Dorothy Menasco

From: Naim, Fariba [faribanaim@dwt.com]
Sent: Tuesday, March 18, 2008 4:43 PM
To: Filings@psc.state.fl.us
Cc: Browne, Maria
Subject: FCTA's Post Hearing Brief in Docket 070300.DOC
Attachments: FCTA Post Hearing Brief in Docket 070300.DOC

1. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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2. The docket number and title if filed in an existing docket: 070300-EI, and 070304-EI

3. The name of the party on whose behalf the document is filed: Florida Cable Telecommunication Association, Inc.

4. The total number of pages in each attached document: 29 pages

5. Post Hearing Statement and Brief of the Florida Cable Telecommunications Association, Inc. (FCTA)

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March 18, 2008

Via Electronic Filing
Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No: 070300-EI: Review Of 2007 Electric Infrastructure Storm Hardening Plan Filed Pursuant To Rule 25-6.0342, F.A.C. Submitted By Florida Public Utilities Company**
Docket No. 070304-EI: Petition For Rate Increase By Florida Public Utilities Company

Dear Ms. Cole:

Enclosed is Florida Cable Telecommunications Association, Inc.'s Post Hearing Statement and Brief for filing in the captioned dockets.

Copies have been served to the parties shown on the attached Certificate of Service.

Thank you for your assistance with this filing.

Sincerely,

/s/ Maria Browne
Maria T. Browne

cc: Parties of Record
Ms. Beth Keating, Akerman Senterfitt
Mr. Mickey Harrelson

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of 2007 Electric Infrastructure Storm Hardening Plan Submitted by Florida Public Utilities Company	Docket No. 070300-EI
In re: Petition for rate increase by Florida Public Utilities Company	Docket No. 070304-EI Filed: March 18, 2008

POST HEARING STATEMENT AND BRIEF OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

In accordance with Orders Nos. PSC-07-0811-PCO-EI and PSC-08-0118-PCO-EI, and the Commission's decision at hearing to extend the filing date to March 18, 2008, the Florida Cable Telecommunications Association, Inc. (FCTA) hereby files its Post Hearing Statement and Brief. In light of FCTA's stipulation with Florida Public Utilities' Company (FPUC or the Company), and the Process to Engage Third Party Attachers, FCTA's filing addresses in detail only one issue that could affect the interests of FCTA's member cable operators, Issue 19.

I. Basic Position

* Based upon FCTA's review of the project details that FPUC has included in its Storm Hardening Plan ("Plan") filed with the Commission on July 3, 2007, as well as the Process to Engage Third Parties entered into and filed by the parties in this proceeding on January 29, 2008, and the Stipulation and Agreement entered into by the Company and FCTA and filed in this docket on January 31, 2008 (jointly referred to herein as "Stipulations"), FCTA has no objections to FPUC's Plan at this time. However, neither the Plan nor the rate case should undermine these Stipulations or the federal pole attachment rate setting process. Furthermore, FCTA members'

rights with regard to cable attachments to FPUC poles are governed by current pole attachment agreements and federal law.*

II. Positions on Issues

Introduction and Summary

FCTA is the trade association for cable operators throughout the state of Florida. Its members include Bright House Networks, Comcast Corporation and Cox Communications among others, who rely upon attachments to FPUC's pole infrastructure to distribute video, voice and broadband services to residents throughout FPUC's service territory. The rates, terms and conditions of attachment by FCTA's member operators to FPUC's poles are governed by the parties' pole attachment agreements and federal law. FCTA has filed here to ensure that nothing determined in FPUC's rate case in any way undermines the pole attachments rights of FCTA's member cable operators under federal law. Indeed, the Commission, in promulgating its Rule governing the filing of utility storm hardening plans, recognized that the plans must not "conflict with Title 47, United States Code, Section 224, relating to Federal Communications Commission jurisdiction over pole attachments." F.A.C. 6-25.0342(8).

Background

Investor owned utilities such as FPUC are obligated by federal law to provide cable operators with non-discriminatory access to utility poles that are owned or controlled by such utilities, 47 U.S.C. § 224(f)(1), and must do so pursuant to just and reasonable rates, terms and conditions. 47 U.S.C. § 224(b)(1). The Federal Communications Commission ("FCC") has authority to regulate pole attachment matters, including the rates, terms and conditions of attachments, except in states that have certified to regulate pole attachments in satisfaction of the certification criteria set forth in Section 224(c)(2). Florida has not certified to regulate pole attachments, and thus, federal law governs the rates, costs, terms and conditions of pole attachments by cable operators to poles owned by Florida utilities, including FPUC.

