State of Florida

# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**



**DATE:** November 21, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Harris, Moore)
Division of Economic Regulation (Breman, Daniel, Hewitt, Kummer, Trapp)
Division of Regulatory Compliance & Consumer Assistance (Velazquez, Mills)

**RE:** Docket No. 060172-EU – Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, to address effects of extreme weather events.

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

**AGENDA:** 12/05/06 – Regular Agenda – Rule Adoption – Participation is at the Commission's discretion

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Arriaga

**RULE STATUS:** Adoption May Be Deferred

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060172.RCM.DOC

## Case Background

As a result of severe damage to electric utility facilities incurred during the 2004 and 2005 hurricane seasons, the Commission has taken several steps to minimize future storm damage to electric infrastructure and resulting outages to customers. In addition to requiring

pole inspections, vegetation management, and other actions, on February 27, 2006, the Commission directed staff to begin rulemaking proceedings to require electric utilities to strengthen Florida's electrical transmission and distribution infrastructure to better withstand the effects of severe weather events. Docket Nos. 060173-EU and 060172-EU were opened to initiate rulemaking in two areas: overhead electrical infrastructure and underground electrical infrastructure. Rule development workshops were held April 17, 2006, May 18, 2006, and July 14, 2006.

On June 20, 2006, the Commission voted to propose amendments to Rule 25-6.034, Florida Administrative Code (F.A.C.), Standards of Construction, new Rule 25-6.0341, F.A.C., Location of the Utility's Electric Distribution Facilities, and new Rule 25-6.0342, F.A.C., Third-Party Attachments and Procedures, and amendments to Rule 25-6.0345, F.A.C., Safety Standards of Construction. The Commission also voted to propose amendments to Rules 25-6.064, F.A.C., Contributions-in-Aid-of-Construction for Installation of New or Upgraded Facilities, Rule 25-6.078, F.A.C., Schedule of Charges, and Rule 25-6.115, F.A.C., Facility Charges for Conversion of Existing Overhead Investor-Owned Distribution Facilities. A Notice of Rulemaking was Published in the Florida Administrative Weekly, July 7, 2006.

In addition, the Commission voted to propose new Rule 25-6.0343, F.A.C., requiring municipal electric utilities and rural electric cooperatives to comply with Rules 25-6.034, 25-6.0341, and 25-6.0342. On July 24, 2006, the Florida Electric Cooperatives Association, Inc. (FECA), filed a Motion for Bifurcation of Proceeding and Request for Hearing and Rescheduled Comments. The motion was granted and Docket No. 060512-EU was established to address all matters pertaining to proposed new Rule 25-6.0343. F.A.C. At the October 4, 2006, rule hearing, the Commission voted to adopt new Rule 25-6.0343, F.A.C., in the form negotiated between staff and the parties.

Following publication of the Commission's proposal of the above rules, written comments and requests for hearing were timely filed, and a rule hearing was held August 31, 2006. Participating in the hearing were Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), BellSouth Florida, Inc., Embarq Florida, Inc., Verizon Florida, Inc., Time Warner Telecommunications (Time Warner), the Florida Cable Telecommunications Association, the Towns of Palm Beach, Florida, and Jupiter Island, Florida (the Towns), the City of Ft. Lauderdale, and an individual FPL customer, Mr. Trevor Underwood. A revised Statement of Estimated Regulatory Costs (SERC) was provided at the August 31, 2006 rule hearing and identified as Exhibit 2.

Joint post-hearing comments were filed by FPL, PEF, TECO, and Gulf (collectively the Joint IOUs). Individual comments were filed by FCTA, Time Warner, BellSouth, Verizon, and Embarq (collectively the "Attachers"), the Towns, and Mr. Underwood.

On July 28, 2006, FCTA filed a Petition for Administrative Determination of the Invalidity of Proposed Rules with the Division of Administrative Hearings (DOAH Case No. 06-2733-RP). FPL, TECO, PEF, Gulf, and FECA have been granted intervention. Pursuant to a stipulated agreement between FCTA and staff, the challenge has been placed in abeyance, with a written status report due December 4, 2006.

This Recommendation addresses staff's recommended changes to the Commission's proposed rules in response to the comments of interested participants provided subsequent to the issuance of Order No. PSC-06-0556-NOR-EU, including preliminary comments from the Joint Administrative Procedures Committee (JAPC) staff attorney.

Staff recommends the Commission adopt Rules 25-6.064, 25-6.078, and 25-6.115 as proposed with one change; adopt Rules 25-6.0341 and 25-6.0345 as proposed with minor technical changes; and adopt Rules 25-6.034 and 25-6.0342 as proposed with significant changes. The Commission has jurisdiction pursuant to Sections 120.54, 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

## Summary

At the June 20, 2006, Agenda, the Commission voted to propose amendments to Rule 25-6.034, F.A.C., Standards of Construction, new Rule 25-6.0341, F.A.C., Location of the Utility's Electric Distribution Facilities, and new Rule 25-6.0342, F.A.C., Third-Party Attachments and Procedures. Together with other amendments to the rules governing the Commission's electric safety jurisdiction and underground contribution-in-aid-of construction policies, these rules formed the basis for a program to cost-effectively strengthen (storm harden) the electric infrastructure in Florida to reduce restoration costs and outage times to customers resulting from extreme weather events. The storm hardening rules proposed at the June 20 Agenda centered around requiring Florida's investor-owned electric utilities to establish and maintain standards of construction to increase the ability of transmission and distribution facilities to withstand extreme weather conditions.

The June 20, 2006, proposed rules depended upon a system of regulation by exception whereby the Commission would, after initial adoption, review the electric investor-owned utilities' (IOUs) storm hardening standards on an as-needed basis when problems are detected by staff or as a result of a complaint by an affected entity. Concerns about this approach were raised by the telecommunications and cable industries whose facilities, in many instances, are attached to electric utility facilities pursuant to joint-use agreements. The concerns of the attaching entities revolve primarily around the apprehension that the electric utilities would use the rules as a means of shifting the costs of storm hardening to the attachers. The third-party attachers also contended that regulation of the IOU storm hardening standards by exception represented an improper delegation of Commission authority.

At the August 31, 2006, rule hearing, which focused primarily on the issues raised by the third-party attachers, the Commission directed the IOUs to meet with the third-party attachers to try to resolve concerns with the proposed rules. The parties were directed to report back to the Commission within 30 days. On October 2, 2006, the parties reported that they were unable to reach consensus.

Notwithstanding the lack of consensus within the industries, staff recommends certain changes to the June 20, 2006, storm hardening rules. These changes are intended to address the concerns of the third-party attachers, while preserving the Commission's intent to require the cost-effective strengthening of electric infrastructure in Florida to better withstand extreme weather events and reduce restoration costs and outage times.

As discussed in greater detail in Issues 1 through 7, staff recommends:

Rule 25-6.034 Standard of Construction

The rule has been simplified to require IOUs to (1) employ accepted engineering practices and (2) comply, at a minimum, with the applicable edition of the National Electrical Safety Code (NESC).

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

The rule has been renumbered but remains substantially unchanged from the June 20, 2006, proposed rule. The rule encourages IOUs, to the extent feasible and cost-effective, to place new and replacement distribution facilities so as to facilitate safe and efficient access for installation and maintenance (adjacent to a public road, normally in front of the customer's premises). The rule requires maximum use of easements and road rights-of-way. Clarification has been added requiring IOUs to notify and attempt in good faith to accommodate concerns raised by third-party attachers and joint users, including input and concerns related to the cost impacts of proposed relocations of facilities to a new location adjacent to a public road. To the extent practical, IOUs are required to coordinate the construction of their facilities with affected third-party attachers. Finally, in the event of a dispute, resolution may be sought from the Commission.

