

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 26, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *SMC*
RE: Docket No. 20060512-EU

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

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2018 JUL 26 AM 11:11
COMMISSION
CLERK

TOM LEE
President



ALLAN G. BENSE
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

Representative Ellyn Setnor Bogdanoff, Chair
Senator Michael S. "Mike" Bennett, Vice-Chair
Senator Nancy Argenziano
Senator Larcenia J. Bullard
Representative Susan K. Goldstein
Representative Matthew J. "Matt" Meadows

F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

October 16, 2006

Mr. Larry Harris
Associate General Counsel
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED
06 OCT 19 AM 11:29
FLA PUBLIC SERVICE COM. H.
OFFICE OF THE
GENERAL COUNSEL

Re: Public Service Commission Rule 25-6.0343

Dear Mr. Harris:

Thank you for your letter and attachment, dated October 11, 2006. I have reviewed the changed rule and prepared the following comments for your consideration and reply. The following comments replace those pertaining to rule 25-6.0343 in my letter dated September 19, 2006. The remainder of the remarks in that letter are still effective.

25-6.0343(3)(a)

Please send me a copy of the 2007 NESC. The document should be incorporated by reference when the rule is filed for adoption. The proposed language also provides that "the edition of the NESC in effect at the time of the facility's initial construction" shall govern electrical facilities constructed prior to February 1, 2007. Please identify the rule[s] which incorporates the various documents by reference.

The National Electrical Safety Code dated 2002 can be picked up at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Rosner".

John Rosner
Chief Attorney

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

October 24, 2006

Mr. John Rosner
Chief Attorney
Joint Administrative Procedures Committee
Room 120,, Holland Building
Tallahassee, Florida 32399-1300

Re: PSC Rule 25-6.0343, F.A.C.

Dear Mr. Rosner:

Thank you for your letter of October 16, 2006. A copy of the 2007 National Electrical Safety Code (NESC) is attached. As far as incorporation of the NESC into Rule 25-6.0343(3)(a), we do not believe it to be necessary. Rule 25-6.0343 is a reporting rule only; subsection (3)(a) only requires municipally owned systems and rural electrical cooperatives to report the extent to which their construction standards, policies, guidelines, practices, and procedures comply with the NESC. Since the Rule does not require actual compliance with the NESC, we do not see the need for incorporation. If I can be of any further assistance, please do not hesitate to contact me at 413-6076 or ldharris@psc.state.fl.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Harris".

Larry D. Harris
Associate General Counsel
Florida Public Service Commission

Enclosure

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
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STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

November 7, 2006

Mr. John Rosner
Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

Re: PSC Rule 25-6.0343, FAC

Dear Mr. Rosner:

Thank you for taking the time to speak with me regarding your concerns with incorporation of the National Electric Safety Code (NESC) into Rule 25-6.0343, Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements. To satisfy your concerns, we will be making the following technical change to the rule when it is filed for adoption:

Paragraph 3(a), the first sentence will read: Comply, at a minimum, with the National Electric Safety Code (ANSI C-2) [NESC], incorporated by reference in Rule 25-6.0345, F.A.C.

Thank you for your time and assistance. If I can provide any further information, please do not hesitate to contact me at 413-6076 or lharris@psc.state.fl.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Harris".

Larry D. Harris
Associate General Counsel

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
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STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

December 21, 2006

Ms. Liz Cloud
Bureau of Administrative Code
Department of State
R. A. Gray Building, Room 101
500 South Bronough Street
Tallahassee, FL 32399-0250

Re: Corrected Text of Rule 25-6.0345, F.A.C., Filed for Adoption 11/20/06

Dear Ms. Cloud:

Enclosed are an original and three copies of Rule 25-6.0345, F.A.C., as it correctly appeared in the October 20, 2006 issue of the Florida Administrative Weekly. Please substitute this version of the rule for the one that was inadvertently filed for adoption on November 20, 2006.

Please do not hesitate to call me at (850) 413-6076 if you have any questions. Thank you for your assistance.

Sincerely,


Larry D. Harris
Associate General Counsel

LDH:wlt

Enclosure

cc: John Rosner, Joint Administrative Procedures Committee
Commission Clerk & Administrative Services

1 25-6.0343 Municipal Electric Utility and Rural Electric Cooperative Reporting
2 Requirements

3 (1) Application and Scope. The purpose of this rule is to define certain reporting
4 requirements by municipal electric utilities and rural electric cooperatives providing
5 distribution service to end-use customers in Florida.

6 (2) The reports required by subsections (3), (4), and (5) of this rule shall be filed with
7 the Director of the Division of Economic Regulation by March 1 of each year for the
8 preceding calendar year.

9 (3) Standards of Construction. Each municipal electric utility and rural electric
10 cooperative shall report the extent to which its construction standards, policies, practices, and
11 procedures are designed to address the ability of transmission and distribution facilities to
12 mitigate damage caused by extreme weather. Each utility report shall, at a minimum, address
13 the extent to which its construction standards, policies, guidelines, practices, and procedures:

14 (a) Comply, at a minimum, with the National Electrical Safety Code (ANSI C-2)
15 [NESC]. For electrical facilities constructed on or after February 1, 2007, the 2007 NESC
16 shall apply. Electrical facilities constructed prior to February 1, 2007, shall be governed by
17 the edition of the NESC in effect at the time of the facility's initial construction. A copy of
18 the 2007 NESC, ISBN number 0-7381-4893-8, may be obtained from the Institute of Electric
19 and Electronic Engineers, Inc. (IEEE).

20 (b) Are guided by the extreme wind loading standards specified by Figure 250-2(d) of
21 the 2002 edition of the NESC for:

22 1. new construction;

23 2. major planned work, including expansion, rebuild, or relocation of existing

24 facilities, assigned on or after the effective date of this rule; and

25

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

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

3 (c) Address the effects of flooding and storm surges on underground distribution
4 facilities and supporting overhead facilities.

5 (d) Provide for placement of new and replacement distribution facilities so as to
6 facilitate safe and efficient access for installation and maintenance.

7 (e) Include written safety, pole reliability, pole loading capacity, and engineering
8 standards and procedures for attachments by others to the utility's electric transmission and
9 distribution poles.

10 (4) Facility Inspections. Each municipal electric utility and rural electric cooperative
11 shall report, at a minimum, the following information pertaining to its transmission and
12 distribution facilities:

13 (a) A description of the utility's policies, guidelines, practices, and procedures for
14 inspecting transmission and distribution lines, poles, and structures including, but not limited
15 to, pole inspection cycles and pole selection process.

16 (b) The number and percentage of transmission and distribution inspections planned
17 and completed.

18 (c) The number and percentage of transmission poles and structures and distribution
19 poles failing inspection and the reason for the failure.

20 (d) The number and percentage of transmission poles and structures and distribution
21 poles, by pole type and class of structure, replaced or for which remediation was taken after
22 inspection, including a description of the remediation taken.

23
24 (5) Vegetation Management. Each municipal electric utility and rural electric

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from existing law.

1 cooperative shall report, at a minimum, the following information pertaining to the utility's
2 vegetation management efforts:

3 (a) A description of the utility's policies, guidelines, practices, and procedures for
4 vegetation management, including programs addressing appropriate planting, landscaping, and
5 problem tree removal practices for vegetation management outside of road right-of-ways or
6 easements, and an explanation as to why the utility believes its vegetation management
7 practices are sufficient.

8 (b) The quantity, level, and scope of vegetation management planned and completed
9 for transmission and distribution facilities.