Under the federal system, cable operators pay up front "make-ready" charges for all costs necessary to rearrange lines or replace poles to attach cable to surplus pole space as well as annual pole rental fees covering the cable operator's share of the costs of the entire pole. The FCC, the courts, and state regulatory bodies have, on every occasion, found the current cable pole rate fully compensates utility owners and that it does not subsidize cable subscribers at the expense of the general public.[1] The annual pole rental fees paid by attachers represent "found money" to the utilities and help them to fund fixed pole operating expenses that exist whether or not there are any attachers. Indeed, Congress noted this fact when it enacted the 1978 Pole Attachment Act. *See* 1977 Senate Report at 16, 1978 U.S.C.C.A.N. at 124 ("CATV offers an income-producing use of an otherwise unproductive and often surplus portion of the plant").

The FCC rules prescribe a formula for determining the maximum annual rents that utilities may impose on cable operators. 47 C.F.R. §1.1409(e)(1). The FCC's pole rental formula first derives the annual carrying costs for the entire pole—including maintenance, depreciation, administrative overhead, taxes, and return on investment at the rate authorized by the applicable state PSC –using existing utility financial reports, including the Federal Energy Regulatory Commission ("FERC") Form No. 1: Annual Report of Major Electric Utilities, Licensees and

[1] *See, e.g., 2001 Reconsideration Order,* 13 FCC Rcd at 6786-91 ¶¶ 15-25; *Florida Power,* 480 U.S. at 253-54 (finding that it could not "seriously be argued, that a rate providing for the recovery of fully allocated cost, including the cost of capital, is confiscatory."); *Alabama Power Co. v. FCC,* 311 F.3d 1357 (11th Cir. 2002); *Detroit Edison Co. v. Michigan Public Serv. Comm'n*, 1998 Mich. App. LEXIS 832, *6-7 (Nov. 24, 1998) (hereinafter "*Detroit Edison Co.*"), *aff'g Consumers Power Co., Detroit Edison Co., Setting Just and Reasonable Rates for Attachments to Utility Poles, Ducts and Conduits*, *Case Nos. U-010741, U-010816, U-010831*, Opinion and Order, 1997 Mich. PSC LEXIS 26 (Feb. 11, 1997); *Trenton Cable TV, Inc. v. Missouri Public Serv. Co.*, PA-81-0037, at ¶ 4 (rel. Jan. 25, 1985) ("Since any rate within the range assures that the utility will receive at least the additional costs which would not be incurred but for the provision of cable attachments, that rate will not subsidize cable subscribers at the expense of the public.").

Others. These carrying costs are then allocated to cable operators based upon the amount of space occupied.[2] Among the FERC Form 1 accounts relied upon by the FCC to derive the annual pole carrying costs is Account 593, Maintenance of Overhead Lines. This account includes the utility's expenses for inspection and maintenance of overhead distribution lines. Thus, the cost of inspecting and maintaining overhead distribution lines is factored into the carrying charges that make up the pole attachment rents paid by cable operators.

The FCC's rate formula and pole attachment rules and case law interpreting them were developed in response to Congressional mandate. Together, the rules and case law ensure 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."[3] Accordingly, FCTA urges the Commission to proceed with caution in fashioning any remedy in this proceeding that implicates FCTA members' federal pole attachment rights.

A. STORM HARDENING AND RULE 25-6.0342, F.A.C.

STIPULATED

ISSUE 1: Does the Company's Plan address the extent to which, at a minimum, the Plan complies with the National Electric Safety Code (ANSI C-2) [NESC] that is applicable pursuant to subsection 25-6.0345, F.A.C.? [Rule 25-6.0342(3)(a)]

FCTA: *No position.*

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2 The amount of space occupied by cable is one foot of the "usable space" on the pole. The usable space is the space remaining above minimum ground clearance requirement. For an average size pole of 38.5 feet, the buried portion of the pole (6 feet) and the first 18 feet above ground typically are deemed to be "unusable." This leaves 13.5 feet of "usable" space. Cable is presumed to occupy one foot of this space. Thus, cable's use ratio is 1/13.5 or 7.4%. This use ratio is then multiplied by the annual carrying costs for the entire 38.5 foot pole to derive the rent.

3 *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).

