

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and Petition of)
 Town of Golden Beach for relief)
 from insufficient, inadequate,)
 and unsafe overhead electric)
 service provided by Florida Power)
 & Light Company.)

DOCKET NO. 900811-EI
 ORDER NO. 25670
 ISSUED: 2/3/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
 BETTY EASLEY

FINAL ORDER

BY THE COMMISSION:

Case Background

The Town of Golden Beach (Town of Golden Beach) is a small residential community located on State Road A-1-A north of Miami Beach. The Town is built on a barrier island that is subject to a salt air environment, and it includes several small landfill islands as well.

On October 5, 1990, the Town filed a formal complaint with this Commission stating that it had received insufficient, inadequate, and unsafe overhead electric service from Florida Power and Light Company (FPL or Utility). FPL acknowledged that substandard service existed in certain areas. The Utility has installed underground facilities on the east side of State Road A-1-A, and it has refurbished the overhead facilities on the west side of State Road A-1-A.

Golden Beach has paid a \$66,400 Contribution-In-Aid-Construction (CIAC) for undergrounding on the east side, with any additional or lesser amount to be determined in this docket. A CIAC for the west side is also determined in this docket.

DOCUMENT NUMBER-DATE

01199 FEB -3 1992

FPSC-RECORDS/REPORTING

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Quality of Service

During the hearing, the following table was admitted into evidence which shows the average number of interruptions per customer in the Town and in FPL's Southern Division.

1990 AVERAGE NUMBER OF INTERRUPTIONS PER CUSTOMER

<u>Town of Golden Beach</u>		<u>FPL Southern Division</u>
Feeder	6.00	0.23
Laterals	4.00	1.09

Another table introduced into evidence shows the average annual outage hours per customer for Golden Beach and for FPL's entire system.

AVERAGE ANNUAL OUTAGE HOURS PER CUSTOMER

<u>Town of Golden Beach</u>			<u>FPL 1990 SYSTEM AVERAGE</u>
<u>(Ex 20)</u>	<u>1989</u>	<u>1990</u>	<u>(TR 371)</u>
East Side	10.8	4.8	0.75
West Side	6.5	5.0	

The record shows FPL had indications that Golden Beach was experiencing service difficulties for some time. FPL's Witness Marshall acknowledged that, despite repeated reports of "wire downs" in certain areas, the utility did not perceive that widespread repairs were needed. Although no injuries or fatalities were experienced, the number of downed wires in such a small area suggests that service quality and safety were a problem. Even the utility's witness, Mr. Marshall admitted that service to some areas was suboptimal. After the Complaint was filed, the extent of the renovations required in Golden Beach substantiated that there was extensive disrepair, and renovations were done promptly. Thus, it seems that it took a formal complaint by the Town to ultimately convince FPL that substantial repairs were needed. In fact, FPL's own witness, Mr. Marshall, stated the Utility became convinced there was a problem after Golden Beach filed its complaint. For these reasons we find that FPL did not provide reasonably sufficient, adequate, efficient, and safe electric service to Golden Beach from January 1, 1987, to June 30, 1991.

Although we find that FPL did not provide reasonably sufficient, adequate, efficient, and safe electric service to Golden Beach, Golden Beach failed to demonstrate how FPL wilfully violated Sections 366.03 and 366.04(6), Florida Statutes. The Town proposed no standards or guidelines for us to use in determining whether these statutory provisions had been violated, although the

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Town did present testimony and exhibits showing instances of poor service. However, electric customers living in coastal communities could expect many of the same difficulties with electric service as experienced by Golden Beach residents. The record shows that mismanagement at FPL prevented some of these problems from being corrected earlier than they were. While FPL did experience management problems in Golden Beach, we find that the mismanagement did not constitute a wilful violation of Sections 366.03 and 366.04(6), Florida Statutes.

The Town did not quantify, in total or annual dollars, any damages due to the deteriorated state of the distribution system in Golden Beach for the period in question, January 1, 1987, to June 30, 1991. While events such as downed lines and outages can have a negative impact on one's perception of the technologies needed to provide reasonably good, reliable, and safe service, we find that the Town presented no record evidence to show the effect downed lines, outages, and voltage fluctuations had on the citizens of Golden Beach.