Rule 25-6.0342 Electric Infrastructure Storm Hardening

Major revisions to the June 20, 2006, proposed rules have been made to require each IOU to file a comprehensive storm hardening plan for review and approval by the Commission. The IOU storm hardening plans would initially be filed within three months of the effective date of the rule, then every three years thereafter. Upon petition or on its on motion, the Commission would review and approve changes to the storm hardening plans more frequently if needed.

The IOU storm hardening plans are required to address all the key elements associated with facility hardening including: (1) compliance, at a minimum, with the NESC; (2) the applicability of extreme wind loading standards for new and replacement distribution facilities; (3) mitigation of damage to underground facilities and supporting overhead facilities due to flooding and storm surges; and (4) safe and efficient access for the installation and maintenance of new and replacement distribution facilities.

The IOU storm hardening plans must also include a detailed explanation of the company's deployment strategy. Each plan must contain a description of the facilities affected and the technical design specifications, standards, and construction methodologies to be employed. The communities and areas within the utility's service area affected by the plan must be identified. Critical infrastructure must be defined.

Each storm hardening plan must identify the extent to which collocation facilities are affected. Attachment Standards and Procedures governing the safety, reliability, pole loading capacity, and engineering standards and procedures for third-party attachments must be included. Each plan must include an estimate of the costs and benefits to the IOU, including reductions in storm restoration costs and outages. Further, each plan must include an estimate of the costs and benefits to third-party attachers, with such information to be provided to the IOU by the affected third-party attachers. A statement has been added clarifying that nothing in this rule is intended to conflict with Title 47, United States Code, Section 224, relating to Federal Communications Commission jurisdiction over pole attachments.

To gain Commission approval of storm hardening plans, each IOU must demonstrate that its plan is prudent, practical, and cost-effective to all affected parties, including third-party attachers.

Staff believes that requiring the IOUs to submit storm hardening plans for Commission approval will meet the Commission's objectives of enhancing reliability and reducing restoration costs and outage times. At the same time, the concerns over potential undue cost incurrence by or cost shifting to third-party attachers will be fully addressed in the Commission's approval of each storm hardening plan. The new rules envision both the IOUs and third-party attachers working together in good faith on the front end to establish the storm hardening plans. Once the plans are filed with the Commission, third-party attachers may participate in the Commission approval process. Finally, in the event that issues arise that cannot be resolved through mutual and voluntary collaboration, third-party attachers have the right to seek dispute resolution from the Commission. Clearly, there is ample opportunity for third-party attachers to make their concerns known and provide competent, substantial evidence to the Commission to support their concerns. There is no delegation of Commission authority within this process.

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

The new rule adopts the 2007 NESC; otherwise it remains substantially unchanged from the June 20, 2006, proposed rule.

Rule 25-6.064 Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities

The rule remains substantially unchanged from the June 20, 2006, proposed rule.

Rule 25-6.078 Schedule of Charges

The rule remains substantially unchanged from the June 20, 2006, proposed rule.

Rule 25-6.115 Facility Charges for Conversion of Existing Overhead Investor-Owned Distribution Facilities

The rule remains substantially unchanged from the June 20, 2006, proposed rule.

## Discussion of Issues

**Issue 1**: Should the Commission adopt Rule 25-6.034, Florida Administrative Code, Standards of Construction, as proposed with changes?

**Recommendation**: Yes. (Breman, Hewitt, Trapp, Harris)

**Staff Analysis**:

**Staff's Recommended Changes**

Existing Rule 25-6.034, Standards of Construction, was adopted in 1969. Staff recommends the existing rule be amended to require utilities to, at a minimum, comply with the National Electrical Safety Code (NESC). Facilities constructed on or after February 1, 2007 must reference the 2007 edition of the NESC, while facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC specified by subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC.[1] Staff recommends that the remaining amendments to this rule proposed by the Commission on June 20, 2006, be moved to new Rule 25-6.0342, Electrical Infrastructure Storm Hardening (Issue 3).

**Rule 25-6.034(1):** No changes.

**Rule 25-6.034(2):** Existing subsection (2) should be stricken and replaced with language requiring utilities to, at a minimum, comply with the NESC.

As proposed by the Commission on June 20, 2006, Rule 25-6.034 retained the substance of existing subsection (1) of the rule, and deleted existing subsection (2), replacing a requirement to comply with the American National Standards Institute (ANSI) Codes C-12 and 57.13 with a requirement to comply with the applicable edition of the NESC. The proposed rule went on to require each utility to establish, within 180 days of the effective date of the rule, construction standards for overhead and underground electrical facilities. These construction standards were to be maintained in the utility's offices, and be available to staff, upon request, in Tallahassee. In developing its construction standards, each utility was to be guided by the extreme wind loading standards of the NESC, and to design its facilities to deter damage from flooding and storm surges. Further, each utility was required to seek input from entities with existing shared use agreements.

In its review of the rulemaking record, staff determined that the limited scope of existing Rule 25-6.034 should be maintained, without the inclusion of additional requirements. Additional requirements for electrical facilities should be addressed in a separate rule. Staff recommends that utilities' storm hardening plans be implemented through new Rule 25-6.0342, Electrical Infrastructure Storm Hardening, and that the additional requirement that utilities establish construction standards should be deleted from Rule 25-6.034.

[1] Subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC provide two categories for existing installations: those that comply with the 2007 NESC and those that comply with the edition of the NESC effective at the time of the original installation or with any subsequent edition of the NESC thereafter.

Rule 25-6.034, both in its existing form and with the changes recommended by staff, requires utilities to construct, install, maintain, and operate their facilities in accordance with generally accepted engineering principles. The existing rule text, adopted in 1969, states that compliance with those principles could be demonstrated by compliance with ANSI Codes C-12 and 57.13. At the June 20, 2006, agenda, staff recommended deleting this subsection of the rule because the language is unnecessary and obsolete.

Subsection (2) is unnecessary and obsolete for two reasons. First, in June 1995, FPL requested certain changes to Rules 25-6.052 through 25-6.058 to reflect current standards contained in the American National Standard for Electric Meters – Code for Electric Metering which is also referred to as ANSI C12.1. FPL's request was implemented in May, 1997.[2] Rule 25-6.053 required all current and potential transformers to be tested for accuracy in accordance with the procedures prescribed in American Standards Institute Code USAS - C57.13. The substance of Rule 25-6.053 was moved to Rule 25-6.052 because the language addressing instrument transformers is now in Rule 25-6.052 and that rule incorporated the 1995 edition of the then current ANSI C12.1 standards inclusive of instrument transformers. Thus, references to an instrument transformer test code in Rule 25-6.034(2) should have been removed when Rule 25-6.053 was repealed, but was not.

Second, Rule 25-6.052 was recently revised to reflect, among other things, a more current edition of ANSI C12.1 than the 1975 edition referenced by Rule 25-6.034(2).[3] Thus, the language in existing subsection (2) is unnecessary because 25-6.052 addresses metering equipment. Additionally, the language in existing subsection 25-6.034(2) is obsolete because it references out-of-date standards.

Staff believes the better standard to adopt is the NESC, which is the underlying standard by which safe and reliable electrical service is evaluated. Further, Section 366.04(6)(b)(2), Florida Statutes (2006), requires the Commission to adopt as safety standards, at a minimum, the most recent edition of the NESC. Staff therefore believes it appropriate to update Rule 25-6.034 to state that, at a minimum, compliance with the edition of the NESC in effect at the time of electric facilities' initial construction should be required. This will ensure that electrical facilities are constructed, installed, maintained and operated in a safe and reliable manner.

**Issues Raised by the Parties**

The parties' issues relate to the Commission's proposed amendments to this rule regarding standards of construction, not the existing rule language (or its replacement by the NESC). Those proposed amendments have been moved to new Rule 25-6.0342. Since staff is recommending the Commission revert to the existing rule, with the changes described above, and delete the standards of construction language, the majority of the parties' comments no longer apply to this rule.