STIPULATED
ISSUE 2: Does the Company's Plan address the extent to which the extreme wind loading standards specified by Figure 250-2(d) of the 2007 edition of the NESC are adopted for new distribution facility construction? [Rule 25-6.0342(3)(b)l]

FCTA: *No position.*

STIPULATED
ISSUE 3: Does the Company's Plan address the extent to which the extreme wind loading standards specified by Figure 250-2(d) of the 2007 edition of the NESC are adopted for major planned work on the distribution system, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule distribution facility construction? [Rule 25-6.0342(3)(b)2]

FCTA: *No position.*

STIPULATED
ISSUE 4: Does the Company's Plan reasonably address the extent to which the extreme wind loading standards specified by Figure 250-2(d) of the 2007 edition of the NESC are adopted for distribution facilities serving critical infrastructure facilities and along major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations? [Rule 256.0342(3)(b)3]

FCTA: *No position.*

STIPULATED
ISSUE 5: Does the Company's Plan address the extent to which its distribution facilities are designed to mitigate damage to underground and supporting overhead transmission and distribution facilities due to flooding and storm surges? [Rule 25-6.0342(3)(c)]

FCTA: *No position.*

STIPULATED
ISSUE 6: Does the Company's Plan address the extent to which the placement of new and replacement distribution facilities facilitate safe and efficient access for installation and maintenance pursuant to Rule 25- 6.0341, F.A.C? [Rule 25-6.0342(3)(d)]

FCTA: *No position.*

STIPULATED
ISSUE 7: Does the Company's Plan provide a detailed description of its deployment strategy including a description of the facilities affected; including technical

design specifications, construction standards, and construction methodologies employed? [Rule 25-6.0342(4)(a)]

FCTA: *No position.*

STIPULATED
ISSUE 8: Does the Company's Plan provide a detailed description of the communities and areas within the utility's service area where the electric infrastructure improvements, including facilities identified by the utility as critical infrastructure and along major thoroughfares pursuant to subparagraph (3)(b)3. are to be made? [Rule 25-6.0342(4)(b)]

FCTA: *No position.*

STIPULATED
ISSUE 9: Does the Company's Plan provide a detailed description of the extent to which the electric infrastructure improvements involve joint use facilities on which third-party attachments exist? [Rule 25-6.0342(4)(c)]

FCTA: *No position.*

ISSUE 10: Does the Company's Plan provide a reasonable estimate of the costs and benefits to the utility of making the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages? [Rule 25-6.0342(4)(d)]

FCTA: *No position.*

ISSUE 11: Does the Company's Plan provide an estimate of the costs and benefits, obtained pursuant to subsection (6) below, to third-party attachers affected by the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages realized by the third-party attachers? [Rule 25-6.0342(4)(e)]

FCTA: *No position.*

STIPULATED
ISSUE 12: Does the Company's Plan include written Attachment Standards and Procedures addressing safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles that meet or exceed the edition of the National Electrical Safety Code (ANSI C-2) that is applicable pursuant to Rule 25-6.034, F.A.C.? [Rule 25-6.0342(5)]

FCTA: *No position.*

ISSUE 13: Based on the resolution of the preceding issues, should the Commission find that the Company's Plan meets the desired objectives of enhancing reliability and reducing restoration costs and outage times in a prudent, practical, and cost-effective manner to the affected parties? [Rule 25-6.0342(1) and (2)]

FCTA: *No position.*

B. 10 POINT STORM PREPAREDNESS INITIATIVES

STIPULATED
ISSUE 14: Should the Commission approve FPUC's request to implement a 3/6 tree trimming cycle instead of a 3/3 cycle?

FCTA: *No position.*

ISSUE 15: Has FPUC complied with the Commission's 10 point initiatives?

FCTA: *No position.*

STIPULATED
ISSUE 16: Should the company's projected plan to accelerate the replacement of the existing wood 69 kv transmission system with concrete poles be approved?

FCTA: *No position.*

STIPULATED
ISSUE 17: Should amortization expense be increased by $354,600 annually to collect the projected $7,092,000 total plant cost of FPUC's proposed 20 year storm hardening project to replace its wood transmission poles with concrete poles?

FCTA: *No position.*

STIPULATED
ISSUE 18: Should FPUC's request to increase Account 593, Maintenance of Overhead Lines, by $352,260 for three additional tree trimming crews be approved?

FCTA: *No position.*

ISSUE 19: Should FPUC's request to increase Account 593, Maintenance of Overhead Lines, by $141,367 per year for distribution of pole inspections from an outside contractor be approved?

FCTA: *Nothing determined in the rate case should be deemed to supersede or conflict with cable operators rights obtained through contract or stipulation, or under Federal law.*

ISSUE 20: Should FPUC's request to increase Account 593, Maintenance of Overhead Lines, and Account 588, Distribution Maps, by a combined total of $99,375 for an additional employee and related travel expenses to handle joint use audits and pole inspections be approved?

FCTA: *Nothing determined in the rate case should be deemed to supersede or conflict with cable operators rights obtained through contract or stipulation, or under Federal law.*

ISSUE 21: Should FPUC's request to increase Account 593, Maintenance of Overhead Lines, by $27,000 for the development and implementation for Post Storm Data Collection and Forensic Review be approved?