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

11 Law Implemented: 366.04(2)(f), 366.04(6) FS.

12 History: New 12/12/06.
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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 2, 2006
TO: Office of General Counsel (Harris)
FROM: Division of Economic Regulation (Hewitt) *BA JF*
RE: Statement of Estimated Regulatory Costs for Florida Electric Cooperatives Association (FECA) Alternative Proposed Rule 25-6.0343, F.A.C., Standards of Construction – Municipal Electric Utilities and Rural Electric Cooperatives. Docket No. 060512-EU

SUMMARY OF THE RULE

FECA's Alternative Proposed Rule 25-6.0343, F.A.C., Standards of Construction, contains the reporting requirements for municipal electric utilities (Munis) and rural electric cooperative utilities (Co-ops). Each Muni and Co-op would have to report the extent to which their construction standards, policies, practices, and procedures are designed to storm harden the transmission and distribution (T&D) facilities. The proposed rule would require that each utility's annual report should at a minimum address the extent the standards, policies, practices, and procedures comply with the National Electric Safety Code (NESC). Each report must also address the extent that the utility is guided by the extreme wind loading standards specified by Figure 250-2(d) of the 2002 NESC for: (1) new construction, (2) major planned upgrades, rebuilds, or relocation of existing facilities, and (3) targeted critical infrastructure and major thoroughfares. Also, the report would address the effects of flooding and storm surges on underground distribution facilities, provide for placement of new and replacement distribution facilities to facilitate safe and efficient access, and include written safety, reliability, and engineering standards and procedures for attachments by others. Munis and Co-ops would also have to report information on their inspections of T&D facilities, including failures and vegetation management.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The 18 cooperatives and 34 municipally operated electric utilities would be affected by the proposed alternative rule. These utilities sell electricity to industrial, commercial, and residential customers throughout the state.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

There would be some minor implementation costs for the Commission for reviewing annual reports submitted because of the proposed rule. The Commission would benefit by the proposed rule from the improved information on the distribution grid and possibly fewer complaints about storm outages.

There should be no impact on agency revenues and the costs of administering the rule would be covered by existing staff.

There should be no negative impact on other state and local government entities. Those entities should benefit from future improvements of the electrical transmission and distribution systems.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

There were no cost data submitted concerning transactional costs to implement FECA's proposed rule. However, FECA states in its proposal that, "The Alternative Rule is a less costly alternative to the Proposed Rule, but it accomplishes the same purposes." There would be some relatively minor costs associated with gathering data and preparing an annual report due to the proposed rule.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a net positive impact on small businesses, cities, and counties if electrical system facilities are improved. There should be no significant negative impact from the proposed alternative rule.

CH:kb

cc: Mary Andrews Bane
Chuck Hill
Jim Bremen
Hurd Reeves

STATE OF FLORIDA

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

July 31, 2006

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FLA PUBLIC SERVICE COMM.
OFFICE OF THE
GENERAL COUNSEL

Mr. Donald Schleicher
Lee County Electric Cooperative, Inc.
P. O. Box 3455
North Fort Myers, Florida 33918-3455

Mr. Schleicher:

Please find attached Staff's data requests, containing 22 numbered requests, directed to Florida's electric municipal utilities and electric cooperative utilities in Docket No. 060512-EU (Proposed Adoption of New Rule 25-6.0343, F.A.C., Standards of Construction - Municipal Electric Utilities and Rural Electric Cooperatives). Responses to these data requests are solicited from each such utility based upon Staff's July 21, 2006, meeting with representatives of the Florida Electric Cooperative Association (FECA) and subsequent telephone discussions with representatives of the Florida Municipal Electric Association, Inc. (FMEA). The attached requests are proposed to assist staff in developing rule language appropriate for this docket. We request a response to these questions to be filed in the Commission's Division of Commission Clerk and Administrative Services by August 25, 2006.

If you have any questions related to these data requests, please contact me at (850) 413-6443 or Daniel Lee, Engineering Specialist IV, at (850) 413-6836. Thank you.

Sincerely,

Handwritten signature of William E. McNulty in cursive.

Bill McNulty,
Public Utilities Supervisor

Attachments (1)

cc: Mr. Bill Willingham, FECA
Mr. Barry Moline, FMEA
✓ Larry Harris, GCL
Chris Moore, GCL
Tim Devlin, ECR
Bob Trapp, ECR

STATE OF FLORIDA

COMMISSIONERS:
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MATTHEW M. CARTER II
KATRINA J. TEW



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

July 31, 2006

Mr. Fred Bryant
Florida Municipal Electric Association, Inc.
P. O. Box 3209
Tallahassee, Florida 32315-3209

Mr. Bryant:

Please find attached Staff's data requests, containing 22 numbered requests, directed to Florida's electric municipal utilities and electric cooperative utilities in Docket No. 060512-EU (Proposed Adoption of New Rule 25-6.0343, F.A.C., Standards of Construction - Municipal Electric Utilities and Rural Electric Cooperatives). Responses to these data requests are solicited from each such utility based upon Staff's July 21, 2006, meeting with representatives of the Florida Electric Cooperative Association (FECA) and subsequent telephone discussions with representatives of the Florida Municipal Electric Association, Inc. (FMEA). The attached requests are proposed to assist staff in developing rule language appropriate for this docket. We request a response to these questions to be filed in the Commission's Division of Commission Clerk and Administrative Services by August 25, 2006. Please distribute these questions to FMEA members and consolidate all timely responses into a single filing to the Commission, containing the individual responses from each member utility.

If you have any questions related to these data requests, please contact me at (850) 413-6443 or Daniel Lee, Engineering Specialist IV, at (850) 413-6836. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "William B. McNulty".

Bill McNulty,
Public Utilities Supervisor

Attachments (1)

cc: Mr. Bill Willingham, FECA
Mr. Barry Moline, FMEA
✓ Larry Harris, GCL
Chris Moore, GCL
Tim Devlin, ECR
Bob Trapp, ECR

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OFFICE OF THE
GENERAL COUNSEL

COMMISSIONERS:
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MATTHEW M. CARTER II
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STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

July 31, 2006

RECEIVED
06 AUG - 1 PM 3:28
FLA PUBLIC SERVICE COMM.
OFFICE OF THE
GENERAL COUNSEL

Mr. Charlie Guyton
Squire, Sanders & Dempsey
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301

Mr. Guyton:

Please find attached Staff's data requests, containing 22 numbered requests, directed to Florida's electric cooperative utilities and electric municipal utilities in Docket No. 060512-EU (Proposed Adoption of New Rule 25-6.0343, F.A.C., Standards of Construction - Municipal Electric Utilities and Rural Electric Cooperatives). Responses to these data requests are solicited from each such utility based upon Staff's July 21, 2006, meeting with representatives of the Florida Electric Cooperative Association (FECA) and subsequent telephone discussions with representatives of the Florida Municipal Electric Association, Inc. (FMEA). The attached requests are proposed to assist staff in developing rule language appropriate for this docket. We request a response to these questions to be filed in the Commission's Division of Commission Clerk and Administrative Services by August 25, 2006. Please distribute these questions to FECA members and consolidate all timely responses into a single filing to the Commission, containing the individual responses from each member utility.

If you have any questions related to these data requests, please contact me at (850) 413-6443 or Daniel Lee, Engineering Specialist IV, at (850) 413-6836. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "William B. McNulty".

Bill McNulty,
Public Utilities Supervisor

Attachments (1)

cc: Mr. Bill Willingham, FECA
Mr. Barry Moline, FECA
✓ Larry Harris, GCL
Chris Moore, GCL
Tim Devlin, ECR
Bob Trapp, ECR

**Florida Public Service Commission Staff Distribution Reliability Data Request to Florida
Electric Cooperative Utilities and Florida Municipal Electric Utilities**

Issued July 31, 2006

Instructions: Please refer to "Attachment A" for definition of terms and phrases used in the following questions. If you currently do not have the capability to report the requested information please state what your plans are, if any, to begin capturing the data.

