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Timolyn Henry

From: Donovan, Chrystal D [LTD] [Chrystal.Donovan@embarq.com]
Sent: Friday, July 28, 2006 4:29 PM
To: Filings@psc.state.fl.us
Subject: 060172-060173 Request for Hearing and Proposal for Lower Cost Alternatives
Attachments: Embarq Req for Hearing and Proposal for Lower Cost Alternatives.pdf

Filed on behalf of:

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Docket No. 060172/060173

Title of filing:Request for Hearing and Proposal for Lower Cost Alternatives

Filed on behalf of Embarq

6 pages

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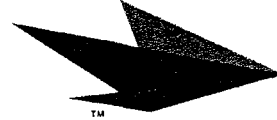
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July 28, 2006

Ms. Blanca Bayò, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket Nos.060172 & 060173-EI
Embarq's Request for Hearing and Proposal for Lower Cost Alternatives

Dear Ms. Bayò:

On behalf of Embarq Florida, Inc. ("Embarq") this letter sets forth Embarq's request for a hearing and its proposal for lower cost regulatory alternatives, in accordance with the Notice of Rulemaking issued June 28, 2006 (Order No. PSC-06-0556-NOR-EU) and ch. 120, F.S.

Request for Hearing

In accordance with s. 120.54(3)(c)1., F.S., and Rule 28-103.004, F.A.C. Embarq requests a hearing on Proposed Rule 25-6.034, F.A.C. Embarq also understands that Proposed Rules 25-6.0341, 6.0342 and 6.0343 are already set for hearing (See, Order No. PSC-06-0610-PCO-EU and Order No. PSC-06-0632-PCO-EU), but to the extent a formal request for hearing may be necessary for these rules this letter also serves as that request.

Embarq is affected by the proposed rules because Embarq is a lawful third-party attacher to electric utility poles under federal law and agreements entered into between Embarq and individual electric utilities. Embarq currently has in place an estimated 250,000 attachments with approximately 30 electric utilities in Florida. The rules proposed by the Commission will affect both the manner and costs of Embarq's attachments. Embarq is requesting a hearing so that it will have an opportunity to present information to the Commission regarding Embarq's legal, operational and cost concerns with the rules as they are currently proposed.

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FLORIDA PUBLIC SERVICE COMMISSION CLERK

Proposal for lower cost alternatives

In accordance with s. 120.541, F.S., Embarq proposes the following lower cost alternatives to the rules proposed by the Commission. Embarq is a “substantially affected person” because it is a lawful third-party attacher as described above and the rules will affect the manner and costs of Embarq’s attachments. The Commission already has recognized that Embarq’s interests are affected by the proposed rules by including a requirement that the electric utilities seek input from third-party attachers related to construction and attachment standards and location decisions (although Embarq believes these provisions are insufficient to protect Embarq’s interests).

First, regarding Proposed Rules 25-6.034 and 25-6.0342, F.A.C., relating to standards for electric utility construction and standards for third-party attachments to electric utility poles (and those portions of Proposed Rule 25-6.0343 that contain similar language for municipal and rural cooperative electric utilities), Embarq proposes that the 2002 National Electric Safety Code (NESC) is the appropriate standard for electric company construction and for third-party attachments. Embarq believes the adoption of this standard by the Commission substantially accomplishes the goals of the statutes that are implemented by the rules. The goals of these statutes are, broadly, to establish standards that ensure the availability of adequate and reliable energy, ensure the safety of the public and ensure the availability of adequate services and facilities to those reasonably entitled to receive such services. (See, ss. 366.04 and 366.05, F.S.) During the 2006 legislative session the Legislature adopted ch. 2006-230, Laws of Florida, amending ss. 366.04 and 366.05, F.S., to allow the Commission to adopt standards that exceed the NESC standards; however, the only requirement the law imposes upon the Commission is to adopt the NESC standards. The Legislature specifically did not alter its earlier finding that compliance with the NESC standards constitutes adequate safety standards for the protection of the public.