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[2] Order No. PSC-97-0501-FOF-EG, issued May 1, 1997, in Docket No. 961379-EG, In re: Proposed Amendment of Rules 25-6.022, 25-6.052, 25-6.054, 25-6.055, 25-6.056, and 25-6.058, and Repeal of Rules 25-6.053 and 25-6.057, F.A.C.

[3] Order No. PSC-06-0507-FOF-EI, issued June 14, 2006, in Docket No. 060121-EI, In re: Proposed amendment of Rules 22-6.022, 25-6.052, 25-6.056, 25-6.058, 25-6.059, 25-6.060, and 25-6.013, F.A.C.

Several parties (FCTA, Embarq and Time Warner) object to the inclusion of the phrase "at a minimum" when requiring compliance with the NESC. As expressed by FCTA, the parties believe the inclusion of the "at a minimum" language is misleading, in that it implies that the NESC is a minimum standard, which FCTA does not believe to be the case. [FCTA post-hearing comments of M.C. Harrellson, pages 2-3 and 14 and FCTA's proposed changes, pages 2 and 10] Time-Warner asserts the language may require "over engineering" in an attempt to "regulate third parties off the poles." [Time-Warner post-hearing comments, pages 7-9] FCTA points out that the 1990 edition of the NESC does not use the term "minimum" due to the drafter's concern that it would be interpreted to mean that the NESC standards should be exceeded in practice.

Staff disagrees with FCTA. Section 010 of the 2007 NESC, Purpose, states:

> These rules contain the basic provisions that are considered necessary for the safety of employees and the public under the specified conditions. This Code is not intended as a design specification or as an instruction manual.

Staff believes that given the severe impact of extreme weather in Florida, it is wholly appropriate for the Commission to require electric utilities under its jurisdiction to exceed the basic provisions of the NESC, where the Commission determines it necessary to ensure safe and reliable electric service in the state. Furthermore, this would appear to be the intent of the 2006 Florida Legislature, which specifically amended Section 366.04(6), F.S., to require the Commission, in adopting safety standards, to at a minimum adopt, after review, new editions of the NESC. Thus, staff believes it is incumbent upon the Commission to amend its rules governing electric safety matters to be consistent with the will of the Legislature, as expressed in statute. Staff therefore recommends that utilities be required to, at a minimum, comply with the NESC.

**Cost Impacts of Rule 25-6.034**

Staff does not believe there should be any new costs associated with its recommended changes to this rule. The existing rule requires electrical facilities to be constructed, installed, maintained and operated in accordance with generally accepted engineering practices. Compliance with the NESC has been the de facto standard for these practices for decades. Making compliance with the NESC explicit in the rule should not change any existing practices.

**Conclusion**

Staff had originally recommended adding increased electrical infrastructure safety and reliability requirements to existing Rule 25-6.034, as standards of construction. As this docket has developed, however, staff concluded that storm hardening plans are more appropriate, and should be contained in a separate new rule. Accordingly, staff recommends that the Commission adopt changes to existing Rule 25-6.034 to ensure compliance, at a minimum, with the NESC. Facilities constructed on or after February 1, 2007, must comply with the 2007 edition of the NESC, while facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC specified by subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC.

**Issue 2**: Should the Commission adopt Rule 25-6.0341, Florida Administrative Code, Location of the Utility's Electric Distribution Facilities, as proposed, with changes?

**Recommendation**: Yes. (Bremen, Trapp, Harris)

**Staff Analysis**:

**Staff's Recommended Changes**

Staff recommends certain editorial changes to the proposed rule based on preliminary comments from the Joint Administrative Procedures Committee (JAPC) staff attorney, consideration of the comments made at the August 31, 2006, hearing, and post-hearing comments. Notwithstanding the recommended changes, the purpose of the rule as proposed remains the same.

**25-6.0341(1):** Staff recommends an editorial change to the preamble of the proposed rule based on preliminary comments from the JAPC staff attorney. The word "practical" should be deleted as it is duplicative and thus unnecessary.

**25-6.0341(2)-(4):** No changes. These subsections of the rule deal with the three situations of overhead, underground, and the conversion of overhead to underground facilities, respectively. In these three cases, the rule provides that utilities should seek to use public roads and easements along the front edge of a customer's property, where feasible and cost-effective.

**25-6.0341(5):** Staff recommends editorial changes to include requiring IOUs to seek in good faith input from affected joint users of electrical facilities that become subject to expansion, rebuild or relocation projects, if such projects result in the relocation of the facilities to the front of a customer's property. It addresses the Attachers' concerns regarding notification of the IOUs' planned relocation projects, and how their concerns about cost impacts will be addressed. It also provides that construction must be coordinated, where practical.

**25-6.0341(6)**: Staff recommends that language be added to clarify that any dispute related to the location of electrical facilities shall be resolved by the Commission.

As proposed by the Commission on June 20, 2006, Rule 25-6.0341 will promote the rapid, efficient restoration of service to customers by encouraging electrical facilities to be located adjacent to a public road, usually in the front of a customer's lot, where feasible and cost-effective. Experience from the 2004 and 2005 storm seasons shows that utilities may have limited access to facilities located behind the customer's premises, and this limitation significantly increased restoration times in some cases.

**Issues Raised by the Parties**

Costs of Relocation

The Attachers spent a significant amount of time at the August 31, 2006, hearing and in their post-hearing comments regarding concerns about their cost impacts if existing facilities are relocated from rear lot to front lot. Staff believes the rule takes these concerns into account by

requiring IOUs to work in good faith to take into consideration the cost impacts to attachers when determining the feasibility and cost-effectiveness of such placements.

This rule is primarily designed to address initial installations of new facilities, or situations where the existing facilities must be expanded or rebuilt. These types of situations are expected to arise primarily when older distribution facilities must be upgraded, perhaps due to the renovation of older neighborhoods and the resulting increase in demand for electricity. The rule clarifies that in these instances, electric utilities will seek to locate facilities where they can be easily accessed, i.e., adjacent to a public road, usually along the front of a customer's lot, where it is feasible and cost-effective. The rule also provides that when a local government seeks to have the facilities placed underground, the facilities shall be placed in a right-of-way where practical.

Staff anticipates that the primary concern of the Attachers, that electric utilities will make widespread changes in their electrical distribution networks, is misplaced. Staff does not believe that utilities will use this rule, which is essentially a statement of today's best practices, to move a significant number of existing distribution facilities to the fronts of customers' lots. Such wholesale relocations would likely not be feasible or cost-effective. To the extent that some specific, targeted facilities may be relocated, the Commission will consider these costs in approving the IOU storm hardening plans, taking into specific consideration the costs and benefits to all affected parties, and will determine whether they are a reasonable means of achieving increased electric reliability and decreased restoration times.

Advance Notice

The Attachers express concern that they be given sufficient advance notice of a utility's plans to allow them to incorporate those plans into their own construction and budgeting activities. Staff agrees that Attachers should be given advance notice, but does not agree that an explicit time frame should be included in the rule. Instead, staff recommends that the Commission change the rule as proposed to specifically require electric utilities to seek and evaluate in good faith input from Attachers, and to coordinate construction with the Attachers. Furthermore, staff recommends the Commission add language stating that the Commission will resolve disputes between parties arising from the application of this rule.

Damage to Existing Facilities

The Attachers assert that increased electric utility conversion projects resulting from the new rule may cause damage to telecommunications and cable television lines in areas where the telecommunications and cable facilities are already located underground. In their comments, the Attachers essentially suggest that no electrical facilities be placed underground where there are existing telecommunications or cable facilities. Undergrounding of electrical facilities, as well as new telecommunications, cable, gas, and water projects are occurring today, however, with the identical risks of damage to existing facilities. All utility companies, including the electric utilities, have existing contractual and legal remedies in place to resolve any issues that occur when one company's facilities are damaged by another company. Furthermore, Chapter 556, Florida Statutes, the Underground Facility Damage Prevention and Safety Act, establishes a centralized statewide information system that requires notification prior to excavation or

demolition. This notification system provides an opportunity for underground utilities to identify and locate underground facilities in advance of construction and fosters awareness of where underground facilities of other companies are located. Staff sees no reason why these existing remedies will be insufficient to resolve any issues that arise as a result of this rule.