1. **(Generation Events)** Please provide the following service reliability data for the outage events due to generation events for 2003-2005. Please specify whether your response includes outage events during named storms. (See Attachment A for definitions)

Outage Event Description	Date of Event	CMI	CI

2. **(Generation)** Please provide the generation infrastructure damage and cost data related to the named storms for 2003-2005.

3. **(Transmission Events)** Please provide the following service reliability data for the outage events due to transmission events for 2003-2005. Please specify whether your response includes outage events during named storms. (See Attachment A for definitions)

Outage Event Description	Date of Event	CMI	CI

4. **(Transmission)** Please provide the estimated number of company owned poles replaced for each named storm in 2003-2005.

Storm Name	Estimated number of poles replaced

5. **(Transmission)** Please provide the transmission vegetation management circuit miles trimmed, excluding trim activities related to hurricanes for 2003-2005.

6. Please provide the following reliability data for the named storms for 2003-2005. (See attachment A for definitions)

Storm Name, Strength, Landfall Location, and Data Source	Affected Management Regions	Est. # of Company Poles exposed to 74+ mph wind speed	Total # of Company Poles	Est. # of Customers exposed to storm surge or flood	CMI	CI

7. **(Distribution)** Please provide the estimated number of company-owned poles replaced for each named storm in 2003-2005.

Storm Name	Estimated number of poles replaced

8. Please provide the 2003-2005 distribution vegetation management circuit miles trimmed excluding trim activities related to hurricanes.
9. What lessons have been learned in the 2003 – 2005 hurricane seasons and what actions have been implemented or in the process of implementing to improve hurricane preparedness and restoration?
10. Please provide the 3% feeder list for 2003-2005. (See Attachment A for definitions)
11. Describe the process used by your company to analyze the actions required to improve the performance of feeders in the 3% feeder list. Provide examples of programs or actions implemented.
12. Provide any best practices that your company identified for 2003-2005 that will improve reliability performance. Describe how these best practices are identified.
13. Provide a description of any best practices that your company implemented for 2003-2005 that have improved reliability performance. Describe how these best practices are identified.
14. Please provide the number of distribution substations and the total number inspected during normal operation (non-storm related) for 2003-2005.
15. Please provide your company's assessment of the negative (or positive) residual effect of hurricanes on the 2003-2005 reported SAIDI. For each contributing factor (such as infrastructure condition, vegetation condition, and other factors), please provide data demonstrating the time length, SAIDI impact, and SAIFI impact of the residual effect of hurricanes. What actions have been taken to mitigate the negative residual effect?
16. Please provide the number of miles, number of customers, CMI, CI and L-bar for overhead distribution facilities for 2003-2005.

17. Please provide the number of miles, number of customers, CMI, CI and L-bar for underground distribution facilities for 2003-2005.
18. Please provide the following in a spreadsheet format for each feeder circuit in service year end 2005.
- A) Feeder ID
 - B) Sub-Region in which the feeder is located
 - C) Number of overhead lateral lines
 - D) Number of overhead lateral miles
 - E) Number of underground lateral lines
 - F) Number of underground lateral miles
 - G) Number of automatic line sectionalizing devices on the lateral lines
 - H) Number of automatic line sectionalizing devices on the feeder
 - I) Whether the feeder circuit is looped
 - J) Total length of the feeder circuit
 - K) Length of underground portion of the feeder circuit
 - L) Length of overhead portion of the feeder circuit
 - M) Load growth
 - N) Average load
 - O) Peak load recorded
19. Please provide adjusted SAIDI, CAIDI, SAIFI, MAIFIe, CEMI5 and L-bar for your utility for years 2003, 2004 and 2005. (See Attachment A for definitions)

	2003 (Adjusted)	2004 (Adjusted)	2005 (Adjusted)
SAIDI			
CAIDI			
SAIFI			
MAIFIe			
L-bar			
CEMI5			

20. Please provide actual SAIDI, CAIDI, SAIFI, MAIFIE, CEMIS and L-bar for your utility for years 2003, 2004 and 2005. (See attachment A for definitions)

	2003 (Actual)	2004 (Actual)	2005 (Actual)
SAIDI			
CAIDI			
SAIFI			
MAIFIE			
L-bar			
CEMIS			

21. Please list the total number of Outage Events (N), categorized by cause for the highest ten causes of Outage Events for 2003-2005.
22. Please provide a listing of distribution/transmission service reliability complaints appealed to the Board and not resolved within 72 hours. Please include complaint ID number, date of complaint, and description of complaint, utility assessment and response and status of resolution for complaints received during 2004 through 2006 YTD. Status of resolution should include remaining work to be completed and anticipated completion date of such work.

Attachment A

- 1.) **“Area of Service.”** A geographic area where a utility provides retail electric service. An Area of Service can be the entire system, a district, or a subregion of the utility’s system in which centralized distribution service functions are carried out.
- 2.) **“Average Duration of Outage Events (L-Bar).”** The sum of each Outage Event Duration for all Outage Events occurring during a given time period, divided by the number of Outage Events over the same time period within a specific Area of Service.
- 3.) **“Customer Average Interruption Duration Index (CAIDI).”** The average time to restore service to interrupted retail customers within a specified Area of Service over a given period of time. It is determined by dividing the sum of Customer Minutes of Interruption by the total number of Service Interruptions for the respective Area of Service.
- 4.) **“Customers Experiencing More Than Five Interruptions (CEMIS).”** The number of retail customers that sustain more than five Service Interruptions for a specified Area of Service over a given period of time.
- 5.) **“Customer Minutes of Interruption (CMI).”** For a given Outage Event, CMI is the sum of each affected retail customer’s Service Interruption Duration.
- 6.) **“Momentary Average Interruption Event Frequency Index (MAIFIE).”** The average number of Momentary Interruption Events recorded on primary circuits for a specified Area of Service over a given period of time.
- 7.) **“Momentary Interruption.”** The complete loss of voltage for less than one minute. This does not include short duration phenomena causing waveform distortion.
- 8.) **“Momentary Interruption Event.”** One or more Momentary Interruptions recorded by the operation of a utility distribution interrupting device within a five minute period. For example, two or three operations of a primary circuit breaker within a five minute period that did not result in a Service Interruption is one Momentary Interruption Event.
- 9.) **“Number of Customers Served (C).”** The sum of all retail customers on the last day of a given time period within a specific Area of Service.
- 10.) **“Number of Outage Events (N).”** The sum of Outage Events for an Area of Service over a specified period of time.
- 11.) **“Outage Event.”** An occurrence that results in one or more individual retail customer Service Interruptions.
- 12.) **“Outage Event Duration (L).”** The time interval, in minutes, between the time when a utility first becomes aware of an Outage Event and the time of restoration of service to the last retail customer affected by that Outage Event.

