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Florida Cable Telecommunications Association

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Steve Wilkerson, President

**VIA ELECTRONIC AND HAND DELIVERY**

August 4, 2006

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

**RE: Docket No. 060173-EU – Comments and Requested Changes to Rules 25-6.0341,  
25-6.0342 on behalf of FCTA and expert witness, M.T. (Mickey) Harrelson**

Dear Ms. Bayo:

Attached for filing are the original and 15 copies of the Florida Cable Telecommunications Association, Inc.'s Comments and Requested Changes to Rules 25-6.0341, and 25-6.0342, Florida Administrative Code; as well as Comments by FCTA's expert witness, M.T. (Mickey) Harrelson.

Copies have been served upon the parties of record by electronic and U.S. Mail delivery.

Thank you for your assistance in this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael A. Gross', written over a horizontal line.

Michael A. Gross  
Vice President, Regulatory Affairs &  
Regulatory Counsel

Enclosure

cc: All Parties of Record

DOCUMENT NUMBER-DATE

07019 AUG-4 8

FPSC-COMMISSION CLERK

BEFORE THE 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: August 4, 2006

**COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. AND REQUESTED CHANGES TO RULES 25-6.0341 AND 25-6.0342, FLORIDA ADMINISTRATIVE CODE**

The Florida Cable Telecommunications Association, Inc., (FCTA), pursuant to section 120.54(3)(c)1., Rule 28-103.004, Florida Administrative Code, and Order No. PSC-06-0610-PSCO-EU, Order Establishing Procedures to be Followed at Rulemaking Hearing, issued on July 18, 2006, submits its comments and suggested rule changes for Rules 25-6.-0341 and 25-6.0342, to be considered at the public hearing scheduled for August 31, 2006.

**INTRODUCTION.**

The Florida Public Service Commission (Commission) issued a Notice of Rulemaking on June 28, 2006, initiating rulemaking to adopt Rules 25-6.0341 Location of the Utility's Electric Distribution Facilities, 25-6.0342 Third-Party Attachment Standards and Procedures, 25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives, and amend Rules 25-6.034 Standard of Construction, 25-6.0345 Safety Standards for Construction of New Transmission and Distribution, 25-6.064 ~~Extension of Facilities~~; Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities, 25-6.078 Schedule of Charges, and 25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public Investor-owned~~ Distribution Facilities ~~Excluding New Residential Subdivisions~~.

The purpose and effect of the rules as stated in the Notice of Proposed Rulemaking is: "to increase the reliability of Florida's electric transmission and distribution infrastructure, as well as

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clarify costs and standards regarding overhead line extensions and underground electric infrastructure.” The summary of the rules as stated in the Notice of Proposed Rulemaking states: “The rules will require electric utilities to develop construction standards which, at a minimum, meet the National Electrical Safety Code; relocate facilities from the rear to the front of customer's premises in certain circumstances; develop standards for third-party attachments to electric facilities; extend applicability of the standards to municipally operated systems and electric cooperatives; and clarify and revise the charges for overhead line extensions, underground construction, and conversion of overhead facilities to underground facilities.”

The Commission approved the proposed rules by vote at its Agenda Conference on June 20, 2006. The Commission voted to set the proposed rules 25-6.0341, 25-6.0342, and 25-6.0343 directly for hearing. An Order Establishing Procedure to be Followed at Rulemaking Hearing was issued on July 18, 2006, confirming that a rulemaking hearing on Rules 25-6.0341, 25-6.0342, and 25-6.0343, F.A.C., is scheduled before the Commission on August 31, 2006. The Order Establishing Procedure provided that “[a]ffected persons who are or will be requesting the Commission adopt changes to Rules 25-6.0341 and 25-6.0342, F.A.C. as proposed in the July 7, 2006, Florida Administrative Weekly shall file comments or testimony enumerating the comments and changes no later than August 4, 2006.” An Order Granting Motion to Bifurcate Proceeding and Establish Controlling Dates and Establishing New Docket, Order No. PSC-06-0632-PCO-EU, was issued on July 27, 2006, establishing Docket No. 060512, setting a separate schedule for Rule 25-6.0343, and setting a hearing date on October 4, 2006.

The FCTA praises and applauds the Commission and the Florida Legislature in taking positive steps to address the storm damage and protracted power outages that were experienced during the recent storm seasons. Cable operators are no longer purely providers of cable TV, but

are now offering voice service and data service both nationally and, more importantly, in Florida. Accordingly, the cable industry has an equal interest in assuring against downed poles and outages. The electric distribution system is vital to the cable industry's plant and feed to its customers. The cable industry is in a very competitive environment. Last hurricane season, satellite trucks were following the downed poles to market residences for satellite TV services. Safe, strong poles are in the cable industry's best interest. However, the FCTA believes that the power companies are waiving the "safety" flag inappropriately in the direction of attaching entities. The FCC has recognized that the public welfare depends upon safe and reliable provision of utility services, yet the FCC also recognized that the 1996 Act reinforces the vital role of telecommunications and cable services.

**RULE 25-6.0342 THIRD-PARTY ATTACHMENT STANDARDS AND PROCEDURES.**

Cable systems distribute service substantially through a community along lines and cables which extend either above ground attached to utility poles or below ground through conduits and trenches. Proposed Rule 25-6.034 requires investor-owned utilities (IOUs) to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0342 requires IOUs to establish, as part of their construction standards adopted pursuant to Rule 25-6.034, F.A.C., third-party attachment standards and procedures for attachments by others to the utility's electric transmission and distribution poles. FCTA members attach their facilities to distribution poles owned by IOUs and municipal electric utilities (Munis) and rural electric cooperatives (Coops). The electric IOUs own a substantial majority of the pole plant in Florida and will have enormous incentives to use their bottleneck control of distribution infrastructure to leverage their position in their ongoing disputes with the cable industry over third-party attachments. The electric and cable industries have been

litigating for 20 years over pole attachment rates and access rights, including issues involving safety, reliability, capacity, and engineering standards. A representative sample of the litigation between the electric and cable industries during the last 20 years is set forth in Exhibit 1 attached hereto.

Section 366.05(1), Florida Statutes, was amended by SB 888 recently passed in the 2006 Legislative Session, to give the Commission the power to adopt construction standards that exceed the National Electric Safety Code for purposes of assuring the reliable provision of service. Although the statutory authority delegated to the Commission is clear that **the Commission has the power to adopt construction standards**, these rules sub-delegate the Commission's authority to the IOUs to establish construction standards and attachment standards as part of their construction standards.<sup>1</sup> The same sub-delegation has been made in Rule 25-6.0343(1)(a), (b), (e), and (f) and (3)(a) and (b), and (4), which sub-delegates the Commission's authority to establish construction and attachment standards to the (Munis) and (Coops). Rules 25-6.034(7), 25-6.0342(3) and Rule 25-6.0343(4) require IOUs as well as the municipal electric utilities and rural electric cooperatives, respectively, to solicit input from third-party attachers. However, there is no obligation on the part of the utilities to utilize and incorporate input provided by third-party attachers. There is no assurance that the utilities will not summarily dismiss any such input. This sub-delegation constitutes an unlawful exercise of delegated authority pursuant to section 120.52(8), Florida Statutes, and an abdication of the Commission's authority granted to it under section 366.05(1), Florida Statutes.

