Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA ELECTRONIC DELIVERY

September 8, 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. 060512-EU – FCTA's Comments and Requested Changes to Rule 25-6.0343

Dear Ms. Bayo:

Attached for filing are the Florida Cable Telecommunications Association, Inc.'s Comments and Requested Changes to Rules 25-6.0343, Florida Administrative Code; as well as Comments and Requested Changes by FCTA's expert witness, Michael T. 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,

s/ Michael A. Gross

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 adoption of new Rule 25-6.0343, F.A.C., Standards of Construction - Municipal electric utilities and rural electric cooperatives	DOCKET NO. 060512-EU Filed: September 8, 2006

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC. AND REQUESTED CHANGES TO RULE 25-6.0343, FLORIDA ADMINSTRATIVE CODE

The Florida Cable Telecommunications Association, Inc., (FCTA), pursuant to section 120.54(3)(c)1., Florida Statutes, Rule 28-103.004, Florida Administrative Code, and Order No. PSC-06-0646-PCO-EU, Second Order Establishing Procedures to be Followed at Rulemaking Hearing, issued on August 2, 2006, and Order No. PSC-06-0632-PCO-EU, Order Granting Motion to Bifurcate Proceedings and Establish Controlling Dates and Establishing New Docket, issued on July 27, 2006, submits its comments and suggested rule changes for Rule 25-6.-0343, to be considered at the public hearing scheduled for October 4, 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 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 Procedures 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 Procedures 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. 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 25-6.0343 MUNICIPAL ELECTRIC UTILITIES AND RURAL ELECTRIC COOPERATIVES

(1) Standards of Construction.

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 25-6.0343(1) requires municipal electric utilities (Munis) and rural electric cooperatives (Coops) to establish construction standards for overhead and underground electric transmission and distribution facilities. FCTA members attach their facilities to distribution poles owned by investor owned utilities (IOUs) and Munis and Coops.

Section 366.05(1), Florida Statutes, was amended by SB 888 which 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 Munis and Coops to establish construction standards and attachment standards as part of their construction standards.[1] Rule 25-6.0343(4) requires Munis and Coops in the process of establishing the Construction Standards to solicit input from other entities with existing agreements to share the use of its electric facilities. 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 25-6.0343(1) 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 that have a pecuniary interest in the outcome of the Construction Standards development process thereby creating incentives for abuse that the utilities have in relation to the cable industry as third-party attachers.

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

The Florida legislature, Florida courts and the Attorney General all have recognized that administrative agencies are limited in the responsibilities they may delegate to private entities.[2] Under the prevailing cases, agencies can not delegate technical matters of implementation but even then, agencies must retain ultimate decision making authority and sufficient control over the delegated function.[3] A private entity may only play an advisory role and the agency may not simply "rubber stamp" the private entity's findings. Rather, discretion and ultimate supervision and control must rest with the governmental entity. [4] This is especially true where the private entity has a stake in the project for which it is performing a technical function.[5]

Here, the proposed rules require the investor owned utilities to develop the standards that will govern third-party attachments. There is no provision for approval of the standards by the Commission; rather the utilities need only make a copy of the standards available on request. The Commission is not obligated to request a copy of the standards, and there is no further language about what might happen if the Commission were to request and/or review a copy of the Standards. Further, the Commission has included a provision for reviewing disputes on an ad hoc

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[2] Fla. Stat. § 120.52 (2006); *County Collection Services, Inc. v. Thomas C. Charnock, aka C.T. Charnock aka Tom Charnock, et al.*, 789 So. 2d 1109 (Fla. App. 2001) (recognizing that county could not delegate its taxing authority to a private entity); *City of Belleview v. Belleview Fire Fighters, Inc.*, 367 So. 2d 1086 (Fla. App. 1979) (recognizing city could not delegate its police power functions to private entity); *Florida Nutrition Counselors Association v. Department of Business and Professional Regulation, Board of Medicine, Dietetics and Nutrition Practice Council*, 667 So. 2d 218, _ (Fla. App. 1995) (striking down a rule that relied too heavily upon role of private educational institutions in setting standards for medical devices); *State of Florida v. State Road Department*, 173 So. 2d 693, _ (Fla. 1965); *Florida Attorney General Op. 078-53*, issued March 28, 1978 at 5-6 (recognizing that state cannot delegate its rate making authority to private entities).

[3] *Brown v. Apalachee Regional Planning Council*, 560 So. 2d 782, _ (Fla. 1990) (distinguishing between delegation of a technical matter of implementation with sufficient constraints including considerable detail and specific criteria about the review process and delegation of a policy function).

