Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA ELECTRONIC AND HAND DELIVERY

August 11, 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 Nos. 060172-EU and 060173-EU – Comments and Requested Changes to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115 on behalf of the FCTA and expert witness, M.T. (Mickey) Harrelson

Dear Ms. Bayo:

Attached for filing are the original and 7 copies of the Florida Cable Telecommunications Association, Inc.'s Comments and Requested Changes to Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078 and 25-6.115, 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,

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

Enclosure

cc: All Parties of Record

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events.	DOCKET NO. 060172-EU
In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.	DOCKET NO. 060173-EU Filed: August 11, 2006

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC. AND REQUESTED CHANGES TO RULES 25-6.034, 25-6.0345, 25-6.064, 25-6.078 AND 25-6.115, FLORIDA ADMINSTRATIVE 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 25-6.034, 25-6.0345 and 25-6.064, 25-6.078, and 25-6.115, to be considered at the public hearing scheduled for August 31, 2006.

RULE 25-6.034 CONSTRUCTION STANDARDS

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 to the FCTA's Comments filed on August 4, 2006.

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.[1] 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.

[1] The FCTA does not concede that the Commission has been granted authority to adopt third-party attachment standards.

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. Rule 25-6.034 is vague and contains inadequate guidelines for the utilities to establish the Construction Standards, and although the rules reserve an ad hoc right of the Staff to request a copy of the rules, there is no requirement for Commission review and approval of the standards either before or after the standards become effective. 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, 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), and 25-6.0342, 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.[2] 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."[3] On reconsideration of that Order, the FCC refused to categorically restrict the type of pole attachments that must be allowed, reiterating that "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."[4] 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:

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[2] 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)).

[3] *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).

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; InterconnectionBetween Local Exchange Carriers and Commercial Mobile Radio Service Providers,* Order on Reconsideration, 14 FCC Rcd 18049,19074 772 (1999).

> 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."[5]

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 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*

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

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 that insufficient capacity exists for third-party attachments. *Southern Company, et al. v. Federal Communications Commission,* 293 F.3d 1338, 1347-49 (11th 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 overlashing 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 as Exhibit 2 to the FCTA's Comments filed on August 4, 2006, 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 25-6.034 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, and exclude third-party attachers from meaningful participation in the development of the Construction Standards. The FCTA's requested changes to Rule 25-6.034 are attached hereto as **Composite Exhibit 1**.

PROPOSED RULE 25-6.034 IS ANTI-COMPETITIVE AND NOT FACTUALLY SUPPORTED AS THE MOST EFFECTIVE MEANS OF MEETING THE GOALS OF REDUCING STORM DAMAGE AND PROTRACTED OUTAGES.

There has been no competent 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.

RULE 25-6.0345

The FCTA's Comments on Rule 25-6.345 are addressed in the Comments of M.T. (Mickey) Harrelson, consultant, submitted on behalf of the FCTA.

RULES 25-6.064, 25-6.078 AND 25-6.115

Rule 25-6.064(5) requires that the cost formula for calculating the contribution-in-aid-of-construction (CIAC) for new or upgraded overhead facilities pursuant to Rule 25-6.064(2) and the cost formula for CIAC for new or upgraded underground facilities pursuant to Rules 25-6.064(3) shall be based on the requirements of Rule 25-6.034, Standards of Construction. Consequently, Rule 25-6.064(2), (3), and (5) are invalid as all references to CIAC throughout the amended rule are rendered invalid as a result of being based on the requirements of invalid Rule 25-6.034, Standards of Construction.

Rule 25-6.078(2) is also based on the requirements of Rule 25-6.034 with the effect of rendering Rule 25-6.078(2) invalid. Rule 25-6.115(8)(a) and (9) are also invalid, since they are based on invalid Rule 25-6.034. However, the FCTA would withdraw its objections to these references to the Construction Standard Rule if FCTA suggested changes to Rule 25-6.034 are accepted.

Respectfully submitted this 11th day of August 2006.

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& 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 and expert witness, Mickey Harrelson, has been served upon the following parties electronically and by U.S. Mail this 11th day of August 2006.