One of the FCTA's substantial concerns arises from the fact that, pursuant to these rules,

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<sup>1</sup> The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

the Commission will be giving unilateral authority to the utilities to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the utilities. The FCTA's concern is underscored as a result of granting such discretion to utilities in light of the long history of conflict and incentives for abuse that the utilities have in relation to the cable industry as third-party attachers.

The construction standards are in many ways intertwined with third-party attachment standards, including determinations as to what make-ready work is appropriate to rearrange facilities on existing poles or to make new attachments. Another example of the inextricable ties between the construction standards in general and the attachment standards that are a part of the construction standards is that the extreme wind loading standards of the NESC that would be required in the utility's construction standards would have to be considered in connection with the wind load of third-party attachments. This example is equally applicable to the Muni and Coop rules for standards of construction which are to be guided by extreme wind loading standards specified by the NESC, and which would have to be considered in connection with third-party attachment standards.

Although the rules give the Commission authority to resolve any disputes over the construction and attachment standards, any such authority shall be in clear violation of FCC jurisdiction in cases where a utility unreasonably imposes conditions on mandatory, nondiscriminatory access rights granted under section 224 of the Commissions Act of 1934, 47 U.S.C.A. § 224. The FCC jurisdiction may be triggered by construction and attachment standards that are facially unreasonable and unjust or by an unreasonable and unjust application of such standards. Pursuant to Section 366.05(1), Florida Statutes, the Commission has an obligation to independently assure that the construction and attachment standards are just and

reasonable, consistent with federal law. Consequently, Rules 25-6.034(1)(2), (5), (6) and (7), 25-6.0342, and 25-6.0343(1)(a), (b), (e), and (f), and (3)(a) and (b), and (4) encroach upon the FCC's exclusive jurisdiction and are invalid under Section 120.52(8)(b).

The FCC has stated that "it would not invalidate summarily all local requirements," while in the same paragraph, the FCC made equally clear that state and local safety requirements apply *only* if there is no "direct conflict with federal policy.... Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Dkt. Nos. 96-98, 95-1 85, 11 FCC Rcd. 16073 § 1154 (1996) ("*Local Competition Order*").

The FCC went on to say that it would consider the merits of "any individual case" alleging safety, reliability or engineering as a basis for denial.<sup>2</sup> The FCC also specifically rejected "the contention of some utilities that *they* are the primary arbiters of such concerns, or that their determinations should be presumed reasonable," while noting that § 224(f)(1) "reflects Congress' intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators."<sup>3</sup> On reconsideration of that Order, the FCC refused to categorically restrict the type of pole attachments that must be allowed, reiterating that

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<sup>2</sup> Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates, *Public Notice* (December 23, 2004) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Order on Reconsideration*, 14 FCC Rcd 18049, 19074 172 (1999)).

<sup>3</sup> *Id.* at 16074 § 1158; *see also In the Matter of Kansas City Cable Partners v. Kansas City Power & Light Company*, 14 FCC Rcd 11599, T 11 (1 999) (stating that "the utility is not the final arbiter of [standards for safety, reliability, and generally applicable engineering standards] and its conclusions are *not* presumed reasonable") (emphasis added).

“when evaluating any attachment request, including a wireless attachment, access determinations are to be based on the statutory factors of safety, reliability, and engineering principles.”<sup>4</sup> Those statutory factors are subject to a reasonableness determination by the FCC (or a *certified* state, which Florida is not) on a case by case basis, where, as here, a prospective attaching entity protests the denial of access on one of those, or other, grounds.

Indeed, as stated by the FCC only a few months ago in response to similar claims by another utility pole owner, Entergy Arkansas, Inc., that the FCC lacked jurisdiction and “specific expertise with respect to electric utilities and their unique safety and operational issues,” the FCC ruled:

Pursuant to the provisions of section 224, the Commission, through its Bureaus, has exercised its jurisdiction in prior pole attachment complaint proceedings to determine whether a pole owner’s adoption or application of specific engineering standards was unjust and unreasonable. Making such a determination does not require the Commission to establish a set of engineering standards that utilities must use across-the-board. Indeed, in adopting rules governing pole attachments, the Commission expressly declined to establish a comprehensive set of engineering standards that would govern when a utility could deny access to its poles based on capacity, safety, reliability, or engineering concerns. The Commission concluded, instead, that “the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis.”<sup>5</sup>

There is abundant precedent for the FCC’s jurisdiction over safety issues. The FCC routinely considers allegations that attachments will pose safety problems. *See, e.g., In the Matter of the Cable Television Assoc. of Georgia v. Georgia Power Company*, 2003 FCC Lexis 4463, \*14 (2003) (dismissing a pole owner’s alleged safety issues, as they were not supported by the

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<sup>4</sup>*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, 14 FCC Rcd 18049, 19074 772 (1999).

<sup>5</sup> *Arkansas Cable Telecommunications Association v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, lv 8-10 (rel March 2, 2006) (internal citations omitted).



record, because the pole owner could not point to a single instance of property damage or personal injury caused by the pole attachments); *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*, Order and Request for Information, File No. PA 99-005, DA 00-1250 at ¶19 (June 7, 2000) (requiring a utility pole owner to “cease and desist from selectively enforcing safety standards or unreasonably changing the safety standards” that the party seeking to attach to its poles must adhere); *In the Matter of Newport News Cablevision, Ltd. Communications, Inc. v. Virginia Electric and Power Company*, Order, 7 FCC Rcd. 2610 ¶ 15 (April 27, 1992) (considering the reasonableness of VEPCO’s guying requirements). The FCC has also affirmatively considered specific safety requirements in rulemaking proceedings, such as the impact of over lashing by attaching entities and third parties, including the impact on wind and weight load burdens. *In the Matter of Amendment of Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, CS Dkt. Nos, 97-98, 97-151, 16 FCC Rcd. 12103 ¶¶ 73-78 (2001). Accordingly, the FCC has, and does exercise, jurisdiction over pole safety issues. Consequently, the proposed rules violate federal legal precedent in giving unilateral and unfettered discretion to utilities to set construction and attachment standards and deny access. Section 224 has already been interpreted to preclude any unilateral determination at insufficient capacity exists for third-party attachments. *Southern Company, et al. v. Federal Communications Commission*, 293 F.3d 1338, 1347-49 (11<sup>th</sup> Cir. 2002). Specifically, the case law provides that electric utilities do not have “unfettered discretion” to determine insufficient capacity and may only refuse to make capacity available on a particular pole “when it is agreed that capacity is insufficient.” Accordingly, Rule 25-6.0342 that gives the utility the unilateral authority to deny access is in violation of section 224 of the

Communications Act and the rules, regulations, FCC decisions, and applicable judicial precedent. Further, the assignment of authority under the rules to the Commission to resolve such disputes is clearly a violation of FCC rules and policy in cases where safety conditions are used unreasonably to deny access. As previously stated above, FCC jurisdiction applies to unreasonable denials of access based on safety, reliability, engineering, and capacity.

