and other legal and economic barriers preclude cable operators and others from placing additional poles in areas where poles already exist. Redundant aerial plant structures (*i.e.*, additional sets of utility poles) are therefore neither permissible nor feasible. Moreover, "in most instances underground installation of necessary cables is impossible or impractical. Utility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables."³⁷ Indeed, the United States Congress,³⁸ the Supreme Court,³⁹ federal courts,⁴⁰ the Department of Justice⁴¹ and the Federal Communications Commission ("FCC"),⁴² have all recognized the status of poles and conduit as "essential facilities" and thus bottlenecks to

³⁶ "About 80 percent of the nation's poles are controlled by [electric] utility companies and the remaining 20 percent by phone companies. . . ." Ted Hearn, *Supreme Court Takes Cable Pole Case*, MULTICHANNEL NEWS, Jan. 29, 2001 at 34. Accordingly, although incumbent local exchange carriers like Qwest and Verizon own poles in Oregon, the state's electric utilities most likely own more poles. Charter is attached to approximately 180,000 poles in the State of Oregon and, as a cable operator, owns virtually no poles.

³⁷ *F.C.C. v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (hereinafter "*Florida Power*").

³⁸ See, e.g., 123 CONG. REC. H35008 (1977) (statement of Rep. Broyhill, co-sponsor of the Pole Attachments Act) ("The cable television industry has traditionally relied on telephone and power companies to provide space on poles for the attachment of CATV cables. Primarily because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, the cable operators are virtually dependent on the telephone and power companies....").

³⁹ See *Nat'l Cable & Telecomm. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 330 (2002) (hereinafter "*Gulf Power*") (stating that cable companies have "found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. . . . Utilities, in turn, have found it convenient to charge monopoly rents.").

⁴⁰ See, e.g., *United States v. Western Elec. Co., Inc.* 673 F. Supp. 525, 564 (D.D.C. 1987) (stating that cable television companies "depend on permission from the Regional Companies for attachment of their cables to the telephone companies' poles and the sharing of their conduit space. . . . In short, there does not exist any meaningful, large-scale alternative to the facilities of the local exchange networks. . . .").

⁴¹ See, e.g., *United States v. AT&T*, No. 74-1698, Plaintiff's First Statement of Contentions and Proof, Appendix, Tab 8 (D.D.C. filed Nov. 1, 1978) (cataloguing by the Justice Department of Bell Operating Company dominance of pole and conduit facilities).

⁴² See *Common Carrier Bureau Cautions Owners of Utility Poles*, 1995 FCC LEXIS 193, *1 (Jan. 11, 1995) ("Utility poles, ducts and conduits are regarded as essential facilities, access to which is vital for promoting the deployment of cable television systems.").

facilities-based competition in telecommunications and cable television markets. Effective regulation of these facilities is thus crucial to ensure access at just and reasonable rates, terms and conditions⁴³ and to promote facilities-based competition.⁴⁴

The federal 1978 Pole Attachment Act (“PAA”)⁴⁵ was the legislative response to substantial evidence of abuse by monopoly pole-owning utilities, including the imposition of “exorbitant fees and other unfair terms . . .” on cable operators.⁴⁶ Congress recognized that without pole attachment regulation, “utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates.”⁴⁷ The statute instructs the FCC to adopt procedures necessary to hear and resolve complaints and to ensure just and reasonable rates, terms and conditions for the use of these essential facilities.⁴⁸

“[T]he predominant legislative goal for Congress in enacting the Pole Attachment Act was ‘to establish a mechanism whereby unfair pole attachment practices may come under review and sanction, and to minimize the effect of unjust and unreasonable pole attachment practices on the wider development of cable television service to the public.’”⁴⁹

⁴³ See *Ala. Cable Telecomm. Ass’n v. Ala. Power*, 15 FCC Rcd 17,346, ¶ 6 (2000) (“By conferring jurisdiction on the Commission to regulate pole attachments, Congress sought to constrain the ability of telephone and electric utilities to extract monopoly profits from cable television systems operators in need of pole space.”).

⁴⁴ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd 1034, 1045 (1998) (“Wireline video and telecommunications competition is heavily dependent on the ability of market participants to obtain access to utility poles, conduits and rights of way at reasonable rates.”).

⁴⁵ Pub. L. No. 95-234, 92 Stat. 25 (1978), (codified at 47 U.S.C. § 224).