- 13.) **“Service Interruption.”** The complete loss of voltage of at least one minute to a retail customer.
- 14.) **“Service Interruption Duration.”** The time interval, in minutes, between the time a utility first becomes aware of a Service Interruption and the time of restoration of service to that retail customer.
- 15.) **“System Average Interruption Duration Index (SAIDI).”** The average minutes of Service Interruption Duration per retail customer served within a specified Area of Service over a given period of time. It is determined by dividing the total Customer Minutes of Interruption by the total Number of Customers Served for the respective Area of Service.
- 16.) **“System Average Interruption Frequency Index (SAIFI).”** The average number of Service Interruptions per retail customer within a specified Area of Service over a given Number of Customers Served for the respective Area of Service.
- 17.) **“Planned Service Interruption.”** A Service Interruption initiated by the utility to perform necessary scheduled activities, such as maintenance, infrastructure improvements, new construction due to customer growth. Customers are typically notified in advance of these events.
- 18.) **“3% Feeder List.”** Identification of the three percent of the utility’s Primary Circuits (feeders) with the highest number of feeder breaker interruptions. For each primary circuit so identified the utility shall report the primary circuit identification number or name substation origin, general location, number of affected customers by service class served, Number of Outage Events (N), Average Duration of Outage Events (L-Bar), Average Service Restoration Time (CAIDI), whether the same circuit is being reported for the second consecutive year, the number of years the primary circuit was reported on the “Three Percent Feeder List” in the past five years, and the corrective action date of completion.
- 19.) **“Adjusted Distribution Reliability Data.”** Adjusted distribution reliability data may omit Outage Events directly caused by:
 - (a) Planned Service Interruptions;
 - (b) A storm named by the National Hurricane Center;
 - (c) A tornado recorded by the National Weather Service;
 - (d) Ice on lines;
 - (e) A planned load management event;
 - (f) Any electric generation or transmission event not governed by Section 25-6.018(2) and (3), Florida Administrative Code; or
 - (g) An extreme weather or fire event causing activation of the county emergency operation center.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of new rule 25-6.0343, F.A.C.,)
standards of construction -municipal electric)
utilities and rural electric cooperatives)

Docket No. 060512-EU



**JURISDICTIONAL ANALYSIS
PROPOSED RULE 25-6.0343**

Summary

In proposing Rule 25-6.0343, Florida Administrative Code, (hereinafter Rule 25-6.0343) for the specific purpose of increasing distribution system reliability, the Commission exceeded its jurisdiction. As a creature of statute, the Commission has only such jurisdiction as has been conveyed by statute. *State Department of Transportation v. Mayo*, 354 So.2d 359, 361 (Fla. 1977); *State Department of Transportation v. Mayo*, 354 So.2d 359, 361 (Fla. 1977); *Southern States Utilities v. Florida Public Service Commission*, 714 So. 2d 1046, 1051 (Fla. 1st DCA 1998); *Florida Power & Light Company v Albert Litter Studios, Inc.*, 896 So.2d 891, 894-95 (Fla. 3rd DCA 2005). Any reasonable doubt as to the existence of a particular power being exercised by the Commission must be resolved against such exercise. *Radio Telephone Communications, Inc. v. Southeastern Telephone Company*, 170 So.2d 577582 (Fla. 1964); *City of Cape Coral v. GAC Utilities Inc. of Florida*, 281 So.2d 493, 496 (Fla. 1973); *State Department of Transportation v. Mayo*, 354 So.2d 359, 361 (Fla. 1977); *Lee County Electric Cooperative, Inc., v. Jacobs*, 820 So.2d 297, 299 (Fla. 2002). The Commission's basic grant over system reliability for rural electric cooperatives ("cooperatives") and municipal electric utilities ("municipals") is found in the Grid Bill, and that grant of authority is over a "coordinated grid." While jointly used transmission facilities and generation facilities owned by cooperatives and municipals are part of a coordinated grid, distribution facilities and radial

transmission facilities not used by other utilities are not part of such a coordinated grid. Therefore, the Commission lacks statutory jurisdiction to regulate the reliability of cooperatives' and municipals' distribution system reliability.

The Commission's lack of jurisdiction over the reliability of the distribution system of cooperatives and municipals is readily apparent from (a) the plain language of the Grid Bill, (b) the Commission's consistent decision for over more than thirty years not to read the Grid Bill as giving it authority to address the reliability of cooperatives' and municipals' distribution systems, and (c) recent Commission and legislative actions. In proposing Rule 25-6.0343, the Commission adopted a flawed Staff legal analysis which overstated the Commission's jurisdiction over the adoption of safety standards and which failed to differentiate what constituted the coordinated grid.

Background

When proposing Rule 25-6.0343, the Commission set forth the following purpose of that rule and its companion rules and rule amendments:

PURPOSE AND EFFECT: To increase the reliability of Florida's electric transmission and distribution infrastructure, as well as clarify costs and standards regarding overhead line extensions and underground electric infrastructure.

Order No. PSC-06-0556-NOR-EU at 3. Simply stated, the underlying purpose was to enhance transmission and distribution system reliability.¹

To accomplish this stated purpose of increasing reliability, the Commission amended its existing rule regarding construction standards applicable to investor owned utilities ("IOUs"), Rule 25-6.034, and it promulgated two new rules applicable to IOUs: Rule 25-6.0341, which addressed the preferred location of distribution facilities, and Rule 25-342, which addressed third

¹ Rules 25-6.034, 6.0341, 6.0342, and 6.0343 address reliability; the other rules proposed addressed costs, line extensions and underground infrastructure and will not be discussed herein.

party attachment standards. The Commission also adopted a rule applicable to rural electric cooperatives and municipal electric utilities, Rule 25-6.0343. Proposed Rule 25-6.0343 adopted the same language applicable to IOUs in rules 25-6.034, 25-6.0341 and 25-6.0342.

In adopting the same language for the rule for cooperatives and municipals as it proposed for IOUs, the Commission followed the recommendation of its staff, which stated:

The purpose of new Rule 25-6.0343 is to make the provisions of Rules 25-6.034, 25-6.0341, and 25-6.0342 applicable to municipally-owned electrical utilities "Municipals" and rural electrical cooperatives "Cooperatives." Staff believes that requiring Municipals and Cooperatives to comply with Rules 25-6.034, 25-6.0341, and 25-6.0342 is in the public interest.

Staff Recommendation of June 8, 2006 in Docket Nos. 060172-EU and 060173-EU (hereinafter "Staff Recommendation"). No acknowledgement was made regarding the broad jurisdiction granted the Commission over IOUs versus the very narrow jurisdiction granted over cooperatives and municipals.

The Commission has been given a broad grant of jurisdiction over "public utilities" and a much narrower grant of authority over cooperatives and municipals. Virtually all of Chapter 366 applies to public utilities. In contrast, Section 366.11, Florida Statutes, exempts cooperatives and municipals from most of the provisions of Chapter 366. Consequently, the Supreme Court of Florida has held that the powers to regulate public utilities are "broad and comprehensive," *Storey v. Mayo*, 217 So.2d 304 (Fla. 1968), *cert. denied* 395 U.S. 909, while "the Grid Bill gives the PSC limited jurisdiction over" cooperatives and municipals, *Lee County Electric Cooperative, Inc., v. Jacobs*, 820 So.2d 297, 299 (Fla. 2002). The Staff Recommendation ignored this vast jurisdictional difference.²

² The broad difference between the Commission's jurisdiction over public utilities and cooperatives and municipals is perhaps best evidenced by a series of decisions acknowledging the Commission can establish rates for public utilities but not for cooperatives and municipals. *In Amerson v. Jacksonville Electric Authority*, 362 So.2d 433 (Fla.

The Staff's Recommendation simply invoked two separate statutory bases for the Commission to propose Rule 25-6.0343. Staff argued that the Commission could act under (a) Section 366.04(6), Florida Statutes, which gives the Commission jurisdiction to adopt safety standards (not construction standards), and (b) the "Grid Bill," an act of Legislature that is codified in a series of statutory sections.³ Neither analysis is correct.

