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May 30, 2007

VIA HAND DELIVERY

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
CLERK

Re: Docket No. 070298-EI –Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, Florida Administrative Code, submitted by Progress Energy Florida, Inc.

Dear Ms. Cole:

CMP _____ Enclosed for filing on behalf of the Florida Cable Telecommunications Association
COM _____ (FCTA), please find the original and seven (7) copies of FCTA's Comments regarding Progress
CTR _____ Energy's Storm Hardening Plan. Enclosed, you will also find a disk containing the Comments
in electronic form (created by Adobe Acrobat Version 8.0 for Microsoft Windows).

ECR _____ Please acknowledge receipt by stamping the enclosed duplicate copy of this letter and
GCL _____ returning the same to me.

OPC _____

RCA _____

SCR _____

SGA _____

SEC _____

OTH Kim

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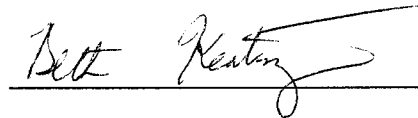
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FPSC-COMMISSION CLERK

Your assistance in this matter is greatly appreciated.

Sincerely,



Beth Keating
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, FAC, submitted by Progress Energy Florida, Inc.

DOCKET NO. 070298-EI

Filed: May 30, 2007

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. REGARDING PROGRESS ENERGY FLORIDA, INC'S INFRASTRUCTURE STORM HARDENING PLANS FILED IN COMPLIANCE WITH RULE 25-6.0342, FLORIDA ADMINISTRATIVE CODE

In response to the Commission Staff's request for comments, the Florida Cable Telecommunications Association, Inc. ("FCTA") hereby submits these comments concerning the Electric Infrastructure Storm Hardening Plan ("Plan") filed by Progress Energy Florida, Inc. ("PEF") on May 7, 2007 in the captioned proceeding pursuant to newly adopted Rule 25-6.0342, of the Florida Administrative Code ("Rule 25-6.0342").

INTRODUCTION

FCTA's member cable operators¹ rely upon Florida's investor owned utility ("IOU") pole infrastructure to distribute video, voice and broadband services to over five million residents throughout the state of Florida.² As such, the storm hardening plans being developed in this and related storm hardening dockets, which require new procedures and increased investment to strengthen Florida's pole infrastructure, have the potential to impact significantly FCTA's

¹ The FCTA members participating in these comments include Bright House Networks, Comcast Corporation and Cox Communications.

² Cable operators currently pass 95 percent of Florida homes and provides services to 78 percent of those homes. See William Taylor, Intermodal Competition and Deregulation in Florida, (Feb. 16, 2007), at http://www.purc.ufl.edu/documents/Taylor_presentation.pdf.

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member operators' ability to service their customers in a timely and cost-effective manner. The storm hardening plans also threaten to undermine FCTA's member operators' federally protected rights to access utility poles on non-discriminatory, just and reasonable rates, terms and conditions.

This Commission recognized both the substantial impact that its storm hardening requirements would have on third party attachers, including cable operators, and the Federal Communications Commission's ("FCC") jurisdiction over third party pole attachments, in Rule 25-6.0342. The Commission thus required the IOUs, in developing their plans, to seek input from third party attachers and to address their concerns, and also recognized the limitations on the Commission's jurisdiction over pole attachments. FCTA's member operators thus welcome this opportunity to provide valuable input about each utility's storm hardening plan in furtherance of Florida's objectives to cost effectively strengthen the state's electric pole infrastructure and reduce storm restoration costs and outage times for Florida residents in a manner that does not conflict with federal law governing pole attachments.

FCTA and its member cable operators recognize the importance of strengthening the state's electric pole infrastructure against extreme weather conditions and deploying strategies that will reduce storm restoration costs and delays associated with such conditions. Indeed, Florida's cable operators have first-hand experience with storm-related outages. When the 2004-2005 hurricane seasons struck, cable operators experienced significant outages and damage to their facilities. Cable companies worked along side the utilities to resolve weather related outages and spent millions of dollars in repairing their own cable facilities and restoring cable service. Accordingly, FCTA's members are committed to ensuring that the state's electric pole infrastructure is hardened to better withstand damage, and in the event that such plant is

damaged, that strategies are deployed to rapidly restore electric service as well as valued communication services to Florida residents.

While FCTA members strongly support the Commission's efforts to strengthen Florida's pole infrastructure, FCTA also wants to ensure that in meeting this objective, the plans filed by Florida IOUs comply with the requirements of Rule 25-6.0342. Specifically, Rule 25-6.0342 requires each storm hardening plan to describe *in detail* the IOU's construction standards, policies, practices and procedures ("Construction Standards"), as well as its deployment strategy, for cost effective strengthening of the IOU's distribution and transmission infrastructure against extreme weather conditions and for reducing restoration costs and outages to end-use customers. In addition, the Rule requires each IOU to seek input from and attempt in good faith to address the concerns of third party attachers, and to include in the plan an estimate of the costs and benefits of the utility's plan to third party attachers.³ Further, in meeting the desired objectives of enhancing reliability and reducing storm restoration costs and outage times, the IOUs were charged with employing *prudent, practical* and *cost-effective* standards and procedures.⁴ Finally, the standards, procedures and deployment strategies set forth in the plans must not conflict with firmly established federal law governing pole attachments, which gives cable operators federally protected rights to access Florida utility poles upon just and reasonable rates, terms and conditions.

PEF's Plan, while admirable in many respects, does not yet fully comply with the requirements of the Rule.

First, FCTA's members have not yet been provided sufficient detail regarding PEF's Plan in order to provide the input contemplated by Rule 25-6.0342. PEF's complete Plan was not

³ See Rule 25-6.0342(6).

⁴ See Rule 25-6.0342(2) and 25-6.0342(5).

made available to FCTA until after it was filed with the Commission on May 7, 2007.⁵ Moreover, the Plan as filed still does not provide the level of detail required to enable third party attachers to provide valuable input, which is necessary for PEF to assess the costs and benefits to third party attachers. For example, FCTA member operators need additional details about the pilot projects identified in the Plan in order to provide meaningful input as to whether they are prudent and cost effective or implicate FCC jurisdiction.

FCTA understands that the utilities were under time constraints in developing their storm hardening plans and, as a result, may not have included the level of detail in their draft plans circulated to FCTA as otherwise would have been preferable. Unfortunately, however, the fact that the complete PEF Plan was not made available until after it was filed made it difficult, if not impossible, for FCTA members to provide specific concerns and feedback. Moreover, the fact that the Plan still lacks certain critical details about how certain standards and projects will be implemented, prevents FCTA members from providing that input at this time.

While PEF's Plan still lacks certain details that are necessary to assess its full impact on third party attachers, the Plan, as filed, is likely to have substantial benefits to cable operators in terms of increased plant reliability. However, it is also certain to give rise to greatly increased costs for cable operator attachers and to impose additional steps in the construction process that could significantly impede cable operators' ability to provide prompt service to customers. These potential costs and benefits must be further examined and better developed with input from the cable industry before the Plan is adopted. To that end, FCTA suggests that the stakeholders in this docket continue working together in a series of Commission-sponsored, collaborative workshops in order to explore each utility storm hardening plan in a more comprehensive and

⁵ FCTA notes that since the filing of PEF's plan, a conference call with PEF has been scheduled to review FCTA comments. That call is scheduled for May 30; consequently, FCTA has been unable to incorporate the results of that call in these Comments.

thoughtful manner. Only then will the Commission achieve its goals to cost-effectively strengthen the electric infrastructure in Florida to reduce restoration costs and outage time to customers resulting from extreme weather events.

Second, overall PEF's Plan is based on prudent, practical and cost effective standards, procedures and deployment strategies.⁶ For example, PEF offers storm hardening alternatives such as vegetation management and small wire replacements that are cost effective alternatives to building to a higher National Electric Safety Code ("NESC") standard. Many proven distribution power system initiatives and storm recovery preparations other than replacing poles and building to standards that exceed the NESC can produce greatly increased electric service reliability, decreased storm damage, and reduced restoration time and expense. However, as set forth below, there are a few places where FCTA's member operators need additional information – such as for the pilot projects being undertaken – in order to assess whether those proposals in fact comport with the Rule's requirements.