If utilities are given unilateral discretion to establish construction standards for pole attachments, they will undoubtedly pass on improper costs to attaching entities. History has proven that utility pole owners will engage in unreasonable billing practices, including imposition of direct charges for certain services while simultaneously recovering the same costs in their annual rental charges (“double billing”), recovering excessive amounts from attaching entities for services that can only be performed by the pole owners (“over billing”), and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves. Moreover, utilities also have engaged in unreasonable operational practices, which have resulted in significant unnecessary costs to attaching entities. For example, utilities have sought to require full application and engineering studies for overloading of fiber optic cable to existing strand – a practice the Federal Communications Commission (“FCC”) has found to be excessive and unnecessary because of its minimal impact on pole loading. Engineering studies are very costly to perform and also delay the provision of valuable services to customers. In addition, utilities have unreasonably denied attachment to their anchors – requiring attaching entities instead to set their own anchors and thereby expend unnecessary resources. Again, the FCC has found this practice to be unreasonable. Attached hereto as Exhibit 2 is a memorandum of FCC cases showing instances where utility pole owners have engaged in unreasonable billing practices,

double-billing, over-billing and improperly assessing charges on an attaching entity for benefits received by other entities, including joint owners, joint users, and the pole owners themselves, and unreasonable operational practices which have resulted in significant, unnecessary costs to attaching entities.

Rule 25-6.0342 as proposed will subject cable third-party attachers to an unlawful exercise of delegated authority and an obstruction of their rights granted under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224. The FCTA's requested changes to Rule 25-6.0342 are attached hereto as Exhibit 3.

**RULE 25-6.0341 LOCATION OF THE UTILITY'S ELECTRIC DISTRIBUTION FACILITIES.**

Rule 25-6.0341(1), (2) and (3) all create the potential for relocating existing facilities by IOUs from the rear edge of a lot to the front edge of the lot. Rule 25-6.0343(2)(a), (b), and (c) also have the same potential for relocation of existing facilities by Munis and Coops from the rear lot to the front lot. Rear lot facilities are able to serve twice as many residences, and relocation to the front lot would require a duplication of facilities to serve the same number of residences that rear lot facilities can serve.

For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. Consequently, relocation from rear lot to front lot is less efficient and more costly. In a substantial number of cases, good maintenance will be more cost-efficient than relocation of

facilities. However, the IOUs and Munis and Coops are given sole discretion to make decisions to relocate their facilities, and cable third-party attachers will be compelled to relocate their facilities.

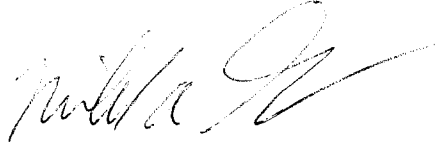
Therefore, Rules 25-6.0341(1), (2), and (3) and 25-6.0343(2)(a), (b), and (c), should be limited to initial installations, and the utilities should not be given complete discretion to make determinations in the case of expansions, rebuilds or relocations. The FCTA appreciates the provision in Rules 25-6.0341(4) and 25-6.0343(4) requiring the electric utility to seek input from and, to the extent practical, to coordinate the construction of its facilities with the third-party attacher. However, the opportunity for input must be timely with respect to the FCTA members' evaluation of construction alternatives, and the FCTA members' budgeting time deadlines. Specifically, language should be inserted providing that an electric utility provide third-party attachers with reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate construction alternatives and make budgeting plans. Therefore, the cited rules are invalid in violation of Section 120.52(8), in that the rules give complete discretion to the utilities to make decisions as to relocation of their facilities without any meaningful input (since the utilities may disregard input from third-party attachers) or consideration of the costs that will be incurred by third-party attachers as a result of such relocations, and without a requirement of sufficient advance notice to accommodate a third-party attacher's needs to evaluate construction alternatives and make budgeting decisions. In general, utilities make their construction plans at least a year in advance and 12 months advance notice is reasonable. Additional language to allow third-party attachers a larger degree of participation and a requirement of a greater degree of cooperation from the utilities in the process of coordinating construction of its facilities with third-party attachers.

**PROPOSED RULES 25-6.0341 AND 25-6.0342 ARE ANTI-COMPETITIVE AND NOT FACTUALLY SUPPORTED AS THE MOST EFFECTIVE MEANS OF MEETING THE GOALS OF PRODUCING STORM DAMAGE AND PROTRACTED OUTAGES.**

There has been no competent, substantial evidence that storm damage and power outages in Florida from the recent hurricane seasons were caused by third-party attachments and/or inadequate construction and NESC standards. Third-party cable attachments are almost exclusively on distribution poles. The most effective effort to reduce widespread and lengthy power outages is to inspect transmission poles and substations and to take remedial or corrective actions to repair or restore transmissions lines and substations to design strengths and performance criteria. Distribution lines and poles are often surrounded by trees and buildings, particularly in urban areas. It is not effective to build stronger distribution lines, only to have them brought down by tall trees and flying debris. Urban areas are also where the greatest concentration of communications cables are attached to distribution poles. It is rare that a distribution pole is broken by wind force alone resulting from the added wind load caused by communications cable attachments. In essence, inspection and repair of transmission poles and substations, and improved inspections, maintenance, and vegetation management for tree trimming are the most effective means to increase the safety and reliability of Florida's electrical grid in the face of increased extreme weather events. The major causes of problems with distribution lines during hurricanes are trees, tree limbs, flying building and other debris, poles rotten at the ground line, and broken or ineffective guy wires. Therefore a priority should be vegetation management or tree trimming. The cited rules give anticompetitive advantages to utilities and are not factually supported as the most effective means of meeting the goals of reducing storm damage and protracted outages. The record shows that there are more effective

means of accomplishing these goals. The FCTA's requested changes to Rule 25-6.0341 are attached hereto as Exhibit 4.

Respectfully submitted this 4<sup>th</sup> day of August 2006.



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Michael A. Gross  
Vice President, Regulatory Affairs  
& Regulatory Counsel  
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**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Florida Cable Telecommunications Association has been served upon the following parties electronically and by U.S. Mail this 4<sup>th</sup> day of August 2006.