⁴⁶ *May 25th Order* at ¶ 21 (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977), reprinted in 1978 U.S.C.C.A.N. 109); see also *Florida Power*, 480 U.S. at 247 (recognizing that Congress enacted the Pole Attachment Act “as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service.”).

⁴⁷ H.R. Rep. No. 94-1-1630 at 5 (1976).

⁴⁸ 47 U.S.C. § 224(b)(1).

⁴⁹ *May 25th Order* at ¶ 21 (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977), reprinted in 1978 U.S.C.C.A.N. 109).

Principles of nondiscrimination have also been implemented to protect telecommunications providers. The Telecommunications Act of 1996 (hereinafter “the 1996 Act”) amended the PAA to expand the FCC’s jurisdiction over poles and conduit to cover “telecommunications carriers” along with “cable television systems.”⁵⁰ As amended, the PAA imposes upon all utilities, the duty to “provide . . . nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”⁵¹ This directive ensures that “no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields.”⁵² The PAA also sets forth a cost-based, pole attachment rent formula that “accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles.”⁵³

The FCC rate formula, creates a range of compensation, the low end of which is the “incremental costs [or] those costs the utility would not have incurred ‘but for’ the pole attachments in question,” and the high end of which is an allocation of the fully-loaded “operating expenses and capital costs [including a return on investment] that a utility incurs in owning and maintaining poles that are associated with the space occupied by the pole

⁵⁰ For purposes of the PAA, the term “telecommunications carrier” does not include incumbent local exchange carriers, like Qwest and Verizon. See 47 U.S.C. § 224(a)(5). Therefore, neither Qwest nor Verizon are protected under the federal PAA.

⁵¹ 47 U.S.C. § 224(f)(1).

⁵² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15,499, ¶ 1123 (1996) (hereinafter “1996 FCC Order”).

⁵³ *May 25th Order* at ¶ 15. Attachers to poles typically pay an annual rental rate for every pole on which they have an attachment. For cable attachers in FCC states, their annual rent is calculated under the cable rate formula, set forth at 47 U.S.C. § 224(d). There is a separate rate formula for attachments made by competitive local exchange carriers, which is set forth at 47 U.S.C. § 224(e). Specifically, both pole rate formulas rely on historical (“actual” or “embedded”) publicly available and reported data reflected in a utility’s regulatory accounts: ARMIS 43-01 Reports (for ILECs) and FERC Form 1 Reports (for electric utilities).

attachments.”⁵⁴ Therefore, anything above incremental costs is a contribution to the utility’s overall revenue requirements. In this regard, most utilities recover such out-of-pocket, or incremental costs in advance of any pole attachment through the imposition of “make-ready” expenses and therefore receive at least the minimum required by law.⁵⁵ Make-ready generally refers to the modification of existing plant to accommodate additional facilities. Nevertheless, the FCC has long interpreted the rate formula statute to provide that when application of the formula reduces a contractual pole rental rate, the FCC will only reduce the rate to the statutory maximum.⁵⁶

Application of the FCC’s rate formula and the numerous other pole attachment rules and case law,⁵⁷ developed in response to Congressional mandate, ensures that facilities-based competition proceeds on fair rates, terms and conditions, notwithstanding monopoly ownership and control of distribution facilities and utilities’ “superior bargaining position in pole attachment matters.”⁵⁸

⁵⁴ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 96 n. 303 (1998) (hereinafter “1998 FCC Order”).

⁵⁵ *May 25th Order* at ¶ 8.

⁵⁶ *See Florida Power*, 480 U.S. at 254.

⁵⁷ The FCC has adjudicated approximately 300 complaints. *See 1998 FCC Order* at ¶ 8 n. 37. All utilities are therefore on notice that the rates, terms and conditions of pole attachments may be scrutinized to ensure they are just and reasonable, as required by the Pole Attachment Act.

⁵⁸ *TCA Mgmt v. Southwestern Pub. Serv. Co.*, 10 FCC Rcd 11,832, ¶ 15 (1995) (citing S. Rep. No. 95-580, 95th Cong. 1st Sess. at 13).