FCTA: *Nothing determined in the rate case should be deemed to supersede or conflict with cable operators rights obtained through contract or stipulation, or under Federal law.*

ISSUE 22: Should FPUC's request for contractor expense of $18,540 in Account 566, for an additional expense for transmission inspections, be approved?

FCTA: *No position.*

ISSUE 23: Should the expense for an additional employee to handle joint-use audits be approved?

FCTA: *Nothing determined in the rate case should be deemed to supersede or conflict with cable operators rights obtained through contract or stipulation, or under Federal law.*

DROPPED
ISSUE 24: Should additional contractor expense to handle joint pole inspections be approved?

STIPULATED
ISSUE 25: Should FPUC's request for recovery of an additional expense to provide personnel for county emergency operating centers be approved?

FCTA: *No position.*

ISSUE 26: Should FPUC's request to recover increased travel and PURC costs be approved?

FCTA: *No position.*

ISSUE 27: What adjustments, if any, should be made to rate base associated with the storm hardening Rule 25-6.0342 and 10 point initiatives requirements?

FCTA: *No position.*

ISSUE 28: What adjustments, if any, should be made to operating expenses associated with the storm hardening Rule 25-6.0342 and 10 point initiatives requirements?

FCTA: *No position.*

C. TEST PERIOD

STIPULATED
ISSUE 29: Are the historical test year ended December 31, 2006, and the projected test year ending December 31, 2008, the appropriate test years to be utilized in this docket?

FCTA: *No position.*

STIPULATED
ISSUE 30: Are FPUC's forecasts of Customers, KWH and KW by Rate Class for the projected 2008 test year appropriate?

FCTA: *No position.*

D. QUALITY OF SERVICE

STIPULATED
ISSUE 31: Is the quality of electric service provided by FPUC adequate?

FCTA: *No position.*

E. RATE BASE

DROPPED
ISSUE 32: Has the Company removed all non-utility activities from rate base?

ISSUE 33: Should the company's request to receive a full 13-month average recovery for a transformer that is not projected to be placed in service until the 2008 test year be approved?

FCTA: *No position.*

DROPPED
ISSUE 34: Has the company provided sufficient evidence to support its projected plant additions for the 2008 test year?

STIPULATED
ISSUE 35: Should Plant in Service, Accumulated Depreciation and Depreciation Expense be reduced to reflect missing invoices?

FCTA: *No position.*

STIPULATED
ISSUE 36: Should Plant in Service, Accumulated Depreciation, Depreciation Expense and Operation and Maintenance Expense be adjusted to capitalize construction of an office wall?

FCTA: *No position.*

STIPULATED
ISSUE 37: Should Plant in Service, Accumulated Depreciation, Depreciation Expense and Operation and Maintenance Expense be adjusted to capitalize construction of a transformer pad?

FCTA: *No position.*

ISSUE 38: Is FPUC's requested level of Plant in Service in the amount of $79,641,581 for the December 2008 projected test year appropriate?

FCTA: *No position.*

DROPPED
ISSUE 39: Is the FPUC's requested level of Common Plant Allocated in the amount of $1,853,396 for the December 2008 projected test year appropriate?

STIPULATED
ISSUE 40: Should an adjustment be made for Plant Retirements for the projected test year?

FCTA: *No position.*

STIPULATED
ISSUE 41: Should Accumulated Depreciation and Depreciation Expense be adjusted for trucks transferred from FPUC's Water Division?

FCTA: *No position.*

ISSUE 42: What adjustments, if any, should be made to accumulated depreciation to reflect the Commission's decision in Docket No. 070382-EI?

FCTA: *No position.*

ISSUE 43: Is FPUC's requested level of accumulated depreciation for Plant in Service in the amount of $35,667,257 for the December 2008 projected test year appropriate?

FCTA: *No position.*

STIPULATED
ISSUE 44: Is FPUC's requested level of accumulated depreciation for Common Plant Allocated in the amount of $660,224 for the December 2008 projected test year appropriate?

FCTA: *No position.*

DROPPED
ISSUE 45: Is FPUC's requested level of Construction Work in Progress in the amount of $75,000 for December 2008 projected test year appropriate?

ISSUE 46: What is the appropriate projection methodology and balance of cash to be included in the 2008 working capital requirement?

FCTA: *No position.*

STIPULATED
ISSUE 47: What is the appropriate balance of special deposits to be included in the 2008 working capital requirement?

FCTA: *No position.*

ISSUE 48: What is the appropriate balance of accounts receivable to be included in working capital?

FCTA: *No position.*

STIPULATED
ISSUE 49: Has the Company estimated an appropriate balance in its accumulated provision for uncollectible accounts?

