**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| | ) | |
| In the Matter of Implementation of Section | ) | WC Docket No. 07-245 |
| 224 of the Act; Amendment of the | ) | RM-11293 |
| Commission's Rules and Policies Governing | ) | RM-11303 |
| Pole Attachments | ) | |

TO: WIRELINE COMPETITION BUREAU

**COMMENTS OF**
**AMERICAN ELECTRIC POWER SERVICE CORPORATION,**
**DUKE ENERGY CORPORATION,**
**ENTERGY SERVICES COMPANY,**
**PPL ELECTRIC UTILITIES CORPORATION,**
**PROGRESS ENERGY,**
**SOUTHERN COMPANY,**
**AND XCEL ENERGY SERVICES INC.**

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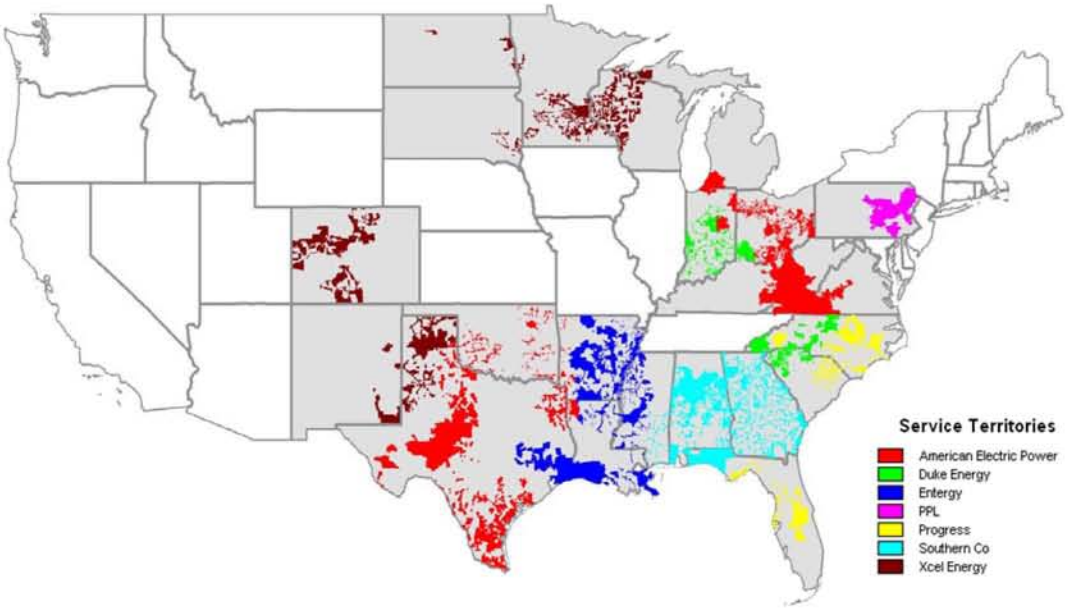
Filed: March 7, 2008

**Service Areas: AEP, Duke Energy, Entergy, PPL Electric Utilities, Progress Energy, Southern Company, and Xcel Energy**



## SUMMARY OF ELECTRIC UTILITIES' COMMENTS

- The Electric Utilities strongly support the comments of the Edison Electric Institute (EEI) and specifically agree that:
  - the current state of pole attachments compromises electric utilities' ability to perform their core mission;
  - the Commission's regulations relating to notice and access should be modified to ensure the safety and reliability of our nation's critical electric infrastructure;
  - the Commission's regulations relating to rates should be reformed to provide for full and fair allocation of the costs and responsibilities of such infrastructure; and
  - the plain language, legislative history, and established Commission practice show conclusively that ILECs have no attachment rights under section 224.
- In support of EEI's comments and policy recommendations, the Electric Utilities also submit relevant data from several of the individual utilities joining these comments regarding (I) unauthorized attachments; and (II) the presumed number of attaching entities per pole.
  - Although the Electric Utilities lack complete data on unauthorized attachments, several companies provide compelling data that shows substantial percentages of unauthorized attachments in the service areas inventoried. Many inventories show in excess of 10 percent of all attachments in specified areas are unauthorized. In the case of one electric utility inventory, the percentage of unauthorized attachments identified represents almost 50 percent of all new attachments made since 2002.
    - This data supports EEI's recommendation that the Commission should adopt clearer notice requirements, allow utilities to impose substantial penalties for unauthorized attachments, and clarify that utilities can file complaints with the Commission regarding unauthorized attachments and violations of notice requirements.
  - With respect to the number of attaching entities per poles, data gathered by several of the Electric Utilities shows that the number of attaching entities per pole (including the electric utility) is, in most of the areas inventoried, significantly below three.
    - This data supports EEI's recommendation that the Commission should eliminate its current presumptions regarding the number of attaching entities per pole for rural and urban areas, which are currently three and five, respectively. Instead, the Commission should establish an across-the-board presumption of three for all areas.

**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | WC Docket No. 07-245 |
| Implementation of Section 224 of the Act; | ) | |
| Amendment of the Commission's Rules and | ) | RM-11293 |
| Policies Governing Pole Attachments | ) | |
| | ) | RM-11303 |
| | ) | |

**COMMENTS OF**
**AMERICAN ELECTRIC POWER SERVICE CORPORATION,**
**DUKE ENERGY CORPORATION,**
**ENTERGY SERVICES, INC.,**
**PPL ELECTRIC UTILITIES CORPORATION,**
**PROGRESS ENERGY,**
**SOUTHERN COMPANY, AND**
**XCEL ENERGY SERVICES INC.**

Pursuant to sections 1.415 and 1.419[1] of the Federal Communications Commission's ("FCC" or "Commission") Rules, American Electric Power Service Corporation, Duke Energy Corporation, Entergy Services, Inc., PPL Electric Utilities Corporation, Progress Energy, Southern Company, and Xcel Energy Services Inc. (collectively, "Electric Utilities"), by their counsel, hereby submit their Comments in response to the Commission's Notice of Proposed Rulemaking in the above captioned proceeding seeking comment on issues relating the Commission's implementation of section 224.[2]

[1] 47 C.F.R. §§ 1.415 and 1.419 (2006).