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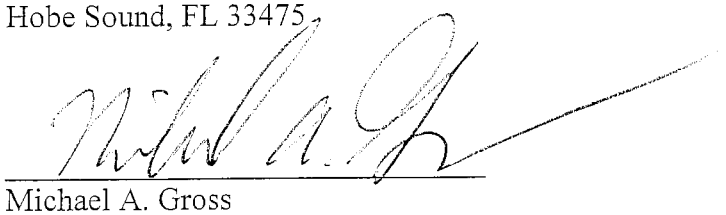

Michael A. Gross

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events.	DOCKET NO. 060172-EU Filed: August 11, 2006

COMMENTS OF M.T. (MICKEY) HARRELSON, CONSULTANT, SUBMITTED ON BEHALF OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC. ON RULES 25-6.034 AND 25-6-0345, FLORIDA ADMINSTRATIVE CODE

25-6.034 Standard of Construction

(1) Application and Scope. No comments at this time.

(2) FCTA members require access to the electric utility's construction standards in order to effectively participate in the establishment of the standards as provided for in paragraph 25-6.034(2).[1] FCTA members also require access to the construction standards as approved by the FPSC for use in make ready engineering for new attachments, review of existing attachments compliance with attachment standards and evaluating feasible rearrangement of cable and power facilities where necessary to correct violations. Some power companies will want the attacher to sign confidentiality agreements. Without reasonable access to the power utility's overhead and underground distribution construction standards FCTA members cannot adequately engineer, operate or manage their cable systems. Therefore, please add "Upon request by a third party attacher, licensed to make attachments to the utility's poles, the utility shall provide a copy of its construction standards to the attaching company."

(3) No comments at this time

[1] See FCTA's suggested changes to Rule 25-6.034(2), providing for participation by third-party attachers and deleting language from subsection (7).

(4) If a company complies with the NESC it meets the requirements of the code. If one exceeds the various requirements of the code, they still comply. The phrase "at a minimum" is confusing in this context. Therefore, please strike "at a minimum."

The NESC Handbook, Fifth Edition, published in 2001 is intended specifically to aid users in understanding and correctly applying the requirements of the 2002 NESC. The Handbook states the following in a discussion of the purpose of the NESC on page 4 and 5:

"The 1990 Edition of the NESC was specifically editorially revised to delete the use of the word 'minimum' because of intentional or inadvertent misuse of the term by some to imply that the NESC values were some kind of minimum number that should be exceeded in practice; such is not the case."

(a) "2002 edition" should be changed to "2007 edition" since the 2007 edition is now available and mandatory compliance goes into effect 180 days after its publication date. The 2007 Edition of the NESC was published on August 1, 2006.

See NESC *Section 1. Rule 016 which states:*

016. ***Effective Date***

This edition may be used at any time on or after the publication date. Additionally, this edition shall become effective no later than 180 days following its publication date for application to new installations and extensions where both design and approval were started after the expiration of that period, unless otherwise stipulated by the administrative authority.

(b) This paragraph is not a correct statement of NESC Section 1 Rules 013.B.1., 2. and 3. The NESC covers "electric supply and communications lines and associated equipment," not just electric facilities. The paragraph should read: Facilities constructed prior to the effective date of the 2007 edition of the NESC shall be governed by the applicable edition of the NESC as stated in NESC Rule 013.B.1., 013.B.2, and 013B3.

There is no reason to apply rule 013.B known as the grandfathering provision to electric facilities and not to communications facilities. FCTA supports the inclusion of this paragraph, as revised, as a clear statement emphasizing that Rule 013.B. is a fundamental principle of the NESC and applies to electric and communications facilities alike.

The NESC 2002 rule states:

Rule 013.B. Existing Installations

1. *Where an existing installation meets, or is altered to meet, these rules, such installation is considered to be in compliance with this edition and is not required to comply with any previous edition.*
2. *Existing installations, including maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply with these rules except as may be required for safety reasons by the administrative authority.*
3. *Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with either (a) the rules that were in effect at the time of the original installation, or (b) the rules in effect in a subsequent edition to which the installation has been previously brought into compliance, or (c) the rules of this edition in accordance with Rule 013B1.*

(5) This paragraph instructs each utility to establish guidelines and procedures governing the use of extreme wind loading standards. Utility appears to mean electric utility. Electric utilities already have construction standards which meet or exceed NESC requirements. The intent of the rule should be "to incorporate extreme wind loading requirements, approved by the FPSC (the administrative authority), into distribution

standards." That is even though the NESC requires extreme wind design only for structures which exceed 60 feet in height. Florida electric utilities must establish guidelines and procedures for applying them to distribution poles less than 60 feet in height as ordered by the FPSC. By specifically limiting the rule language to require application of extreme wind loading to distribution poles less than 60 feet high, the FPSC will be much more focused on the increased pole and line strength it contemplated to better withstand hurricanes in exposed areas near the coast. Perhaps it will also relieve many of the concerns relating to the FPSC's broad mandate to the electric utilities to develop construction standards which exceed NESC requirements.