In addition, a handful of PEF's proposed practices set forth in the Plan are not necessarily prudent, practical or cost effective. FCTA's member operators would like additional time to work with PEF – possibly through Commission sponsored workshops – to further develop these areas and explore the use of additional storm hardening alternatives, which are set forth in more detail below.

Finally, some of the standards, procedures and deployment methods set forth in PEF's Plan conflict with or implicate federal laws governing pole attachments and the jurisdiction of the FCC to enforce such laws. Investor owned utilities are obligated under federal pole attachment law to provide cable operators and telecommunications carriers with non-

⁶ Mr. Michael T. Harrelson, a registered Professional Engineer in the states of Georgia and Florida and a consultant to the cable television, telecommunications and electric utility industries, served as an engineering consultant to FCTA for these comments. A copy of his Curriculum Vitae is attached hereto as Exhibit 3.

discriminatory access to utility poles that are owned or controlled by such utilities,⁷ and must do so pursuant to just and reasonable rates, terms and conditions.⁸ These laws were developed to promote the competitive deployment of facilities based competition throughout the United States. The FCC has jurisdiction to enforce these laws, including jurisdiction over safety and engineering standards or practices to the extent they are unjust or unreasonable, or interfere with federally protected access rights.⁹

PEF has proposed several standards and procedures in its Plan that implicate the FCC's jurisdiction. For example, PEF requires permits for overloading while the FCC has expressly prohibited IOUs from requiring permits for overloading. Similarly, PEF requires a complete loading analysis for attachments, which PEF broadly defines to include overloading of fiber strand, regardless of whether it increases the size or weight of the existing bundle, a requirement that is not just or reasonable under federal law. Moreover, PEF's Plan does not explain whether, how or the extent to which PEF intends to allocate the costs of its Storm Hardening Plan, to third party attachers. Federal law prescribes the manner in which costs must be allocated, if at all, to third party attachers. The specific items in PEF's Plan that conflict, or potentially conflict, with FCC jurisdiction are enumerated below. These areas of conflict, and how they should be navigated in developing utility storm hardening plans, could be addressed and possibly resolved in Commission sponsored workshops.

I. FCTA's Member Operators Must Have A Further Opportunity To Provide Input Concerning PEF's Storm Hardening Plan and Attachment Standards And Procedures

Rule 25-6.0342(6) requires PEF to seek input from and attempt in good faith to

⁷ See 47 U.S.C. § 224(f)(1).

⁸ See 47 U.S.C. § 224(b)(1).

⁹ The FCC has jurisdiction to regulate cable operators' access to, and the rates, terms and conditions of pole attachments on, Florida's utility poles pursuant to 47 U.S.C. 224(b)(1).

accommodate concerns raised by third party attachers. "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."¹⁰ In addition, each storm hardening plan must utilize such input to estimate the costs and benefits of the proposed storm hardening activities to third party attachers.¹¹

Florida IOUs had ninety days from the adoption of Rule 25-6.0342 to develop their storm hardening plans and solicit and incorporate input from third party attachers. During this relatively short ninety day period, PEF engaged FCTA members in discussion regarding the development of its Plan by holding two meetings: a two hour Storm Hardening Plan Overview meeting on March 2, 2007, and a meeting on April 10, 2007, which involved a more detailed review of what PEF intended to address through its Storm Hardening Plan. FCTA members participated in, and provided feedback at, both meetings. PEF provided written project descriptions and locations to third party attachers on April 10 and April 24, 2007, as well as a copy of Progress Energy's Joint Use Pole Attachment Guidelines (dated 10/29/2004) and an outline of the draft Plan thereafter. However, PEF was unable to provide a complete written draft of its Storm Hardening Plan to third party attachers during the ninety day period. Accordingly, while FCTA provided some feedback to PEF at the meetings and in a letter dated May 3, 2007, FCTA's member operators were not able to provide input on, or note all of their concerns with, PEF's Plan prior to it being filed with the Commission.

PEF's May 7, 2007 Plan filed with the Commission contains more than 500 pages including PEF's Distribution Overhead and Underground Construction Manuals, a Distribution Engineering Manual, PEF's Transmission line design criteria and philosophy, as well as PEF's Joint Use Pole Attachment Guidelines. PEF's Plan contains a tremendous amount of information

¹⁰ Nov. 21, 2006 Staff Recommendation in Dockets 060172-EU and 060173 EU.

¹¹ See Rule 25-6.0342(4)(e).

that is relevant to third party attachers and upon which third party attachers should be permitted to provide input. Clearly, where, as here, third party attachers did not receive a complete copy of the Plan until it was filed, the process of obtaining and incorporating input is not yet complete.

Florida's cable operators are mature, well-established multi-state corporations with over forty years of experience in attaching their facilities to utility poles in the State of Florida. FCTA's member cable operators have attachments on thousands of poles in PEF's footprint alone. PEF's Plan proposes to invest millions of dollars in hardening its distribution infrastructure in 2007, including joint use poles to which cable operators are attached. While PEF's Plan does not explain whether, how, or to what extent it will seek to recover storm hardening costs from third party attachers, it appears that PEF's storm hardening efforts will result in increased costs for cable operators. For example, the investment and carrying charges upon which cable operator pole rents are based may increase resulting in an increase in the annual pole attachment rental fees, PEF may attempt to collect certain costs associated with storm hardening directly from attaching entities, and cable operators may incur costs in transferring their facilities where poles are replaced.

Moreover, cable operators anticipate that as inspections and loading analyses are completed on joint use poles, utilities will assign responsibility for non-compliance to third party attachers and seek to allocate certain direct charges to cable operators. In addition, the processes being proposed could add significant time to the attachment process, and thus result in delays in the provision of service to cable subscribers. Thus, cable operators' input into the utilities' storm hardening plans is essential to ensuring that the plans effectively harden the state's pole infrastructure and do so in a manner that is practical and cost-effective and thus, sustainable for the long term.

Moreover, even the voluminous material that was provided by PEF lacks certain detail and information that is necessary for FCTA members to provide meaningful input. Pursuant to Rule 25-6.0342(3), each plan must show the extent to which it complies with the NESC, adopts extreme wind standards, mitigates damage from flooding and storm surges and provides for placement of new and replacement distribution facilities. Pursuant to Rule 25-6.0342(4) each plan shall describe facilities affected, list communities impacted and critical infrastructure, the extent to which joint use facilities are affected, and estimate the costs and benefits of the plan to the utility and to third party attachers. In this case, PEF omitted certain critical information that is necessary for third party attachers to provide input. For example:

- FCTA needs more details of PEF's specific plans for undergrounding of interstate crossings before it can comment on whether these are prudent, practical and cost effective as required by the Rules.
- FCTA needs more information on the specific alternatives PEF will consider in lieu of relocation from back to front lots before FCTA can provide meaningful input about those alternatives. There are many ways to facilitate safe and efficient access to back lots without relocating power lines, including vegetation management, improved right-of-way access projects, and purchasing specialized vehicles and equipment.
- PEF has listed many projects impacting joint use poles at pages 20 to 21 of its Plan as required by Rule 25-6.0342(4)(c) but has provided very little detail concerning the specific nature of the projects.
- The information provided concerning the joint use pole inspection audits is incomplete. For example, on page 38 (300 of 551) of the PEF Reliability Report dated 3-1-07, there is a Joint Use Attachment-Distribution Poles chart. The chart states at lines G, H, I and K,

that 3792 poles were "strength tested," 3791 passed, 1 pole failed and it was corrected by adding a down guy. There is a note at G and H that states "(complete load analysis needed)". It is not clear why this is needed or whether a complete load analysis was performed already on every pole. PEF states on page 21 (22 of 551) of its Storm Hardening Plan that it spent \$1,100,000 in 2006 and will spend \$470,000 in 2007 on a Joint Use Pole Inspection Audit. It is unclear how much of the \$470,000 will be spent on "load analysis," whether PEF intends to collect any of the amounts from attaching entities, how any such load analysis will be done, and how PEF will determine which party is responsible if a pole is overloaded.