[4] *Florida Attorney General Op. 078-53*, issued March 28, 1978 a6t 5-6 (recognizing that state cannot delegate its rate making authority to private entities) (citing *State of Florida v. State Road Department*, 173 So. 2d 693, _ (Fla. 1965).

[5] *Sierra Club v. Lynn*, 502 F. 2d 43, 59 (5th Cir. 1974) (Florida was part of the 5th Circuit until 1980, when the 11th Circuit was created) (finding that HUD had the obligation to "independently perform its reviewing, analytical, and judgmental functions, and participate actively and significantly in the preparation and drafting process" and could not "abdicate its statutory duties by reflexively rubber stamping a statement prepared by others."); *Sierra Club v. Sigler*, 695 F. 2d 957 , 962, n. 3(5th Cir. 1983) ("The role of the private firm in preparation of [the draft and final version of environmental impact statement] is particularly troubling in this case because the consulting firm also had a stake in the project which it was evaluating.").

basis but that review is undermined by the FCC's jurisdiction over pole attachment disputes. Thus, there is no effective control or final decision making authority in the Commission and the rules are therefore an unauthorized exercise of the Commission's delegated authority.

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.

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. Moreover, to a substantial degree, there is the potential for the same types of abuses on the part of Munis and Coops as in the case of IOUs. Although the Munis and Coops do not operate for a profit, too much discretion given by the rules to Munis

and Coops provides financial incentives to raise Munis' revenues for municipal coffers, and for Coops to raise revenues for their consumer/shareholders.

Rule 25-6.0343(1) will subject cable third-party attachers to an unlawful exercise of delegated authority and exclude third-party attachers from meaningful participation in the development of the Construction Standards. The FCTA's requested changes to Rule 25-6.0343(1) are attached hereto as a portion of **Composite Exhibit 1**.

PROPOSED RULE 25-6.0343(1) 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 25-6.0343(2) LOCATION OF THE UTILIITY'S ELECTRIC DISTRIBITION FACILITIES

Rule 25-6.0343(2)(a), (b), and (c) all create the potential for relocating existing facilities by Munis and Coops from the rear edge of a lot to the front edge of the 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 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, 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 Rule 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. The FCTA's requested changes to Rule 25-6.0343(2)(a), (b), and (c), are attached hereto as a portion of **Composite Exhibit 1.**

RULE 25-6.0343(3) 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 25-6.0343(1) requires Munis and Coops to establish construction standards for overhead and underground electric transmission and distribution facilities. Rule 25.6-0343(3) requires Munis and Coops to establish, as part of their construction standards adopted pursuant to subsection (1), 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 Munis and Coops.

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 Munis and Coops pursuant to Rule 25-6.0343(1)(a), (b), (e), and (f) and (3)(a) and (b), and (4), to establish construction standards and attachment standards as part of their construction standards. Rule 25-6.0343(4) requires Munis and Coops 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. The rules contain inadequate guidelines to the Munis and Coops to establish the construction standards, and although the rules reserve an ad hoc right of the Commission to request a copy of the rules, there is no requirement for Commission review and approval of the standards. 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 Munis and Coops to establish construction and attachment standards, and then, unfettered authority to deny an attachment that does not comply with the standards established by the Munis and Coops. The FCTA's concern is underscored as a result of granting such discretion to Munis and Coops in light of the fact that they have a pecuniary interest in the outcome of the third-party attachment standards ultimately established. Accordingly, Rule 25-6.0343(3) constitutes an unlawful exercise of the delegated authority in violation of section 120.52(8), Florida Statutes. See discussion at pages 4 and 5.

If the Munis and Coops are given unilateral discretion to establish third-party attachment standards and procedures, they will undoubtedly pass on improper costs to attaching entities. See discussion at page 6.

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. See discussion at page 6.

Rule 25-6.0343 as proposed will subject cable third-party attachers to an unlawful exercise of delegated authority and exclude third-party attachers from meaningful participation in the development of the third-party attachment standards. The FCTA's requested changes to Rule 25-6.0343(3) are attached hereto as a portion of **Composite Exhibit 1**.

PROPOSED RULES 25-6.0343(3) IS ANTI-COMPETITIVE AND NOT FACTUALLY SUPPORTED AS THE MOST EFFECTIVE MEANS OF MEETING THE GOALS OF REDUCING STORM DAMAGE AND PROTRACTED OUTAGES.

See discussion at pages 7 and 8.

Respectfully submitted this 8th day of September 2006.

s/ Michael A. Gross

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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 8th day of September 2006.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed adoption of new Rule 25-6.0343, F.A.C., Standards of Construction - Municipal electric utilities and rural electric cooperatives	DOCKET NO. 060512-EU Filed: September 8, 2006

MICHAEL T. HARRELSON'S COMMENTS AND SUGGESTED CHANGES TO RULE 25-6.0343, ON BEHALF THE FLORIDA CABLE TELECOMMUNICATIONS ASSSOCIATION, INC.