FCTA: *No position.*

ISSUE 50: Should an adjustment be made to pension liability in the calculation of working capital?

FCTA: *No position.*

STIPULATED**
ISSUE 51: What is the appropriate balance of regulatory assets retirement plan to be included in working capital?

FCTA: *No position.*

STIPULATED
ISSUE 52: What is the appropriate allocation methodology and amount for prepaid insurance to be included in working capital for electric operations?

FCTA: *No position.*

ISSUE 53: What is the appropriate balance of unbilled revenue to be included in working capital?

FCTA: *No position.*

ISSUE 54: What is the appropriate balance of temporary services to be included in working capital?

FCTA: *No position.*

ISSUE 55: Is the Company's working capital treatment of over and under recovery of fuel and conservation costs appropriate?

FCTA: *No position.*

STIPULATED
ISSUE 56: Should FPUC's requested level of Other Property and Investments/Other Special Funds in the amount of $3,100 for the projected test year be approved?

FCTA: *No position.*

ISSUE 57: Is FPUC's balance of Accrued Interest on Customer Deposits appropriate?

FCTA: *No position.*

ISSUE 58: What is the appropriate balance of deferred debit rate case expense to be included in working capital?

FCTA: *No position.*

ISSUE 59: Is FPUC's requested projected 2008 balance for its storm damage reserve appropriate?

FCTA: *No position.*

ISSUE 60: Is FPUC's requested level of Working Capital in the amount of a negative $1,310,654 for the December 2008 projected test year appropriate?

FCTA: *No position.*

ISSUE 61: Is FPUC's requested rate base in the amount of $43,020,996 for the December 2008 projected test year appropriate?

FCTA: *No position.*

F. COST OF CAPITAL

ISSUE 62: What is the appropriate return on common equity for the projected test year?

FCTA: *No position.*

ISSUE 63: What is the appropriate capital structure for the projected test year?

FCTA: *No position.*

STIPULATED
ISSUE 64: What is the appropriate projected cost rate for long-term debt?
FCTA: *No position.*

ISSUE 65: What is the appropriate projected cost rate for short-term debt?

FCTA: *No position.*

DROPPED
ISSUE 66: Should the company's request to change the amortization methodology for deferred income taxes from the average rate assumption method (ARAM) to the straight-line method be approved?

ISSUE 67: What is the appropriate amount of accumulated deferred taxes to include in the capital structure for the projected test year?

FCTA: *No position.*

ISSUE 68: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure for the projected test year?

FCTA: *No position.*

ISSUE 69: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure for the test year ending December 31, 2008?

FCTA: *No position.*

G. NET OPERATING INCOME

ISSUE 70: Should FPUC's request for recovery for an additional expense to inspect and test substation equipment costs be approved?

FCTA: *No position.*

ISSUE 71: Has the Company properly estimated an appropriate amount of forfeited discounts in calculating the revenues for 2008?

FCTA: *No position.*

STIPULATED
ISSUE 72: Has FPUC made the appropriate test year adjustments to remove fuel revenues and fuel expenses recoverable through the Fuel Adjustment Clause?

FCTA: *No position.*

STIPULATED
ISSUE 73: Has FPUC made the appropriate test year adjustments to remove conservation revenues and conservation expenses recoverable through the Conservation Cost Recovery Clause?

FCTA: *No position.*

ISSUE 74: What is the appropriate projected test year miscellaneous service revenue?

FCTA: *No position.*

ISSUE 75: Is FPUC's projected level of Total Operating Revenues in the amount of $17,186,965 for the December 2008 projected test year appropriate?

FCTA: *No position.*

ISSUE 76: What are the appropriate escalation factors and trend rates for use in forecasting the test year projected Operation and Maintenance Expenses?

FCTA: *No position.*

ISSUE 77: Should the Company's requested position in Corporate Accounting for a Compliance Accountant for the audit of inventory, cash and other processes be approved?

FCTA: *No position.*

ISSUE 78: Should the Company's requested position in Customer Relations for a CR Analyst/Coordinator for work on SOX 404 Internal Control requirements be approved?

FCTA: *No position.*

STIPULATED
ISSUE 79: Should any adjustments be made to Account 935, Maintenance of General Plant, related to office renovation costs?

FCTA: *No position.*

STIPULATED
ISSUE 80: Should the company's request for recovery of salaries for vacant information technology positions be approved, and if so, what are the appropriate test year expenses?
FCTA: *No position.*

ISSUE 81: Should an adjustment be made to test year expenses to Account 916, Miscellaneous Sales Expenses related to a customer survey?