These are just a few examples of information that is both missing from, and necessary for third party attachers to provide meaningful input about PEF's Plan.

Again, FCTA appreciates the monumental task undertaken by PEF, and other Florida utilities, in seeking to develop detailed storm hardening plans for their electric transmission and distribution systems in a relatively short period of time. As a result of the time constraints, the plans do, however, lack certain essential information identified herein. These details need to be more fully developed. Consequently, FCTA's member operators have found it difficult, if not impossible in some instances, to relay their concerns or provide specific cost and benefit information about the plans, which further exacerbates the undeveloped, elemental nature of the plans themselves. FCTA has, however, engaged in dialogue with each of the IOUs regarding their plans. Generally, that dialogue has been beneficial, and FCTA strongly believes that significant benefit can be gained by maintaining and facilitating continued, open discussions on storm hardening. Accordingly, FCTA recommends that the Commission consider the May 7, 2007 plans as a continuation of an ongoing dialogue among attaching entities and order

Commission sponsored workshops.

II. PEF's Plan Should Continue To Be Developed To Ensure That Its Construction Standards, Deployment Strategies And Attachment Standards And Procedures Are Prudent, Practical And Cost Effective

Pursuant to Rule 25-6.0342(2), IOU storm hardening plans must meet the desired objectives of enhancing reliability and reducing storm restoration costs and outage times in a *prudent, practical and cost effective* manner to the affected parties. While it might be attractive on the surface to hear that a utility is building to a more stringent standard than is required by the NESC, this fact alone will not ensure that the utility's pole infrastructure is any more likely to better withstand hurricane conditions.

For example, Section 250C of the 2007 NESC prescribes extreme wind loading standards only for poles that are over 60 feet tall.¹² Applying these standards to shorter poles has not been demonstrated to be effective for sustaining reliability in hurricane conditions. Consider the remarks of Mr. Nelson G. Bingell of Osmose Utility Services and a member of the 2007 NESC standards subcommittee on overhead lines strength and loading. At the April 17, 2006 Rule Development Workshop, which considered the issue of extreme wind loading, Mr. Bingell concluded that extending these standards to poles shorter than 60 feet could not be justified because of the "uncertainty of the improved reliability" and the fact that many of the failures that occurred in the 2004-2005 hurricane seasons were the result of trees and flying debris hitting the lines – a situation which would not be improved by increased resistance to sustained wind gusts.¹³ Commenting further on his meeting with the NESC subcommittee evaluating wind loading, Mr. Bingell noted that "the general feeling was that once debris starts flying around in a storm, that's when the wind-only loading criteria kind of aren't adequate. It's hard to design for

¹² NESC Rule 250C and Tables 250-2 (a) through (d) (2007 ed.).

¹³ Transcript of April 17, 2006 Rule Development Workshop, at 53-54. (hereinafter "Transcript").

tool sheds running into lines.”¹⁴

At the same workshop, David McDonald, director of Distribution Asset Management and System Storm Coordinator for Progress Energy, noted that the 2007 NESC subcommittee responsible for evaluating loading considered and recommended against extreme wind loading on poles under 60 feet.¹⁵ And as stated by Mr. Regan Haines, director of Energy Delivery Engineering and Field Services for Tampa Electric Company at the same workshop, “improving the vegetation management program that we have and our maintenance program is probably dollars better spent than investing in a higher construction standard.”¹⁶

Similarly, when IOUs are considering clearance issues, such as when to replace a pole, the NESC prescribed standards for clearances should be the standard. The NESC required clearances between power and communications attachments should be the ultimate *minimum* spacing acceptable. While it may be prudent to require greater clearances on new or existing poles when space is available, clearances may be reduced to NESC standards as the pole gets filled up when, for example, power companies add attachments such as transformers, electric services and street light fixtures. Using NESC clearances as a minimum standard will ensure that attachments are not unnecessarily relocated or poles unnecessarily changed out, and thus is a more cost effective and practical result.

PEF has decided *not* to adopt extreme wind standards for new distribution construction, stating “all credible research that PEF is aware of shows there is no benefit to applying the extreme wind standard to distribution construction,” for major planned work or for critical

¹⁴ Transcript at 53.

¹⁵ Transcript at 45. *See also* Remarks of Nelson Bingell, Transcript at 53 (“So that was the effort of the [NESC task force on wind loading], to say, hey, if we really want to increase reliability and safety, we can only go up to the point where debris starts to fly around, because it would be very difficult to design for those conditions.”).

¹⁶ Transcript at 68.

infrastructure, finding that “debris and vegetation are the primary causes of distribution pole damage, and these are conditions that the extreme wind standards, and other overhead construction standard, cannot address.” PEF Plan at 4-7. FCTA agrees with and supports these conclusions as well as the design standards summarized by PEF on page 4 of its Plan. Specifically, PEF describes its standards as (1) quality construction in adherence with current NESC requirements; (2) well defined and consistently executed maintenance plans; and (3) prudent end-of-life equipment replacement programs.

FCTA also agrees with and supports the PEF methodology of evaluating alternatives to building to more stringent standards for hardening poles. In particular, FCTA applauds PEF’s Plan for small conductor replacement projects to decrease line breakage during storms. The small wire upgrade is a fundamental improvement to reliability and public safety. This best practice storm hardening action should be included in all IOU plans as it will produce improved reliability and decrease restoration time and cost. Many more outages in hurricanes involve broken wires than broken poles, especially in the impacted areas outside the central path of strong storms.

In addition to the storm hardening alternatives proposed by PEF, other proven distribution power system initiatives and storm recovery preparations can produce greatly increased electric service reliability, decreased storm damage, and reduced restoration time and expense. Such storm hardening initiatives for overhead electric power distribution lines which are prudent, practical and cost effective include:

- Vegetation management on a three year cycle, including tree removal where practical.
- Right of way access improvement projects for lines which are inaccessible, including removing or providing access across strategic obstacles to line sections.

- The use of specialized equipment and or contractors for work in difficult right of way conditions such as back lot line, off road or swampy area lines for more efficient restoration.
- Pole inspection with strengthening or replacement or guying of deteriorated or overloaded poles. All deteriorated, broken or missing guys should be replaced. All buried anchor heads should be extended to above grade or water levels to prevent guy wires from rusting off.
- Installation of storm guying projects for line segments where it is feasible. Include lines where poles are subject to lean over in soft soil during high winds. Larger poles do little to solve the problem of leaning in soft soil without guying.
- Replacing small conductor primary voltage wires with larger, stronger wires to decrease breakage during storms. These projects should be coordinated with pole inspections and vegetation management and include major maintenance and guying improvements.
- Adding line segment sectionalizing switches, breakers and fuses as needed to isolate sections of line which sustain heavy storm damage. This can greatly improve time to restore power to lightly damaged main line segments before all major storm damage in an area is repaired.
- Updating automatic electric primary circuit coordination of breakers and line sectionalizing fuses. Add devices as appropriate to assure automatic line sectionalizing initially and facilitate power restoration after storms pass.
- Converting selected distribution systems' voltage from 12 or 13 kV to 25 kV. Four times the electric power can be delivered by the same circuit if the voltage is doubled. Higher distribution voltage decreases the need for larger primary wire sizes and multiple circuits

as electric system load grows. The long-term effect on wind loading is positive, and there are many other economic benefits of 25 kV systems.

- Developing an improved procedure to avoid cutting of fiber optic cables by debris clearing and electric repair crews. In many instances fiber optic circuits have survived the hurricanes, still functional, but on the ground in places only to be cut repeatedly by restoration efforts by others.

While FCTA members generally support these alternative solutions for storm hardening, FCTA still has concerns about whether, how and to what extent the costs of these proposed activities might be passed on to third party attachers. As set forth below, a full body of federal law exists that governs which costs may be passed on to third party attachers, and where such costs can be imposed, whether they should be collected as direct reimbursements or through the annual rental rates, prescribed by FCC formula.