A. Safety Standards Differ From Construction Standards.

Proposed Rule 25-6.0343 would require the adoption of construction standards by cooperatives and municipals. Those construction standards would be the vehicle through which the Commission requires a variety of actions pursuant to the rule: compliance with generally accepted engineering practices, compliance with the National Electrical Safety Code ("NESC"), consideration of the extreme wind loading standards in the NESC, construction to deter flooding, the placement of distribution facilities, and third party attachment standards.⁴ Thus, whether the Commission has authority to adopt construction standards for cooperatives and municipals is central to the validity of proposed Rule 25-6.0343.

¹st DCA 1978), the Commission's rate setting jurisdiction was acknowledged to be limited to public utilities. In *City of Tallahassee v. Mann*, 411 So.2d 162, 164 (Fla. 1981), the *Amerson* decision was extended, with the Supreme Court holding that the Commission did not have rate setting jurisdiction over municipals. In *Polk County v. Florida Public Service Commission*, 460 So.2d 370 (Fla. 1984), the Supreme Court held that the Commission had no jurisdiction to regulate specific dollar amounts charged for a specific service by municipal but could regulate rate structure. The Commission's limited rate structure jurisdiction over cooperatives and munis is granted by the Grid Bill, which stops far short of the broad rate setting jurisdiction over IOUs given by Chapter 366.

³ According to the Staff, "The Grid Bill added the following Sections to Chapter 366, Florida Statutes: 366.04(2)(c), 366.04(2)(d), 366.04(2)(e), 366.04(2)(f), 366.04(5), 366.05(7), 366.05(8), 366.055(1), 366.05(2), and 366.0455(3)." Actually, Chapter 74-196, added sections: 366.04(2)(a)-(e), 366.04(3) (now codified as Section 366.04(5)), 366.05(7), 366.05(8), 366.055, 366.061 (now repealed), Section 366.11 and Section 366.015.

⁴ Adoption of such standards would impose significant costs on cooperatives and municipals. In imposing significant costs on entities over which it has no rate setting authority, the Commission should be mindful of the Supreme Court's decision in *Florida Power Corp. v. Seminole County*, 579 So.2d 105, 107 (Fla. 1991), where the Court struck down an effort by an entity without rate setting jurisdiction to adopt a requirement that would impose significant costs on a utility that would have to be covered by rates.

In its Recommendation which led to the Commission proposing Rule 25-6.0343, the Staff set forth part of the statutory section that authorizes the Commission to adopt safety standards:

Section 366.04(6), gives the Commission “exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities.”

Staff Recommendation at 21. Then, blurring the distinction between construction standards and safety standards, the Staff Recommendation urged the Commission to adopt construction standards:

[S]taff recommends that the Commission amend Rule 25-6.034 to require investor-owned electric utilities to establish certain construction standards in order to better withstand the extreme weather events experienced by the State of Florida. Damage to the State’s electric grid, requiring weeks to repair, is a threat to the safety of the citizens of the state. The safety threats are direct such as falling equipment and energized lines on the ground and indirect (threats to health, sanitation, and medical equipment that fails to function without electricity). Staff believes that the loss of electricity, potentially for weeks following a severe weather event, is exactly the type of safety issue the Legislature intended the Commission to address through Section 366.04(6), explicitly authorizing the Commission to prescribe safety standards for all electric utilities: Cooperatives, Municipals, and IOUs.

Id.

The Commission Staff’s reliance upon Section 366.04(6), Florida Statutes, to justify proposed Rule 25-6.0343, F.A.C., mistakenly substitutes the Commission’s authority to adopt safety standards for the authority to adopt construction standards. Safety standards are different from construction standards, as the Commission has expressly recognized. In 1982, the Commission amended its Construction Standards Rule, Rule 25-6.034, F.A.C., to remove all references to safety standards noting that:

The proposed amendments are designed to make the rule consistent with the Commission's statutory authority. As the Commission has no express or implied statutory authority to prescribe and enforce electrical safety standards for the construction of facilities by investor-owned electrical utilities, all references to safety have been removed from the rule.

In re: Amendment of Rule 25-6.34, Standard of Construction, 82 FPSC 10:263 (October 29, 1982) (Order No. 11287).

For years the Commission has asserted jurisdiction over IOUs' Construction Standards. Rule 25-6.034, F.A.C., which has always been limited to IOU construction standards, was initially adopted by the Commission before 1969. From the start, the Commission relied upon Section 366.05(1), Florida Statutes, as both the Specific Authority and Law Implemented with the adoption of Rule 25-6.034, F.A.C., Construction Standards. This is entirely consistent with the Commission's statutory jurisdiction over IOUs ("public utilities"). Section 366.05(1) provides in pertinent part:

- (1) In the exercise of such jurisdiction, the commission shall have the power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed *by each public utility*

(Emphasis added.) By its clear language, the applicable portion of Section 366.05(1), Florida Statutes, applies only to public utilities (IOUs) not electric utilities (cooperatives and municipals).

When the Commission ruled in 1982 that the Commission's authority to adopt construction standards did not extend to the adoption of safety standards, the Commission was holding that the two types of standards were different. The differences are obvious. Not all

matters of safety, for instance, tree trimming, involve construction, and not all constructions standards are safety related. The NESC itself reflects that it is not a construction document:

Section 1.010, Purpose –
This code is not intended as a design specification or as an instruction manual.

The Commission would do well to recognize the distinction between construction and safety standards, as well as its prior precedent.

In 1982, the Commission amended its IOU construction standard rule to remove references to safety standards, because Section 366.05(1), Florida Statutes, the Commission's statutory basis for the rule at that time, did not authorize the adoption of safety standards. It still does not authorize the adoption of safety standards, but as of the last legislative session, it now authorizes the Commission to adopt construction standards for public utilities that include NESC requirements.

What has changed between 1982 and today is that there is now a separate statutory section that authorizes the Commission to adopt safety standards. That statute, Section 366.04(6), Florida Statutes, extends the Commission's jurisdiction over safety standards beyond public utilities to include all electric utilities. However, what Section 366.04(6) does not change is the previously recognized difference between construction standards and safety standards.

The simple fact is that the statutory authorization for the Commission to adopt safety standards for cooperatives and municipals found in Section 366.04(6), Florida Statutes, does not authorize the Commission to adopt construction standards for cooperatives and municipal electric utilities. Safety standards are different from construction standards, as the Commission has previously held, and the Commission's authority to adopt construction standards, still found in Section 366.05(1), is limited to public utilities and does not apply to cooperatives and

municipals. Thus, the first basis the Commission Staff offered to provide a statutory basis for proposed Rule 25-6.0343, does not support Commission jurisdiction to adopt construction standards for cooperatives and municipal electric utilities.

B. The Grid Bill Does Not Authorize The Commission To Adopt Construction Standards Or To Take Any Other Action To Increase The Reliability Of Cooperatives' and Municipal Electric Utilities' Distribution Systems.

1. Staff's inadequate legal analysis.

In the Staff Recommendation proposing Rule 25-6.0343, the Staff set forth the following legal analysis regarding the Commission's jurisdiction over reliability:

B. Reliability Jurisdiction.

In addition to subsection 366.04(6), discussed above, Section 366.04 enumerates the Commission's jurisdiction over all electric utilities (IOUS, Municipals, and Cooperatives) in several additional subsections. Many of these sections were added in the 1974 "Grid Bill ⁵," which the Legislature passed with the intention of expanding and clarifying the Commission's jurisdiction over the State's integrated electric generation, transmission, and distribution facilities.⁶

Subsection 366.04(2) provides, in part:

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

* * *

(f) To prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

Subsection 366.04(5) provides:

(5) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in

⁵ Chapter 74-196, Laws of Florida.