New Construction Versus Relocation of Existing Facilities

The Attachers suggest that the rule be limited to new construction only. Staff does not agree with this limitation. Rule 25-6.0341 is intended to apply to all new construction, but also to expansions, rebuilds and relocation of existing facilities, where such relocation would be feasible and cost-effective, not only for the utility, but also for third-party attachers. The intent of the rule is to increase system reliability and decrease restoration times. Staff cannot see how limiting a utility's options on which facilities must be relocated assists in achieving this intent.

Federal Communications Commission Jurisdiction under 47 U.S.C. §224

The Attachers raise the concern that this rule impacts their rights under federal law. As discussed more fully in Issue 3, staff does not agree. This rule in no way limits third-party attacher's access to electrical facilities, nor does it regulate the rates, terms, or conditions regarding pole attachments. The rule only requires that, where feasible and cost-effective, electric distribution facilities be placed adjacent to a public right of way. To the extent that some non-electric distribution facilities may be relocated, the parties' negotiated joint-use agreements will control. Staff believes adding language regarding federal law in this rule is unnecessary, and does not recommend the changes suggested by the Attachers. Staff does recommend adding language regarding federal law to Rule 25-6.0342, as discussed in Issue 3.

**Costs Estimates Due To Proposed Rule 25-6.0341**

Staff's June 8, 2006, recommendation contained a cost analysis of this new rule. Additional reliable and detailed cost data has not been supplied subsequent to June 20, 2006. Staff does not believe, however, that there should be any new costs associated with its recommended changes to this rule as proposed.

**Conclusion**

New Rule 25-6.0341 is intended to codify the policy decision that where feasible and cost-effective, electric facilities shall be placed adjacent to a public road, which will normally be in the front of a customer's lot. Staff's recommended changes address the concerns of the Attachers. Staff recommends the Commission adopt Rule 25-6.0341, Location of Facilities, as proposed, with changes.

**Issue 3**: Should the Commission adopt Rule 25-6.0342, Florida Administrative Code, Electric Infrastructure Storm Hardening, as proposed, with changes?

**Recommendation**: Yes. (Bremen, Hewitt, Trapp, Harris)

**Staff Analysis**:

**Staff's Recommended Changes**

As proposed on June 20, 2006, Rule 25-6.0342 is titled "Third-Party Attachment Standards and Procedures." While preparing the staff recommendation following review of the post-hearing filings, staff concluded that the underlying goals of the Commission's rulemaking efforts in these dockets might better be addressed by removing all of the construction standards provisions from existing Rule 25-6.034, moving them to this rule, and substantially revising the language. Staff believes this substantially modified rule language will also resolve the concerns raised by the Attachers and the JAPC staff attorney.

**25-6.0342(1):** Subsection (1) is an expanded version of Rule 25-6.034(1) as proposed by the Commission on June 20, 2006. The expansion of the proposed language makes clear that strengthening activities must be cost-effective in order to reduce restoration costs and outage times to end use customers.

**25-6.0342(2):** Subsection (2), "Storm Hardening Plans," requires that within 90 days after the effective date of this rule, and at least every three years thereafter, each utility will file for Commission approval a detailed plan for strengthening its system to enhance reliability and reduce restoration costs and outage times. The subsection also makes explicit that such plans must be prudent, practical, and cost-effective to affected parties. Staff recommends that storm hardening plans replace the construction standards requirement in Rule 25-6.034, as proposed June 20, 2006.

**25-6.0342(3):** Subsection (3), "Contents of Plan," is a modified version of Rule 25-6.034(4) and (5) as proposed June 20, 2006. The construction standards required by that rule are now items that each utility must address in its storm hardening plan, which the Commission will review for approval.

**25-6.0342(4):** Subsection (4), "Deployment Strategy," is a modified version of Rule 25-6.034(6) as proposed June 20, 2006. This subsection requires each utility to provide a detailed description of the systematic approach it will take to enhance reliability and reduce outages and restoration costs. The subsection specifies a number of factors that must be addressed by the utility.

**25-6.0342(5):** Subsection (5), "Attachments Standards and Procedures," is a modification of Rule 25-6.0342 as originally proposed by the Commission on June 20, 2006. It makes clear the requirement that utilities shall maintain written standards and procedures for attachments to poles.

**25-6.0342(6):** Subsection (6), "Input from Third Parties," makes clear that each utility must seek in good faith, and evaluate for incorporation in its plan, input, including cost effects, from existing joint-use entities. This subsection is based upon subsection (8) of Rule 25-6.034, as proposed June 20, 2006.

**25-6.0342(7):** Subsection (7), "Dispute Resolution," contains an explicit requirement that any dispute or challenge to a utility's storm hardening plan shall be resolved by the Commission.

**25-6.0342(8):** Subsection (8) has been added to make clear that this rule is not intended to conflict, in any way, with federal jurisdiction over third-party access to IOU facilities or the rates, terms, or conditions of pole attachments.

**Issues Raised By The Parties**

Improper Delegation of Rulemaking Authority

In their post workshop comments, at the rule hearing, and in their post-hearing comments, the Attachers express concern that the Standards of Construction required by Rule 25-6.034, as proposed, constituted an improper subdelegation of the Commission's rulemaking authority. The Attachers argue that leaving it to the electric companies to develop standards, which would then be enforced by the Commission, vests too much power in the regulated entities.

In considering this argument, staff determined that the construction standards language proposed by the Commission was merely one way to achieve the Commission's purpose of reducing electrical outages and restoration costs while strengthening Florida's electrical system. Staff concluded that requiring the IOUs to file detailed storm hardening plans will achieve these goals. Further, the process recommended by staff to be codified in the rule explicitly calls for the plans to be developed by the utilities, but filed with the Commission for review and, if appropriate, approval. The rule also specifically requires the utilities to seek cost effectiveness data from the Attachers, which data shall be included in the plans, and which will be an explicit element the Commission will consider in determining if the plans are appropriate.

Requiring the utilities to produce the storm hardening plans, to be filed with the Commission, reflects current Commission regulatory practices. Just as in the Ten Point Plan[4] and Pole Inspection Dockets,[5] staff's recommended changes to the proposed rule to require storm hardening plans will allow the electric companies' management to determine what strategy makes the best sense for their systems, and then to present those plans to the Commission for review and subsequent approval.

[4] Docket No. 060198-EI, Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates.

[5] Docket No. 060078-EI, In Re: Proposal to Require Investor-Owned Electric Utilities to Implement a Ten-Year Wood Pole Inspection Program and Docket No. 060531-EU Review of all electric utility wooden pole inspection programs.

Requiring the utilities to draft plans, which are then reviewed, and if deemed appropriate, approved by the Commission, also removes any concerns regarding improper subdelegation of the Commission's rulemaking authority. There is no subdelegation where the Commission retains authority to review a storm hardening plan developed by a utility before it is implemented, and retains the ultimate decision-making authority to determine how and when it is implemented.

Federal Preemption

The Attachers argue that Title 47, United States Code, Section 224, known as the "Federal Pole Attachment Act," specifically preempts the Commission from any regulation that affects access to electrical distribution facilities, or the rates, terms, and conditions of third-party attachments. As such, the Attachers assert the Commission is preempted from promulgating these rules regarding the safety and reliability of Florida's electrical system. Staff disagrees with this argument.