Some of the specific recommendations adopted in PEF's Plan exceed the NESC requirements in ways that are not prudent, practical and cost effective. For example:

- The minimum separation between communication cables at midspan should be 4", not 12" as stated on page 4 of PEF's Joint Use Pole Attachment Guidelines (p. 512 of the Plan). *See* NESC Rule 235.H.2.
- Power supplies should be allowed on poles as long as they comply with NESC requirements and do not overload the pole. On page 5 of the PEF's Joint Use Pole Attachment Guidelines, it states that power supplies may only be mounted on attacher-owned facilities.
- On Drawing #09.04-02, the 12" minimum clearance shown at (x) should recognize NESC Rule 238.D. Exception which allows 3" under the conditions stated. It should also be

noted that 20" separation is required to ungrounded street light brackets and 4" to grounded street light brackets. The leads to the light below CATV must be covered to 72" below cable, not 12". See NESC rule 239G.1. Rule 238D applies to a light above cable only.

- Drawing 09.04-04 Dimension Letter B should recognize NESC Rule 239.F.2.Exception 1 which allows 30" separation to the neutral under the conditions stated.
- Drawing 09-04-14 Note 1 should read 30", not 40" consistent with Table 235-5 footnote 5, and NESC Rule 230.F.1. The clearance to span guy and down guy should be 6", not "12." See NESC Table 235-5 lines 2 a, b, and c; column 2. The minimum clearance from neutral midspan should be 12" consistent with NESC Rule 235.C.2b(1)(a) Exception 1.
- The Transmission Loading Design Guideline should include guidelines regarding overbuilding existing joint use distribution lines with combination distribution and transmission structures and should also be rewritten to comply with the 2007 NESC.
- PEF requires full permitting for overlashing, upgrades to larger cable, rebuilds, removals, and large scale relocations. Pp. 2-3 of Joint Use Attachment Guidelines, dated October 29, 2004. As set forth below, PEF's permitting requirements for overlashing, as well as other types of modifications of existing attachments, implicate FCC jurisdiction. Moreover, full permitting for modifications of existing attachments is not prudent, practical or cost effective. The permitting process can be very time consuming and often creates significant delays for cable operators seeking to repair existing facilities or service new customers in a highly competitive environment. Delay in providing service in a highly competitive environment translates to lost business. More prudent, practical and

cost effective means exist for ensuring that poles are compliant with governing standards and that allow pole owners to keep track of attachments. For example, cable operators can ensure that any modifications of existing attachments comply with NESC clearance and loading requirements prior to making such modifications, and can notify the utilities after the fact to ensure that records accurately reflect modifications, as they currently do for drop poles.

It would be extremely beneficial for these types of specific engineering issues to be further discussed and refined in Commission sponsored workshops. FCTA believes that these discussions could lead to prudent, practical and cost effective solutions.

III. PEF's Plan Should Be Further Developed To Ensure That It Does Not Conflict With Federal Laws Governing Pole Attachments

While each IOU's Storm Hardening Plan will inevitably impact third party attachers, the Commission must ensure that the Plans do not "conflict with Title 47 U.S.C. § 224, relating to Federal Communications Commission jurisdiction over pole attachments," consistent with Rule 25-6.0342(8). As the FCTA explained in a comprehensive memorandum of law submitted August 31, 2006, 47 U.S.C. § 224 authorizes the FCC "to regulate pole attachment matters, including denials of access for safety related reasons, as well as the rates, terms and conditions of attachments. . . ." ¹⁷ Pursuant to this authority, over the past 30 years, the FCC has developed an extensive set of pole attachment rules, in the form of regulations, ¹⁸ pole attachment orders ¹⁹

¹⁷ Memorandum of Law in Support of the Florida Cable Telecommunications Associations' Suggested Rule Changes, filed in *In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events*, Docket No. 060172-EU, *In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code*, Docket No. 060173-EU, (August 31, 2006) ("August 31, 2006 Memo").

¹⁸ 47 C.F.R. 1.401 *et seq.*

¹⁹ See, e.g., *Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,130 (2001) (hereinafter "*May 25th Order*"), *aff'd Southern Co. Servs., Inc. v. FCC*,

and case law, involving a wide variety of joint-use issues, including engineering and safety issues.²⁰ A brief history of federal pole attachment law is attached hereto as Exhibit 1.

Despite the FCC's comprehensive authority over pole attachments, some aspects of PEF's Plan directly conflict with FCC precedent or otherwise undermine FCTA members' Section 224 rights. For example:

- ***Overlashing***

PEF requires full permitting for overlashing, including both overlashing by the existing attacher and by third parties. *See* Joint Use Pole Attachment Guidelines at 2, 4. The FCC has ruled, however, "that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment."²¹ Under federal pole attachment laws, overlashing terms and conditions must be just and reasonable, must not impede attachers' rights to be on the poles, and cannot be unilaterally imposed but instead must be negotiated.

FCTA members certainly do not suggest that overlashing should be permitted to bring a pole out of compliance. In order to ensure that poles to be overlashed are not over-loaded or otherwise out of compliance, FCTA members recommend that the stakeholders work together to

313 F.3d 574, 582 (D.C. Cir. 2002).

²⁰ Indeed, just last year, the FCC "confirmed that it has jurisdiction to review and reject [] challenged engineering standard[s] or practice[s] as unjust or unreasonable under section 224, even where the standard or practice complies with state and local engineering standards that are inconsistent with [the FCC's] rules and policies." *Arkansas Cable Telecomm. Ass'n v. Entergy Arkansas, Inc.*, 21 FCC Rcd 2158, ¶¶ 8-11 & n. 37 (2006) (internal citations omitted). *See also* August 31, 2006 Memo at 6-7.

²¹ *May 25th Order* at ¶ 75, *aff'd Southern Company Services, Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) ("Overlashers are not required to give prior notice to utilities before overlashing. However, FCC rules do not preclude owners from negotiating with pole users to require notice before overlashing In short, the [FCC's] overlashing rules show due consideration for the utilities' statutory rights and financial concerns. The record shows that these matters played a role in the FCC's decision, but petitioner's concerns were balanced with the efficiency gains that overlashing brings the industry."). *See also Cable Television Association of Georgia v. Georgia Power Co.*, 18 FCC Rcd. 16,333, ¶ 13 (2003) (rejecting a pole attachment agreement provision that required the utility's "written consent to overlashing, which the utility may take up to 30 days to grant or deny" as "unjust and unreasonable on its face" and ordering the "to negotiate in good faith a reasonable provision consistent with FCC precedent.")

develop an overlash standard, similar to the one adopted in a recent New York State Public Service Commission ("NYPSC") pole attachment rulemaking. In that case, the NYPSC ruled that "a predetermined limited amount of overlashing, that is not a substantial increase to existing facilities, shall be allowed," without notification and allows the attacher itself to make the determination.²² Specifically, "[a]n Attacher, [sic] whose facility has a pre-existing NESC calculated span tension of no more than 1,750 lbs., shall be allowed to overlash a pre-determined maximum load of not more than 20% to the existing communications facility. Existing facilities with an NESC calculated span tension of less than 1,000 lbs. shall be allowed a pre-determined overlash of up to 40% of such pre-existing facilities."²³ If the attacher "determines that the addition of equipment and loading is greater than the pre-determined limits, further assessment of the overlashed facility for its impact on the overall pole loading is required to assure that the pole limits are not exceeded."²⁴ In those cases, the attacher would be required to "provide the pole Owner with a 'worst case' pole analysis from the area to be overlashed, to be sure that the additional facilities will not excessively burden the pole structures."²⁵

Moreover, it remains to be seen whether, how and to what extent, PEF might attempt to assign responsibility for non-compliance discovered in routine inspections to unpermitted entities, and whether PEF might attribute responsibility to parties that have, in accordance with federal law, not obtained permits for overlashing. Utilities must not be permitted to unilaterally dictate responsibility for non-compliance. The FCC has held repeatedly that attaching entities cannot be required to pay for corrections of existing non-compliance. In 2003, the FCC ruled

²² *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachment, 2004 N.Y. P.U.C. LEXIS 306, *28-31 (N.Y. P.U.C. rel. Aug., 6, 2004).

²³ *Id.* at *30.

