

# AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

May 3, 2006

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by the National Electric Safety Code; FPSC Docket No. 060173-EU

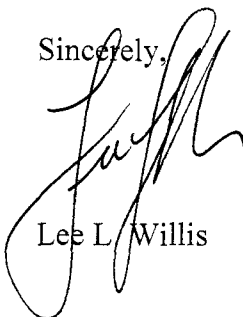
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Joint Supplemental Comments of Florida Power & Light Company, Progress Energy Florida, Tampa Electric Company and Gulf Power Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Lee L. Willis

LLW/pp  
Enclosures

DOCUMENT NUMBER-DATE

03929 MAY-3 06

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: May 3, 2006

**JOINT SUPPLEMENTAL COMMENTS**

Florida Power and Light Company (“FPL”), Progress Energy Florida (“PEF”), Tampa Electric Company (“Tampa Electric”) and Gulf Power Company (“Gulf Power”), in addition to their individual comments, file these Joint Supplemental Comments and suggested amendments to Rule 25-6.034 Standard of Construction which address the establishment of pole attachment standards and procedures and respectfully represent:

1. There are a number of safety, capacity and engineering issues with respect to third party attachments that should be considered in the Commission’s review of Rule 25-6.024, Standards of Construction.

2. The focus of the Commission’s review of Rule 25.6.034 is to consider appropriate means of making electric facilities safer and less vulnerable to extreme weather conditions. This proceeding is a part of a multi-pronged effort to improve the safety and reliability of Florida’s electric grid.

3. As this Commission has recognized recently on several occasions in various related proceedings concerning electric infrastructure, third party pole attachments have a definite effect on wind loading and weight loading of poles and consequently on the safety and reliability of the electric grid.

DOCUMENT NUMBER-DATE  
03929 MAY-3 06  
FPSC-COMMISSION CLERK

4. This Commission in Order PSC 06-0144-PAA-EI (“Order 06-0144”) issued February 27, 2006 in Docket No. 060078-EI, ordered utilities to implement an eight-year pole attachment program which includes inspection requirements related to loadings of pole attachments. Order 06-0144 at page 5 provides:

Inspection Requirements Related to Loadings: Pole Attachments

Factors such as electrical fixtures and non-electric pole attachments impose additional strength requirements that are considered at the time the pole is installed. Of course, many pole attachments occur well after the date of pole installation. The code states that “[w]hen new or changed facilities add loads to existing structures (a) the strength of the structure when new shall have been great enough to support the additional loads and (b) the strength of the deteriorated structure shall exceed the strength required at replacement. If either (a) or (b) cannot be met, the structure must be replaced, augmented, or rehabilitated.” See Attachment A. We believe that third parties have completed pole attachments to electric IOU wood poles that were done without full consideration of the requirements of the NESC requirement.

\* \* \*

Thus, we find that wood pole strength inspections under such conditions require both remaining strength assessments as well as pole attachment loading assessments.

A similar statement is repeated at page 8 of Order 06-0144 under the heading: Pole Inspection for Strength Requirements Related to Pole Attachments.

5. Order PSC-06-0531-PAA-EI issued April 25, 2006 in Docket No. 060198-EI – Requirement for Investor-Owned Utilities to File Ongoing Storm Preparedness Plans on Implementation Cost Estimates continued to address the Commission’s concerns about pole attachments saying:

At the January 23, 2006 Staff workshop, independent technical experts presented information suggesting that a percentage of existing electric utility poles are overloaded and approaching overloading due to non-electric utility attachments to the poles.

6. Attachment 1 sets forth the proposed pole attachment standards and procedures proposed to enable the Commission and utilities to more fully address the reliability and safety concerns of third party pole attachments discussed in the various related dockets discussed above.

7. The Commission has ample jurisdiction to address issues of safety and reliability of third party pole attachments under its Grid Bill and safety jurisdiction set out in part in Subsections 366.04(5) and (6), 366.05(1) and (8). Further, this jurisdiction has not been preempted by federal law which defers matters of reliability and safety related to pole attachments to the state.

8. The Federal Pole Attachment Act, which generally gives the Federal Communications Commission (“FCC”) jurisdiction over pole attachments, specifically states that the FCC does not have jurisdiction over pole access issues, including safety and reliability, where such matters are regulated by a state. 47 USC §§ 224(c)(1) and (f)(2). The Commission’s exercise of its jurisdiction over pole attachment safety and reliability does not require any kind of certification to the FCC. Certification is needed only for regulation of “rates, terms and conditions,” but not for “access” issues such as safety and reliability. 47 USC §§ 224(c)(1), (c)(2), and (f)(2).

Respectfully submitted this 3<sup>rd</sup> day of May, 2006.