⁶ The Grid Bill added the following Sections to Chapter 366, Florida Statutes: 366.04(2)(c), 366.04(2)(d), 366.04(2)(e), 366.04(2)(f), 366.04(5), 366.05(7), 366.05(8), 366.055(1), 366.05(2), and 366.0455(3).

Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Subsection 366.04(7) provides:

(7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

Subsection 366.04(8) provides:

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance

These sections make clear that the Legislature intends for the Commission to exercise jurisdiction over all electrical utilities in the state to ensure the reliability of the state's electrical generation, transmission, and distribution grid. Staff's recommended amendments to Rule 25-6.034 are intended to increase the reliability of the electrical grid. Staff believes this increased reliability should be extended to Municipals and Cooperatives, as authorized by Florida Statutes.

Staff Recommendation at 21, 22. Staff's statutory recitation leaves out part of one of the more instructive statutes, Section 366.05(8), Florida Statutes, and completely omits the statute that is most instructive as to what comprises the coordinated grid, Section 366.055, Florida Statutes. More importantly, Staff's single sentence analysis of those statutes, "These sections make clear that the Legislature intends for the Commission to exercise jurisdiction over all electrical utilities in the state to ensure the reliability of the state's electrical generation, transmission and distribution grid," is seriously wanting.

2. The plain language of the Grid Bill.

In 1974 the Legislature passed what is commonly referred to as the "Grid Bill." See Chapter 74-196, Laws of Florida. Chapter 74-196 added numerous sections to Chapter 366, Florida Statutes, and was the first grant of regulatory authority of the Commission over rural

electric cooperatives and municipal electric utilities. *Lee County Electric Cooperative, Inc., v. Jacobs*, 820 So.2d 297, 299 (Fla.2002). Prior to the passage of the Grid Bill, the Commission had no statutory authority to regulate cooperatives and municipals. *Id.* Its statutory authority related only to the regulation of public utilities.

Therefore, it is critically important in examining this new grant of legislative authority to read it closely and in its entirety. What is clear from such a reading is that the Commission's grant of jurisdiction over cooperatives and municipals is much narrower than the broad grant of jurisdiction over public utilities. What is also clear from a careful reading of all the applicable sections of the Grid Bill is that the Commission's jurisdiction over reliability is limited to a coordinated energy grid, not all cooperative and municipal facilities.

Several portions of the Grid Bill come into play in determining the extent of the Commission's jurisdiction over the coordinated grid. Each section of the Grid Bill applicable to this discussion is addressed in turn.

In Section 1 of Chapter 74-196, Section 366.04, Florida Statutes, was amended in several respects relating to the grid. Section 366.04(2) was added, and subsection (2) (c)⁵ specifically addressed the grid:

- (2) In the exercise of its jurisdiction the commission shall have the power over rural electric cooperative and municipal electric utilities for the following purposes: . . .
- (c) To require electric power conservation and reliability *within a coordinated grid* for operational as well as emergency purposes.

(Emphasis added.) Subsection (3) was also added to Section 366.04, Florida Statutes,⁶ and it provided:

⁵ This section remains as Section 366.02(c), Florida Statutes, today.

⁶ This section remains effective today but has been renumbered to be subsection (5) of Section 366.04, Florida Statutes.

- (3) The commission shall further have jurisdiction over the planning, development and maintenance of a *coordinated electric power grid* throughout Florida, to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities.

(Emphasis added.)

Section 2 of Chapter 74-196, Laws of Florida also amended Section 366.05, Florida Statutes, by adding two sections that also referred to “energy grids.” Subsection (7) was added to Section 366.05, Florida Statutes,⁷ was added:

- (7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable *energy grids*.

(Emphasis added.) Section (8) was also added to Section 366.05, Florida Statutes,⁸ and it provided:

- (8) If the Commission determines that there is probable cause to believe that inadequacies exist with respect to the *energy grids* developed by the electric utility industry, it shall have the power, after holding hearings as provided by law, and after a finding that mutual benefits will accrue to the public utilities involved, to require installation or repair of necessary facilities, including *generating plants and transmission facilities* with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to insure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have the full power and authority notwithstanding any general or specific laws to the contrary, to jointly plan, finance, build, operate or lease *generating and transmission facilities* and shall be further authorized to exercise the powers granted to corporations in Chapter 361, Florida Statutes. Provided that this subsection shall not supersede or control any provision of the electric power plant siting act, sections 403.501 thru 403.516, Florida Statutes, 1973.

⁷ This remains as subsection (7) to Section 366.05, Florida Statutes.

⁸ This language, with modest modification, remains as subsection (8) to Section 366.05, Florida Statutes.

Section 3 of Chapter 74-196 also added Section 366.055, Florida Statutes:

366.055 Availability of and payment for energy reserves.—

- (1) Energy reserves of all utilities in the *Florida energy grid* shall be available at all times to insure that grid reliability and integrity are maintained. The commission is hereby authorized to take such action as necessary to assure compliance; provided, however, prior commitments as to energy use in interstate commerce as approved by the Federal Power Commission; commitments between one electric utility and another which have been approved by the federal Power Commission; or commitments between an electric utility which is part of the *energy grid* created herein and another *energy grid* shall not be abridged or altered except during an emergency as declared by the governor and the cabinet.
- (2) When the energy produced by one electric utility is transferred to another or others through the *energy grid* and under the powers granted by this section, the commission shall direct the appropriate recipient utility or utilities to reimburse the producing utility in accordance with the latest wholesale electric rates approved for the producing utility by the Federal Power Commission for such purposes.
Any utility which provides a portion of the *transmission facilities involved in the transfer of energy* from a producing utility to a recipient utility or utilities shall be entitled to receive an appropriate reimbursement commensurate with the *transmission facilities* and services provided. Provided further, no utility shall be required to sell purchased power to a recipient utility or utilities at a rate lower than the rate at which the power is purchased from the producing utility.
- (3) To assure efficient and reliable operation of a *state energy grid*, the commission shall have the power to require any electric utility to *transmit electric energy over its transmission lines* from one utility to another or as part of the total energy supply of the *entire grid*, subject to the provisions hereof.

This last section of the Grid Bill, which is still in place today, was not cited by Staff at all in the Staff Recommendation which provided the rationale for proposed Rule 25-6.0343. That is unfortunate, for it provides considerable guidance as to what the Legislature was attempting to do with the Grid Bill and the facilities that are considered to be part of the coordinated grid.

As seen from the italicized passages above, throughout the Grid Bill the legislature made repeated references to “coordinated grid,” “coordinated electric power grid,” “energy grids,” “energy grids,” “Florida energy grid,” “energy grid,” “state energy grid,” and “entire grid.” Unfortunately, the Legislature did not define the term “coordinated grid” or “grid” in any of its various forms. However, what comprises the “coordinated grid” is apparent from the usage of the various “grid” terms throughout the Grid Bill.

Section 366.05(8), Florida Statutes, addresses the Commission’s authority to correct inadequacies in the grid. The authority it is granted to relieve grid inadequacies sheds light on what the legislature considered to be the grid – the Commission is authorized to require installation or repair of necessary facilities, specifically “generating plants and transmission facilities.” Moreover, utilities are given authority to jointly plan, finance, build, operate or lease “generating and transmission facilities.” It is clear from this passage that the Legislature considered “generating and transmission facilities” to be part of the coordinated grid, for these types of facilities are specifically mentioned as facilities that could be repaired, installed or jointly developed to address inadequacies in the coordinated grid. There is no mention of distribution facilities.