²⁴ *Id.*

²⁵ *Id.*

that "...it is an unjust and unreasonable term and condition of attachment, in violation of Section 224 of the Act, for a utility pole owner to hold an attacher responsible for the costs arising from the correction of other attachers' safety violations."²⁶ Similarly in 2001, the FCC ruled that the pole owner was "prohibited from holding the Complainant [an attacher] responsible for costs arising from the correction of safety violation of attachers other than the Complainant."²⁷ And, a utility that uses a request for modification from an attaching entity to bring its facilities into compliance with applicable safety or other regulatory requirements will be responsible for its share of the modification costs.²⁸

- ***Unauthorized Attachments***

PEF reports that 72,186 unauthorized attachments were discovered in its audit completed in December 2006. See Joint Use Attachment-Distribution Poles chart line (f), page 38 of the PEF Reliability Report dated 3-1-07 (p. 300 of the PEF Plan). This amounts to approximately 9% of the number of authorized attachments. However, it should be noted that Progress unilaterally changed its definition of an attachment in 2006 and now counts multiple contacts on one pole by the same CATV operator as individual attachments. The past practice, which comports with the PEF pole attachment agreement and FCC precedent,²⁹ was to count the

²⁶ *Knology v. Ga. Power Co.*, 18 FCC Rcd 24,615, ¶ 37 (2003).

²⁷ *Cavalier Tel., LLC v. Va. Elec. and Power Co.*, 15 FCC Rcd 9563 ¶17 (2000).

²⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, 14 FCC Rcd 18,049, ¶ 88 (1999) (hereinafter "*1999 Recon Order*"), *aff'd Southern Co. v. FCC*, 293 F.3d 1338, 1352 (11th Cir. 2002) ("As the utilities will be the primary beneficiaries of efforts to modernize their facilities, it is logical for the FCC to mandate that they bear some share of the costs of the transition."). The FCC has also ruled "that utilities may not hold attaching entities responsible for sharing in the direct costs of government mandated pole modifications that would be required without the presence of attachers." *1999 Recon Order* at ¶ 106 (1999) *aff'd Southern Co. v. FCC*, 293 F.3d at 1352 ("Finally, it is reasonable to mandate that utilities bear the costs of modifying their facilities in response to local government mandates, given that they would bear these costs in any event. Attaching entities are not given a free ride, as incremental costs associated with moving the attachment can be factored into the standard rent utilities charge to attachers.").

²⁹ The FCC long ago instructed that any ancillary equipment that occupies the same foot of space as the cable attachment itself should not be considered a separate attachment. *Matter of Texas Cablevision Company, et al. v.*

facilities of a third party attacher as one attachment, even if the pole hosted a cable, drop, down guy, lateral cable attachment, etc., for that attacher. This change in the method of counting attachments is disputed by FCTA member operators. Thus, it should not be perceived that Progress has experienced a recent, excessive rate of unauthorized attachments.

Again, it remains to be seen whether, how and to what extent, PEF might use its audit results in an attempt to assign responsibility for non-compliance to unpermitted attachments, and whether PEF might attribute responsibility to parties that have, in accordance with their existing agreements and federal law, not obtained permits for multiple pole contacts. However, the FCC has found that whether an attachment is permitted or not does not inform whether it was compliant with NESC.³⁰ Clearly PEF's ability to change rental rates for multiple contracts on the pole is governed by federal law.³¹ These types of issues should be further addressed in workshops so that third party attachers can provide appropriate input to ensure that their federal rights are protected.

- ***Pole Inspections and Audits***

PEF states that each pole in the application shall be checked to meet NESC clearance requirements and that all costs associated with this NESC clearance work will be paid by the third party attacher proposing the attachment or overlash but does not explain how these costs will be recovered. PEF also references periodic inspections and vegetation management as

Southwestern Electric Power Company, Memorandum Opinion and Order, PA-84-007, 1985 FCC Lexis 3818, ¶ 6 (rel. Feb. 26, 1985).

³⁰ See *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, 2002 FCC LEXIS 1589, ¶ 9 (2002), *aff'd*, *Pub. Serv. Co. of Colo. v. FCC*, 328 F.3d 675, 680 (D.C. Cir. 2003).

³¹ See Memorandum of Law in Support of the Florida Cable Telecommunications Associations' Suggested Rule Changes, In re: Proposed rules governing placement of new electric distribution facilities underground, and conversion of existing overhead distribution facilities to underground facilities, address effects of extreme weather events, Docket No. 060172-EU, In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code, Docket No. 060173-E (August 31, 2006).

alternative methods of strengthening poles but does not indicate the extent to which it will seek to recover the costs of such inspections or vegetation management from attaching entities.

Under federal law, all charges must be just and reasonable. 47 U.S.C. § 224. Moreover, the FCC has consistently held that “[a] rate based on fully allocated costs,” such as the rental rate paid to Florida pole owners, “by definition encompasses all pole related costs and additional charges are not appropriate.”³² As a result, the “costs attendant to routine inspections of poles, which benefit all attachers, should be included in the maintenance costs account and allocated to each attacher in accordance with the Commission’s formula.”³³ For example, FERC Account 593 includes the expenses for inspection and maintenance of overhead distribution lines and is factored into the carrying charges that make up an electric utility’s annual rent, including tree-trimming expenses.³⁴ Thus, whether and how much PEF may charge for inspections is governed by federal law.

Moreover, it remains to be seen whether, how and to what extent, PEF might attempt to assign responsibility for non-compliance discovered in routine inspections to unpermitted entities. Utilities must not be allowed to unilaterally dictate responsibility for non-compliance. The FCC has clearly held that attaching entities cannot be required to pay for existing non-compliance. These types of issues should be further addressed in workshops so that third party attachers can provide appropriate input to ensure that their federal rights are protected.

³² *Texas Cable & Telecomm. Ass’n v. Entergy Servs., Inc.*, 14 FCC Rcd 9138, ¶ 10 (1999).

³³ *See, e.g., Cable Tel. Ass’n of Ga. v. Ga. Power Co.*, 18 FCC Rcd. 16,333, ¶ 16 (2003).

³⁴ *See* 18 C.F.R. pt. 101 (describing Account 593 to include “the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures . . . [including] [t]rimming trees and clearing brush.”).

- ***Makeready Costs***

PEF sets forth provisions for the recovery of certain makeready costs in its Plan. Joint Use Guidelines at p. 4 (“The cost of all materials required to adjust facilities shall be paid by the attacher.” “ All costs associated with the application requiring PEF clerical, engineering and crew costs will be paid by the proposing attacher.”) and pp. 7 – 8 (listing estimates for certain types of make ready work such as pole replacements.). The amounts that PEF may assess for makeready work and the types of charges that PEF may collect directly from attaching entities fall within the FCC’s jurisdiction.³⁵

Many of these cost issues are left unresolved in the utilities’ storm hardening plans. For example, the FCTA does not know which of the costs (*e.g.*, engineering load studies for third party attachers, pole replacement, allocation of cost to correct for safety violations, etc.) IOUs will seek to recover from cable operators, if at all. Whether these costs are necessary and whether they will be sought on a direct reimbursement basis, allocated in the pole rent, or not recovered remains a significant source of concern for the FCTA as they directly implicate the FCC’s jurisdiction.

- ***Tagging***

PEF imposes stringent requirements for tagging and provides “If attacher fails to install identifying tags, PEF may deem the attachment in violation.” Joint Use Attachment Guidelines at 4. Depending upon how this is applied, it could implicate FCC jurisdiction as an unreasonable or discriminatory term or condition.³⁶ Tagging may not have been required or enforced historically. In that case, it should not give rise to allegations of non-compliance. Moreover,

³⁵ Attached hereto as Exhibit 2 is list of numerous FCC cases addressing utility collection of costs from attaching entities

³⁶ See 47 U.S.C. § 224(b)(1); See also 1999 Recon Order at ¶ 120 (“We believe that, on a prospective basis, reasonable tagging requirements may be included in agreements between utilities and attachers.”).

tagging may not be reasonable if more efficient alternatives exist – such as electronic databases – that can be accessed by field personnel. Tags can be expensive and often are destroyed or become illegible over time. Tagging requirements, and how they are implemented, are a good subject for further development by pole owners and attaching entities in workshops.