[2] *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, FCC 07-187, "Notice of Proposed Rulemaking" ¶ 3 (2007).

## INTRODUCTION

The Electric Utilities are a group of seven companies that serve electric consumers in 24 states and numerous metropolitan areas and own and maintain large numbers of poles with third-party attachments. The Electric Utilities serve both urban and rural areas in 20 of the 31 states in which pole attachments are regulated by the FCC.[3] (The "Service Areas" map on page two of this filing above shows the geographic extent of the Electric Utilities' operations).

American Electric Power Service Corporation ("AEP Service Corp.") is a wholly-owned subsidiary of American Electric Power Company, Inc ("AEP"). AEP Service Corp. is a supplier of administrative and technical support services to AEP and its subsidiaries. AEP is one of the largest investor-owned electric utilities in the United States with more than 5 million customers linked to its state electricity transmission and distribution grid covering 197,500 square miles. AEP, through its operating company subsidiaries, owns and operates critical electric distribution infrastructure in eleven states across the Midwest and Southeast: Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia. Major cities in AEP's service areas include Tulsa, Oklahoma, Charleston, West Virginia, Corpus Christi, Texas, and Roanoke, Virginia.

Duke Energy Corporation ("Duke Energy") is a diversified energy company with a portfolio of natural gas and electric businesses, both regulated and unregulated and an affiliated

[3] The 20 FCC-jurisdictional states served by the Electric Utilities are Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Minnesota, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Arkansas has issued pole attachment regulations and is expected to file a certification with the Commission pursuant to section 224(c), but the State remained an FCC-jurisdictional as of the date of this filing. The 31 FCC-jurisdictional states includes the District of Columbia. *See New Hampshire Joins States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 07-245, "Public Notice", DA 08-450 (2008).

real estate company. Duke Energy supplies, delivers, and processes energy for customers in North America and selected international markets. Duke Energy supplies and delivers energy to approximately 4 million customers in a 22,000 square-mile service territory spanning five states: North Carolina, South Carolina, Indiana, Kentucky, and Ohio.

Entergy Corporation is an integrated energy company engaged primarily in electric power production and retail distribution operations. Entergy Services, Inc. ("Entergy") joins these comments acting as agent on behalf of Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy Texas, Inc., Entergy New Orleans, Inc., Entergy Louisiana, LLC, and Entergy Gulf States, LLC, which combined serve approximately 2.7 million customers in Arkansas, Louisiana, Mississippi, and Texas.

PPL Electric Utilities Corporation ("PPL Electric Utilities"), headquartered in Allentown, Pennsylvania, controls more than 11,000 megawatts of generating capacity in the United States and sells energy in important U.S. markets. PPL Electric Utilities owns and operates critical electric distribution infrastructure in Pennsylvania, where the company serves 1.4 million customers in a 10,000 square mile service territory.

Progress Energy, headquartered in Raleigh, N.C., is a Fortune 250 energy company with more than 21,000 megawatts of generation capacity. Progress Energy includes two major utilities that serve more than 3.1 million customers in the Carolinas and Florida. The distribution plant consists of 2.3 million poles with joint use attachments on over one million of those poles. Progress Energy currently has 73 attachment agreements with cable, CLEC, and ILEC companies that have made 1,385,518 attachments on poles. The company is the 2006 recipient of the Edison Electric Institute's Edison Award, the industry's highest honor, in recognition of its

operational excellence. The company also is the first utility to receive the prestigious J.D. Power and Associates Founder's Award for customer service.

Southern Company ("Southern"), is one of the largest generators of electricity in the nation, serving both regulated and competitive markets across the southeastern United States. Southern, through five retail operating companies, supplies energy to approximately 4.2 million customers in a 120,000 square-mile service territory spanning most of Georgia and Alabama, southeastern Mississippi, and the panhandle region of Florida.

Xcel Energy Services Inc. ("Xcel Energy"), through its affiliated operating companies, provides electric power service to 3.3 million electricity customers and 1.8 million natural gas customers across eight Western and Midwestern States. Xcel Energy owns and operates critical electric distribution infrastructure in Colorado, North Dakota, New Mexico, Minnesota, Michigan, South Dakota, Texas, and Wisconsin.

Each of the Electric Utilities owns or controls poles in states that are governed by the FCC's pole attachment authority and, as such, are vitally interested in issues affecting the integrity and use of their electric plants for communications purposes.

## COMMENTS

The Electric Utilities' core business and mandate as public utilities under State and Federal laws is to provide safe, reliable electric service to our customers at reasonable prices. Accordingly, the Electric Utilities appreciate the Commission's concern for the "safety and reliability of an integral component of our nation's critical infrastructure, our electric power system." NPRM at ¶ 38. The Electric Utilities also appreciate the Commission's concerns regarding whether cable operators receive a "subsidized pole attachment rate at the expense of electric consumers" and, more generally, regarding the Commission's authority to apply a

uniform rate to all Commission-jurisdictional attachments. NPRM at ¶¶ 19, 21. Finally, the Electric Utilities believe the Commission is correct to inquire about the limits of its authority under section 224 with regard to ILECs, particularly in light of the Commission's previous interpretation that section 224 "does not apply to attachment rates paid by incumbent LECs." NPRM at ¶ 23.