The pole attachment agreements generally used within the industry provide that poles and attachments will be constructed in accordance with the NESC standards. In addition, the rulemaking record does not support the insufficiency of the NESC standards (particularly as they relate to attachments) as the cause of electric outages experienced during extreme weather events, nor does the record support that exceeding the NESC standards will result in fewer or shorter electric outages. In fact, the Commission itself does not know what additional standards might be necessary to achieve the statutory objectives and, so, has delegated to the individual electric utilities the ability to adopt standards in excess of the NESC, entirely at each utility’s discretion.¹ The NESC provides uniform standards that allow third parties to plan for and place attachments throughout the state on a consistent basis. The proposed rules would allow electric utilities to adopt potentially widely varying standards that could significantly increase the operational difficulties and costs imposed on third-party attachers.

¹ Embarq believes that this is an unlawful delegation of the Commission’s rulemaking authority and intends to raise this issue through the appropriate proceedings at the appropriate time.

The proposed rules leave the adoption of these “excessive” standards entirely within the discretion of the electric utilities (which Embarq believes is unlawful). While the proposed rules require the electric companies to “seek input” from third parties and allow disputes regarding the standards to be brought before the Commission, there is no clear mechanism for notice to third parties of the standards the electric utilities propose to adopt (in fact, the utilities have stated that much of this information is proprietary). Also, there are no clear guidelines for the Commission to decide whether a proposed excessive standard is appropriate. Because the proposed rules do not set forth specific standards in excess of the NESC or a specific process for developing or challenging these standards, Embarq is not able to accurately assess the cost impact of any additional standards, the administrative costs of providing “input” to the electric utilities in the development of the standards, or the costs Embarq would incur if it finds it necessary to file a challenge with the Commission. In addition, given that the Commission cannot know what the standards ultimately will be, the Commission cannot determine the added value of the rule or the additional costs that any new standards exceeding the NESC may engender. At least, setting forth the specific, fact-supported construction or attachment standards in the rules would be a lower cost alternative because it would provide Embarq a clear point of entry in the development of the standards and allow Embarq to assess, and perhaps ameliorate, the cost impacts associated with a particular standard.

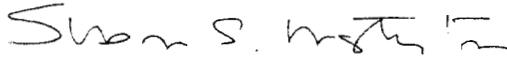
Regarding Proposed Rule 25-6.0341, F.A.C., related to the location of electric utilities (and those portions of Proposed Rule 25-6.0343 that contain similar language for municipal and rural cooperative electric utilities), Embarq proposes that a lower cost alternative is to apply the rule only to the installation of new facilities. Embarq believes that a prospective application of the rule addresses the access issues that the Commission asserts are the basis for the proposed rule. A prospective rule would be a more cost-effective alternative, as well, in that it would avoid the considerable costs (as well as the disruption) associated with removing existing facilities currently located in the back of a customer’s premises and placing new facilities in the front or in the public right-of-way.² Embarq believes these relocation costs and disruptions are likely to significantly outweigh any potential benefits of improved access to the facilities for restoration purposes.

In addition to this letter and to the cost estimates filed today under separate cover, Embarq intends to file comprehensive comments addressing Embarq’s legal, operational and cost concerns with the proposed rules by the August 4, 2006 deadline set forth in Order No. PSC-06-0610-PCO-EU. In addition, Embarq intends to fully participate in the rulemaking hearing for Proposed Rules 25-6.0341 and 25-6.0342 scheduled for August 31, 2006, in the hearing for Proposed Rule 25-6.0343 scheduled for October 4, 2006 and in the hearing for Proposed Rule 25-6.034, F.A.C., whenever it is scheduled.

² Embarq has provided an estimate of the potential costs associated with Proposed Rule 25-6.0341, F.A.C., as requested at the July 13th staff workshop in a separate filing on this same day.

If you have any questions or need additional information concerning the matters set forth in this letter, please contact me at (850) 599-1560.

Sincerely,

A handwritten signature in cursive script that reads "Susan S. Masterton".

Susan S. Masterton

Cc: Larry Harris, Esq., FPSC
Charles J. Rehwinkel
Interested Persons of Record

**CERTIFICATE OF SERVICE
DOCKET NO. 060172-060173**

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 28th day of July, 2006, to the following:

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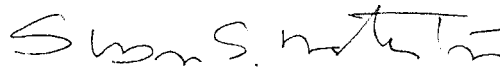
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