- ***Boxing***

PEF prohibits boxing, opposite side construction, and the use of extension arms or brackets. Pole Attachment Guidelines at 5. These alternative construction methodologies are currently pending before the FCC in a Petition for Rulemaking request filed by Fibertech Communications, Inc.³⁷

In sum, these types of issues, which clearly implicate FCC jurisdiction, should be further addressed in workshops so that third party attachers can provide appropriate input to ensure that their federal rights are protected.

IV. The Commission Should Have Ongoing Workshops To Further Develop Utility Plans

FCTA member operators will benefit from the implementation of effective and prudent storm hardening plans, and would like to continue to work with the IOUs and the Commission towards the development of comprehensive storm hardening plans that increase the ability of Florida IOU distribution pole infrastructure to better withstand extreme weather events and that improve the coordination of service restoration efforts. Further development and discussion of these plans is especially important given the potential cost impact on third party attachers as well as the potential that aspects of these plans will impact FCTA members' federally protected pole attachment rights.

³⁷ See *Pleading Cycle Established for Petition for Rulemaking of Fibertech Networks, LLC*, Public Notice, RM-11303, DA 05-3182 (rel. Dec. 14, 2005).

So far, dialogue between the IOUs and cable operators has been beneficial, and FCTA strongly believes that significant benefit can be gained by maintaining and facilitating continued, open discussions on storm hardening. Thus, the best course of action to address the standards set forth under storm hardening proposals is for the Commission to facilitate this ongoing dialogue between the utilities and interested attaching parties in the form of Commission sponsored workshops.

To date, the FCTA has been proactive in its participation in meetings with the Companies and has provided feedback on all available plans. In accord with the Commission's intent that "the new rules envision both the IOUs and third-party attachers working together in good faith on the front end to establish storm hardening plans," the FCTA has submitted feedback to each utility including PEF at every step of this process.³⁸ This input is important because third-party attachers have more than forty years of experience in attaching their facilities to utility poles in the state of Florida, are the most knowledgeable about their own attachments, and currently contribute to pole improvements.³⁹ Furthermore, cable operators provide important services that can be crucial in emergency situations, including 911 services. Thus, the impact that implementation of these plans can and will have on cable operators should not be discounted. By the same token, FCTA's member operators have every incentive and desire to work with the IOUs towards the further development of these plans.

Due to the complexity of the issues and the uncertain amount and level of detail that has been captured by the plans, it is appropriate to contemplate further incremental steps to implement and establish storm hardening standards. To that end, FCTA members strongly

³⁸ Staff Recommendation, issued Nov. 21, 2006, in Dockets Nos. 060172-EU and 060173-EU.

³⁹ Specifically, in making poles ready for attachment, cable operators often guy the pole, or pay to have a pole changed out with a new pole. Even though the new pole is owned by the utility, cable continues to pay rent.

recommend that a collaborative process, which would include Commission workshops, is the optimal approach for the development of truly comprehensive storm hardening plans. Through workshops, all stakeholders will have the opportunity to develop and discuss essential details of the storm hardening plans, which will enable third party attachers to provide additional, more detailed input to the plans. Such workshops would also allow third party attachers an opportunity to identify any additional facilities that they believe should be included as critical infrastructure and/or targeted poles. The development of such details, as well as the attendant opportunity for more specific input from third party attachers, will result in more comprehensive and effective plans, thereby bolstering the Commission's efforts to ensure the availability of power and communications services for all Florida consumers in extreme weather situations.

The Commission has used workshops in the past to develop infrastructure hardening rules, to assess research in electric utility infrastructure hardening, and to address the role of vegetation management. These workshops have provided appropriate forums for representatives from responsive entities to share ideas, promote shared interests and to receive detailed information. Elsewhere, workshops have provided a forum for addressing similar issues and have yielded positive outcomes through ongoing dialogue and coordination amongst all stakeholders. For instance, after nearly a decade of dispute concerning joint-use in Oregon, in April 2007, the Oregon Public Utilities Commission adopted an Order that established comprehensive pole attachment rules.⁴⁰ This successful resolution was due in no small part to multiple workshops and hearings at which many of the most contentious issues were identified and explored by all stakeholders.

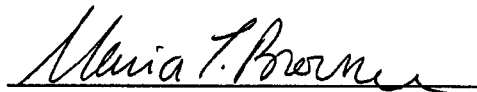
⁴⁰ Oregon is certified to regulate pole attachments pursuant to 47 U.S.C. § 224.

Commission approval of the PEF Plan, in its current, incomplete state, would be premature. Workshops would promote the continued development of the PEF Plan and other IOU plans in a productive atmosphere under the guidance of the Commission and its professional staff. Thus, FCTA respectfully suggests that the Commission take action with regard to each of the utility's plans by implementing a collaborative process for the further development of these plans and by scheduling workshops for that purpose. If, however, the Commission determines that it must affirmatively act to approve or reject the plans at this time, FCTA strongly recommends that the Commission consider approving the plans on a limited, experimental basis only, subject to further clarification, input, and revisions, and include a statement that any approval is not intended to conflict with federal pole attachment law. Thereafter, the collaborative process discussed herein should be implemented in order to develop further details and third party attacher input contemplated by Rule 25-6.0342 and the Commission's Order.

Respectfully submitted this 30th day of May, 2007.

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EXHIBIT 1

History of 224

Utilities possess monopoly ownership of poles on which cable operators must rely to provide their services.⁴¹ Local franchises, environmental restrictions and other legal and economic barriers preclude cable operators and others from placing additional poles in areas where poles already exist. Redundant aerial plant structures (*i.e.*, additional sets of utility poles) are therefore neither permissible nor feasible. Moreover, "in most instances underground installation of necessary cables is impossible or impractical. Utility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables."⁴² Indeed, the United States Congress,⁴³ the Supreme Court,⁴⁴ federal courts,⁴⁵ the Department of Justice⁴⁶ and the Federal Communications Commission ("FCC"),⁴⁷ have all recognized the status of poles and conduit as "essential facilities" and thus bottlenecks to

⁴¹ "About 80 percent of the nation's poles are controlled by [electric] utility companies and the remaining 20 percent by phone companies...." Ted Hearn, *Supreme Court Takes Cable Pole Case*, MULTICHANNEL NEWS, Jan. 29, 2001 at 34. Accordingly, although incumbent local exchange carriers like Qwest and Verizon own poles in Oregon, the state's electric utilities most likely own more poles. Charter is attached to approximately 180,000 poles in the State of Oregon and, as a cable operator, owns virtually no poles.

⁴² *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (hereinafter "*Florida Power*").

⁴³ See, e.g., 123 Cong. Rec. H35008 (1977) (statement of Rep. Broyhill, co-sponsor of the Pole Attachments Act) ("The cable television industry has traditionally relied on telephone and power companies to provide space on poles for the attachment of CATV cables. Primarily because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, the cable operators are virtually dependent on the telephone and power companies....").

⁴⁴ See *Nat'l Cable & Telecomm. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 330 (2002) (hereinafter "*Gulf Power*") (stating that cable companies have "found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles Utilities, in turn, have found it convenient to charge monopoly rents.").

⁴⁵ See, e.g., *United States v. Western Elec. Co., Inc.* 673 F. Supp. 525, 564 (D.D.C. 1987) (stating that cable television companies "depend on permission from the Regional Companies for attachment of their cables to the telephone companies' poles and the sharing of their conduit space.... In short, there does not exist any meaningful, large-scale alternative to the facilities of the local exchange networks....").

⁴⁶ See, e.g., *United States v. AT&T*, No. 74-1698, Plaintiff's First Statement of Contentions and Proof, Appendix, Tab 8 (D.D.C. filed Nov. 1, 1978) (cataloguing by the Justice Department of Bell Operating Company dominance of pole and conduit facilities).