47 U.S.C. §224 is clear that if a state does not certify to the Federal Communications Commission (FCC) that it regulates pole attachments, issues of access and the rates, terms and conditions of attachments shall be regulated by the FCC. A state, however, retains jurisdiction to regulate safety and reliability of its electrical infrastructure. Staff believes that these rules are permissible regulations of safety and reliability issues of electric infrastructure, and any tangential impact on pole attachment rates cannot be construed as regulation of pole attachments. Further, staff recommends the Commission adopt specific language in the rule to make clear that nothing in this rule is intended to conflict with federal jurisdiction over pole attachments under 47 U.S.C. §224.

Third-Party Cost Impacts

The Attachers are concerned about the cost impacts of these rules on their businesses. One attacher, BellSouth, estimates the cost impacts of proposed Rule 25-6.034 could range as high as $4 billion for their company alone, if 40 percent of its existing overhead telephone facilities were converted to underground.[6] Staff believes this to be an unreasonable assumption. The new rule requires IOUs to identify and define their critical infrastructure to be hardened. Further, they must share this information and coordinate their actions with attachers, in advance, to determine cost impacts.

Any actions Florida's electric utilities take to strengthen Florida's electrical infrastructure will have cost impacts. To the extent that such actions impact the value of electrical plant to which third parties are attached, there may be cost impacts to those third parties, depending on the language of the parties' existing joint-use agreements. Staff recommends, however, that cost impacts as a result of the state's valid and compelling interests in ensuring a safe, reliable electrical system are not the same thing as specific regulation of the rates, terms, and conditions of the third-party attachments themselves. Nothing in these rules affects the rate calculations as negotiated by the parties, nor the terms or conditions by which attachments can be made to electric distribution infrastructure.

[6] August 4, 2006, prefiled testimony of Mr. K. Smith, p. 14-15.

Validity of Statement of Estimated Regulatory Costs and Lower Cost Regulatory Alternatives

Embarq proposes that the Commission consider not adopting any rule requiring infrastructure strengthening as a lower cost regulatory alternative that the Commission must consider before adopting any rule in this proceeding. While Section 120.541, Florida Statutes, requires that the Commission consider these alternatives, staff does not consider not adopting a rule at all, or adopting the reporting rule proposed by BellSouth, as valid lower cost regulatory alternatives.

A lower cost regulatory alternative, within the meaning of §120.541, must be a valid method that substantially accomplishes the objectives of the law being implemented. The alternative of not adopting a rule may be proposed by a party, but that party must explain how the objectives of the law will be implemented. §120.541(1)(a). No party has provided such an explanation, including municipal and cooperative utilities. While not requiring Florida's electric utilities to do anything to strengthen their system would certainly be lower cost, it does not achieve the Commission's objectives of increasing the safety and reliability of Florida's electric infrastructure, reducing outages due to storms, and reducing the attendant costs of those outages.

In its post-hearing comments, Embarq also questions the validity of the Statement of Estimated Regulatory Costs (SERC). Embarq argues that since the cost impacts of the utility's construction standards will not be known until after they are developed, the Commission cannot consider those costs at this point in determining whether the rule is justified or not.

Staff's recommended changes to the rule address this concern. Paragraphs 25-6.0342(4)(d) & (e) explicitly require each utility's storm hardening plan to estimate the costs and benefits to the utility and to third-party attachers. Further, Rule 25-6.0342(2) specifically requires the Commission to consider cost-effectiveness in approving the Storm Hardening Plans. Thus, this information will be in the storm hardening plans and before the Commission for consideration at the time the Commission votes on whether to approve the storm hardening plans. With these changes, staff believes Embarq's concerns are adequately addressed.

Infrastructure Advisory Committee and Reporting Rule

At the rulemaking hearing, BellSouth presented a proposal that the parties form an "Infrastructure Advisory Committee" (IAC), composed of representatives of the electric utilities, telecommunications companies, and cable companies. The purpose of the IAC would be to seek consensus on ways to achieve the goals of strengthening Florida's electrical infrastructure in a manner that all parties could agree to. At the conclusion of the hearing, the Commission urged the parties to seek consensus through the IAC on a voluntary basis, and to report their progress in their post-hearing comments.

In its post-hearing comments, BellSouth reports on the IAC activities, and suggests that those activities be allowed to continue. Staff agrees that the activities of the IAC should go forward. However, given the lack of any reportable progress, and the significant differences between the parties, staff does not believe that delaying this rulemaking proceeding is likely to result in any measurable improvement in the safety and reliability of Florida's electric infrastructure within the foreseeable future.

BellSouth further suggests that if the Commission determines there is a need to adopt rules relating to electric infrastructure strengthening, these rules should be similar to the reporting rule for municipal and cooperative electric utilities, adopted by the Commission as Rule 25-6.0343. For a number of reasons, staff does not agree.

First, Commission jurisdiction over municipal and cooperative electrical utilities is different than the Commission's jurisdiction over investor-owned electric utilities. Second, the Commission does not have the level of data regarding the reliability of municipal and cooperative systems that it has for IOUs. Third, the governance of the municipals (elected public officials) and cooperatives (boards elected by the member/consumers) is dramatically different from that of the IOUs (management selected by shareholders), and the profit motives of the various entities are entirely different. As a result of these differences, staff recommends that while a reporting rule is entirely appropriate for the municipals and cooperatives, it is not appropriate for the IOUs.

**Costs Estimates Due To Proposed Rule 25-6.0342**

Staff recommends significant changes to the Commission's proposed rule on electric infrastructure strengthening. Staff recommends replacing the proposed standards of construction with storm hardening plans. Given this significant shift, no firm cost estimates on the impact of staff's recommended language is contained in the record. To the extent that IOUs harden their system, there will be costs, and these costs may fall somewhere in the large range of estimates prepared by the parties and contained in the record. As the record demonstrates, however, one significant problem with the standards of construction language as proposed was the lack of specificity about what the IOUs would do; without such specificity, both the IOUs and the Attachers were unable to develop concrete cost estimates of the impacts of the rule as proposed.

Staff's revised language, however, contains explicit requirements that IOUs, in developing their storm hardening plans, will seek input on the cost effectiveness of the plans, and will include this input when the plans are filed with the Commission. The Commission will then consider the cost estimates of both the IOUs and the Attachers in determining whether the storm hardening plans are feasible and cost-effective, and in determining which storm hardening activities to direct the IOUs to undertake. Therefore, the best and most accurate information on costs will be before the Commission at the time it makes a decision on which infrastructure improvements to require through the approval of the storm hardening plans.

**Conclusion**

Staff recommends Rule 25-6.0342 be adopted with changes to the rule proposed by the Commission on June 20, 2006. Staff recommends that these changes are significant improvements as they address and resolve the concerns of the Attachers while still implementing the Commission's intent to strengthen Florida's electrical infrastructure, increase safety and reliability, and reduce outages and their attendant costs. Staff recommends that the Commission adopt new Rule 25-6.0342, Electric Infrastructure Storm Hardening, as proposed, with changes.

**Issue 4**: Should the Commission adopt Rule 25-6.0345, Florida Administrative Code, Safety Standards for Construction of New Transmission and Distribution Facilities, as proposed, with changes?

**Recommendation**: Yes. (Velazquez, Hewitt, Mills, Harris)

**Staff Analysis**:

**Staff's Recommended Changes**

Staff recommends certain changes to the proposed rule based on preliminary comments from the JAPC staff attorney, consideration of the comments made at the August 31, 2006, hearing, and post-hearing comments.

**25-6.0345(1):** Staff recommends changing the edition of the NESC that is incorporated by reference to the 2007 edition as the minimum applicable safety standards for electric transmission and electric distribution facilities for all new facilities constructed on or after February 1, 2007. Staff recommends that facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC specified by subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC.[7] Staff recommends two additional editorial changes that delete obsolete language; the first is a reference to 1991 Florida Statutes, and the second pertains to work-order numbers assigned on or after the effective date of the rule.