FCTA: *No position.*

STIPULATED
ISSUE 82: Should an adjustment be made to Other Post Employment Benefits Expense for the December 2008 projection for 401k benefits expense?

FCTA: *No position.*

STIPULATED
ISSUE 83: Should any adjustments be made to Account 923.1, Outside Services Expense for postage and printing expenses?

FCTA: *No position.*

STIPULATED
ISSUE 84: Should any adjustments be made to Account 928, Regulatory Commission Expense for legal fees?

FCTA: *No position.*

STIPULATED
ISSUE 85: Should the Company's requested increase related to the vacant position for the Northwest Florida Division operations manager be approved?

FCTA: *No position.*

ISSUE 86: Should FPUC's requested increase in training expense for apprentice linemen be approved?

FCTA: *No position.*

STIPULATED
ISSUE 87: Should an adjustment be made to the Company's requested increase for benefits for the Northeast Florida Division Safety coordinator?

FCTA: *No position.*

ISSUE 88: Should the Company's requested position in Corporate Services for a Corporate Services Administrator to assist in maintaining compliance be approved?

FCTA: *No position.*

ISSUE 89: Should the Company's requested increase for travel expenses related to the requested new position in Corporate Accounting for compliance accounting be approved?

FCTA: *No position.*

ISSUE 90: Should an adjustment be made to Account 901, Operation Supervision-Administrative and General, related to the test year amount of moving expenses?

FCTA: *No position.*

ISSUE 91: Should an adjustment be made to Account 588.2, Other Distribution Expense, related travel expenses for an employee's spouse?

FCTA: *No position.*

STIPULATED
ISSUE 92: Should an adjustment be made to Account 595.3, Maintenance of Transformers, to remove the 2008 test year expense related to the escalated cost of a new transformer added in 2006?

FCTA: *No position.*

ISSUE 93: Should the test year outside audit fees be approved?

FCTA: *No position.*

STIPULATED
ISSUE 94: Should the company's requested increase in janitorial, elevator, air conditioning and landscaping expense be approved?

FCTA: *No position.*

STIPULATED
ISSUE 95: Should the company's requested increase in supervisory training expenses "to keep managers informed on various issues" be approved?

FCTA: *No position.*

DROPPED
ISSUE 96: Should an adjustment be made to Advertising Expense for the December 2008 projected test year?

ISSUE 97: Should the company's requested increase in customer information expense be approved?

FCTA: *No position.*

ISSUE 98: Should an adjustment be made to FPUC's requested level of Salaries and Employee Benefits for the December 2008 projected test year related to the salary survey?

FCTA: *No position.*

ISSUE 99: Should the company's requested salary adjustment for executives be approved?

FCTA: *No position.*

STIPULATED
ISSUE 100: Should an adjustment be made to Other Post Employment Benefits Expense for the December 2008 projection for medical expense?

FCTA: *No position.*

ISSUE 101: What is the appropriate amount of annual storm expense accrual?

FCTA: *No position.*

DROPPED
ISSUE 102: Should an adjustment be made to the accrual for property damage for the December 2008 projected test year?

STIPULATED
ISSUE 103: What is the appropriate amount for projected general liability expense?

FCTA: *No position.*

ISSUE 104: Should the projected 2008 economic development donations be approved?

FCTA: *No position.*

DROPPED
ISSUE 105: Is the level of overhead cost allocation for the 2008 projected test year appropriate?

STIPULATED
ISSUE 106: Should the increase to Account 903, Customer Records and Collection Expenses, to reflect an increase in postage expense, be approved?

FCTA: *No position.*

ISSUE 107: What is the appropriate total amount, amortization period and test year expense for Rate Case Expense for the December 2008 projected test year?

FCTA: *No position.*

STIPULATED
ISSUE 108: What is the appropriate period for the amortization of rate case expense?

FCTA: *No position.*

ISSUE 109: Should an adjustment be made to uncollectible expense in Account 904, Uncollectible Accounts, for the December 2008 projected test year?

FCTA: *No position.*

STIPULATED
ISSUE 110: Should an adjustment be made to Pension Expense for the December 2008 projected test year?

FCTA: *No position.*

ISSUE 111: Should the company's request for recovery of tree replacement costs be approved?

FCTA: *No position.*

DROPPED
ISSUE 112: Should an adjustment be made to other distributions expense, account 5882 for the December 2008 projected test year?

ISSUE 113: Is FPUC's requested level of O&M Expense - Other in the amount of $10,081,391 for the December 2008 projected test year appropriate?

FCTA: *No position.*

ISSUE 114: What adjustments, if any, should be made to the December 2008 projected test year depreciation expense to reflect the Commission's decisions regarding the depreciation study filed in Docket No. 070382-EI?