R. Wade Litchfield, Esq.  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
Telephone: (561) 691-7101  
Facsimile: (561) 691-7135  
and  
John T. Butler  
9250 W. Flagler Street  
Miami, FL 33174  
Telephone: (305) 552-3857  
Facsimile: (305) 552-3865

ON BEHALF OF FLORIDA POWER &  
LIGHT COMPANY

Alex Glenn  
John Burnett  
Post Office Box 14042  
St. Petersburg, FL 33733  
Telephone: (727) 820-5184  
Facsimile: (727) 820-5519

ON BEHALF OF PROGRESS ENERGY  
FLORIDA, INC.

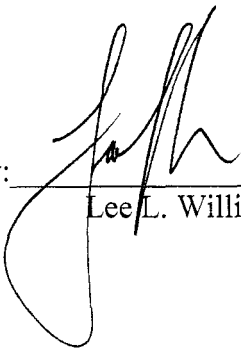
Jeffrey A. Stone  
Russell A. Badders  
Beggs & Lane  
Post Office Box 12950  
Pensacola, FL 32591-2950  
Telephone: (850) 432-2451  
Facsimile: (850) 469-3331

ON BEHALF OF GULF POWER  
COMPANY

Lee L. Willis  
James D. Beasley  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
Telephone: (850) 224-9115  
Facsimile: (850) 222-7952

ON BEHALF OF TAMPA ELECTRIC  
COMPANY

By: \_\_\_\_\_

  
Lee L. Willis

## ATTACHMENT "1"

### PROPOSED RULE

Docket No: 060173-EU

The following proposed additions to Rule 25-6.0434 should be placed at the end of the other proposed revisions to this rule. Accordingly the section numbers of the proposed revisions are left blank in this joint filing.

(x) **Establishment of Attachment Standards and Procedures.** Each electric utility shall establish and maintain written safety, reliability, capacity, and engineering standards and procedures for attachments by others to the utility's electric distribution poles ("Attachment Standards and Procedures"). Such Attachment Standards and Procedures shall meet or exceed National Electrical Safety Code and other applicable standards imposed by law so as to assure, as far as is reasonably practicable, that third-party facilities attached to electric distribution poles do not impair electric system safety or reliability, do not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(x) **Prohibition on Attachments in or above Communications Worker Safety Zone.** Following the effective date of this rule, no non-electric utility attachment, unless necessary for the distribution and delivery of electric power, shall be made in or above the Communications Worker Safety Zone of a utility's distribution poles.

(x) **Filing with the Commission.** No later than thirty (30) days after the effective date of this rule, each electric utility shall file a copy of its Attachment Standards and Procedures with the Commission. In the event a utility modifies its Attachment Standards and Procedures, the utility shall file its new Attachment Standards and Procedures, appropriately labeled to indicate

## ATTACHMENT "1"

### PROPOSED RULE

Docket No: 060173-EU

The following proposed additions to Rule 25-6.0434 should be placed at the end of the other proposed revisions to this rule. Accordingly the section numbers of the proposed revisions are left blank in this joint filing.

(x) **Establishment of Attachment Standards and Procedures.** Each electric utility shall establish and maintain written safety, reliability, capacity, and engineering standards and procedures for attachments by others to the utility's electric distribution poles ("Attachment Standards and Procedures"). Such Attachment Standards and Procedures shall meet or exceed National Electrical Safety Code and other applicable standards imposed by law so as to assure, as far as is reasonably practicable, that third-party facilities attached to electric distribution poles do not impair electric system safety or reliability, do not exceed pole capacity, and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(x) **Prohibition on Attachments in or above Communications Worker Safety Zone.** Following the effective date of this rule, no non-electric utility attachment, unless necessary for the distribution and delivery of electric power, shall be in or above the Communications Worker Safety Zone of a utility's distribution poles.

(x) **Filing with the Commission.** No later than thirty (30) days after the effective date of this rule, each electric utility shall file a copy of its Attachment Standards and Procedures with the Commission. In the event a utility modifies its Attachment Standards and Procedures, the utility shall file its new Attachment Standards and Procedures, appropriately labeled to indicate

the effective date of the new version, together with an annotated copy of the previous version showing each modification.

(x) **Compliance.** No attachment to an electric utility's distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures as filed with the Commission.

(x) **Review.** The Commission shall review the Attachment Standards and Procedures filed by each utility and may at any time require a utility to demonstrate, through appropriate proceedings, that its Attachment Standards and Procedures comply with the requirements of Section (X). The Commission also may investigate each attaching party's compliance with the same.

(x) **Availability of Attachment Standards and Procedures.** A copy of the utility's Attachment Standards and Procedures as filed with the Commission shall be made available by the utility for public inspection. Any person shall, upon request, be furnished a copy of the utility's Attachment Standards and Procedures in effect at the time.