**25-6.0345(2)-(7):** No changes.

**Issues Raised By The Parties**

Adoption of the 2007 edition of the NESC

The Joint IOUs and the FCTA recommended that the Commission adopt the 2007 edition of the NESC. [TR 32, 37, 99, 157] The Attachers do not object to this change. Staff surveyed Florida's electric utilities, including many municipal and cooperative utilities, by telephone, to independently solicit each utility's ability to implement the 2007 edition of the NESC by February 1, 2007. The consensus is that each electric utility will be able to implement the 2007 edition within that time.

The February 2007 effective date is consistent with the NESC. NESC Rule 016, Effective Date, states "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." A following note explains that the 180 days is allowed for utilities and regulatory authorities to acquire copies of the new edition and to change regulations, internal standards, and procedures as may be required. The 2007 edition was published August 1, 2006.

[7] Subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC provide two categories for existing installations: those that comply with the 2007 NESC and those that comply with the edition of the NESC effective at the time of the original installation or with any subsequent edition of the NESC thereafter.

Staff has reviewed the 2007 edition of the NESC and recommends the Commission adopt it with an effective date of February 1, 2007. Staff also recommends a change to clarify that existing facilities need not be upgraded to comply with the 2007 edition; instead such facilities must comply with subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC.

Limiting Storm Hardening Options by Striking "at a minimum" from the Rule

Both the FCTA and Time Warner Telecom suggest the Commission remove "at a minimum" language from the proposed rule to avoid any implication that the NESC safety standards represent a minimum standard that should be exceeded. As discussed more fully in Issue 1, staff disagrees with deleting the "at a minimum" language because inclusion of the language implements the Legislature's clear intent. The Florida Legislature amended Section 366.04(6), Florida Statutes, in 2006 to require the Commission, in adopting safety standards, to at a minimum adopt, after review, new editions of the NESC. Thus, it is wholly appropriate for the Commission to amend its rules governing electric safety matters to be consistent with the Florida Statutes. Staff recommends the Commission therefore reject requests to strike the phrase "at a minimum" from the rule.

**Costs Estimates Due To Proposed Rule 25-6.0345**

Adopting the 2007 edition of the NESC does not impose additional costs on electric utilities because Section 366.04(6), Florida Statutes, already requires that, at a minimum, the Commission review and adopt the latest version of the NESC. As discussed above, staff made a phone survey of the Florida electric utilities to independently solicit each electric utility's ability to implement the 2007 edition of the NESC. There is consensus that each electric utility will be able to implement the 2007 edition of the NESC within the February 2007 timeframe.

**Conclusion**

Section 366.04(6), Florida Statutes, amended in 2006, requires the Commission to, at a minimum, adopt the 2007 edition of the NESC. Staff has reviewed the 2007 edition of the NESC, and recommends the Commission adopt Rule 25-6.0345 as proposed with changes.

**Issue 5**: Should the Commission adopt Rule 25-6.064, Florida Administrative Code, Extension of Facilities, as proposed, with one change?

**Recommendation**: Yes. (Daniel, Kummer, Harris)

**Staff Analysis**:

**Summary of Proposed Rule and Staff's Recommended Change**

Rule 25-6.064 addresses the calculation of contributions-in-aid-of-construction (CIAC) for line extensions. The calculations of CIAC for underground extensions in new subdivisions and conversions of existing overhead to underground facilities are covered in Rules 25-6.078 and 25-6.115, respectively. Because staff recommends in Issue 1 that storm hardening plans be moved from Rule 25-6.034 to Rule 25-6.0342, one change needs to be made to this rule, as proposed, to reference the correct rule citation. The references in subsection (5) of the proposed rule to Rule 25-6.034 should be changed to Rule 25-6.0342.

**Rule 25-6.064(1)-(4)** No changes.

**Rule 25-6.064(5):** Subsection (5) requires that the costs included in the calculations of CIAC be based on the construction standards addressed in Rule 25-6.0342, Electric Infrastructure Storm Hardening.

**Rule 25-6.064(6)-(7):** No changes.

**Issues Raised by the Parties**

In its post hearing comments, BellSouth reiterated its earlier comments about reducing pole attachment rates to recognize CIAC and pole attachment charges paid by other users. At the rule hearing, the telecommunications companies and cable providers spent significant time advocating their position that the Commission has no jurisdiction over pole attachment rates. Staff agrees with FPL's assessment that this is not the appropriate forum to renegotiate pole attachment charges. [TR 158] Pole attachment charges are agreed to in private contracts outside of the Commission's jurisdiction. Any further negotiations between the parties regarding pole attachment charges should take place in that context.

The Attachers also objected to the inclusion of a reference to Rule 25-6.0342,[8] Electric Infrastructure Storm Hardening. While Rule 25-6.064 does not now include a specific reference to any increased infrastructure costs resulting from the storm hardening plans required by Rule 25-6.0342, staff believes such a reference should be included. As the IOUs go forward with infrastructure reliability and safety improvements, there will be significant cost impacts on the value of electrical plant. Given that the intent of this rule is to quantify the costs for overhead and underground facilities construction in order to accurately determine the appropriate amount

[8] The actual objection is to the reference to the construction standards referenced in Rule 25-6.034 as proposed. Since staff recommends storm hardening plans be moved to Rule 25-6.0342, staff has renumbered the Attachers' objection to reflect its new location.

of CIAC to be collected, these costs should be reflected in this rule. No other substantive comments regarding the proposed changes to Rule 25-6.064 were made at the August 31 rule hearing.

**Conclusion**

The proposed rule provides needed clarification and simplification to existing language and addresses inherent problems in the existing rule with respect to CIAC estimates, prorating, waivers, and customer recourse in CIAC disputes. Because staff recommends that storm hardening plans be addressed in Rule 25-6.0342, one change must be made to this rule to reflect the correct reference in subsection (5). Staff recommends that Rule 25-6.064 be adopted as proposed with this one change.

**Issue 6**: Should the Commission adopt Rule 25-6.078, Florida Administrative Code, Schedule of Charges, as proposed, with one change?

**Recommendation**: Yes. (Kummer, Trapp, Breman, Harris)

**Staff Analysis**:

**Summary of Proposed Rule and Staff's Recommended Change**

Rule 25-6.078 sets forth the procedure for determining the Estimated Average Cost Differential, or per lot differential, charged to developers who plan to place electrical facilities underground in a new subdivision. The Commission's proposed amendments to the rule clarify existing language and make the rule consistent with the changes proposed in Rules 25-6.064 and 25-6.115. Because staff recommends in Issue 1 that storm hardening plans be moved from Rule 25-6.034 to Rule 25-6.0342, one change needs to be made to this rule, as proposed, to reference the correct rule citation. The references in subsection (2) of the proposed rule to Rule 25-6.034, should be changed to Rule 25-6.0342.

**Rule 25-6.078(1):** No changes.

**Rule 25-6.078(2):** Subsection (2) requires underground and overhead costs used to determine the per-lot cost differential to be estimated reflecting Rule 25-6.0342, Electric Infrastructure Storm Hardening.

**Rule 25-6.078(3)-(10):** No changes.

**Issues Raised by the Parties**

The Towns of Jupiter Island and Palm Beach suggested significantly expanding this rule in their earlier comments. During the hearing, however, the Towns, along with the City of North Miami, expressed support for the rule as proposed as a good starting point. They cited specifically to the requirement to track costs separately for overhead and underground facilities, the inclusion of lifecycle costs and benefits, and the inclusion of storm restoration costs in the calculation of the CIAC. (TR 119, 133)

The Attachers objected to the inclusion of a reference to Rule 25-6.0342, Electric Infrastructure Storm Hardening.[9] While Rule 25-6.078 does not now include a specific reference to any increased infrastructure costs resulting from the storm hardening plans required by Rule 25-6.0342, staff believes such a reference should be included. As the IOUs go forward with infrastructure reliability and safety improvements, there will be significant cost impacts on the investment in electrical plant. Given that the intent of this rule is to quantify the differential in costs between overhead and underground facilities construction, these costs should be reflected in this rule.