The guidelines and procedures to be developed by each electric utility and approved by the FPSC should take a conservative approach of applying the stronger design only to areas which would obviously benefit from the high cost required for the extra strength. Where storm guying of poles is feasible, it is a very effective and cost efficient means of strengthening distribution lines. These areas would include only areas near the coast or very exposed open areas such as lines with little or no shelter effect from high winds by trees, buildings, etc. The major engineering justification for designing lines to withstand extreme wind loads is that such lines will be exposed directly to high winds. That is a major reason the NESC has chosen only poles or structures greater than 60 feet in height to which to apply the extreme wind design requirements.

Again, it makes no sense to expend limited valuable resources constructing lines to extreme wind standards, only to have them torn down by overhanging or nearby trees or roof tops, signboards, etc. which cannot withstand the extreme winds.

FCTA believes this conservative philosophy is well covered in the phrase "to the extent reasonably practical, feasible, and cost-effective." However, we believe the determination of feasibility and cost effectiveness must include the costs to all utilities, and

that specific projects should be reviewed by the FPSC if ultimately disputed by an affected utility which believes the project to be not feasible or not cost effective.

Other initiatives to inspect wood poles and guys and repair or replace deficiencies and vegetation management are much more certain to be prudent expenditures of limited funds.

(6) None at this time.

(7) FCTA expects to participate actively to provide responsible input to the proposed standards as they affect FCTA members. We look forward to the opportunity.

25-6.0345 Safety Standards

The NESC 2007 is now in publication and in effect no later than 180 days after the publication date. Change the references to the 2002 NESC to the 2007 NESC.

The phrase "at a minimum comply with the standards..." is misleading and implies that the NESC is a minimum standard. Delete the phrase "at a minimum."

Prepared by:

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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 ASSSOCIATION, INC. ON RULES 25-6.0341 AND 25-6.0342, FLORIDA ADMINSTRATIVE 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, 20006 workshop. Those comments are incorporated herein and attached as Exhibit I.

Respectfully submitted this 4th day of August 2006.

Prepared by:

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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:

Michael T. (Mickey) Harrelson, Consultant
On behalf of the Florida Cable Telecommunications Association

COMPOSITE EXHIBIT MAG-1

FCTA PROPOSED CHANGES TO RULE 25-6.034

25-6.034 Standard of Construction.

(1) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. This rule applies to all investor-owned electric utilities. ~~The facilities of the utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.~~

(2) Each utility shall establish, no later than 180 days after the effective date of this rule, construction standards for overhead and underground electrical transmission and distribution facilities that conform to the provisions of this rule. 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 the Construction Standards, as well as subsequent updates, changes, and modifications to the utility's Construction Standards. The jointly developed Construction Standards shall be submitted to the Commission for approval. The Commission shall have an independent obligation, whether the Construction Standards are adopted by agreement of the parties or as a result of an evidentiary hearing, to assure that the Construction Standards further the goals of reducing storm damage to transmission and distribution poles, and any attachments thereto, and any protracted outages.[1]

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[1] 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 Construction Standards. Michael A. Gross (MAG)/FCTA Comments at pages 2 through 4. M.T. (Mickey) Harrelson (MTH)/FCTA Comments at page 1; MTH/FCTA Comments filed on August 4, 2006, at pages 5 through 9, a copy being attached; MTH/FCTA Post July 13, 2006, Post Workshop Comments at pages 1 through 4, a copy being attached.

Each utility shall maintain a copy of its construction standards at its main corporate headquarters and at each district office. Subsequent updates, changes, and modifications to the utility's construction standards shall be labeled to indicate the effective date of the new version and all revisions from the prior version shall be identified. Upon request, the utility shall provide access, within 2 working days, to a copy of its construction standards for review by Commission staff at the utility's offices in Tallahassee. Upon request by a third-party attacher, the utility shall provide a copy of its Construction Standards to the attaching entity.[2] ~~The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard Requirements, Terminology and Test Code for Instrument Transformers, ANSI-57.13, and has found them to contain reasonable standards of good practice. A utility that is in compliance with the applicable provisions of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices.~~

(3) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(4) Each utility shall~~, at a minimum,~~[3] comply with the applicable edition of the National Electrical Safety Code (ANSI C-2) [NESC].