After Golden Beach filed its complaint, FPL relocated facilities on the east side to underground and it made renovations to the overhead system of the west side of the Town. Golden Beach contends that only an underground system can satisfy its concerns. However, there is no evidence in the record which indicates that an underground system is the only system which can address the Town's concerns in a reasonable and cost effective manner. For example, a table introduced into the record showed that Golden Beach and Sea Ranch Lakes, an underground served coastal community, both experience a high number of outages. This table also shows that Sea Ranch Lakes is also subject to an increasing number of interruptions.

We find that FPL's refurbished overhead system on the west side should provide reliable and efficient service at the least cost. FPL introduced an exhibit which presented life cycle cost comparisons between overhead and underground systems specifically designed for the west side of Golden Beach. An overhead system would appear to have the lowest construction costs, and perhaps even the lowest overall costs. Mr. Marshall, FPL's witness, indicates that FPL believes it has now met the reliability and safety concerns of the Town, and that it will continue to do so. We find no information in the record which would conclusively indicate that the post-complaint construction will not provide the Town reasonably sufficient, adequate, efficient, and safe electric service. Further, we find that based on life cycle revenue requirement cost estimates, the refurbishment done by FPL was the

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most appropriate means to provide the Town reasonably sufficient, adequate, efficient, and safe electric service.

We find that FPL should have been able to determine the state of disrepair in Golden Beach sooner than it did, and that FPL should have initiated corrective actions earlier. Because all distribution systems should be closely monitored to prevent a recurrence of the situation in Golden Beach, FPL must take steps to improve its trouble reporting and evaluation procedures. FPL claims to have made changes to its trouble call system. Accordingly, within 60 days of the issuance of this Order, FPL shall submit a report which details the changes FPL has made to its trouble call system. This report should cover, at a minimum, the following:

- a) A description of FPL's trouble call management system. This description should include how the information is conveyed to management (from whom to whom), the form of the information, the criteria reviewed, and the weight each criteria is given.
- b) FPL's procedure for correlating trouble call data with other O&M data.
- c) The thresholds that trigger further action and/or investigation by management.
- d) A description that details the improvements made to FPL's trouble call management system, to FPL's procedure for correlating trouble call data, and to FPL's threshold requirements. This description should compare prior procedures to those changes which were made after Golden Beach filed its complaint.

Contribution-in-Aid-of-Construction

Towns' New Development Argument.

The Town argued that because the old distribution facilities were no longer serviceable, Golden Beach should be treated like a new development, and thus it should be charged the currently tariffed Underground Residential Development (URD) rate for new subdivisions. However, the Town must look like a new subdivision, under Rule 25-6.076, Florida Administrative Code, in order to obtain underground electric service pursuant to this tariff. Under this rule, new developments must provide right-of-ways and easements free of paving, vegetation, and other obstructions. While Golden Beach offered to provide easements, it

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did not offer to remove vegetation and paving. In fact, the record shows that the Town cannot provide easements clear of existing underground utilities and other obstructions.

The FPL URD cost for new construction is based on the average cost of work in areas where low-cost rapid construction techniques can proceed unhindered by existing residences and infrastructure. The installation of underground distribution in developed, mature communities like Golden Beach, entails hand digging and slower construction techniques. Thus, undergrounding in developed communities generates expenses that greatly exceed the tariffed average cost. Based on FPL's experience with installation along State Road A-1-A, the cost to provide underground service to the Town would be substantially higher than the average cost to install underground facilities in a new subdivision. Accordingly, Golden Beach can not be treated like a new development.

Town's O&M/External Costs Argument.

Golden Beach claims it should be given credit in the Contribution-in-Aid-of-Construction (CIAC) because underground systems are said to enjoy lower operating and maintenance (O & M) costs. However, Golden Beach failed to prove these cost savings, and no estimate of these cost savings has ever been applied to any customer. Because many of the benefits of underground service, including improved reliability and aesthetics, accrue almost exclusively to the recipients of underground service, the general body of ratepayers should not be burdened by any extra costs incurred in providing the benefits of underground service to any individual community.

Golden Beach's Witness, Mr. Maney, discussed associated benefits of undergrounding that he said should be considered in determining the appropriate type of service. However, Witness Maney also stated that it was premature to consider many of these cost-savings at this time because these cost savings were being studied in another docket. We agree. Instead, we find that any CIAC adopted here for the west side shall be adjusted as necessary pursuant to the rule phase of Docket No. 910615-EU, the Underground Wiring Study. We have been directed to resolve Docket No. 910615-EU by June of 1992, and our resolution of Docket No. 910615-EU may result in a reduction of the west side CIAC that we approve in the body of this Order.