BellSouth also reiterated its earlier comments about its inability to recover any additional costs associated with the proposed changes to the rule. Staff emphasizes that Rule 25-6.078 only

[9] See Footnote 8.

applies to the installation of electric distribution facilities in new subdivisions. The basic concept of the rule has been in place since 1978 (it was last amended in 1997 to change some cost reporting forms). Given the amount of construction in Florida over the last 30 years, staff believes BellSouth has some mechanism in place to recover its costs for installing facilities in new subdivisions today. The proposed changes to the rule do not affect existing practices in this regard.

FPL noted, "the basic purpose of the Commission's revisions to those rules [25-6.064, 6.078 and 6.115] is to reflect potential differences in maintenance and storm restoration costs between overhead and underground distribution service in the calculation of CIAC . . . We urge the Attachers to withdraw their objections to the CIAC rules so that they can be put into effect as quickly as possible. " (TR 157) The Towns also urged the Commission to go forward as quickly as possible with these CIAC rule changes. (TR 121) No other substantive comments were received on this rule.

**Conclusion**

The primary purpose of the amendments to this rule is to better clarify the identification and tracking of costs by overhead and underground installations. Because staff recommends that storm hardening plans be addressed in Rule 25-6.0342, one change needs to be made to this rule to reflect the correct reference in subsection (2). Otherwise, staff recommends the rule be adopted as proposed.

**Issue 7**: Should the Commission adopt Rule 25-6.115, Florida Administrative Code, Facility Charges for Conversion of Existing Overhead Investor-Owned Distribution Facilities, as proposed, with one change?

**Recommendation**: Yes. (Kummer, Trapp, Breman, Harris)

**Staff Analysis**:

**Summary of Proposed Rule and Staff's Recommended Change**

Rule 25-6.115 addresses conversion of existing overhead distribution facilities to underground facilities. This rule was originally adopted to codify what would be included in estimates for requested conversions. The Commission proposed amendments to the rule to clarify existing language and to make the rule consistent with the changes proposed in Rules 25-6.064 and 25-6.078. Because staff recommends in Issue 1 that storm hardening plans be moved from Rule 25-6.034 to Rule 25-6.0342, one change needs to be made to this rule, as proposed, to reference the correct rule citation. The references in paragraph 8(a) and subsection (9) of the proposed rule to Rule 25-6.034 should be changed to Rule 25-6.0342.

**Rule 25-6.115(1)-(7):** No changes.

**Rule 25-6.115(8):** Subsection (8) removes the reference to conversions that is no longer necessary and provides that the charge for the proposed underground facilities shall be based on the requirements of Rule 25-6.0342, Electric Infrastructure Storm Hardening.

**Rule 25-6.115(9):** Subsection (9) establishes that the charge for all estimated construction costs shall be based on the requirements of Rule 25-6.0342, Electric Infrastructure Storm Hardening.

**Rule 25-6.115(10)-(12)** No changes.

**Issues Raised by the Parties**

The Attachers objected to the inclusion of a reference to Rule 25-6.0342,[10] Electric Infrastructure Storm Hardening. While Rule 25-6.115 does not now include a specific reference to any increased infrastructure costs resulting from the storm hardening plans required by Rule 25-6.0342, staff believes such a reference should be included. As the IOUs go forward with infrastructure reliability and safety improvements, there will be significant cost impacts on the investment in electrical plant. Given that the intent of this rule is to quantify the differential in costs between overhead and underground facilities construction, these costs should be reflected in this rule.

BellSouth reiterated its earlier comments about its inability to recover the cost of conversions of existing facilities. Staff notes that this rule addresses only conversions requested by an applicant, such as a city or homeowners associations. This rule has been in place, and conversions have been occurring, since 1992. Staff believes BellSouth has some mechanism in

[10] See Footnote 8.

place to recover costs of conversion today. The Commission's proposed changes to the rule do not affect existing practices in this regard.

**Conclusion**

The primary purpose of the amendments to this rule is to clarify the method for identifying and tracking costs for overhead and underground installations. Because staff recommends that storm hardening plans be addressed in Rule 25-6.0342, one change needs to be made to this rule in paragraph 8(a) and subsection (9) to reflect the correct reference to Rule 25-6.0342, F.A.C.

**Issue 8**: Should the Commission grant Trevor G. Underwood's Motion to Establish a New Docket?

**Recommendation**: No. (Harris, Breman, Trapp)

**Staff Analysis**: Mr. Underwood, a resident of the City of Ft. Lauderdale, filed post-hearing comments in Docket Nos. 060172-EU and 060173-EU, stating that he did not believe the proposed rules would remedy the problems of electric outages. He maintains that the root cause of recent reliability issues is the "lack of incentive for proper maintenance of overhead facilities and the lack of incentive of new investment. . . based on regulated franchised monopolies providing for transmission and distribution system." [Post Hearing Comments, September 28, 2006, p. 4] His solution is to "replace this regulated monopoly environment with competition at each stage of electricity supply for which this is possible." [Post Hearing Comments, September 28, 2006, p. 4]

Mr. Underwood goes on to state that the participants in the hearing did not present a sufficiently broad perspective on the problem. His alternative is "for municipalities to construct, control and own the underground local utility distribution systems for electricity, telephone, Internet access and cable services in place of existing utility owned overhead facilities and to rent them to multiple competitive providers of these services, or in the case of electricity, alternatively, for the municipal electric utility to purchase electricity competitively from electricity generators in the wholesale market and to resell to its customers, in place of the current system based on regulation of franchised monopolies." [Post Hearing Comments, September 28, 2006, p. 8]

The action Mr. Underwood seeks in asking the Commission to open a new docket is action that can only be taken by the City of Ft. Lauderdale, not the Public Service Commission. Staff therefore recommends that the Commission deny Mr. Underwood's motion to open a new docket.

**Issue 9**: Should the rules as approved by the Commission be filed for adoption with the Secretary of State and Docket Nos. 060172-EU and 060173-EU be closed?

**Recommendation**: Yes. The rules should be filed for adoption once the rule challenge filed at the Division of Administrative Hearings has been resolved. (Harris)

**Staff Analysis**: After a Notice of Change is published in the Florida Administrative Weekly and if the rule challenge filed at the Division of Administrative Hearings is withdrawn, dismissed, or resolved in the Commission's favor, the rules may be filed with the Secretary of State for adoption and the dockets may be closed.

PART III

GENERAL MANAGEMENT REQUIREMENTS

**25-6.034 Standard of Construction.**

(1) 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.

(2) Each utility shall, at a minimum, comply with the National Electrical Safety Code (ANSI C-2) [NESC], incorporated by reference in Rule 25-6.0345, F.A.C.

(a) For facilities constructed on or after February 1, 2007, the 2007 NESC shall apply. A copy of the 2007 NESC, ISBN number 0781-4893-8, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(b) Facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC specified by subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC, incorporated by reference in Rule 25-6.0345, F.A.C.

~~(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.~~

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

Law Implemented 366.04(2)(c),(f),(5), 366.05(1) FS

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

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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

(1) In order to facilitate safe and efficient access for installation and maintenance, to the extent feasible and cost-effective, electric distribution facilities shall be placed adjacent to a public road, normally in front of the customer's premises.

(2) 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.

(3) 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.

(4) 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.

(5) Where the expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments or the facilities of existing joint users, and will result in the relocation of such facilities to a new location adjacent to a public road, the utility shall notify and attempt in good faith to accommodate concerns raised by third-party attachers and joint users, including input and concerns related to the cost impacts of the proposed relocation on attaching entities. The electric utility shall also, to the extent practical, coordinate the construction of its facilities with the affected third-party attachers and joint users.