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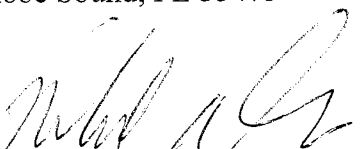
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Southern Pressure Treaters Association

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\_\_\_\_\_  
Michael A. Gross

- *Florida Power Corp. v. FCC*, 480 U.S. 285 (1987) held that no taking had occurred because Florida Power had voluntarily agreed to the cable companies' attachments. The 1978 Act did not require mandatory access.
- *Gulf Power Co. v. United States*, 187 F. 3d 1324 (11th Cir. 1999) (*Gulf Power I*) held that the 1996 Act authorized a taking of Gulf Power's property, but declined to rule on the just compensation issue because it was not ripe for review.
- *Gulf Power v. FCC*, 208 F. 3d 1263 (11<sup>th</sup> Cir. 2000) (*Gulf Power II*) held that FCC has no jurisdiction to regulate attachments for Internet service under the 1996 Act, and therefore the FCC pole rate formula does not apply to pole attachments that carry commingled cable video and Internet service.
- Alabama Power and Gulf Power are emboldened by *Gulf Power II* to unilaterally raise pole rates in Alabama and Florida 500 %. *Gulf Power II* is stayed pending appeal.
- Alabama Cable Telecommunications Association (ACTA) files complaint against Alabama Power on June 22, 2000. Cable Services Bureau grants complaint on September 8, 2000, and FCC affirms on May 25, 2001.
- FCTA files complaint against Gulf Power on July 19, 2000, and Complaint is granted by the FCC Enforcement Bureau on May 13, 2003 (FCTA action was held in abeyance during pendency of appeal of *NCTA v. Gulf Power* concluded on January 16, 2002 and *Alabama Power* case that concluded on November 14, 2002).
- *NCTA v. Gulf Power Co.*, 534 U.S. 327 (2002) held on January 16, 2002 that Pole Attachment Act covers attachments that provide high-speed Internet access at the same time as cable television. Reversed 11<sup>th</sup> Circuit's decision in *Gulf Power II*.
- *Alabama Power Co. and Gulf Power Co. v. FCC*, 311 F. 3d 1357 (11<sup>th</sup> Cir. 2002) (ACTA and FCTA were intervenors in appeal) held on November 14, 2002 that FCC Cable Formula that provides more than marginal costs (and hence more than just compensation) provides adequate compensation for use of APCo's poles, unless pole owner proves lost opportunity by showing full capacity and a higher valued use on a pole-by-pole basis. APCo neither alleged nor proved these facts.
- In litigation pending between the FCTA and Gulf Power at the FCC, *Florida Cable Telecommunications Ass'n, Inc.*, et al. the Gulf Power Co.; E.B. Docket No. 04-381, on Sept 27, 2004, the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC") released a *Hearing Designation Order* ("HDO"), initiating an evidentiary hearing in connection with a Petition for Reconsideration and Request for Evidentiary Hearing filed by Gulf Power in Florida Cable Operators' pole attachment rate complaint proceeding.
- In *Alabama Power Co. v FCC*, the Eleventh Circuit established a limited set of factual circumstances whereby a utility might be able to justify compensation greater than that





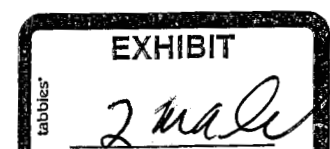
received under the Cable Formula and payment of make-ready expenses. The Court concluded that, to do this, a utility must be able to show "*with regard to each pole* that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is able to put the space to a higher-valued use with its own operations."

- A final hearing in this matter was held before the administrative law judge (ALJ) at the FCC in Washington, D.C. from April 24-27, 2006, and concluded on May 2, 2006.
- Reply proposed findings of fact and conclusions of law are scheduled to be filed on August 16, 2006, after which the ALJ will issue an order.

## A. Unreasonable Billing Practices by Utilities

### 1. Double Billing:

- Collected money from attachers for unnecessary, duplicative, or defective make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 26 (2003) (identifying at least 29 examples of engineering errors or duplicative charges that Georgia Power unreasonably forced Knology to pay).
- Required cable operators to pay a share of indirect costs associated with the functions performed by dedicated employees and simultaneously to pay for the dedicated employees amounting to an unreasonable duplicative charge. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 53 (2003) (demonstrating that Georgia Power included management and supervisory functions in the calculation of the indirect overhead expenses when these same functions were already paid by Knology through the direct expense of the two dedicated Georgia Power employees).
- Charged for cost of private easements when the cost was already recovered in the pole attachment rent. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 27 (2003) (holding that Georgia Power was not entitled to additional payment for private easements because the Commission's rate formula assures that Georgia Power receives just compensation as required by the Fifth Amendment).
- Imposed a direct charge for anchors while also recovering the costs of anchors in the pole attachment rent. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶¶ 28, 33 (1983) (holding VEPCO's \$7.00 charge for use of each anchor rod was unjust and unreasonable because the rate formula takes into account the cost of a bare pole and the investment in anchors). *See also Capital Cities Cable v. Mountain States Telephone & Telegraph Co.*, Memorandum Opinion & Order, 56 RR 2d 393 ¶¶ 40-42 (1984) (holding the utility was double recovering the cost of the anchors by charging a separate anchor fee when the cost of the anchors was already included in the rate formula by way of the bare pole cost).
- Used administrative fees to double recover administrative costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the administrative costs associated with the "Billing Event Fee" and the "CATV Pole License Agreement" fee were already included in the carrying charges used to calculate the maximum pole attachment rate).



## 2. Over Billing:

- Imposed charges without any discernable backup or itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 50 (2003) (holding Georgia Power's \$190,805.86 charge to Knology for "GPESS SUPR & ADMIN" costs was unreasonable because Georgia Power provided no explanation or support for this figure).
- Charged excessive penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶¶ 11, 13 (2000) (holding the unauthorized pole attachment penalty charge of up to \$250 per pole was unreasonable in light of the industry practice of charging between \$15 and \$25 per unauthorized pole attachment).
- Imposed unreasonably high markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding the "margin of error" surcharge of approximately 10.5% on all make-ready bills was unreasonable because no evidence was provided to justify the percentage).
- Provided insufficient detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (holding that VEPCO's make-ready bills to Cavalier Telephone were insufficiently detailed).
- Failed to provide refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO never provided a make-ready overcharge refund despite charging a margin of error surcharge).
- Applied make-ready surcharges across an entire category of attachers without regard to the underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563 ¶ 29 (2000) (finding that VEPCO charged all CLECs the margin of error surcharge without any connection to the work performed).
- Imposed administrative fees that exceeded actual costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975 ¶ 33 (1999) (holding the "Billing Event Fee" and the "CATV Pole License Agreement" fee do not represent actual costs).
- Imposed engineering survey fees unrelated to the actual costs. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138 ¶¶ 6, 10 (1999) (holding the engineering fee was inappropriate because it was not based on non-recurring actual costs; therefore, by definition, the

engineering survey fee was already included in the annual pole attachment fee based on fully allocated 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 24615 ¶ 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. Billing a Single Attacher for Costs Common to All Attachers:

- Charged new attacher for the full cost of a post attachment pole inspection that benefited the utility and other attachers. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 34 (2003) (holding that Georgia Power's post attachment inspection was a routine inspection because the inspection involved the identification and correction of other attachers' safety violations). *See also Newport News Cablevision, Ltd. Communications, Inc. v. Va. Elec. & Power Co.*, 7 FCC Rcd 2610 ¶¶ 8-14 (1992) (holding that VEPCO unreasonably allocated 100% of the inspection costs to the cable provider); *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 16 (2003) (holding that charges to cable operators for periodic inspections were unreasonable since "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 . . .").
- Charged new attacher the full cost for the pre-make-ready inspections that benefited the utility and other attachers. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶ 43 (2003) (rejecting Georgia Power's assertion that Knology should pay the entire cost of the pre-make-ready inspections because both Georgia Power and the other attachers benefited from the large scale inspection).