⁴⁷ See *Common Carrier Bureau Cautions Owners of Utility Poles*, 1995 FCC LEXIS 193, *1 (Jan. 11, 1995) ("Utility poles, ducts and conduits are regarded as essential facilities, access to which is vital for promoting the deployment of cable television systems.").

facilities-based competition in telecommunications and cable television markets. Effective regulation of these facilities is thus crucial to ensure access at just and reasonable rates, terms and conditions⁴⁸ and to promote facilities-based competition.⁴⁹

The federal 1978 Pole Attachment Act ("PAA")⁵⁰ was the legislative response to substantial evidence of abuse by monopoly pole-owning utilities, including the imposition of "exorbitant fees and other unfair terms" on cable operators.⁵¹ Congress recognized that without pole attachment regulation, "utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates."⁵² The statute instructs the FCC to adopt procedures necessary to hear and resolve complaints and to ensure just and reasonable rates, terms and conditions for the use of these essential facilities.⁵³

"[T]he predominant legislative goal for Congress in enacting the Pole Attachment Act was 'to establish a mechanism whereby unfair pole attachment practices may come under review and sanction, and to minimize the effect of unjust and unreasonable pole attachment practices on the wider development of cable television service to the public.'"⁵⁴

Principles of nondiscrimination have also been implemented to protect telecommunications providers. The Telecommunications Act of 1996 (hereinafter "the 1996

⁴⁸ See *Ala Cable Telecomm. Ass'n v. Ala. Power*, 15 FCC Rcd 17,346, ¶ 6 (2000) ("By conferring jurisdiction on the Commission to regulate pole attachments, Congress sought to constrain the ability of telephone and electric utilities to extract monopoly profits from cable television systems operators in need of pole space.").

⁴⁹ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 1034, *1045 (Jan. 13, 1998) ("Wireline video and telecommunications competition is heavily dependent on the ability of market participants to obtain access to utility poles, conduits and rights of way at reasonable rates.").

⁵⁰ Pub. L. No. 95-234, 92 Stat. 25 (1978), (codified at 47 U.S.C. § 224).

⁵¹ *May 25th Order at ¶ 21* (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977), reprinted in 1978 U.S.C.C.A.N. 109); see also *Florida Power*, 480 U.S. at 247 (recognizing that Congress enacted the Pole Attachment Act "as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service.").

⁵² H.R. Rep. No. 94-1-1630 at 5 (1976).

⁵³ 47 U.S.C. § 224(b)(1).

⁵⁴ *May 25th Order at ¶ 21* (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. (1977), reprinted in 1978 U.S.C.C.A.N. 109).

Act”) amended the PAA to expand the FCC’s jurisdiction over poles and conduit to cover “telecommunications carriers” along with “cable television systems.”⁵⁵ As amended, the PAA imposes upon all utilities, the duty to “provide . . . nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”⁵⁶ This directive ensures that “no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields.”⁵⁷ The PAA also sets forth a cost-based, pole attachment rent formula that “accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles.”⁵⁸

The FCC rate formula, creates a range of compensation, the low end of which is the “incremental costs [or] those costs the utility would not have incurred ‘but for’ the pole attachments in question,” and the high end of which is an allocation of the fully-loaded “operating expenses and capital costs [including a return on investment] that a utility incurs in owning and maintaining poles that are associated with the space occupied by the pole attachments.”⁵⁹ Therefore, anything above incremental costs is a contribution to the utility’s

⁵⁵ For purposes of the PAA, the term “telecommunications carrier” does not include incumbent local exchange carriers, like Qwest and Verizon. *See* 47 U.S.C. § 224(a)(5). Therefore, neither Qwest nor Verizon are protected under the federal PAA.

⁵⁶ 47 U.S.C. § 224(f)(1).

⁵⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 FCC Rcd 15499, 1123 (1996) (hereinafter “1996 FCC Order”).

⁵⁸ *May 25th Order* at ¶ 15. Attachers to poles typically pay an annual rental rate for every pole on which they have an attachment. For cable attachers in FCC states, their annual rent is calculated under the cable rate formula, set forth at 47 U.S.C. § 224(d). There is a separate rate formula for attachments made by competitive local exchange carriers, which is set forth at 47 U.S.C. § 224(e). Specifically, both pole rate formulas rely on historical (“actual” or “embedded”) publicly available and reported data reflected in a utility’s regulatory accounts: ARMIS 43-01 Reports (for ILECs) and FERC Form 1 Reports (for electric utilities).

⁵⁹ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules*

overall revenue requirements. In this regard, most utilities recover such out-of-pocket, or incremental costs in advance of any pole attachment through the imposition of “makeready” expenses and therefore receive at least the minimum required by law.⁶⁰ Makeready generally refers to the modification of existing plant to accommodate additional facilities. Nevertheless, the FCC has long interpreted the rate formula statute to provide that when application of the formula reduces a contractual pole rental rate, the FCC will only reduce the rate to the statutory maximum.⁶¹

Application of the FCC’s rate formula and the numerous other pole attachment rules and case law,⁶² developed in response to Congressional mandate, ensures that facilities-based competition proceeds on fair rates, terms and conditions, notwithstanding monopoly ownership and control of distribution facilities and utilities’ “superior bargaining position in pole attachment matters.”⁶³

and Policies Governing Pole Attachments, Report and Order 13 FCC Rcd. 6777, ¶ 96 n. 303 (1998) (hereinafter “1998 FCC Order”).

⁶⁰ *May 25th Order* at ¶ 8.

⁶¹ *See Florida Power*, 480 U.S. at 254.

⁶² The FCC has adjudicated approximately 300 complaints. *See 1998 FCC Order* at ¶ 8, n. 37. All utilities are therefore on notice that the rates, terms and conditions of pole attachments may be scrutinized to ensure they are just and reasonable, as required by the Pole Attachment Act.

⁶³ *TCA Mgmt. v. Southwestern Pub. Serv. Co.*, 10 FCC Rcd 11,832, ¶ 15 (1995) (citing S. Rep. No. 95-580, 95th Cong. 1st Sess. at 13).

EXHIBIT 2

Cost Recovery Issues Within the FCC's Jurisdiction

1. Billing Standards:

- Discussed the standards for reasonable charges for make-ready work. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 26 (2003) (identifying examples of engineering errors or other duplicative charges that Georgia Power inappropriately billed to an attachers).
- Clarified the share of indirect utility employee costs attachers must pay. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 53 (2003) (correcting utility billing management and supervisory function expense costing in the pole attachment rate).
- Delineating costs of easement inclusions in rates. *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16,333, ¶ 27 (2003) (private easement costs are not recoverable from pole attachment rates).
- Evaluating charges for anchors. *Cox Cable v. Va. Elec. & Power*, Memorandum Opinion & Order, 53 RR 2d 860, ¶¶ 28, 33 (1983) (the pole attachment rate includes costs of anchors). *See also Capital Cities Cable v. Mountain States Tel. & Tel. Co.*, Memorandum Opinion & Order, 56 RR 2d 393 ¶¶ 40-42 (1984).
- Recovery of administrative costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975, ¶ 33 (1999) (billing and pole attachment licensing administration are recovered in the utility pole attachment rate).

2. Billing Overages:

- Charges without itemization. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 50 (2003) (holding utility charge to attacher for vaguely described term was inappropriate).
- Penalties for unauthorized pole attachments. *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, Order, 15 FCC Rcd 11,450, ¶¶ 11, 13 (2000) (unauthorized pole attachment penalty charges must be in line with industry standards).
- Markups on make-ready work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (margin of error surcharges must be explained and reasonable).

- Detail on make-ready bills. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (make-ready bills must contain sufficient detail of work performed).
- Providing refunds for make-ready overcharges. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (refunds for make-ready overcharges must be provided).
- Make-ready surcharges tied to underlying work. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 29 (2000) (make-ready surcharges must be connected to specific work performed).
- Administrative fees relationship to actual costs. *Tex. Cable & Telecomm. Ass'n. v. GTE Southwest, Inc.*, Order, 14 FCC Rcd 2975, ¶ 33 (1999) (holding administrative charges must represent actual costs).
- Engineering survey fees. *Tex. Cable & Telecomm. Ass'n v. Entergy Serv., Inc.*, Order, 14 FCC Rcd 9138, ¶¶ 6, 10 (1999) (the engineering fee should be based on non-recurring actual costs).