(a) The Commission adopts and incorporates by reference the 2007~~2~~[4] edition of the

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[2] It is necessary for cable third-party attachers to have access to the electric utility's Construction Standards for numerous reasons related to third-party attachments. MTH/FCTA Comments at page 1.

[3] The 1990 Edition of the NESC deleted the use of the word "minimum" to avoid any implication that the NESC standards represented a minimum that should be exceeded, which is not the case. MTH/FCTA Comments at pages 1 and 2.

[4] The 2007 Edition is now available and may be used at any time on or after the publication date. MTH/FCTA Comments at page 2.

NESC, published August 1, 20061[5]. A copy of the 2002 NESC, ISBN number 0-7381-2778-7, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(b) ~~Electrical~~ Ffacilities constructed prior to the effective date of the 20072 edition of the NESC shall be governed by the applicable edition of the NESC as stated in NESC Rule 013.B.1., 013.B.2., and 013.B.3. ~~in effect at the time of the initial construction.~~[6]

(5) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250-2(d) of the 20072 edition of the NESC. The intent of this subsection is to promote the review of existing Construction Standards, assure that those standards comply with current NESC rules, and include extreme wind design criteria to the extent reasonably practical, feasible, and cost-effective, rather to develop a completely new Construction Standard.[7] As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) new construction;

(b) major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and

(c) targeted critical infrastructure facilities and major thoroughfares taking into account

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[5] The 2007 Edition of the NESC was published on August 1, 2006. MTH/FCTA Comments at page 2.

[6] See footnote 4 for applicability of the 2007 Edition of the NESC. This subsection is not a correct statement of NESC Section 1 Rules 013.B.1., 2, and 3, since the NESC covers electric supply and communications lines and associated equipment, not just electric facilities. MTH/FCTA Comments at pages 2 and 3.

[7] See footnote 4 for applicability of the 2007 Edition of the NESC. The additional language has been inserted to clarify the intent of this subsection in the context of existing practices. MTH/FCTA Comments at pages 3 and 4.

political and geographical boundaries and other applicable operational considerations.

(6) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(7) ~~In establishing the construction standards, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities.~~[8] Any dispute or challenge to a utility's construction standards by a customer, applicant for service, or attaching entity shall be resolved by the Commission.

(8) 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.[9]

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

Law Implemented 366.04(2)(c)(f), (5)(6), 366.05(1)(7)(8) FS.

History–Amended 7-29-69, 12-20-82, Formerly 25-6.34, Amended _____.

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[8] The deleted language has been replaced by additional language inserted in subsection (2). MAG/FCTA Comments at page 2 through 4.

[9] 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 4 through 8.

FCTA PROPOSED CHANGES TO RULE 25-6.0345

25-6.0345 Safety Standards for Construction of New Transmission and Distribution Facilities.

(1) In compliance with Section 366.04(6)(b), F.S., 1991, the Commission adopts and incorporates by reference the 2007~~2~~ edition of the National Electrical Safety Code (ANSI C-2), published August 1, 2006~~1~~, as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall~~, at a minimum~~[10]~~,~~ comply with the standards in these provisions. Standards contained in the 2007~~2~~ edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.[11]

(2) Each investor-owned ~~public~~ electric utility, rural electric cooperative and municipal electric utility shall report all completed electric work orders, whether completed by the utility or one of its contractors, at the end of each quarter of the year. The report shall be filed with the Director of the Commission's Division of Regulatory Compliance and Consumer Assistance ~~Auditing and Safety~~ no later than the 30th working day after the last day of the reporting quarter, and shall contain, at a minimum, the following information for each work order:

(a) Work order number/project/job;

(b) Brief title outlining the general nature of the work;~~ and~~

(c) Estimated cost in dollars, rounded to nearest thousand and:~~.~~

(d) Location of project.

(3) The quarterly report shall be filed in standard DBase or compatible format, DOS

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[10] See footnote 3.
[11] See footnotes 4 and 5.