EXHIBIT 2

Cost Recovery Issues Within the FCC's Jurisdiction

1. Billing Standards:

- Discussed the standards for reasonable charges for make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 26 (2003) (identifying examples of engineering errors or other duplicative charges that Georgia Power inappropriately billed to an attacher).
- Clarified the share of indirect utility employee costs attachers must pay. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 53 (2003) (correcting utility billing management and supervisory function expense costing in the pole attachment rate).
- Delineating costs of easement inclusions in rates. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16,333 ¶ 27 (2003) (private easement costs are not recoverable from pole attachment rates).
- Evaluating charges for anchors. *Cox Cable v. Va. Elec. & Power*, Memorandum Opinion & Order, 53 RR 2d 860, ¶¶ 28, 33 (1983) (the pole attachment rate includes costs of anchors). *See also Capital Cities Cable v. Mountain States Tel. & Tel. Co.*, Memorandum Opinion & Order, 56 RR 2d 393 ¶¶ 40-42 (1984).
- Recovery of administrative costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975, ¶ 33 (1999) (billing and pole attachment licensing administration are recovered in the utility pole attachment rate).

2. Billing Overages:

- Charges without itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 50 (2003) (holding utility charge to attacher for vaguely described term was inappropriate).
- Penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11,450, ¶¶ 11, 13 (2000) (unauthorized pole attachment penalty charges must be in line with industry standards).
- Markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (margin of error surcharges must be explained and reasonable).

- Detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (make-ready bills must contain sufficient detail of work performed).
- Providing refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (refunds for make-ready overcharges must be provided).
- Make-ready surcharges tied to underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (make-ready surcharges must be connected to specific work performed).
- Administrative fees relationship to actual costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975, ¶ 33 (1999) (holding administrative charges must represent actual costs).
- Engineering survey fees. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138, ¶¶ 6, 10 (1999) (the engineering fee should be based on non-recurring actual 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 24,615, ¶ 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. Attachment Fees In Relation to Particular Attachers:

- Charges to new attacher of inspection that benefits multiple parties. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 34 (2003) (a utility's post attachment inspection is routine to the extent it involves the identification and assessment of multiple parties attachments). *See also Newport News Cablevision, Ltd. Commc'ns, Inc. v. Va. Elec. & Power Co.*, 7 FCC Rcd 2610, ¶¶ 8-14 (1992) (inspection costs must be divided among all parties); *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16,333, ¶ 16 (2003) (cost of routine inspections of poles which benefit all attachers should be accounted for in the pole attachment rate).

- Pre-make-ready inspections that benefit multiple parties. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 43 (2003) (pre-make-ready inspection costs must be shared by the utility and other attachers when they benefit from such inspections).

EXHIBIT 3

CURRICULUM VITAE

M. T. (MICKEY) HARRELSON

M. T. (Mickey) Harrelson

P. O. Box 432
McRae, GA 31055

Phone: (912) 568-1504

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Registered Professional Engineer (Electrical) GA#10724 (1976)

Registered Professional Engineer (Electrical) FL #51788 (1997)

EDUCATION: B.S. Industrial Engineering (Co-op) GA TECH, 1970

WORK EXPERIENCE:

- 1959- Worked part-time with Harrelson Electric Co., owned by my father.
- 1963 W. T. Harrelson, doing residential, commercial, & industrial electrical and repair work in McRae, GA.
- Dec. 1963- Co-op student of Georgia Power Co. in Electric Distribution Operating, McRae,
Mar. 1970 GA, & Commercial Sales, North Atlanta.
- Apr. 1970- Lieutenant in U. S. Army Air Defense, Minneapolis, MINN, & Yong Son,
Jan. 1972 KOREA. Served as Battery Commander, Korea. Military Status: Inactive,
Army Reserves; Rank: Captain.
- Feb. 1972- Operating Engineer, Brunswick, Georgia Power Co.; Designing, operating, and
June 1974 maintaining distribution system and operating transmission system.
- June 1974- Senior Commercial Marketing Engineer, Brunswick. Selling wise use of
Feb. 1976 electricity to new and existing commercial customers in Brunswick area. This
included lighting design to I.E.S. standards, and consultations regarding the
National Electrical Code.
- Feb. 1976- Operating Engineer, St. Simons Island, Ga. Power; Designing, operating, &
June 1978 maintaining distribution system & operating transmission system.
- June 1978- District Engineer; Supervised engineering and operation of Brunswick District
May 1986 of Ga. Power Co., including Kingsland Operating Headquarters.

- May 1986-
Sept. 1989 Area Manager, McRae, Ga. Power Co; Restructure McRae, Eastman, Hazlehurst into area operation, and supervise and coordinate all company activities in the area.
- Sept. 1989-
April 1992 District Power Delivery Manager, Milledgeville District; Manager of Engineering, Construction, & Maintenance of the electric distribution system and operation of the transmission & distribution system.