## B. Unreasonable Operational Practice by Utilities

- Imposed a consent requirement on cable operators for overlanding that contravened Commission policy. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 13 (2003) (rejecting Georgia Power's requirement that cable operators seek written consent prior to overlanding because the Commission's policy was that "neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlanding other than the approval obtained for the host attachment").
- Denied anchor attachments for safety reasons without explanation or support. *Cox Cable v. Virginia Electric & Power*, Memorandum Opinion & Order, 53 RR 2d 860 ¶ 33 (1983) (rejecting VEPCO's denial of anchor attachments because VEPCO made no detailed showing that its poles were engineered in such a way that separate anchors were necessary).

## C. Actual Costs Relating to Pole Attachments

### 1. Pole Replacement:

- \$2,146 per pole. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24615 ¶¶ 40-41 (2003) (Ordering Georgia Power to refund Knology for 16 pole replacements at \$2,146 per pole for a total refund of \$34,366. The \$2,146 amount was the average amount that had been charged by Georgia Power where Knology was found not to be the cause of the pole replacement.)
- \$3,000 - \$5,000 per pole. *Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, Consolidated Order, 14 FCC Rcd 11599 ¶ 9 (1999) (The primary issue in the case was Kansas Cit Power & Light's failure to perform make-ready work in timely fashion. The amount per pole was provided by KCPL in response to a request from Time Warner for estimated cost of pole replacements.)<sup>1</sup>

### 2. Pole audit:

- \$0.70 per pole. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11450 ¶ 9 n.62 (2000) (commenting that this may be a reasonable rate).

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<sup>1</sup> The per pole cost data cited is provided for illustrative purposes only. It should be noted that pole costs and associated labor costs have gone up substantially in general, and particular poles may be extremely expensive depending on characteristics of individual poles. The price of a single pole may vary by as much as tenfold depending on the characteristics of the poles.

- “The just and reasonable cost for the 1996 [Pole] Count is \$1.40 [per pole].” *Cable Tex., Inc. v. Entergy Services, Inc.*, Order, 14 FCC Rcd 6647 ¶ 16 (1999).<sup>2</sup>

**3. Make ready construction costs, management and inspection costs, and engineering costs:**

- \$150 per pole. *Cable Television Ass’n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16333 ¶ 19 (2003) (The Cable Association was contesting Georgia Power’s \$150 up-front fee for make-ready work. The Enforcement Bureau found the fee unreasonable and concluded that “Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs.” It is not clear from the decision the specific tasks that this fee was designed to cover.)

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<sup>2</sup> The audit fees cited involved the total cost for a pole count. Audits currently are much broader in scope, and the costs have increased substantially.

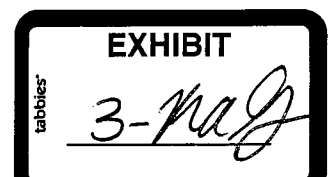
## FCTA PROPOSED CHANGES TO RULE 25-6.0342

### 25-6.0342 Third-Party Attachment Standards and Procedures.

(1) As part of its construction standards adopted pursuant to Rule 25-6.034, F.A.C., each utility shall establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall meet or exceed the applicable edition of the National Electrical Safety Code (ANSI C-2) pursuant to subsection 25-6.034(4) and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory.

(2) Third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account the construction and service requirements of third-party attachers in developing Attachment Standards and Procedures. The jointly developed Attachment Standards and Procedures shall be submitted to the Commission for approval. The Commission shall have an independent obligation, whether the Attachment Standards and Procedures are adopted by agreement of the parties or as a result of an evidentiary hearing, to assure that the Attachment Standards and Procedures further the goals of reducing storm damage to transmission and distribution poles, and any attachments thereto, and any protracted outages.<sup>1</sup>

<sup>1</sup> The requested changes in this subsection are to assure proper exercise of the Commission's delegated authority and to assure that the construction and service requirements of third-party attachers are taken into account in developing Attachment Standards and Procedures. Michael A. Gross (MAG)/FCTA Comments at pages 4 and 5. M.T. (Mickey) Harrelson (MTH)/FCTA Comment at pages 5 through 9.



(3)(2) No attachment to a utility's electric transmission or distribution poles shall be made except in compliance with such utility's Attachment Standards and Procedures., except that a utility shall not deny access if the Attachment Standards and Procedures are in conflict with federal law in contravention of an attacher's rights to mandatory, non-discriminatory access under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224. A utility shall not make a unilateral determination to deny access on the basis that there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes. Third-party attachers shall be given reasonable notice, and any determination to deny access shall be based upon agreement of the parties or if the parties cannot agree, after review by the Federal Communications Commission as the agency possessing jurisdiction to adjudicate an attacher's rights and obligations in a manner consistent with the section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224.<sup>2</sup>

(4)(3) In establishing the Attachment Standards and Procedures, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities. Any dispute arising from the implementation of this rule shall be resolved by the Commission.

(5) Nothing in this rule is intended to interfere with section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224, inclusive of any successor statutes and applicable rules, regulations, FCC decisions and judicial precedents.<sup>3</sup>

Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

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<sup>2</sup> The requested changes in this subsection are for the purpose of assuring that cable third-party attachers' rights to mandatory, non-discriminatory access to poles under section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224 are preserved. MAG/FCTA Comments at pages 5 through 10.

<sup>3</sup> See footnote 2 above.



**FCTA PROPOSED CHANGES TO RULE 25-6.0341**

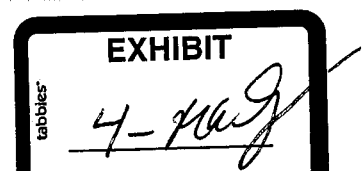
25-6.0341 Location of the Utility's Electric Distribution Facilities. In order to facilitate safe and efficient access for installation and maintenance, to the extent practical, feasible, and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(1) For initial installation, expansion, rebuild, or relocation of overhead facilities, utilities shall use easements, public streets, roads and highways along which the utility has the legal right to occupy, and public lands and private property across which rights-of-way and easements have been provided by the applicant for service.