In regard to all of these matters, the Electric Utilities strongly support the comments of the Edison Electric Institute ("EEI") filed in the above captioned proceeding. Specifically, the Electric Utilities agree with EEI that the current state of pole attachments compromises electric utilities' ability to perform their core mission, and agree with EEI's recommendations for improving the Commission's regulations to help ensure the safety and reliability of our nation's critical electric infrastructure and provide for full and fair allocation of the costs and responsibilities of such infrastructure. The Electric Utilities also agree with EEI that a sound policy for promoting broadband competition should reflect the fact that telecommunications providers rely upon and benefit from critical electric infrastructure, and that disregard for the integrity of such infrastructure distorts competition. Finally, although the Electric Utilities appreciate the Commission's concern for "even-handed treatment" of competitors in broadband markets, the plain language, legislative history, and established Commission practice compel the Electric Utilities to agree with EEI that ILECs have no attachment rights under section 224.

In addition to expressing strong agreement with EEI's comments and policy recommendations, the Electric Utilities also submit the following data in support of several points addressed in EEI's discussion of the state of pole attachments. Specifically, the Electric Utilities discuss data from the individual utilities joining these comments regarding: (I)

unauthorized and unsafe attachments; and (II) the presumed number of attaching entities per pole, in both urban and rural areas.

## I. Unauthorized Attachments

The Electric Utilities appreciate the opportunity to comment on "practices of attachers that have the potential to adversely impact the safety and reliability of an integral component of our nation's critical infrastructure, our electric power system." NPRM at ¶ 38. The Commission specifically seeks comments on the "prevalence" of "unauthorized attachments, or attachments that have been installed without a lawful attachment agreement." NPRM at ¶ 38. The Commission is correct to ask about unauthorized attachments in the context of safety and reliability. However, the Electric Utilities agree with EEI that unauthorized attachments may also affect competition among broadband service providers. Making attachments without notice to the utility also means that the attaching entity pays no rent for the attachment unless and until it is "caught" by the utility. To the extent that some attaching entities do not pay rent for some of their attachments, the issue of unauthorized attachments is also related to the "the difference in pole attachment prices paid by cable systems, incumbent LECs, and competing telecommunications carriers that provide the same or similar services" and to the question of "how many poles . . . do the different types of providers or different network architectures access pursuant to section 224?" NPRM at ¶ 13.

Several of the Electric Utilities individually report the following data regarding the prevalence of unauthorized attachments:

AEP

AEP has conducted at least partial system inventories for five of its operating companies in Commission-jurisdictional states. The inventories were conducted during the period 2002-2006. To determine the number of unauthorized attachments within a pool of inventoried poles owned by an operating company, AEP counted the total number of existing attachments and subtracted the number of attachments previously on record. Table 1.1 below represents the difference between the total number of attachments (column three) and the total number previously on record (not shown) as a percentage of unauthorized attachments (column five). The inventory period is shown in column six. The inventories for three of the five companies inventoried (Kingsport Power (KGP), Wheeling Power (WPCO), and Indiana Michigan Power (IM)) were complete inventories. The inventories for Appalachian Power Virginia (APCO (VA)) and Appalachian Power West Virginia (APCO (WV)) were partial inventories. The APCO (VA) inventory included approximately 20 percent of all of the operating company's poles, while the APCO (WV) inventory covered approximately one quarter of the company's poles.

*Results*. These inventories show substantial numbers and percentages of unauthorized attachments for the operating companies inventoried. Within the pool of poles inventoried for the two largest operating companies shown, APCO (VA) and APCO (WV), the percentage of unauthorized attachments was 10 percent and 17 percent respectively. A total of 25,170 unauthorized attachments were identified out of the 262,036 attachments counted, or almost 10 percent of all the attachments counted.

*Other AEP operating companies*. With regard to AEP's other operating companies in Commission-jurisdictional states, AEP is confident that there are also a substantial number of

unauthorized attachments in those operating company service areas, but AEP has not yet gathered complete data for those operating companies.

**Table 1.1 -- AEP, Unauthorized Attachments as Percentage of Inventoried Attachments for Operating Companies: Appalachian Power (VA), Appalachian Power (WV), Kingsport Power (TN), Wheeling Power (WV), and Indiana Michigan Power (IN)**

| Operating Company (Op-Co) | Total CATV and CLEC Attachments OpCo-Wide | Total CATV and CLEC Attachments Inventoried | Number Unauth. of Attachments Inventoried | Percent Unauth. of Attachments Inventoried | Inventory Period |
|---|---|---|---|---|---|
| APCO (VA) | 183,172 | 37,530 | 3,842 | 10% | 2006-2007 |
| APCO (WV) | 206,753 | 51,606 | 8,846 | 17% | 2006-2007 |
| KGP | 18,510 | 18,510 | 1,462 | 8% | 2007 |
| WPCO | 15,100 | 15,100 | 282 | 2% | 2002-2007 |
| IM | 139,290 | 139,290 | 10,738 | 8% | 2002-2007 |
| TOTALS | 562,825 | 262,036 | 25,170 | 10% | |

Duke Energy

Duke Energy has systematically gathered data on unauthorized CATV attachments for its Duke Energy Carolinas operating company for over 15 years. Duke Energy's operating companies in Duke Energy Midwest also have a significant problem with unauthorized CATV attachments, but Duke Energy has not prepared percentage data on such attachments.