ASCII text, or hard copy, as follows:

(a) DBase Format

Field Name	Field Type	Digits
1. Work orders	Character	20
2. Brief title	Character	30
3. Cost	Numeric	8
4. Location	Character	50
~~5. Kv~~	~~Numeric~~	~~5~~
~~6. Contiguous~~	~~Character~~	~~1~~

(b) DOS ASCII Text.

1. – 5.(c) No change.

The following format is preferred, but not required:

Completed Electrical Work Orders For PSC Inspection

Work Order	Brief Title	Estimated Cost	Location	~~KV Rating~~	~~Contiguous (y/n)~~

(4) No change.

(5) As soon as practicable, but by the end of the next business day after it learns of the occurrence, each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report to the Commission any accident occurring in connection with any part of its transmission or distribution facilities which:

(a) – (b) No change.

(6) Each investor-owned electric ~~public~~ utility, rural electric cooperative, and municipal electric utility shall (without admitting liability) report each accident or malfunction, occurring in connection with any part of its transmission or distribution facilities, to the Commission within 30 days after it learns of the occurrence, provided the accident or malfunction:

(a) – (7) No change.

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

Law Implemented 366.04(2)(f), (6), 366.05(7) FS.

History–New 8-13-87, Amended 2-18-90, 11-10-93, 8-17-97, 7-16-02

FCTA PROPOSED CHANGES TO RULE 25-6.064

25-6.064 ~~Extension of Facilities; Contribution-in-Aid-of-Construction~~ for Installation of New or Upgraded Facilities.

(1) Application and scope ~~Purpose~~. The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities ~~subject to this rule will~~ calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities ~~require extensions of distribution facilities~~ in order to receive electric service, except as provided in Rule 25-6.078, F.A.C..

(2) ~~Applicability. This rule applies to all investor owned electric utilities in Florida as defined in Section 366.02, F.S.~~ Contributions-in-aid-of-construction for new or upgraded overhead facilities ($CIAC_{OH}$) shall be calculated as follows:

$CIAC_{OH}$	=	Total estimated work order job cost of installing the facilities	-	Four years expected incremental base energy revenue	-	Four years expected incremental base demand revenue, if applicable

(a) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.

(b) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.

(c) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.

(d) In no instance shall the $CIAC_{OH}$ be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities ($CIAC_{UG}$) shall be calculated as follows:

$CIAC_{UG}$	=	$CIAC_{OH}$	±	Estimated difference between cost of providing the service underground and overhead

~~(3) Definitions. Actual or estimated job cost means the actual cost of providing the specified line extension facilities, calculated after the extension is completed, or the estimated cost of providing the specified facilities before the extension is completed.~~

~~(4) In developing the policy for extending overhead distribution facilities to customers, the following formulas shall be used to determine the contribution in aid of construction owed by the customer.~~

~~(a) For customers in rate classes that pay only energy charges, i.e., those that do not pay demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding transformers, service drops, and meters) − (4 × nonfuel energy charge per KWH × expected annual KWH sales over the new line)~~

~~(b) For customers in rate classes that pay both energy charges and demand charges, the CIAC shall be calculated as follows:~~

~~$CIAC_{oh}$ = (Actual or estimated job cost for new poles and conductors) − (4 × nonfuel energy charge per KWH × expected annual KWH sales) − (4 × expected annual demand charge revenues from sales~~

~~and appropriate sales over the new line) over the new line)~~

~~fixtures required to~~

~~provide service,~~

~~excluding transformers,~~

~~service drops, and meters)~~

~~(c) Expected demand charge revenues and energy sales shall be based on an annual period ending not more than five years after the extension is placed in service.~~

~~(5) In developing the policy for extending underground distribution facilities to customers, the following formula shall be used to determine the contribution in aid of construction.~~

~~$CIAC_{ug}$ = (Estimated difference between ÷ $CIAC_{oh}$ (as above)~~

~~the cost of providing the~~

~~distribution line extension~~

~~including not only the distribution~~

~~line extension itself but also~~

~~the transformer, the service drop,~~

~~and other necessary fixtures, with~~

~~underground facilities vs. the cost~~

~~of providing service using overhead~~

~~facilities)~~

~~(6) Nothing in this rule shall be construed as prohibiting a utility from collecting from a customer the total difference in cost for providing underground service instead of overhead service to that customer.~~

~~(7) In the event that amounts are collected for certain distribution facilities via the URD~~