(2) For initial installation, expansion, rebuild, or relocation of underground facilities, the utility shall require the applicant for service to provide easements along the front edge of the property, unless the utility determines there is an operational, economic, or reliability benefit to use another location.

(3) For conversions of existing overhead facilities to underground facilities, the utility shall, if the applicant for service is a local government that provides all necessary permits and meets the utility's legal, financial, and operational requirements, place facilities in road rights-of-way in lieu of requiring easements.

(4) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, third-party attachers shall be provided notice and an opportunity to participate and the utility shall take into account the needs and requirements of third-party attachers in coordinating the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher. The electric utility shall provide third-party attachers with reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate their construction alternatives and to make



necessary budgeting plans. Nothing herein shall be construed to interfere with section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224, inclusive of any successor statutes and applicable rules, regulations, FCC decisions and judicial precedents.<sup>1</sup>

Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 366.04(2)(c), (5), (6), 366.05(1)(8) FS.

History– New.

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<sup>1</sup> The requested changes to this subsection are for the purpose of assuring that the budget and construction requirements of third-party attachers are taken into account by utilities in coordinating construction of their facilities with the third-party attacher. The notice requirement is for the purpose of providing third-party attachers reasonable and sufficient notice of the utility's construction plans to enable third-party attachers to evaluate their construction alternatives and make necessary budgeting plans. These requested changes are calculated to minimize costs, increase efficiency, mitigate the risks of cable cuts and the costs of repair, and to require consideration of less costly alternatives, especially when good maintenance will be more cost-efficient than relocation. MAG/FCTA Comments at pages 10 and 11. MTH/FCTA Comments at pages 1 through 4. The requested change referring to section 224 of the Communications Act of 1934, 47 U.S.C.A. § 224 are for the purpose of assuring that cable third-party attachers' rights to mandatory, non-discriminatory access to poles are preserved.

BEFORE THE 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: August 4, 2006

**COMMENTS OF M.T. (MICKEY) HARRELSON, CONSULTANT, SUBMITTED ON BEHALF OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. ON RULES 25-6.0341 AND 25-6.0342, FLORIDA ADMINISTRATIVE CODE**

**RULE NO. 25-6.0341 LOCATION OF THE UTILITY'S ELECTRIC DISTRIBUTION FACILITIES.**

FCTA members prefer that new overhead electric lines be constructed in accessible locations such as (we believe) are required by this rule. Expansion, rebuild or relocation of overhead lines with cable attachments will be a great expense to FCTA members where existing line relocation results. Full consideration of the costs to all joint users should be given in a cost-to-benefit analysis of these type line relocations.

Poles on rear lot lines with narrow alleys or no alleys at all can usually serve houses directly from the main line poles to the rear of the houses with aerial drop wires, both communications and electric. Overhead lines along front streets usually require "lift" poles across the street from the main line to access the sides or corners of houses for attachment of aerial drop wires. In some cases there are no houses on the opposite side of front streets. Line relocation in this case would require twice as much cable plant to serve the same customers overhead. If CATV lines are relocated from back lot lines aerial to front streets underground, complete cable lines down each side of each street is

often more feasible than boring under the street for all drop connections to houses which were already served overhead.

Underground electric lines can be located in a joint trench with communications lines. However, there is no widespread use of this practice in Florida. Since most FCTA members have to provide their own trench or conduit, the location of underground electric lines has little effect on our members. When electric lines are relocated to underground locations where communications cables are already buried, the risk of cable cuts is great. The associated disruption of service and the cost of repairs are excessive but can and should substantially be avoided by the power companies during construction.

For conversions of overhead lines to underground, the disruption and cost to FCTA members can be extreme with no increase in revenue. We believe that prudent evaluation of alternatives will indicate that good vegetation management and maintenance of poles and lines will be much more cost effective in most circumstances. Access to lines can also be improved by community and customer awareness initiatives.

In limited instances it will be practical for telephone companies to assume ownership of abandoned poles after power lines are relocated. FCTA members could then remain on the poles with telephone.

Coordination and effective communication between all joint users will be extremely important to the success of this initiative.

FCTA supports the location of new lines in accessible locations but believes that relocation of existing lines with attachments should be fully justified based on costs and benefits to all attachers. We believe relocations will and should have limited application after complete analysis.

## **PREVIOUS ORDERS AND DOCKETS.**

The FCTA supports and appreciates the tremendous resources and efforts which are being applied to hurricane preparedness and, when necessary, future hurricane recovery in Florida.

Florida PSC order PSC-06-0144-PAA-EI issued February 27, 2006 required investor owned electric utilities to inspect wood distribution and transmission poles on an eight year cycle for adequate strength including the effects of pole attachments.

Florida PSC order PSC-06-0351-PAA-EI required a three-year Vegetation Management cycle (tree-trimming) for distribution circuits. It required an audit of joint-use attachment agreements. It required a six-year transmission structure inspection program which included substations. This order also required hardening of existing transmission structures.

FCTA members understand the massive commitment of resources, money and management time, as well as workforce, required to establish and maintain these initiatives. There will be much work to be done to correct deficiencies found in the inspections. The millions of dollars to replace rotten poles, broken or deteriorated guy wires and anchors and remediate other weakened poles or structures have not even been estimated.

The most extensive improvement in prevention and recovery from hurricane caused power outages will be realized by three initiatives. They are vegetation management, transmission line and substation inspections and distribution pole inspections. Transmission line related outages occur as far away as hundreds of miles from the immediate impact area of the hurricane. To date the cost of the inspections have

been estimated. No estimate has been reported of the cost of fixing what is found to be wrong during the inspections.

The Florida PSC should place a high priority on requiring transmission and distribution pole inspections, and the pole replacements and maintenance which those inspections indicate, and tree trimming.

The initiative (2) in order PSC-06-0351-PAA-EI required:

*“Each investor-owned electric utility shall develop a plan for auditing joint-use agreements that includes pole strength assessments. These audits shall include both poles owned by the electric utility to which other utility attachments are made (i.e., telecommunications and cable) and poles not owned by the electric utility to which the electric utility has attached its electrical equipment. The location of each pole, the type and ownership of the facilities attached, and the age of the pole and the attachments to it should be identified. Utilities shall verify that such attachments have been made pursuant to a current joint-use agreement. Stress calculations shall be made to ensure that each joint-use pole is not overloaded or approaching overloading for instances not already addressed by Order No. PSC-06-0144-PAA-EI.”*

The Florida PSC has already ordered the detailed audits as stated above.

The investor owned electric utilities have begun submitting plans and answering questions by PSC staff to implement this order.

Plans by TECO and Gulf indicate that stress calculations are not necessary on every joint use pole. The FCTA agrees that some form of screening and/or sampling is practical and effective to achieve the goals of the audits. FCTA believes that the

objective of the audits is to determine the pole overloading caused by attachments including electric facilities attached to the poles.