*Overview of Inventory Process*. Attachment inventories are conducted for each contract once every five years. This practice has been in place for over 15 years. Inventories are conducted for each individual contract. The total number of attachments inventoried is compared to number of attachments on record. The difference represents the number of unauthorized attachments. The percentage of unauthorized attachments is then calculated by dividing the number of unauthorized attachments by the total number of attachments counted during the inventory.

*Data Represented and Results*. Table 1.2 below represents combined data from inventories of poles accessed by 20 CATV companies operating in the Duke Energy Carolinas service area in North and South Carolina. These 20 companies collectively have entered into 64 individual pole attachment contracts with Duke Energy. Inventory results shown are for the most recent inspection cycles which were conducted between 2002 and 2006.

The total number of CATV attachments identified in the audit was 866,328. The percent of unauthorized attachments for each contract ranged from zero percent to 54 percent. 58 of the companies inventoried have been through 3 or more inventory cycles. Results for those companies ranged from 0% unauthorized to 43% unauthorized.

It should be noted that six of the 20 CATV companies had not previously been inventoried on a regular cycle. Results for those six companies ranged from 15% to 54%. This suggests that a portion of the unauthorized attachments discovered in those inventories were made many years prior to the audit.

The results of Table 1.2 demonstrates that when systematic inventories are conducted, unauthorized CATV attachments exceed six percent. When systematic inventories have not been conducted, the percent unauthorized increases to more than 30 percent. Duke Energy supports EEI's points that inadequate notice requirements and an unrealistically low cap on penalties utilities can charge for violations of notice have resulted in a widespread and serious problem of unauthorized attachments.

Table 1.3 below shows the number of contracts for each given range of percentages of unauthorized attachments. This data suggests that the problem of unauthorized attachments is particularly egregious in some areas, and, although generally widespread, is apparently minimal or non-existent in certain localities. For example, the number of unauthorized attachments

corresponding to 16 of the 64 contracts studies was between six percent and 10 percent of all attachments on poles under the contract, while nine of the contracts had between 20 percent and 54 percent unauthorized attachments. At the same time, not every contract inventory yielded unauthorized attachments.

| **Table 1.2 -- Duke Energy (Carolinas Only), Percentage of Unauthorized CATV Attachments for 64 Contracts (2002-2006 Inventories)** | | | | |
|---|---|---|---|---|
| | Number of Attachments Last Reported | Number of Attachments Counted in Inventory | Difference | **Percent Unauthorized** |
| All 64 CATV Contracts | 813,488 | 866,328 | 56,707 | **6.5%** |
| Contracts w/ CATVs Not Previously Inventoried on Regular Cycle | 19,418 | 28,103 | 8,685 | **31%** |

| **Table 1.3 -- Duke Energy (Carolinas), Number of Contracts with Specified Percentage of Unauthorized Attachments** | | |
|---|---|---|
| Percentage of Unauthorized Attachments in Group of Contracts | Number of Contracts w/ Specified Percentage | Total Number of Unauthorized Attachments For Such Contracts |
| Contracts w/ 0% Unauth. | 12 | 0 |
| Contracts w/ 1%-5% Unauth. | 19 | 14,186 |
| Contracts w/ 6%-10% Unauth. | 16 | 12,547 |
| Contracts w/ 11%-20% Unauth. | 8 | 16,696 |
| Contracts w/ 21%-54% Unauth. | 9 | 13,278 |

PPL Electric Utilities

Beginning in 2002 PPL Electric Utilities has conducted inventories of its pole plant using an advanced, pole-by-pole tracking system that combines specialized software and physical inspections. PPL's methodology for identifying unauthorized attachments applies only to attachments that have been installed since the commencement of its advanced tracking system in

2002. PPL Electric Utilities is certain that a substantial percentage of attachments made before 2002 were unauthorized, but is not able to provide analogous year by year comparisons for those years. For example, during PPL's first complete system-wide survey in 2000 and 2001, they identified over 87,000 unauthorized CATV attachments and over 6000 unauthorized CLEC attachments.

Significantly, with respect to FCC-jurisdictional attachments made since 2002, PPL has discovered an extraordinarily high number of unauthorized attachments, as compared to attachments that were made pursuant to an approved application submitted by the third-party attacher to PPL Electric Utilities. Specifically, PPL Electric Utilities found that 57.1 percent of all CATV attachments, and 30 percent of all CLEC attachments made during the period 2002-2006 were unauthorized. As part of its survey resolution process, PPL Electric Utilities sought and received confirmation from these CATV and CLEC companies that these unauthorized attachments did in fact belong to the companies identified. Unauthorized attachment fees were recovered per the relevant attachment agreements, and the additional attachments added to the overall inventory for annual billing purposes.

(See Table 1.4 on the following page).

**Table 1.4 -- PPL ELECTRIC UTILITIES, UNAUTHORIZED CATV & CLEC ATTACHMENTS**

**AS PERCENTAGE OF ALL CATV & CLEC ATTACHMENTS MADE DURING 2002-2006**

**Unauthorized CATV Attachments 2002-2006**

| | TOTAL CATV ADDED | CATV UNAUTH | CATV APPLIC | % CATV UNAUTH |
|---|---|---|---|---|
| **2002** | 10284 | 4848 | 5436 | 47.1% |
| **2003** | 10191 | 6534 | 3657 | 64.1% |
| **2004** | 13665 | 8732 | 4933 | 63.9% |
| **2005** | 12235 | 8192 | 4043 | 67.0% |
| **2006** | 5934 | 1555 | 4379 | 26.2% |
| | | | | |
| **Totals** | 52309 | 29861 | 22448 | 57.1% |