Section 366.055, Florida Statutes, also provides guidance regarding the types of facilities the Commission intended to be part of the coordinated grid. Subsection (1) makes the “reserves” (generating plants and power purchases) of Florida utilities available to insure grid reliability. This subsection addresses generating resources, whether available through ownership or purchase, as being part of the grid. Subsection (2) addresses the transfer of power from one electric utility to another through the grid. Of course, that is done with transmission facilities, and the subsection specifically mentions “transmission facilities” and requires reimbursement for

their use. So, transmission facilities used to move power from one utility to another through the grid are part of the coordinated grid. Subsection (3) also addresses grid reliability, giving the Commission authority “to require any electric utility to transfer electric energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid” Clearly, the Legislature contemplated that transmission lines used to move power from one utility to another or as a part of the total energy supply of the entire grid to be part of the coordinated grid. Once again, there is no mention of distribution facilities.

The guidance from Section 366.055, Florida Statutes, as to what comprises the coordinated grid is simple and compelling. It refers exclusively, as does Section 366.05(8), Florida Statutes, to generating and transmission facilities. Conspicuously absent in either statute is any reference to distribution facilities.

While the Grid Bill does not define what comprises the “coordinated electric grid,” when it is read in its entirety, including the sections that address inadequacies in the grid and the availability of energy reserves, it is clear that the coordinated grid was understood by the Legislature to mean generating resources and transmission facilities used to move power from utility to another. There is no reference to the grid comprising distribution systems, as such systems are not used to move power from one utility to another; instead they are used by a utility to serve their end use customers.

Thus, when the Commission is granted authority in the Grid Bill “to require . . . reliability within a coordinated grid,” and “over the planning, development and maintenance of a coordinated electric power grid throughout Florida, to assure an adequate and reliable source of energy . . . ,” the Commission is being granted such authority as to generating plants and transmission facilities used to move power from one utility to another, not over distribution

facilities that are used for other purposes. The plain language of the Grid Bill makes it clear that the Commission is not given authority under the Grid Bill to regulate the reliability of distribution systems.

3. The Commission's thirty year application of the Grid Bill to cooperatives and municipals is consistent with this reading of the Commission's Grid Bill authority.

The Grid Bill was adopted by the Legislature in 1974, thirty-two years ago. Not once in those thirty-two years has the Commission applied or interpreted the Grid Bill as giving it authority to regulate the reliability of distribution systems of cooperatives and municipals.⁹ That does not mean the Commission has been derelict in its duties; it means that the Commission has not asserted jurisdiction that it does not have.

That is not so say that the Commission has not exercised its reliability jurisdiction under the Grid Bill during that extensive period of time. It has, but in doing so it has limited its determinations to transmission facilities rather than addressing distribution facilities.

In 1990, after a year or more of investigation, the Commission issued an order under its Grid Bill authority addressing the adequacy of the transmission grid in north Florida. *In re: Investigation of the adequacy of the electrical transmission grid in North Florida*, 90 FPSC 12:519 (December 20, 1990) (Order No. 23909). In the case several parties argued that the Commission should mandate statewide transmission system planning and operation under the Grid Bill. *Id* at 527, 528. The Commission declined. In doing so, it noted that it had jurisdiction under the Grid Bill to require joint transmission ownership, but only after determining there was probable cause to conclude there was a deficiency in the coordinated grid and then after a hearing in which the evidence showed that mutual benefits would accrue to the joint owners. *Id* at 528, 529. The Commission went on to note that, "the planning, development, and operation of

⁹ For instance, the Commission's construction standards rule, Rule 25-6.034, F.A.C., has never been applied to cooperatives and municipals, only IOUs.

the transmission grid in Florida is currently coordinated through the existing guidelines and procedures established by the Florida Electric Power Coordinating group (FCG).” *Id* at 529. While it is clear that the Commission was acting under its Grid Bill reliability jurisdiction in this case, the only types of facilities considered were transmission facilities. There was no mention or consideration of distribution facilities.

The Commission’s thirty-two year application of the Grid Bill is a telling acknowledgement of a lack of jurisdiction. Not once has the Commission taken the position that it has authority to regulate the reliability of the distribution systems of cooperatives and municipals. An assertion that the Commission has enjoyed such jurisdiction for over thirty years but declined to exercise it would be a suggestion that the Commission has intentionally been derelict in its duties, a suggestion that FECA is not prepared to make or accept. The Commission has acted where it had reliability jurisdiction, over transmission facilities used to move power from one utility to another or as part of the total grid, and refrained from acting where it did not have reliability jurisdiction, over cooperatives’ and municipals’ distribution systems.

4. Recent legislative actions reinforce the conclusion that the Commission lacks jurisdiction over the reliability of cooperatives’ and municipals’ distribution systems.

Recent actions of the Legislature as well as public statements by legislators and a representative of the Commission before the Legislature reinforce the conclusion above that the Commission lacks jurisdiction over the reliability of cooperatives and municipals’ distribution systems. Each will be addressed in turn.

During the 2005 Legislative session the Commission adopted a new statutory provision that explicitly distinguished the transmission grid from the distribution system. This is further

evidence that when the legislature addressed jurisdiction over a coordinated grid, it was addressing transmission facilities but not distribution facilities.

In Chapter 2005-259, Laws of Florida, the Legislature adopted Section 366.91, Florida Statutes, Renewable Energy. Subsection (5) of Section 366.91, Florida Statutes, requires a contracting producer of renewable energy to pay the actual costs of its interconnection. The statute notes that the interconnection can be “with the transmission grid or distribution system.” This is a recent legislative expression that the grid does not include distribution facilities, it refers to transmission facilities. Thus, when the Commission is given jurisdiction “to require ... reliability within a coordinated grid . . . ,” the Commission is not being given jurisdiction over distribution system reliability.

Even more recently the Legislature considered and passed changes to Chapter 366, Florida Statutes. Those changes are found in Chapter 2006-230, Laws of Florida. Here what is relevant is not so much the legislative language that was passed but the legislative language that was omitted and what both the representative of the Commission and several legislators had to say regarding the Commission’s jurisdiction over cooperatives and municipals.

The bill that was ultimately adopted as Chapter 2006-230, Laws of Florida, was Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 888 (“SB 888”). A similar house bill, HB 1473, was rolled into SB 888. During a meeting of the House Committee on Utilities and Telecommunications on March 9, 2006, a representative of the Commission made observations evidencing that the Commission’s lacked jurisdiction over cooperative and municipal distribution systems.

At issue was a proposed amendment to Section 366.05(8), Florida Statutes. That statutory subsection addresses the Commission’s authority to act once it has determined that

inadequacies exist in the coordinated grid in Florida. The first sentence in the statute authorizes the Commission, after undertaking certain proceedings and making certain findings to order, “installation or repair of necessary facilities, including generating plants and transmission facilities” The second sentence authorizes the utilities the Commission has ordered to address grid inadequacies “to jointly plan, finance, build, operate, or lease generating and transmission” At different points in its development, HB 1473 would have amended both sentences to include distribution facilities as well as transmission facilities to address grid inadequacies.

At the March 9, 2006 meeting of the House Committee on Utilities and Telecommunications, a representative of the Commission, Mr. Jim Dean, made a statement to the committee to the effect that there was a question as to whether the Commission had jurisdiction over cooperatives and municipals distribution systems. Mr. Dean stated that the Commission has authority over cooperatives and municipals regarding generation and transmission because those two activities “hold the system together” but that it is “questionable” whether the Commission has Grid Bill jurisdiction over cooperatives and municipals “at the distribution level.” Thus, Mr. Dean, as the Commission’s representative to the Legislature, has recognized the Commission’s lack of jurisdiction over cooperative and municipal distribution systems.