TECO has estimated the cost of pole audits to be \$53,000,000 over 10 years while its cost of tree trimming is estimated to be \$97,000,000.

TECO also stated that it intends to conduct a complete safety audit of required clearances and all TECO attachment standards on poles with “unauthorized attachments.” This will be far beyond the FPSC requirement to determine the effect of third party attachments on pole strength.

The proposed rule requires “verify that such attachments have been made pursuant to a current joint-use agreement.” Many “joint use” or “license to attach” agreements in Florida are in renegotiation or litigation and not current. The associated term “Unauthorized Attachment” has not been defined in this proceeding and has been the subject of litigation in other states. Other power companies have claimed that no attachment is “Authorized” unless a permit approved by the power company for each attachment can be produced. This is completely unrealistic considering the extreme variations in formal and informal procedures which have been practiced over the years. Many attachments in other disputes have been alleged to be “Unauthorized” even though they have been in place many years, inventoried in attachment counts, and pole rent paid for years.

The way to define “Unauthorized Attachment” for purposes of this proposed audit should include: attachments belonging to a company or agency which does not have a current agreement, an agreement with a predecessor owner, or a contested attachment agreement with the pole owner. Such a definition would serve to bring the non-

authorized attacher into a formal contract and establish its duty to comply with the proposed attachment standards contemplated by the FPSC.

The reasonable goal of this rule is to assure that existing attachments, including power, are evaluated to determine if the pole is overloaded for the appropriate wind speed and remaining pole strength. A second goal is to assure that all attachers, including power, are to perform sufficient engineering of future attachments to comply with the appropriate wind loading for each pole and comply with all other reasonable attachment standards of the pole owner.

These audits could quickly become complete safety audits (based on power company rules) completely bog down in lengthy disputes, and have little effect on hurricane preparedness.

#### **THE PRESENT ORDER PSC-06-0556-NOR-EU**

Rule No.: 25-6.034 proposes to order all electric utilities to establish construction standards “guided by the extreme wind loading” requirements of the NESC. Rule No.:25-6.0342 proposes: As part of the construction standards, each utility shall establish third party attachment standards. Each electric utility shall seek input from attached entities into its construction and attachment standards.

The proposed rules to require construction standards and third party attachment standards which incorporate the extreme wind design criteria would be much more marginally effective in reducing power outages than the initiatives mentioned above.

Audits of third party attachments to all poles in Florida would be a monumental task.



Construction standards, attachments standards, and attachment contracts already exist between power companies and third party attachers. Many disputes are already on-going regarding contract terms and attachment standards. The contracts and attachment standards are supposed to be negotiated between the parties.

A requirement by the Florida PSC for power companies to “establish third party attachment standards and procedures,” without first negotiating terms acceptable to third parties, will complicate an already contentious issue. More importantly, it will disrupt the otherwise good progress being made to better prepare for hurricanes in Florida by slowing the rule-making.

If the complete audits implied by the proposed rules are required, they will drain resources from more productive initiatives already discussed. Specifically, wood distribution pole inspection should proceed without the simultaneous audit of third party attachments. The many issues related to the audits including Third-party Attachment Standards and Procedures should be resolved before the audits are done.

All attachments to utility poles should be designed and constructed to comply with the NESC. Unfortunately, some are not, including power attachments.

There is certainly a need to develop reasonable attachment standards which must comply with the NESC. Many “attachment standards” in Florida are in dispute or not complied with by multiple parties including power companies. Power companies should comply with their own construction standards and attachment standards. Many do not. Power company construction standards should be available to attaching companies for reference during construction and maintenance activities. Rearrangement of power facilities is frequently necessary to correct NESC violations. Many NESC violations are

caused by power facilities being added which violate the construction and attachment standards. Again these attachment standards should be negotiated. If the FPSC staff can facilitate successful negotiations or perhaps recommend model attachment standards, that may be very helpful.

A much slower pace should be taken to address the problems caused by the proposed order requiring power companies to establish engineering standards and procedures for attachments by others to the utilities poles. The standards and procedures should be approved first by the FPSC before the attachment audits are incorporated into the wood pole inspections.

The purposes and scope of the audits should also be determined before the audits begin.

The case for resolving these issues now is supported by the following reasons.

1. Third party attachments are not a major part of the power outage problems.
2. Reasonable attachment standards should be established before any substantial auditing effort is expended.
3. The purpose and scope of the audits, if required, must be made clear.
4. Reasonable construction standards and attachment standards approved by the FPSC should be complied with for all new construction, relocations etc.
5. A practical strategy and plans to address existing problems should be developed.

## **PREVIOUS WORKSHOP**

A more detailed presentation of some important issues pertaining to these two proposed rules was made by this author at a July 13, 2006 workshop. Those comments are incorporated herein and attached as Exhibit I.

Respectfully submitted this 4<sup>th</sup> day of August 2006.

Prepared by:

M.T. (Mickey) Harrelson  
Professional Engineer  
P.O. Box 432  
McRae, GA 31055

**DOCKET NO. 060173-EU**  
**STAFF WORKSHOP**  
**July 13, 2006**

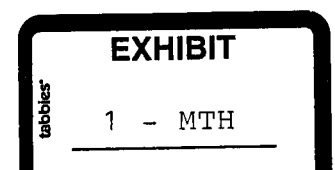
**JOINT USE OF POLES BY ELECTRIC, TELEPHONE,  
CABLE TV, AND OTHERS IN FLORIDA**

**Rule 25-6.0341 Location of the Utility's Electric Distribution Facilities**

1. Regarding location of the utilities' electric distribution facilities, it is very difficult to respond to the request for cost impact on cable TV of the proposed rule #25-6.0341. For new overhead or underground lines, we prefer that they be constructed in accessible locations. For relocation of existing lines the total cost could be 1.5 to 2 times the cost of new lines. An approximate cost of overhead is \$20,000 per mile and \$125 to \$150 per service drop. An approximate cost of underground is \$35,000 to \$40,000 per mile if constructed before subdivisions are established. Cost can be \$100,000 to \$125,000 per mile for underground systems in established subdivisions. Boring under roads and other obstacles costs \$9 to \$18 per foot. Input into electric construction projects is appreciated. We request that the opportunity for input be timely with respect to the evaluation of construction alternatives and our budgeting time deadlines. Funding of line relocation and conversion to underground projects remains a major concern.