FCTA: *No position.*

ISSUE 115: What is the appropriate amount of Depreciation Expense for the December 2008 projected test year?

FCTA: *No position.*

ISSUE 116: Should an adjustment be made to Taxes Other Than Income Taxes for the December 2008 projected test year?

FCTA: *No position.*

ISSUE 117: Should an adjustment be made to Income Tax expense for the December 2008 projected test year?

FCTA: *No position.*

ISSUE 118: Is FPUC's projected Net Operating Income in the amount of $206,341 for the December 2008 projected test year appropriate?

FCTA: *No position.*

H. REVENUE REQUIREMENTS

ISSUE 119: What is the appropriate net operating income multiplier for FPUC?

FCTA: *No position.*

ISSUE 120: Is FPUC's requested annual operating income increase of $5,249,895 for the December 2008 projected test year appropriate?

FCTA: *No position.*

I. COST OF SERVICE AND RATE DESIGN

STIPULATED
ISSUE 121: Are FPUC's estimated revenues from sales of electricity by rate class at present rates for the projected test year appropriate?

FCTA: *No position.*

STIPULATED
ISSUE 122: What is the appropriate cost of service methodology to be used in designing FPUC's rates?

FCTA: *No position.*

STIPULATED
ISSUE 123: If a revenue increase is granted, how should the increase be allocated to rate classes?

FCTA: *No position.*

STIPULATED
ISSUE 124: What are the appropriate customer charges?

FCTA: *No position.*

ISSUE 125: What are the appropriate demand charges?

FCTA: *No position.*

ISSUE 126: What are the appropriate energy charges?

FCTA: *No position.*

STIPULATED
ISSUE 127: What are the appropriate service charges?

FCTA: *No position.*

STIPULATED
ISSUE 128: What are the appropriate transformer ownership discounts?

FCTA: *No position.*

ISSUE 129: What are the appropriate Street and Outdoor Lighting rates?

FCTA: *No position.*

STIPULATED
ISSUE 130: Should FPUC's Transitional Rate of non-profit sports fields be eliminated?

FCTA: *No position.*

STIPULATED
ISSUE 131: What are the appropriate standby rates?

FCTA: *No position.*

STIPULATED
ISSUE 132: What is the appropriate adjustment to account for the increase in unbilled revenues due to the recommended rate increase?

FCTA: *No position.*

STIPULATED
ISSUE 133: What is the appropriate effective date for FPUC's new rates and charges?

FCTA: *No position.*

J. OTHER ISSUES

ISSUE 134: Should any of the $790,784 interim rate increase granted by Order No. PSC-07-0897-PCO-EI be refunded to the ratepayers?

FCTA: *No position.*

STIPULATED
ISSUE 135: Should FPUC be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, earnings surveillance reports, and books and records which will be required as a result of the Commission's findings in this docket?

FCTA: *No position.*

STIPULATED
ISSUE 136: Should this docket be closed?

FCTA: *Yes.*

III. Argument Specific to Issues 19 – 21, and 23

ISSUE 19: Should FPUC's request to increase Account 593, Maintenance of Overhead Lines, by $141,367 per year for distribution of pole inspections from an outside contractor be approved?

In its Over/Above Expenses, FPUC seeks an incremental expense of $219,833 for a contractor and new employee to handle distribution pole inspections. [TR. at 519, lines 7-8 (Direct Testimony of Patricia Merchant, CPA, On Behalf of the Office of Public Counsel)] In response to OPC Interrogatory 57, FPUC further explained that it would incur $141,367 per year in distribution pole inspections from an outside contractor. [*Id.* at lines 9-12] Thus, FPUC is seeking to increase Account 593, Maintenance of Overhead lines, by $141,367 per year for distribution pole inspections from an outside contractor to coordinate the pole inspection and joint use audit requirements. In prehearing statements, both FPUC and OPC noted that the person hired to fill the new outside contractor position would inspect poles in connection with

FPUC's storm hardening duties. Issues 19, 20 and 23 consider what portion of these amounts FPUC should be permitted to recover from ratepayers.

In its prehearing statement, FPUC noted the position sought to be added "will also be used to coordinate the other storm hardening initiatives in order to ensure documentation and reporting is completed and submitted accurately." In its position statement for Issue 19, OPC noted that, "because this is an item that the Commission has required as part of the storm initiative, it is important for the Company to comply with the Commission's directives." OPC does not argue that the amounts sought in Issues 19, 20, and 23 should be eliminated entirely. Rather, OPC has challenged certain travel and inspection expenses, and in particular, $8.46 per pole in inspection costs in issue 19, which it believes solely benefit third party attachers. At the hearing, OPC's arguments on issues 20 and 23 centered on travel and other expenses generally. FCTA confines its advocacy to opposing statements by OPC concerning Issue 19 that some inspection expenses solely benefit third-party attachers, and not ratepayers.