3. Billing One Attacher for Costs Associated with Another Attacher:

- Charged new attacher for make-ready work to remedy pre-existing safety violations. *Cavalier Tel. v. Va. Elec. & Power Co.*, Order & Request for Information, 15 FCC Rcd 9563, ¶ 16 (2000) (illustrating VEPCO's attempt to push costs associated with correcting pre-existing safety violations onto Cavalier Telephone).
- Charged new attacher to replace poles to remedy pre-existing safety violations. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 40 (2003) ("Having rejected Georgia Power's defenses regarding pole change-outs, we order Georgia Power to refund Knology the costs of any change-outs necessitated by the safety violations of other attachers. . .").

4. Attachment Fees In Relation to Particular Attachers:

- Charges to new attacher of inspection that benefits multiple parties. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 34 (2003) (a utility's post attachment inspection is routine to the extent it involves the identification and assessment of multiple parties attachments). *See also Newport News Cablevision, Ltd. Communc'ns, Inc. v. Va. Elec. & Power Co.*, 7 FCC Rcd 2610, ¶¶ 8-14 (1992) (inspection costs must be divided among all parties); *Cable Television Ass'n of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 16,333, ¶ 16 (2003) (cost of routine inspections of poles which benefit all attachers should be accounted for in the pole attachment rate).

- Pre-make-ready inspections that benefit multiple parties. *Knology, Inc. v. Ga. Power Co.*, Memorandum Opinion & Order, 18 FCC Rcd 24,615, ¶ 43 (2003) (pre-make-ready inspection costs must be shared by the utility and other attachers when they benefit from such inspections).

EXHIBIT 3

CURRICULUM VITAE

M. T. (MICKEY) HARRELSON

M. T. (Mickey) Harrelson

P. O. Box 432

McRae, GA 31055

Phone: (912) 568-1504

Cell: (229) 860-1300

Fax: (912) 568-1502

Registered Professional Engineer (Electrical) GA#10724 (1976)

Registered Professional Engineer (Electrical) FL #51788 (1997)

EDUCATION: B.S. Industrial Engineering (Co-op) GA TECH, 1970

WORK EXPERIENCE:

1959-	Worked part-time with Harrelson Electric Co., owned by my father.
1963	W. T. Harrelson, doing residential, commercial, & industrial electrical and repair work in McRae, GA.
Dec. 1963- Mar. 1970	Co-op student of Georgia Power Co. in Electric Distribution Operating, McRae, GA, & Commercial Sales, North Atlanta.
Apr. 1970- Jan. 1972	Lieutenant in U. S. Army Air Defense, Minneapolis, MINN, & Yong Son, KOREA. Served as Battery Commander, Korea. Military Status: Inactive, Army Reserves; Rank: Captain.
Feb. 1972- June 1974	Operating Engineer, Brunswick, Georgia Power Co.; Designing, operating, and maintaining distribution system and operating transmission system.
June 1974- Feb. 1976	Senior Commercial Marketing Engineer, Brunswick. Selling wise use of electricity to new and existing commercial customers in Brunswick area. This included lighting design to I.E.S. standards, and consultations regarding the National Electrical Code.
Feb. 1976- June 1978	Operating Engineer, St. Simons Island, Ga. Power; Designing, operating, & maintaining distribution system & operating transmission system.
June 1978- May 1986	District Engineer; Supervised engineering and operation of Brunswick District of Ga. Power Co., including Kingsland Operating Headquarters.

May 1986- Sept. 1989	Area Manager, McRae, Ga. Power Co; Restructure McRae, Eastman, Hazlehurst into area operation, and supervise and coordinate all company activities in the area.
Sept. 1989- April 1992	District Power Delivery Manager, Milledgeville District; Manager of Engineering, Construction, & Maintenance of the electric distribution system and operation of the transmission & distribution system.

Note: During 28 years with Georgia Power Company, I was involved with claims, damage and accident investigations. From 1978 through 1992, I was in charge of these activities at my location.

April 1,1992	Resigned from Georgia Power Company, Reason for leaving: Early retirement incentive package gave excellent opportunity to pursue independent consulting engineer goals.
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April 1,1992 to present	<p>Electric Utility Consulting Engineer.</p> <p>Investigated accidents and testified in matters involving the National Electrical Safety Code, OSHA regulations, utility company safety manuals, employee training courses, accepted good work practices, and the National Electrical Code. These cases have involved electrical contact, flash, and burn injuries, collisions with poles and guy wires, falls from poles, etc., hydraulic oil fires, crushing injuries, property losses from fires, stray voltage, etc. The companies involved have been electric, telephone, cable TV, and product manufacturing companies.</p>
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I do management consulting and safety and engineering training for electric cooperatives, engineering consulting companies and private industry

I do electric power line inspections for electric cooperatives as required by the Rural Utility Service.

I inspect power lines and communications lines built jointly for National Electrical Safety Code compliance. I teach N.E.S.C. compliance and train field engineers and technicians in joint use compliance.

OTHER COURSES AND SEMINARS:

1974	13 weeks Commercial Sales Training by Ga. Power Co., including interior & exterior lighting design, & National Electrical Code.
1975	1 week General Electric Outdoor Lighting School, Hendersonville, NC.
1976	8 weeks Electric Operations Training by Ga. Power Co.
1977	1 week Principles of Leadership Training, Ga. Power Co.
1979	1 week Basic Management Training by Ga. Power Co.
1980-1985	Served as "Leader" of Engineering Dept Quality Circle.

1981	1 week Communications-General Training by Ga. Power Co.
1982	1 week Human Relations Skills Training by Ga. Power Co.
1987	3 days Interpersonal Skills Seminar by Ga. Power Co.
1988	1 week Management Grid School, Mobile, AL, Training by Southern Co.
1988	13 weeks Community Leadership Class sponsored by University of GA Cooperative Extension Service and Telfair County.
1989	1 week Negotiating Edge Seminar, Athens, GA., Training by Ga. Power Co. and Susan Wise
1989	Basic Economic Development Course, GA Institute of Technology
1990	3 months- Committee assignment (met bi-weekly) to formulate Ga. Power Company Guarantee Policy
1991	6 months-Committee assignment (met bi-weekly) to develop "District Operations Performance Measurement" facilitated by Ernst & Young Co.
1991	3 months-Committee assignment (met bi-weekly) to assess Georgia Power Company Marketing Dept Readiness for Incentive pay.
1992	1 week advanced Negotiating Skills Seminar, Peachtree City, Training by Ga. Power Co. & The Executive Speaker, Inc.
1992	1 day IEEE Seminar on 1993 National Electrical Safety Code
1993	2 day NRECA Safety Accreditation Team Training & Testing Seminar
1994	3 day Seminar-The Development & Application of the National Electrical Safety Code by Allen Clapp
1995	2 day ILCI (International Loss Control Institute, Inc.) Seminar on accident investigation
1996	1 day IEEE Seminar - "Changes in me 1997 NESC."
1997	3 day Seminar - "Application of 1997 NESC."

MEMBERSHIPS AND AFFILIATIONS:

1970-present	Member, Georgia Tech Alumni Association
1974-present	Member, Georgia & National Society of Professional Engineers
1978-1986	Member, Glynn County GA Electrical Inspection Board
1992-present	Member, Telfair Co. Chamber of Commerce
1992-present	Member, Institute of Electrical & Electronics Engineers (IEEE)
1993-2002	Board Member, Telfair County Industrial Development Authority
1993-2002	Member, Illuminating Engineering Society of North America (IECNA)
1993-present	Rural Electric Safety Accreditation Program (RESAP) certified accreditation inspector

1994-present Member, National Fire Protection Association

CERTIFICATE OF SERVICE

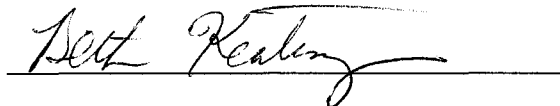
I HEREBY CERTIFY that a true and correct copy of the Florida Telecommunications Association's Comments has been served upon John T. Burnett, Progress Energy Florida, Inc., P.O. Box 14402, St. Petersburg, FL 33733-4042, and that a copy has also been provided via Hand Delivery or US Mail to the persons listed below this 30th day of May, 2007:

Mr. Paul Lewis
Progress Energy Florida, Inc.
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Tallahassee, FL 32301

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By:



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