**Unauthorized CLEC Attachments 2002-2006**

| | TOTAL CLEC ADDED | CLEC UNAUTH | CLEC APPLIC | %CLEC UNAUTH |
|---|---|---|---|---|
| **2002** | 5186 | 2057 | 3129 | 39.7% |
| **2003** | 4347 | 804 | 3543 | 18.5% |
| **2004** | 3502 | 792 | 2710 | 22.6% |
| **2005** | 5032 | 1868 | 3164 | 37.1% |
| **2006** | 1808 | 444 | 1364 | 24.6% |
| | | | | |
| **Totals** | 19875 | 5965 | 13910 | 30.0% |

**Total Unauthorized Attachments 2002-2006**

| | TOTAL ADDED | TOTAL UNAUTH | TOTAL APPLIC | TOTAL % UNAUTH |
|---|---|---|---|---|
| **2002** | 15470 | 6905 | 8565 | 44.6% |
| **2003** | 14538 | 7338 | 7200 | 50.5% |
| **2004** | 17167 | 9524 | 7643 | 55.5% |
| **2005** | 17267 | 10060 | 7207 | 58.3% |
| **2006** | 7742 | 1999 | 5743 | 25.8% |
| | | | | |
| **Totals** | 72184 | 35826 | 36358 | 49.6% |

Progress Energy

Progress Energy audits its entire distribution system every five years. Progress Energy last performed a full audit in 2006. The Florida Public Service Commission requires Progress Energy Florida ("PEF") to submit an annual Storm Preparedness Report which includes the number of unauthorized attachments detected through PEF system audits. Progress Energy Carolinas (PEC) also conducts a full audit. Through the combined audits, Progress Energy detected 57,170 unauthorized attachments by CATVs and CLECs. Because these attachments were made without advanced permitting or post inspection many created clearance and loading violations that were only detected years after the attachment.

Table 1.5 shows the percentage of unauthorized attachments for all of Progress Energy and for PEC and PEF. The percentage is calculated by subtracting the pre-audit count from the final settlement count and dividing the difference by the total number of attachments identified (*i.e.*, by the final settlement count). The table shows a system-wide percentage of 6.18 percent unauthorized.

**Table 1.5 -- Progress Energy: Unauthorized CATV and CLEC Attachments Other Than ILECs**

| Area | Pre-Audit Count | Final Settlement Count | Unauthorized Difference | % Unauthorized |
|---|---|---|---|---|
| **Progress Energy Carolinas** | 386,515 | 410,335 | 23,820 | 5.80% |
| **Progress Energy Florida** | 481,826 | 515,176 | 33,350 | 6.47% |
| **All Progress Energy** | 868,341 | 925,511 | 57,170 | 6.18% |

*Progress Energy Stub Poles*. Progress Energy also reports having a serious problem with "stub poles" (or "double wood"). Stub poles are wood distribution poles that were sawed off

above the communication lines and left in the field because the communication companies did not remove or relocate their lines during normal construction timelines. Progress Energy strongly agrees with EEI's comments on the double wood issue. The stub pole problem is similar to ordinary unauthorized attachments, because the attaching entity on a stub pole is obliged to transfer its wire off of an old pole and onto a new pole. Its presence on the stub pole is, therefore, unauthorized.

As further explained in comments filed by the Balch & Bingham law firm on behalf of a group of Florida Investor Owned Utilities ("IOUs"),[4] the 2006 joint use pole attachment audit identified 13,223 stub poles in the PEF distribution system as of January 2007, including 4,919 stub poles with un-transferred CATV attachments. Progress Energy used the National Joint Utilities Notification System (NJUNS) to notify the communication attachers on the stub poles, but these attachers failed to remove or transfer their lines.

All of the attachers on each of these sub poles received a transfer notification and a "Streets and Trips" mapping file in February 2007 giving them the exact locations of the poles requiring the transfer of cables. One year later, Progress Energy has not heard back from any of the communication companies stating they have moved their facilities off of these stub poles. Many of these existing stub poles are rotten and in very poor condition. In this condition, some have fallen over while others remain standing because the phone and cable lines are the only things supporting it. Many other stub poles now reside very close to road ways and create safety hazards for cars and pedestrians as well as a liability for Progress Energy and the attaching entity.

[4] Florida IOU Safety and Reliability Comments. The Florida IOUs are Tampa Electric Company, Florida Power & Light, and Progress Energy Florida.

Xcel Energy

Xcel Energy has gathered data from Commission-jurisdictional unauthorized attachments from 2004-2006 audits of for two of its operating companies: Northern States Power Company Minnesota (NSPMN) and Northern States Power Company Wisconsin (NSPWI). Audit data for these two companies shows a substantial number and percentage of unauthorized attachments. In Table 1.6 below, the "Pre-Audit Number of Attachments" represents CATV and CLEC attachments on record. The "Post-Audit Number of Attachments" is the number of attachments found identified in the audit. The number of unauthorized attachments is calculated by subtracting the pre-audit count from the post audit count. The "Percent Unauth. Attachments" is the percentage of all existing (*i.e.*, post-audit) attachments that are unauthorized.