In particular, Ms. Patricia Merchant, testifying on behalf of Citizens of the State of Florida in this proceeding, recommended removal of $25,467 from the amounts sought for the distribution pole inspections by an outside contractor. [TR at 522 lines 20-21] Specifically, Ms. Merchant stated her belief that this amount – which includes the costs attributable to LoadCalc, CATV and Telephone attachments – should be removed from the test year expenses. [TR at 521 lines 5-6] In support of her recommendation, Ms. Merchant stated her belief that "Since a portion of the cost of pole inspections is increased due to joint users, any costs directly caused by joint use attachments should not be covered by the ratepayers. It is unreasonable to charge the ratepayers 100% for this expense since it benefits other users and these costs do not related to the cost of providing electric service to the electric customers." [TR at 520 lines 20-24] In addition, on cross examination, Ms. Merchant stated "the LoadCalc is calculating the amount of the load of all the attachments on the pole. And so that's why we removed it as something that was directly caused by other attachers, because the company has already spent the money when they put the pole up to figure out what their load is for their own equipment." [TR at 550-551 lines 25-6] When asked whether FPUC customers might actually benefit if the revenues from third-party attachers exceeded the expenses associated with the inspections, Ms. Merchant responded in part, "It's what is all in the formula that's used to calculate the rates that the third party attachers collect – or pay, excuse me." [TR at 554 lines 19-21]

The Commission should reject OPC's arguments because the record evidence indicates that the costs would be incurred in any event regardless of whether third-party attachers existed. Mr. Cutshaw explained that "the LoadCalc is performed regardless of whether or not there are any third-party attachers or not." [TR at 711 lines 21-22] In addition, as Mr. Cutshaw, testifying on behalf of FPUC in redirect by Mr. Horton explained, the revenues from third-party attacher contracts cover the associated costs with those contracts. [TR at 711 line 12] FCTA agrees with Mr. Cutshaw on both points.

First, as Mr. Cutshaw testified, pole owners must maintain their poles regardless of whether third parties are attached. It is well recognized that pole maintenance, including inspections to assess the need for corrections of any non-compliance with governing safety standards, benefit the pole owner.[4]

Second, to the extent that an inspection also benefits third party attachers, such as cable operators, these attachers more than cover their proportionate share of the costs of such

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[4] *Cable Tel. Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd. 16333, ¶ 16 (2003).

inspections in their federally prescribed annual rental payments to FPUC, as courts and the FCC have uniformly held. *See e.g.* cases cited *supra* note 1.

Federal law creates a range of compensation for pole attachments, 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."[5] Thus, at a minimum, the pole owner is reimbursed for any expenses it would not have incurred but for the cable operator. The federal pole formula, which is based on the allocation of the fully-loaded costs, more than ensures that FPUC recovers, among other things, the cable operator's share of FPUC's maintenance expenses booked to Account 593, Maintenance of Overhead Lines, including inspections. 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."[6] That occurs here. FCTA's members pay their fair share of the contractor inspections in the annual rental payments that are based, in part, on the maintenance expenses booked to 593, Maintenance of Overhead Lines. *See id.* The Commission should follow this vast body of federal case law concerning the costs of attachments, and Mr. Cutshaw's testimony, and reject Ms. Merchant's testimony.

The Commission has no jurisdiction to require cable operators to pay more for attachments, as the amounts cable operators pay in connection with pole attachments are

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5 *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order 13 FCC Rcd. 6777, ¶ 96 n. 303 (1998).

6 *Cable Tel. Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd. 16333, ¶ 16 (2003).

prescribed by private contracts and federal law, and the Commission has not certified to regulate FCTA member operators' attachments, or require cable operators to reimburse ratepayers for costs caused by cable operator pole attachments. 47 U.S.C. § 224. Accordingly, the Commission should proceed with caution in fashioning any remedy that would implicate the amounts paid by FCTA's members in connection with attachments to FPUC's poles.

IV. Compliance With Prehearing Order

FCTA believes that this Post Hearing Statement and fully complies with the requirements of the Prehearing Order, Order No. PSC-08-0118-PCO-EI.

RESPECTFULLY SUBMITTED this 18th day of March, 2008.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of 2007 Electric Infrastructure Storm Hardening Plan Submitted by Florida Public Utilities Company.	DOCKET NO. 070300-EI
In re: Petition for rate increase by Florida Public Utilities Company.	DOCKET NO. 070304-EI
	FILED: March 18, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by Electronic Mail and First Class U.S. Mail on this 18th day of March, 2008.

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