As significant as that admission to the Legislature is, what is even more significant is what a legislator said and the actions the Legislature took. On April 5, 2006, the Chairman of the House Committee on Utilities and Telecommunications, Rep. Ken Littlefield, offered an amendment to HB 1473 that removed “distribution facilities” from the bill. In doing so, he indicated cooperatives’ distribution systems were not subject to Commission regulation:

This amendment removes the word “distribution” from the language from facilities that the PSC can require installation and repair and the reason . . . [is that] cooperative electric companies have distribution facilities but they are not regulated by the PSC and there may be some confusion at this point if that word stays in there.

Recording of April 5, 2006, House Committee on Utilities and Telecommunications meeting. The Committee adopted Representative Littlefield’s amendment, leaving Section 366.05(8) without any references to distribution facilities. A companion amendment to Senate Bill 888, which removed the term “distribution facilities” from the section that would have amended Subsection 366.05(8), Florida Statutes, was offered by Senator Constantine and was adopted by the Senate Committee on Communications and Public Utilities on March 28, 2006. Of course, Representative Littlefield’s statement and the actions of both the House and Senate committees reinforce FECA’s interpretation of the Grid Bill.¹⁰

Finally, the Commission itself has acknowledged its dubious jurisdiction over cooperative and municipal distribution system reliability. At the February 7, 2006 Agenda Conference, in voting to approve the Staff’s recommendation on Issue 12A, the Commission voted 4-1 not to include cooperatives and municipals in its pole inspection order in Docket No. 060077-EU. Commissioner Deason, who moved to accept the Staff’s recommendation which was limited to IOUs, rejected an amendment to extend the vote to cooperatives and municipals. After the vote, Commissioner Deason articulated his reservation about including cooperatives and municipals:

COMMISSIONER DEASON: Madam Chair, may I take just a minute and explain the motion in greater detail, why I would not entertain the amendment?

¹⁰ FECA is aware of, and the Commission should also be aware of, Section 19 of Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 888 which mandated the Commission to perform a study of the Florida “electric transmission grid.” Subsection (2) of Section 19 speaks of both transmission and distribution grids. This statute authorizes a study; it is not a legislative interpretation of the Grid Bill.

CHAIRMAN EDGAR: Commissioner Deason.

COMMISSIONER DEASON: Okay. Thank you. I certainly respect that. I am reluctant to, even though we may have jurisdiction and, then again, we may not when it comes to the munis and co-ops in this regard, I think that our jurisdiction historically in terms of the munis and co-ops has been limited in a number of situations. And what we are talking about here is the inspection of wood poles that's basically at the customer level, the distribution level. It's no doubt that we have jurisdiction when it comes to the integrated grid in the state of Florida. But I believe that the munis and co-ops have the ability themselves, being that they are entities which either serve their constituents or else are utilities which are owned by the customers, that they have the ability to go forward with their own inspection program and it doesn't have to be mandated by this Commission. And that is – there does not – does not imperil the integrated grid which is primarily at a transmission level. For those reasons, I don't think it's prudent at this point to go forward with mandating it for those particular entities.

Transcript of February 7, 2006 Agenda Conference, Item 12A.

The adoption of Section 366.91(5), Florida Statutes, which differentiates the transmission grid from distribution systems, as well as the Legislature's conscious decisions not to include distribution facilities among the facilities the Commission could order installed or repaired to address grid inadequacies in Section 366.05(8), Florida Statutes, plus the statements of the Commission and the Commission's representative about the Commission's questionable jurisdiction over cooperative distribution systems, and the clear pronouncement by Representative Littlefield that the Commission did not have authority to regulate cooperatives' distribution system all reinforce and are consistent with FECA's interpretation of the Grid Bill. The Commission lacks authority to regulate cooperative and municipal distribution system reliability.

5. A proper reading of the Grid Bill is that the Commission's jurisdiction over reliability is limited to a "coordinated grid," and a coordinated grid does not include cooperative and municipal distribution systems.

FECA maintains, as it has for thirty-two years, that the Commission's Grid Bill jurisdiction over reliability is limited to the facilities that comprise the coordinated grid. The facilities that comprise the coordinated grid are generating resources and transmission facilities such that power generated can be moved through the use of transmission facilities from one utility to another to assure grid reliability. The coordination contemplated is the type of coordination that exists today by the Florida Regional Coordinating Council ("FRCC"). The FRCC coordinates the use of transmission facilities that are used to move electricity from generating resources to utilities. The Commission is familiar with this coordination; it described it more than a decade ago when it was being performed by the FRCC's predecessor, the Florida Coordinating group ("FCG"):

[T]he planning, development, and operation of the transmission grid in Florida is currently coordinated through the existing guidelines and procedures established by the Florida Electric Power Coordinating group (FCG).

In re: Investigation of the adequacy of the electrical transmission grid in North Florida, 90 FPSC 12:519 (December 20, 1990) (Order No. 23909).

Proposed Rule 25-6.0343 attempts to regulate the reliability of cooperative and municipal facilities that are not part of the coordinated grid – distribution facilities. Therefore, in proposing Rule 25-6.0343, the Commission has exceeded its authority under the Grid Bill. The Commission should withdraw proposed Rule 25-6.0343 and either not advance a rule for cooperatives and municipals or consider a rule that can does not address reliability of cooperative and municipal distribution systems, but instead, addresses only safety standards for cooperative and municipal distribution systems.

Conclusion

Rule 25-6.0343 was proposed for the specific purpose of enhancing the reliability of the distribution systems of cooperatives and municipals. The Rule employs the use of construction standards to improve reliability.

The Commission Staff offered two statutory bases for the proposed Rule: (1) the Commission's jurisdiction to adopt safety standards in Section 366.04(6) and (2) the Commission's authority under the Grid Bill to assure the reliability of the coordinated grid. Neither statute authorizes the Commission to adopt construction standards that are intended to address the reliability of distribution systems owned by cooperatives and municipals.

The Commission has clearly been granted authority to adopt safety standards for cooperative and municipal distribution systems. However, construction standards are not safety standards, as this Commission has clearly ruled previously. Safety standards encompass more than construction practices, and not all construction standards necessarily address safety. Moreover, the Commission's authority to adopt construction standards is limited to IOUs. Staff has blurred the important distinction between safety standards and construction standards, and in doing so, has encouraged the Commission to propose a construction standards rule that exceeds the Commission's safety standards jurisdiction.

Similarly, the Commission has been granted authority to assure the reliability of a coordinated grid under the Grid Bill. However, that authority is limited to the facilities that comprise the coordinated grid – generating resources and transmission facilities that are used to move power to utilities. That authority does not extend to distribution systems that are not used for that purpose and are not part of the coordinated grid. Thus, in urging the Commission to

adopt a rule designed to increase the reliability of cooperative and municipal distribution system, the Staff has urged the Commission to exceed its statutory jurisdiction.

As a creature of statute, the Commission only has such power as has been conveyed by statute. It cannot act without statutory authority, no matter how compelling the public interest it is attempting to serve. That function is left for the Legislature, not the Commission. The Legislature has consciously chosen not to give the Commission authority to regulate the reliability of cooperative and municipal distribution systems. It made that decision thirty-two years ago when it gave the Commission very narrow jurisdiction over cooperatives and municipals, and it reinforced that decision in just the last legislative session when it rejected statutory amendments that would have extended the Commission's jurisdiction to cooperative and municipal distribution systems.

Proposed Rule 25-6.0343 is based upon a seriously erroneous legal analysis. The proposed Rule exceeds the Commission's jurisdiction.

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