**Table 1.6 -- NSPMN and NSPWI: Unauthorized CATV and CLEC Attachments (From 2004-2006 Audits)**

| | **Pre-Audit Number of Attachments** | **Post-Audit Number of Attachments** | **Number of Unauth. Atts.** | **Percent Unauth. Attachments** | **Audit Date** |
|---|---|---|---|---|---|
| NSPMN | 253,114 | 261,377 | 8,263 | **3.2%** | 2005 |
| NSPWI | 47,921 | 54,800 | 6,879 | **12.6%** | 2006 |
| Total | 301,035 | 316,177 | 15,142 | **4.79%** | |

## II. Numbers of Attaching Entities Per Pole

The Electric Utilities strongly agree with EEI that the costs of owning and maintaining pole infrastructure are substantial and growing, and should be fully and fairly allocated among all attaching entities. The Electric Utilities also agree with EEI that the current cable and telecom rate formulas do not fully and fairly allocate such costs and, in fact, result in subsidies at the expense of electric consumers. As EEI explains, these subsidies can be substantially reduced if the Commission modifies its regulations to apply an improved version of the telecom formula to all Commission-jurisdictional attachments. The Commission is therefore correct to seek comment on "the extent of the Commission's ability to modify how the cable and telecom rates are applied." NPRM at ¶ 20.

The Electric Utilities appreciate the opportunity to comment on how the telecom formula is applied. A particularly important factor used in applying the telecom formula is the presumed number of attaching entities on the pole. The Commission is, therefore, correct to seek comment on "how may poles have three attachments or fewer" in a typical metropolitan area. NPRM at ¶ 13. The Electric Utilities agree with EEI that the presumed numbers of attaching entities under the Commission's current regulations are too high, for both urban and rural areas. In this regard, the Electric Utilities offer the following data on the number of attaching entities on poles owned by several of the Electric Utilities individually, in both rural and urban areas.

<u>AEP</u>

AEP's distribution poles have over 3.5 million third-party attachments, including, in Commission-jurisdictional states, approximately 1.3 million CATV and CLEC attachments and approximately 0.9 million ILEC attachments. Table 2.1 shows the average number of attaching entities per joint use pole, by operating company. In calculating this average number, AEP

included only joint use poles, defined as any pole with at least one third-party attacher. Each average number includes the electric utility itself. Among operating companies in states under Commission's jurisdiction, the average number of attaching entities ranged from 2.44 for South Western Electric Power in Arkansas, to 2.99 for Kingsport Power, serving the city of Kingsport, Tennessee.

Significantly, this number assumes perfect overlap of joint users, which means that the actual number may be even lower than the number stated in column three. For example, if a utility knows that it has 100,000 poles that have an ILEC attachment, and 90,000 poles that have a CATV attachment, and 15,000 poles that have one or more CLEC attachment, it is assumed that no fewer than 90,000 of the 100,000 ILEC-attached poles also has a CATV, and, in turn, that no fewer than 15,000 of those 90,000 poles also has a CLEC attachment. In reality, there may be some poles that have CATV attachments, but no ILEC attachments, or some poles that have CLEC attachments, but no CATV attachments, and so on. The significance of this point is that the total number of joint use poles is probably somewhat higher than the number stated in column two of the table and, as a result, the average number of attaching entities is, in reality, even lower than what is stated in column three of the table.

Table 2.2 provides additional detail underlying the calculations represented in Table 2.1. Specifically, Table 2.2 shows the number of poles that have a specified number of attaching entities. Significantly, in each case, the number of poles that have five attaching entities is almost statistically insignificant, while the number of poles that have only two attaching entities represents a substantial share of all poles. For example, in the city of Kingsport, Tennessee, there are a total of only two poles with five attaching entities each, out of 18,750 poles. The

number of Kingsport Power's poles with four or more attaching entities is only 1,030, or 5.5 percent.

| **Table 2.1 -- AEP, Number of Attaching Entities Per Pole for All Operating Companies (Joint Use Poles Only) (Operating Companies in non-FCC States Italicized)** | | |
|---|---|---|
| Operating Company | Total Number of Joint Use Poles (Assuming Perfect Overlap) | Average Number of Attaching Entities Per Joint Use Pole |
| Appalachian Power (VA) | 176,863 | 2.98 |
| Appalachian Power (WV) | 231,015 | 2.84 |
| Kingsport Power (TN) | 18,750 | 2.99 |
| Wheeling Power (WV) | 24,000 | 2.91 |
| Indiana Michigan Power (IN) | 132,530 | 2.83 |
| Public Service of Oklahoma | 144,400 | 2.62 |
| Texas North | 81,938 | 2.61 |
| Texas Central | 273,600 | 2.58 |
| South Western Electric Power (AK) | 61,560 | 2.44 |
| South Western Electric Power (TX) | 110,370 | 2.60 |
| *Kentucky Power (KY)* | *107,272* | *2.57* |
| *Ohio Power (OH)* | *273,300* | *2.86* |
| *Columbus Southern Power (OH)* | *204,000* | *2.66* |
| *Indiana Michigan Power (MI)* | *57,269* | *2.61* |
| *South Western Electric Power (LA)* | *66,750* | *2.76* |

| **Table 2.2 -- AEP, Number of Joint Use Poles With Specified Number of Attaching Entities (Including Electric Utility) (Operating Companies in FCC States Only)** | | | | |
|---|---|---|---|---|
| Oper. Co. | 5 | 4 | 3 | 2 |
| APCO (VA) | 152 | 3,653 | 170,833 | 6,931 |
| APCO (WV) | 98 | 3,589 | 185,624 | 41,704 |
| WPCO (WV) | 59 | 952 | 13,166 | 2,669 |
| IM (IN) | 608 | 6,446 | 96,840 | 31,090 |
| PSO (OK) | 3,985 | 6,142 | 65,437 | 68,623 |
| KGP (TN) | 2 | 1,028 | 16,448 | 1,272 |
| SWEPCO (AR) | 68 | 409 | 31,762 | 42,388 |
| SWEPCO (TX) | 941 | 1,045 | 61,712 | 46,673 |
| TCC (TX) | 4,217 | 9,738 | 139,563 | 141,749 |
| TNC (TX) | 416 | 988 | 53,936 | 37,941 |

Progress Energy

Progress Energy does not track the number of "attaching entities" or attaching parties as such, but Progress Energy does track the number of attachments on its distribution poles. Because each attaching entity on a given pole has at least one attachment on that pole, the average number of attachments represents a maximum limit of how many attaching entities there can be on that pole. Progress Energy has 2.3 million distribution poles in Florida and the Carolinas. Of these poles, approximately 1.1 million are joint use poles, i.e., poles with at least one third-party attachment. There are currently 1,385,518 third-party telephone, Cable, CLEC, and other private attachments on these joint use poles. Including Progress Energy itself, the average system-wide number of attachments per joint use pole is 2.37. Table 2.3 below shows the averages for Progress Energy system-wide and by operating company.