~~differential tariff as permitted by Rule 25-6.078, F.A.C., that would also be collected pursuant to this rule, the utility shall give an appropriate credit for such amounts collected via the URD differential tariff when calculating the line extension CIAC due pursuant to this rule.~~

(4)~~(8)~~ Each utility shall apply the ~~above~~ formulas in subsections (2) and (3) of this rule uniformly to residential, commercial and industrial customers requesting new or upgraded facilities at any voltage level. ~~requiring line extensions.~~

~~(5) The costs applied to the formula in subsections (2) and (3) shall be based on the requirements of Rule 25-6.034, Standards of Construction.~~[12]

~~(9) Each utility shall calculate an appropriate CIAC for line extensions constructed to serve customers who receive service at the primary distribution voltage level and the transmission voltage level. This CIAC shall be based on the actual or estimated cost of providing the extension less an appropriate credit.~~

(5)~~(6)~~[13]~~(10)~~ All CIAC calculations under this rule shall be based on estimated work order job costs. In addition, each ~~The~~ utility shall use its best judgment in estimating the total amount of annual revenues ~~and sales~~ which the new or upgraded facilities are ~~each line extension is~~ expected to produce ~~in the near future~~.

(a) A customer may request a review of any CIAC charge within 12 months following the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the CIAC to reflect the actual costs of construction and actual base revenues received at the time the request is made.

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[12] This subsection has been deleted as a result of the invalidity of Rule 25-6.034, Standards of Construction, in its current form. The FCTA agrees to the reinstatement of this subsection if the FCTA's suggested changes to Rule 25-6.034 are accepted. MAG/FCTA Comments at page 10.

[13] This paragraph number has been conformed to be consistent with the deletion of paragraph 5.

(b) In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(6)~~(7)~~[14]~~(11)~~ The utility may elect to waive all or any portion of the ~~line extension~~ CIAC for customers, even when a CIAC is found to be applicable ~~owing~~. If h~~H~~owever, ~~if~~ the utility waives a ~~the~~ CIAC, the utility shall reduce net plant in service as though the CIAC had been collected, unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived CIAC. ~~Commission will reduce the utility's net plant in service by an equal amount for ratemaking purposes, as though the CIAC had been collected, except when the company's annual revenues from a customer are sufficient to offset the unpaid line extension CIAC under subsection (4) or (5).~~ Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.

~~(12) In cases where larger developments are expected to be served by line extensions, the utility may elect to prorate the total line extension costs and CIAC's owed over the number of customers expected to connect to the new line.~~

(7)~~(8)~~[15]~~(13)~~ A detailed statement of its standard facilities extension and upgrade policies~~y~~

[14] See footnote 13.

[15] See footnote 13.

shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform application and shall be nondiscriminatory.

(8)~~(9)~~[16]~~(14)~~ If a utility and applicant are unable to agree on the CIAC amount, ~~in regard to an extension,~~ either party may appeal to the Commission for a review.

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

Law Implemented 366.03, 366.05(1), 366.06(1) FS.

History–New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended ____.

[16] See footnote 13.

FCTA PROPOSED CHANGES TO RULE 25-6.078

25-6.078 Schedule of Charges

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

~~(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.034, Standards of Construction.~~[17]

(2)~~(3)~~[18]~~(2)~~ On or before October 15~~th~~ of each year each utility shall file with the Commission's Division of Economic Regulation Form PSC/ECR 13-E, Schedule 1, using current material and labor costs. If the cost differential as calculated in Schedule 1 varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (4~~3~~) and (5~~4~~) of this rule on or before April 1 of the following year; however, each utility shall file a written policy and supporting data and analyses at least once every 3 ~~three~~ years.

(3)~~(4)(3)~~ Differences in Net Present Value of operational ~~operating and maintenance~~ costs, including average historical storm restoration costs over the life of the facilities, between

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[17] See footnote 12.

[18] Paragraphs 3, 4, 5, 6 and 10 have been renumbered as paragraphs 2, 3, 4, 5 and 9 as a result of the deletion of paragraph 2.

underground and overhead systems, if any, shall ~~may~~ be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(4)~~(5)(4)~~ Detailed supporting data and analyses used to determine the Estimated Average Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period. The utility shall record these data and analyses on Form PSC/ECR 13-E (10/97). Form PSC/ECR 13-E, entitled "Overhead/Underground Residential Differential Cost Data" is incorporated by reference into this rule and may be obtained from the Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6900.