Note: During 28 years with Georgia Power Company, I was involved with claims, damage and accident investigations. From 1978 through 1992, I was in charge of these activities at my location.

April 1,1992 Resigned from Georgia Power Company, Reason for leaving: Early retirement incentive package gave excellent opportunity to pursue independent consulting engineer goals.

April 1,1992
to present Electric Utility Consulting Engineer.
Investigated accidents and testified in matters involving the National Electrical Safety Code, OSHA regulations, utility company safety manuals, employee training courses, accepted good work practices, and the National Electrical Code. These cases have involved electrical contact, flash, and burn injuries, collisions with poles and guy wires, falls from poles, etc., hydraulic oil fires, crushing injuries, property losses from fires, stray voltage, etc. The companies involved have been electric, telephone, cable TV, and product manufacturing companies.

I do management consulting and safety and engineering training for electric cooperatives, engineering consulting companies and private industry

I do electric power line inspections for electric cooperatives as required by the Rural Utility Service.

I inspect power lines and communications lines built jointly for National Electrical Safety Code compliance. I teach N.E.S.C. compliance and train field engineers and technicians in joint use compliance.

OTHER COURSES AND SEMINARS:

- 1974 13 weeks Commercial Sales Training by Ga. Power Co., including interior & exterior lighting design, & National Electrical Code.
- 1975 1 week General Electric Outdoor Lighting School, Hendersonville, NC.
- 1976 8 weeks Electric Operations Training by Ga. Power Co.
- 1977 1 week Principles of Leadership Training, Ga. Power Co.
- 1979 1 week Basic Management Training by Ga. Power Co.
- 1980-1985 Served as "Leader" of Engineering Dept Quality Circle.

- 1981 1 week Communications-General Training by Ga. Power Co.
- 1982 1 week Human Relations Skills Training by Ga. Power Co.
- 1987 3 days Interpersonal Skills Seminar by Ga. Power Co.
- 1988 1 week Management Grid School, Mobile, AL, Training by Southern Co.
- 1988 13 weeks Community Leadership Class sponsored by University of GA
Cooperative Extension Service and Telfair County.
- 1989 1 week Negotiating Edge Seminar, Athens, GA., Training by Ga. Power Co. and
Susan Wise
- 1989 Basic Economic Development Course, GA Institute of Technology
- 1990 3 months- Committee assignment (met bi-weekly) to formulate Ga. Power
Company Guarantee Policy
- 1991 6 months-Committee assignment (met bi-weekly) to develop "District
Operations Performance Measurement" facilitated by Ernst & Young Co.
- 1991 3 months-Committee assignment (met bi-weekly) to assess Georgia Power
Company Marketing Dept Readiness for Incentive pay.
- 1992 1 week advanced Negotiating Skills Seminar, Peachtree City, Training by Ga.
Power Co. & The Executive Speaker, Inc.
- 1992 1 day IEEE Seminar on 1993 National Electrical Safety Code
- 1993 2 day NRECA Safety Accreditation Team Training & Testing Seminar
- 1994 3 day Seminar-The Development & Application of the National Electrical
Safety Code by Allen Clapp
- 1995 2 day ILCI (International Loss Control Institute, Inc.) Seminar on accident
investigation
- 1996 1 day IEEE Seminar - "Changes in me 1997 NESC."
- 1997 3 day Seminar - "Application of 1997 NESC."

MEMBERSHIPS AND AFFILIATIONS:

- 1970-present Member, Georgia Tech Alumni Association
- 1974-present Member, Georgia & National Society of Professional Engineers
- 1978-1986 Member, Glynn County GA Electrical Inspection Board
- 1992-present Member, Telfair Co. Chamber of Commerce
- 1992-present Member, Institute of Electrical & Electronics Engineers (IEEE)
- 1993-2002 Board Member, Telfair County Industrial Development Authority
- 1993-2002 Member, Illuminating Engineering Society of North America (IECNA)
- 1993-present Rural Electric Safety Accreditation Program (RESAP) certified accreditation
inspector

1994-present Member, National Fire Protection Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Telecommunications Association's Comments has been served upon Jeffrey A. Stone, Esquire, Russell A. Badders, Esquire, and Steven R. Griffin, Esquire, Beggs & Lane Law Firm, P.O. Box 12950, Pensacola, FL 32591 and that a copy has also been provided via Hand Delivery or US Mail to the persons listed below this 30th day of May, 2007:

Ms. Susan Ritenour
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

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Florida Public Service Commission,
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2540 Shumard Oak Blvd.
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