**Table 2.3 -- Progress Energy : Average Number of Attachments on Poles With at Least One Third-Party Attachment**

| | Total Joint Use Poles | Total Third-Party Attachments | Average Number of Attachments Per Joint Use Pole (Third Party Attachments Only) | Average Number of Attachments Per Joint Use Pole (including Progress Energy) |
|---|---|---|---|---|
| **Progress Energy Carolinas** | 504,650 | 648,395 | 1.28 | 2.28 |
| **Progress Energy Florida** | 510,235 | 737,123 | 1.44 | 2.44 |
| **Progress Energy System-Wide** | 1,014,885 | 1,385,518 | 1.37 | 2.37 |

Southern Company

Southern Company has assembled data on the number of attaching entities on poles owned by its subsidiary Georgia Power Company (Georgia Power). Georgia Power is the largest of Southern Company's four electric utility operating companies in terms of customers served and second largest in terms of number of poles owned. Georgia Power's service area, excluding the recently acquired Savannah Electric area, covers 152 counties, of which 35 are classified as urban and 117 are classified as rural. Georgia Power serves Fulton County, which has the second highest population of any Georgia county, and is the center of metropolitan Atlanta. Georgia Power also serves several other major urban areas in Georgia, including Augusta (Richmond County), Macon (Bibb County), Columbus (Muscogee County), Rome (Floyd County), and Valdosta (Lowndes County).

Georgia Power's calculation of the number of attaching entities per pole is based on county-by-county audits conducted during the period 2003-2007. This data is based on attachments by CATVs, CLECs, ILECs, private entities, government entities, electric suppliers, and all other attachers. Based upon 2000 U. S. Census data, any county with a population of less than 50,000 people is considered rural and any county with a population of 50,000 or greater is considered urban.

*Data Summary*. The average number of attaching entities per pole for Georgia Power's entire service territory, including both urban and rural counties, is 2.73. The average number of attaching entities is 2.83 for Georgia Power's urban counties, and 2.58 for rural counties.

*Urban Areas*. Georgia Power has 73,763 poles in Fulton County that have one or more third-party attachers. Of these poles, 65,450, or 88.7 percent, have three or fewer attaching

entities (including Georgia Power). Only 2,239, or three percent, have five or more attaching entities.

Significantly, as shown in Table 2.4 below, in 26 of these urban counties, the number of poles with four or more attachers is less than 10 percent of the total number of poles with third party attachments. In 12 counties, it is less than five percent of the total. In one of Georgia Power's urban counties, Catoosa, out of 1305 poles with third-party attachments, there are only ten poles with four attachers and no poles at all with five or more attachers. In another one of Georgia Power's urban counties, Bartow, out of 22,901 poles with third-party attachments, there are only 106 poles with four attachers, 16 with five and no poles at all with more than five attachers. Table 2.5 shows the number of attaching entities per pole, broken down by the number of joint use poles in the county.

(See Tables 2.4 and 2.5 below.)