25-6.0343(1) Standard of Construction

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

(b) The Florida Cable Telecommunications Association (FCTA) members require access to the electric utility's construction standards first to effect its input into the establishment of the standards as provided for in paragraph 25-6.0343(4). FCTA members also require access to the construction standards required 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."

(c) No comments at this time.

(d) 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."

(d) 1. "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.

(d) 2. 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 013.B.1.*

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

standards to distribution poles less than 60 feet in height as ultimately ordered by the FPSC. By specifically limiting the rule language to require application of greater strength standards 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 as required 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 littler or no shelter effect from high winds by trees, buildings, etc. The major engineering justification for designing lines to withstand greater wind loads than required by the NESC 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 together with vegetation management are much more certain to be prudent expenditures of limited funds.

(f) None at this time.

Rule No.25-6.0343(2) 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.

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.

Rule No. 25-6.0343(1) proposes to order all electric utilities to establish construction standards "guided by the extreme wind loading" requirements of the NESC. Rule No. 25-6.0343(3) proposes: "As part of the construction standards, each utility shall establish third party attachment standards and procedures." Construction standards, attachments standards, and attachment contracts already exist between power companies and third party attachers. The contracts and attachment standards are supposed to be negotiated between the parties. 25-6-0343(4) This paragraph requires the utility to seek input from other entities with existing agreements to share the use of its electric facilities. FCTA expects to participate

actively to provide responsible input to the proposed standards as they affect FCTA members. We look forward to the opportunity.

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On behalf of the FCTA

COMPOSITE EXHIBIT MAG-1

FCTA PROPOSED CHANGES TO RULE 25-6.0343

25-6.0343 Municipal Electric Utilities and Rural Electric Cooperatives.

(1) Standards of Construction.

(a) 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 municipal electric utilities and rural electric cooperatives.

(b) 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 are fair and reasonable and ensure the reliable provision of electric service.[1] Each utility shall maintain a copy of its construction standards at its main corporate

[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 3 through 6. M.T. (Mickey) Harrelson (MTH)/FCTA Comments at page 1,3 and 6.

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 in Tallahassee. Upon request by a third-party attacher, the utility shall provide a copy of its Construction Standards to the attaching entity.[2]

(c) 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.

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

1. The Commission adopts and incorporates by reference the 20072[4] edition of the 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).

2. ~~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

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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.

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

Rule 013.B.1., 013.B.2., and 013.B.3. ~~in effect at the time of the initial construction.~~[6]

(e) 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 2007~~2~~ 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:

1. new construction;

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

3. targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

(f) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost-

[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, 4 and 5.

effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges.

(2) 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.

(a) 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.

(b) 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.

(c) 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.

(d) 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 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.[8]

(3) Third-Party Attachment Standards and Procedures.

(a) As part of its construction standards adopted pursuant to subsection (1), 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 (1)(d) of this rule 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.

(b) 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

[8] 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 8 and 9. MTH/FCTA Comments at pages 5 through 7.

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 are fair and reasonable and ensure the reliable provision of electric service.[9]

(~~c~~b) 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 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 appropriate agency or administrative or judicial forum possessing jurisdiction to adjudicate an attacher's rights and obligations.[10]

(4) ~~In establishing the construction standards and 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 or challenge to a utility's construction standards and/or third-party attachment standards and procedures by a customer, applicant for service, or attaching entity, or a challenge arising out of the expansion rebuild or relocation of electric distribution facilities affecting existing third-party

[9] 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 9 through 11. M.T. (Mickey) Harrelson (MTH)/FCTA Comment at pages 6 and 7.

[10] The requested changes in this subsection are for the purpose of assuring that cable third-party attachers' rights to reasonable, non-discriminatory access to poles are preserved. MAG/FCTA Comments at pages 10 through 11.

attachments, shall be resolved by the Commission. ~~Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments, the electric utility shall seek input from and, to the extent practical, coordinate the construction of its facilities with the third-party attacher.~~[11]

(5) If the Commission finds that a municipal electric utility or rural electric cooperative utility has demonstrated that its standards of construction will not result in service to the utility's general body of ratepayers that is less reliable, the Commission shall exempt the utility from compliance with the rule.

Specific Authority: 350.127, 366.05(1) F.S.

Law Implemented: 366.04(2)(c)(f), (5), (6), 366.05(8)F.S.

History New.

[11] The request changes to this subsection are for the purpose of assuring that there is a viable remedy for prompt resolution of disputes rising out of the development and application of the provisions of this rule. MAG/FCTA Comments at pages 3 through 11.