(6) Any dispute or challenge related to the implementation of this rule by a customer, applicant for service, or attaching entity shall be resolved by the Commission.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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

Law Implemented 366.04(2)©,(5),(6), 366.05(1) FS

History-New _____.

**25-06.0342 Electric Infrastructure Storm Hardening.**

(1) Application and Scope. This rule is intended to ensure the provision of safe, adequate, and reliable electric transmission and distribution service for operational as well as emergency purposes; require the cost-effective strengthening of critical electric infrastructure to increase the ability of transmission and distribution facilities to withstand extreme weather conditions; and reduce restoration costs and outage times to end-use customers associated with extreme weather conditions. This rule applies to all investor-owned electric utilities.

(2) Storm Hardening Plans. Each utility shall, no later than 90 days after the effective date of this rule, file with the Commission for its approval a detailed storm hardening plan. Each utility's plan shall be updated every 3 years, unless the Commission, on its own motion or on petition by a substantially affected person or utility, initiates a proceeding to review and, if appropriate, modify the plans. In a proceeding to approve a utility's plan, the Commission shall consider whether the utility's plan meets the desired objectives of enhancing reliability and reducing restoration costs and outage times in a prudent, practical, and cost-effective manner to the affected parties.

(3) Contents of Plan: Each utility storm hardening plan shall contain a detailed description of the construction standards, policies, practices, and procedures employed to enhance the reliability of overhead and underground electrical transmission and distribution facilities in conformance with the provisions of this rule. Each filing shall, at a minimum, address the extent to which the utility's storm hardening plan:

(a) Complies, at a minimum, with the National Electric Safety Code (ANSI C-2) [NESC] that is applicable pursuant to Rule 25-6.034(2), F.A.C.

(b) Adopts the extreme wind loading standards specified by Figure 250-2(d) of the 2007 edition of the NESC for the following distribution facilities:

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

(c) Is designed to mitigate damage to underground and supporting overhead transmission and distribution facilities due to flooding and storm surges.

(d) Provides for the placement of new and replacement distribution facilities so as to facilitate safe and efficient access for installation and maintenance pursuant to Rule 25-6.0341, F.A.C.

(4) Deployment Strategy: Each utility storm hardening plan shall explain the systematic approach the utility will follow to achieve the desired objectives of enhancing reliability and reducing restoration costs and outage times associated with extreme weather events. The utility's storm hardening plan shall provide a detailed description of its deployment strategy including, but not limited to the following:

(a) A description of the facilities affected; including technical design specifications, construction standards, and construction methodologies employed.

(b) The communities and areas within the utility's service area where the electric infrastructure improvements, including facilities identified by the utility as critical infrastructure and along major thoroughfares pursuant to subparagraph (3)(b)3. are to be made.

(c) The extent to which the electric infrastructure improvements involve joint use facilities on which third-party attachments exist.

(d) An estimate of the costs and benefits to the utility of making the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages.

(e) An estimate of the costs and benefits, obtained pursuant to subsection (6) below, to third-party attachers affected by the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages realized by the third-party attachers.

(5) Attachment Standards and Procedures: As part of its storm hardening plan, each utility shall 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 edition of the National Electrical Safety Code (ANSI C-2) that is applicable pursuant to Rule 25-6.034(2), F.A.C., and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably practicable, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or pole 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.

(6) Input from Third-Party Attachers: In establishing its storm hardening plan and Attachment Standards and Procedures, or when updating or modifying such plan or Attachment Standards and Procedures, each utility shall seek input from and attempt in good faith to accommodate concerns raised by other entities with existing agreements to share the use of its electric facilities.

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(7) Dispute Resolution: Any dispute or challenge to a utility's storm hardening plan, construction standards, deployment strategy, Attachment Standards and Procedures, or any projects implementing any of the above by a customer, applicant for service, or attaching entity shall be resolved by the Commission.

(8) Nothing in this rule is intended to conflict with Title 47, United States Code, Section 224, relating to Federal Communications Commission jurisdiction over pole attachments.

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

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

History-New _____.

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

(1) The ~~In compliance with Section 366.04(6)(b), F.S., 1991, the~~ Commission adopts and incorporates by reference the ~~2002 edition of the~~ National Electrical Safety Code (ANSI C-2) [NESC], ~~published August 1, 2001,~~ as the applicable safety standards for transmission and distribution facilities subject to the Commission's safety jurisdiction. For electrical facilities constructed on or after February 1, 2007, the 2007 NESC shall apply. Electrical facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC specified by subsections 013.B.1, 013.B.2, and 013.B.3 of the 2007 NESC. Each investor-owned ~~public~~ electric utility, rural electric cooperative, and municipal electric system shall, at a minimum, comply with the standards in these provisions. ~~Standards contained in the 2002 edition shall be applicable to new construction for which a work order number is assigned on or after the effective date of this rule.~~ A copy of the 2007 NESC, ISBN number 0781-4893-8,

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may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE).

(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 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.

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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) FS.

Law Implemented 366.04(2)(f),(6) FS

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

PART IV

GENERAL SERVICE PROVISIONS

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**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:

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| | | | | |
|---|---|---|---|---|
| $CIAC_{UG}$ | □ | $CIAC_{OH}$ | ± | 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) − (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~~

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~~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 25-6.0342, Electric Infrastructure Storm Hardening.

~~(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.~~

(6)~~(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.

(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

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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.

(7)~~(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.~~

(8)~~(13)~~ A detailed statement of its standard facilities extension and upgrade policies~~y~~ shall be filed by each utility as part of its tariffs. The tariffs ~~This policy~~ shall have uniform application and shall be nondiscriminatory.

(9)~~(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 ____.

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PART V

RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

**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 25-6.0342, Electric Infrastructure Storm Hardening.

(3)~~(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.

(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 underground and overhead systems, if any, shall ~~may~~ be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish

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sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(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.

(6)~~(5)~~ Service for a new multiple-occupancy building shall be constructed underground within the property to be served to the point of delivery at or near the building by the utility at no charge to the applicant, provided the utility is free to construct its service extension or extensions in the most economical manner.

(7)~~(6)~~ T he recovery of the cost differential as filed by the utility and approved by the Commission may not be waived or refunded unless it is mutually agreed by the applicant and the utility that the applicant will perform certain work as defined in the utility's tariff, in which case the applicant shall receive a credit. Provision for the credit shall be set forth in the utility's tariff rules and regulations, and shall be no more in amount than the total charges applicable.

(8)~~(7)~~ The difference in cost as determined by the utility in accordance with its tariff shall be based on full use of the subdivision for building lots or multiple-occupancy buildings. If any given subdivision is designed to include large open areas, the utility or the applicant may refer the matter to the Commission for a special ruling as provided under Rule 25-6.083, F.A.C.

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(9)~~(8)~~ The utility shall not be obligated to install any facilities within a subdivision until satisfactory arrangements for the construction of facilities and payment of applicable charges, if any, have been completed between the applicant and the utility by written agreement. A standard agreement form shall be filed with the company's tariff.

(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,___.

PART VII

UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

**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~~

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~~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) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

(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) s~~S~~uch agreement is not expected to cause the general body of ratepayers to incur additional ~~greater~~ costs.

(4) Nothing in the tariff shall prevent the applicant from requesting a non-binding cost estimate which shall be provided to the applicant free of any charge or fee.

(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.

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(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) The charge paid by the applicant shall be the charge for the proposed underground facilities as indicated in subsection (8) minus the charge for overhead facilities as indicated in subsection (9) minus the non-refundable deposit amount. The applicant shall not be required to pay an additional amount which exceeds 10 percent of the binding cost estimate.

(8) For the purpose of this rule, the charge for the proposed underground facilities shall include:

(a) t~~T~~he estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.0342, Electric Infrastructure Storm Hardening, 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 25-6.0342, Electric Infrastructure Storm Hardening.

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

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(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~~1~~) 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 ____.

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