**Table 2.4 -- Georgia Power, Number of Attaching Entities By County for Urban Counties**

| URBAN COUNTY | # of Poles w/ at least One 3d-Party Attachment | Number of Attaching Entities | | | | | Average Number of Attaching Entities Per Pole |
|---|---|---|---|---|---|---|---|
| | | 2 | 3 | 4 | 5 | 6 or Greater | |
| Fulton | 73763 | 16169 | 49281 | 6074 | 1738 | 501 | 2.93 |
| Dekalb | 63273 | 13212 | 45705 | 3725 | 509 | 122 | 2.87 |
| Floyd | 31227 | 13655 | 17015 | 539 | 18 | 0 | 2.58 |
| Bibb | 29848 | 7599 | 18927 | 2980 | 243 | 99 | 2.87 |
| Richmond | 27334 | 7532 | 10856 | 8182 | 658 | 106 | 3.08 |
| Gwinnett | 24799 | 6652 | 15830 | 1787 | 495 | 35 | 2.85 |
| Clayton | 24175 | 6704 | 16135 | 1221 | 112 | 3 | 2.78 |
| Bartow | 22901 | 10625 | 12154 | 106 | 16 | 0 | 2.54 |
| Cobb | 22893 | 6045 | 13893 | 2163 | 508 | 284 | 2.92 |
| Muscogee | 22502 | 3798 | 5753 | 11571 | 1312 | 68 | 3.47 |
| Columbia | 17196 | 5417 | 8138 | 3464 | 173 | 4 | 2.91 |
| Hall | 13234 | 4978 | 7605 | 602 | 48 | 1 | 2.68 |
| Glynn | 12072 | 3984 | 7953 | 132 | 3 | 0 | 2.68 |
| Henry | 10907 | 3669 | 6660 | 520 | 56 | 2 | 2.72 |
| Lowndes | 10876 | 3765 | 6653 | 419 | 38 | 1 | 2.70 |
| Cherokee | 10691 | 3514 | 6752 | 404 | 21 | 0 | 2.71 |
| Clarke | 10507 | 3908 | 6027 | 502 | 65 | 5 | 2.69 |
| Carroll | 7813 | 2740 | 4752 | 316 | 5 | 0 | 2.69 |
| Bulloch | 6118 | 3501 | 2565 | 51 | 1 | 0 | 2.44 |
| Whitfield | 5490 | 1485 | 3687 | 303 | 15 | 0 | 2.79 |
| Coweta | 5390 | 2400 | 2236 | 595 | 156 | 3 | 2.72 |
| Liberty | 4692 | 3775 | 858 | 53 | 6 | 0 | 2.21 |
| Douglas | 4358 | 1250 | 2763 | 335 | 10 | 0 | 2.79 |
| Rockdale | 3229 | 1049 | 1908 | 245 | 27 | 0 | 2.77 |
| Houston | 3055 | 886 | 1972 | 171 | 20 | 6 | 2.78 |
| Dougherty | 3040 | 1192 | 1665 | 144 | 31 | 8 | 2.68 |
| Fayette | 2692 | 905 | 1592 | 182 | 13 | 0 | 2.73 |
| Walton | 2614 | 702 | 1163 | 663 | 77 | 9 | 3.05 |
| Forsyth | 2512 | 813 | 1488 | 177 | 30 | 4 | 2.78 |
| Walker | 1923 | 970 | 901 | 51 | 1 | 0 | 2.52 |
| Paulding | 1913 | 676 | 1059 | 156 | 22 | 0 | 2.75 |
| Spalding | 1859 | 883 | 911 | 65 | | 0 | 2.56 |
| Newton | 1326 | 584 | 669 | 73 | | 0 | 2.61 |
| Catoosa | 1305 | 499 | 796 | 10 | | 0 | 2.63 |
| Troup | 1173 | 607 | 416 | 129 | 20 | 1 | 2.63 |

| **Table 2.5 -- Georgia Power, Average Number of Attaching Entities for All <u>Rural</u> Counties, In Order of Most Joint Use Poles to Fewest Joint Use Poles** | | |
|---|---|---|
| Rural Counties By # of Poles with Third-Party Attachers | Number of Poles | Average Number per Pole |
| Counties with > 10,000 Poles | 17,321 | 2.58 |
| Counties with 9,000-9,999 JU Poles | 37,913 | 2.59 |
| Counties with 8,000-8,999 JU Poles | 8,545 | 2.66 |
| Counties with 7,000-7,999 JU Poles | 14,414 | 2.51 |
| Counties with 6,000-6,999 JU Poles | 33,366 | 2.77 |
| Counties with 5,000-5,999 JU Poles | 21,860 | 2.63 |
| Counties with 4,000-4,999 JU Poles | 41,026 | 2.45 |
| Counties with 3,000-3,999 JU Poles | 31,651 | 2.59 |
| Counties with 2,000-2,999 JU Poles | 59,059 | 2.60 |
| Counties with 1,000-1,999 JU Poles | 50,196 | 2.55 |
| Counties with <1,000 JU Poles | 12,640 | 2.43 |
| All Rural Counties | 327,991 | 2.58 |

Xcel Energy

Xcel Energy has gather data on the number of attaching entities per pole for two major metropolitan areas within its service territory: Denver, Colorado and Minneapolis / St. Paul, Minnesota.

*Xcel Energy: Denver Metropolitan Area*. Xcel Energy's operating company Public Service Company of Colorado serves the Denver, Colorado metropolitan area. Results of a 2004 field audit show an average number of attaching entities per pole of 2.61, including Xcel Energy as an attaching entity. Table 2.6 represents this finding. Only poles with at least one third-party attacher are included in the calculation of the average number of attaching entities per pole.

**Table 2.6 -- Xcel Energy (Public Service Company of Colorado Operating Company), Average Number of Attaching Entities and Number of Poles with Specified Number of Attaching Entities in Denver, Colorado Metropolitan Area**

| | |
|---|---|
| # of Poles w/ 2 Att. Entities | 60,062 |
| # of Poles w/ 3 Att. Entities | 83,470 |
| # of Poles w/ 4 Att. Entities | 2,651 |
| # of Poles w/ 5 Att. Entities | 18 |
| Total # of Poles | 146,201 |
| Total # of Attaching Entities | 381,228 |
| **Average # of Attaching Entities** | **2.61** |
| | |

*Xcel Energy: Minneapolis / St. Paul Metropolitan Area*. Xcel Energy's operating company Northern States Power Company Minnesota (NSPMN) serves the Minneapolis / St. Paul metropolitan area. Results of a 2005 field audit show an average number of attaching entities per pole of 2.47, including Xcel Energy as an attaching entity. Table 2.7 includes only poles with at least one third-party attacher.

| Table 2.7 -- Xcel Energy, Northern States Power Company Minnesota, Number of Attaching Entities Per Joint Use Pole | |
|---|---|
| **Total # of 3rd-Party Attaching Entities** | **268,183** |
| **Total # of Joint Use Poles** | **182,273** |
| **Average # of Attaching Entities Per Joint Use Pole (including Xcel Energy)** | **2.47** |

## CONCLUSION

**WHEREFORE, THE PREMISES CONSIDERED,** American Electric Power Service Corporation, Duke Energy Corporation, Entergy Services, Inc., PPL Electric Utilities Corporation, Progress Energy, Southern Company, and Xcel Energy, request the Federal Communications Commission take action in this proceeding in accordance with the views expressed in these comments.

Respectfully submitted,

***/s/ Sean B. Cunningham***
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