(5)~~(6)(5)~~ Numbers (5) through (8) ~~renumbered to (6) through (9)~~ No change.

(9)~~(10)(9)~~ Nothing in this rule ~~herein contained~~ shall be construed to prevent any utility from waiving ~~assuming~~ all or any portion of a cost differential for ~~of~~ providing underground facilities. ~~distribution systems, provided, however, that such assumed cost differential shall not be chargeable to the general body of rate payers, and any such policy adopted by a utility shall have uniform application throughout its service area.~~ If, however, the utility waives the differential, the utility shall reduce net plant in service as though the differential had been collected unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived differential.

Specific Authority 350.127(2), ~~366.04(2)(f),~~ 366.05(1) FS.

Law Implemented 366.03, 366.04(1), ~~(4),~~ 366.04(2)(f), 366.06(1) FS.

History–New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97, ___.

FCTA PROPOSED CHANGES TO RULE 25-6.115

25-6.115 Facility Charges for Conversion of Existing Overhead ~~Providing Underground Facilities of Public~~ Investor-owned Distribution Facilities ~~Excluding New Residential Subdivisions.~~

(1) Each investor-owned ~~public~~ utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing ~~new construction and~~ the conversion of existing overhead electric distribution facilities to underground facilities ~~excluding new residential subdivisions~~. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of ~~new construction or~~ convertingsion ~~of~~ existing overhead ~~electric~~ facilities to underground ~~electric~~ facilities. The non-refundable deposit amounts shall be calculated in the same manner as ~~approximate~~ the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

(2) For ~~the~~ purposes of this rule, the applicant is the person or entity requesting the conversion ~~seeking the undergrounding~~ of existing overhead electric distribution facilities to underground facilities. In the instance where a local ordinance requires developers to install underground facilities, the developer who actually requests the construction for a specific location is ~~when a developer requests local government development approval, the local government shall not be~~ deemed the applicant for purposes of this rule.

(3) No change:

(a) s~~S~~uch work meets the investor-owned ~~public~~ utility's construction standards;

(b) t~~T~~he investor-owned ~~public~~ utility will own and maintain the completed distribution facilities; and

(c) sSuch agreement is not expected to cause the general body of ratepayers to incur additional ~~greater~~ costs.

(4) No change.

(5) Upon an applicant's request and payment of the deposit amount, an investor-owned ~~public~~ utility shall provide a binding cost estimate for providing underground electric service.

(6) An applicant shall have at least 180 days from the date the estimate is received~~,~~ to enter into a contract with the public utility based on the binding cost estimate. The deposit amount shall be used to reduce the charge as indicated in subsection (7) only when the applicant enters into a contract with the public utility within 180 days from the date the estimate is received by the applicant, unless this period is extended by mutual agreement of the applicant and the utility.

(7) – (8) No change:

(a) t~~T~~he estimated cost of construction of the underground distribution facilities ~~based on the requirements of Rule 25-6.034, Standards of Construction.~~[19] including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and

(b) ~~For conversions,~~ the estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.

(9) For the purpose of this rule, the charge for overhead facilities shall be the estimated construction cost to build new overhead facilities, including the service drop(s) to the meter(s) of the customer(s). ~~Estimated construction costs shall be based on the requirements of Rule 25-6.034, Standards of Construction.~~[20]

(10) An applicant requesting ~~to a public utility for~~ construction of underground

[19] See footnote 12.

[20] See footnote 12.

distribution facilities under this rule may ~~petition~~ challenge the utility's cost estimates ~~the Commission~~ pursuant to Rule 25-22.032, F.A.C.

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already been paid, credited to the customer. At no time will the costs to the customer be less than zero.

(12) Nothing in this rule shall be construed to prevent any utility from waiving all or any portion of the cost for providing underground facilities. If, however, the utility waives any charge, the utility shall reduce net plant in service as though those charges had been collected unless the Commission determines that there is quantifiable benefits to the general body of ratepayers commensurate with the waived charge.

(13~~+~~) Nothing in this rule shall be construed to grant any investor-owned electric utility any right, title or interest in real property owned by a local government.

Specific Authority 350.127(2) ~~366.04~~,366.05(1) FS.

Law Implemented 366.03, 366.04, 366.05 FS.

History–New 9-21-92, Amended.