**Rule 25-6.0342 Third-Party Attachment Standards and Procedures**

2. The implementation of Rule 25-6 0342, third-party attachment standards and procedures, could be very helpful to power and communications companies if the individual power companies adopt rules which recognize when it is prudent to exceed NESC requirements for joint pole use and when, as the pole fills up, the NESC requirements should govern. The application of extreme wind loading, if adopted and where it is applied geographically, will be as required by the Florida PSC. Thoughtful application of guying to help achieve required strength of pole lines can be very effective. The failure of guy wires, guy splices and guy anchors caused many pole failures during the hurricanes. Critical guys should be inspected and tested as thoroughly as wood poles are required to be. It is my understanding that the application of extreme wind loading is not to be applied state wide. We can not estimate the cost impact of extreme wind loading at this time.
3. Power lines, hardware for attaching lines to poles and power apparatus such as transformers, fused switches, lightning arrester assemblies, outdoor lights and many others usually account for most of the wind load on a pole. Wind load is a product of the surface area exposed to the wind multiplied times the force of the assumed wind and also multiplied times the pole height from the fixed point (often the ground line or the lowest guy wire) on the pole. What causes hurricane related pole failures is falling trees, flying building debris, soft soil, weak guy failure, rotten pole failure, and finally wind



force on poles, lines and attachments. Tornados within hurricanes have winds in excess of “extreme wind design speeds” which can and frequently do break poles which meet extreme wind criteria. Taking all these facts into consideration, it is unlikely that a broken pole failed because of a communication cable which would not have failed otherwise.

4. Rarely, multiple cable lines which are attached much lower than power facilities on poles do account for more wind load than very basic power lines with only two to four small wires with little or no electric apparatus attached.
5. Almost all power companies already have construction standards for power lines which specify power line and apparatus configurations for basic power pole assemblies. Examples are: one, two, or three primary voltage wires at the top of the pole with a neutral wire below; one, two, or three transformers on a pole; one or more electric service wires, both underground thru riser pipe or overhead thru the air; outdoor lighting fixtures and many other types of electric apparatus and wires.
6. Power Company construction standards do not contain drawings depicting the many combinations of power assembly units which are used in actual practice. Examples include adding transformers, underground service risers, outdoor light fixtures, secondary voltage cables, etc. to the various power line assembly configurations.
7. The RUS construction standards which are used by most Electric Cooperatives are available to the public and cable TV companies. Cable TV companies need access to the construction standards of all power companies with which they have attachment agreements. Without the standards it is impossible to determine what make ready work is appropriate to rearrange facilities on existing poles or make new attachments.
8. Many of the violations of the NESC separation requirements between power and communications facilities and many violations of the NESC pole loading limitations occur as a result of power facilities being added after the initial construction of power and communication lines.
9. The communications companies also have construction standards for attaching to poles, separation from power requirements, and pole loading limitations. The company which requires additional space or pole strength to accommodate its new attachment must pay the power company to rearrange facilities or install a new pole if necessary and pay the cost of other attachers to provide such space. This also applies to the power company when it needs additional space or strength for power facilities. The power company must bear the cost of additional space for its facilities. It may not take back space from a legal attacher or add facilities in violation of NESC rules.
10. *The National Electrical Safety Code (NESC)* is a performance standard which contains detailed rules for what must be accomplished for safety of power and communications lines. The NESC does not dictate how to accomplish what is required by the rules. Therefore, power and communications companies must have construction standards

which specify how they will accomplish what the NESC requires. For example they may use wood or concrete poles, build lines with tall poles spaced far apart or shorter poles spaced more closely etc.

11. It is accepted good practice to exceed many of the NESC requirements upon initial construction although it is not "necessary for safety." This practice allows enough pole strength and height to accommodate the addition of facilities by power companies, communications companies, and government agencies which often utilize poles for traffic signals, signal control circuit cables and other facilities.
12. Most power companies and telephone companies which own poles already have procedures for authorizing attachments by cable TV and others. They also have specifications for cable attachments, separation from power facilities and other cables, etc. Reliance on NESC requirements varies greatly among various companies. Compliance with NESC requirements is mandatory, as it should be. These procedures and attachment requirements are usually covered in existing joint use contracts or license to attach contracts.
13. The major problem with many of these existing contracts is that they contain provisions which are inconsistent with FCC rulings, and they contain some attachment rules which unreasonably exceed NESC requirements. Many of the attachment rules are not enforced by the pole owner in the field where workers often cooperate. When these type contracts and rules are used as the basis for a compliance audit they result in a very high alleged violation rate and erroneous assignment of responsibility. Many of these contracts give power companies "sole discretion" to specify attachment requirements and to change those requirements when they see fit. Pole attachment policies and procedures must be "just reasonable and non-discriminatory." Litigation involving one such contract has gone on for six years at the FCC and is still not resolved. We are concerned that power companies may simply submit those type of attachment rules and represent them as already agreed to by cable operators. One example of a power company requirement is 40 inches separation of cable TV below a power guy wire attachment. The NESC requires 6 inches. Therefore almost three feet of additional pole height is required for a pole with a power guy and a TV cable. Significantly, the addition of storm guying to distribution poles in certain areas is the most effective and economical way to greatly strengthen the lines. If this rule is enforced it could disrupt a very effective method of pole hardening. Great care by the commission staff and cooperation between utility representatives can identify such counterproductive rules which exceed NESC rules. One power company attachment rule requires 12 inches separation between communications drop attachment points on power poles. That is not an NESC requirement. It has nothing to do with safety or pole strength. Until recently it had never been enforced by the power company but now is mandatory, they say.
14. The common requirements for separation between cable TV and power, which exceed NESC requirements, are acceptable for new or existing poles with adequate height and strength capacity. In fact, more initial separation (up to 6 or 8 feet) between power and

cable is now required by some power cooperatives. For tall pole initial designs this is good planning. Facilities are routinely added to poles over time by power companies, communications companies and a growing number of others. As poles have more attachments added, the NESC rules must be applied as the final Standard for safety for separation of facilities and the strength of the poles.

15. Some power companies retain spacing requirements between cable and power which exceed NESC requirements even if they necessitate changing poles to taller poles. This practice is not necessary for safety, wasteful of resources, and unreasonable. NESC requirements (as modified by the FPSC) should be the final determination if an existing pole is required to be strengthened and/or made taller.
16. A significant number of poles in Florida contain violations of the separation requirements. Some of these violations have been caused by all of the various companies and agencies on the poles. Many of the NESC violations do not present serious safety hazards. Part 4 of the NESC contains safe work rules for electric and communications workers. Separate OSHA regulations also apply. Utility workers who are properly trained and equipped can perform their jobs safely even on non-standard or storm damaged pole lines.
17. Measures should be taken to correct serious safety hazards, correct practices by all electric, communications and other organizations which create NESC violations, and provide for orderly correction of existing violations. This should be done while incorporating whatever increased pole strength requirements are adopted in Florida. The NESC states in rule 214. “....defects....if not promptly corrected, shall be recorded;...” and “....defects that could reasonably be expected to endanger life or property shall be promptly repaired, disconnected or isolated.”
18. We appreciate the ability to have input into the revision of power company Attachment Standards and Procedures and will work to achieve good results.

Submitted by:

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On behalf of the Florida Cable Telecommunications Association