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Town's Undue Prejudice Argument.

The Town argued that because many of its electrical facilities were installed prior to 1971, it did not have the opportunity to obtain service pursuant to the underground differential tariff. Therefore, Golden Beach alleges that it was discriminated against, and that it should now be able to receive underground facilities at the current differential. Because the FPL URD tariff did not exist prior to 1971, underground service under this URD tariff was not available to anyone prior to 1971. The Town could have obtained underground service under the same terms and conditions as anyone else at that time. No one can be discriminated against for having not received underground service under a provision prior to its existence.

Town's Subsidization of New Customers Argument.

The Town argued that FPL's refusal to apply average URD rates on the basis of subsidization was without merit, because there are inherent variations in costs among new installations which are not recovered. FPL does not deny that subsidies exist in rate design. However, just as new customers are subsidized today by average rates, so will existing customers be subsidized by other customers when it comes time to replace facilities at future cost levels. In addition, if subsidies are an issue, the maintenance cost of coastal electric distribution systems is higher than that of inland systems. While the Town is already subsidized by the general body of ratepayers due to its location, it does not view this as discrimination.

The Town also proposed paying for the undepreciated, or remaining book value, of the existing overhead system to make it appear like a new area for accounting purposes, consistent with the currently approved tariff provision addressing the relocation and removal of existing facilities (FPL Tariff Sheet 6.095). Golden Beach's approach would treat new customers and existing customers requesting conversion the same, on the basis that the current cost of an overhead system goes into rate base for both groups. We have not viewed the concept of new customers adding above average cost to rate base as discrimination. However, we find that the URD tariff was not designed to include the extra costs associated with routing underground lines under roads, driveways, fences, and other appurtenances and cannot be applied to developed areas.

East side Estimated vs Actual Underground Costs and CIAC.

One of the issues discussed at length during the hearing was the validity of the estimates FPL provided Golden Beach compared to

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the actual cost of the underground installation on the east side of State Road A-1-A. Under protest, the Town paid \$66,400 to FPL in order to secure installation of underground facilities during a DOT reconstruction along State Road A-1-A. Golden Beach maintains that some or all of the original \$66,400 should be refunded because this amount does not take into consideration cost-savings the conversion would confer on the utility. The Town's \$66,400 CIAC for the East side underground construction was based on the following:

May 1989 Estimate for Undergrounding	\$171,900
<u>Planned Overhead Improvements Credit</u>	- 105,500
CIAC Paid by the Town	66,400

FPL maintains that the May estimate was simply a quick estimate and that the detailed December 1990 estimate of \$374,000 is the appropriate estimate. FPL maintains that the Town owes an additional \$284,045 based on the following :

Actual Costs of the East Side	\$455,945
Planned Improvements Credit	- 105,500
<u>CIAC Paid by the Town</u>	- 66,400
Balance due from the Town per FPL	\$284,045

We find that Golden Beach shall pay \$17,190, based on the following:

May 1989 Estimate for Undergrounding	\$171,900
Additional Costs of 10%	17,190
Planned Overhead Improvements Credit	- 105,500
<u>CIAC Paid by the Town</u>	- 66,400
Balance due from the Town	\$ 17,190

We agree with Golden Beach that FPL should have made a more diligent effort to prepare a more accurate estimate of the actual cost to install the underground facilities on the east side. Therefore, the Town should be responsible for no more than 10 percent above the amount estimated by FPL in its letter dated May of 1989. The balance of \$266,855 shall be written off below the line because of management inefficiencies that were admitted by the utility in handling the entire matter of service in the Town. The balance to be written off below the line is based on the following:

Actual Costs of the East Side	\$455,945
Planned Improvements Credit	- 105,500
CIAC Paid by the Town	- 66,400
<u>Balance due from the Town</u>	- 17,190
Balance Written off Below the Line	\$266,855

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West side CIAC.

The amount of CIAC payable for the west side conversion shall be the total cost of the conversion less the cost of improvements made by FPL during the course of this docket to upgrade that portion of the system, less any salvage value of the facilities removed. We find that this approach will require the requesting entity to pay the extra cost of the undergrounding, while not requiring the Town to pay twice for upgrades which would have been necessary in the absence of any request for undergrounding. We agree with FPL that an entity requesting a conversion of facilities with remaining useful life should also pay for the remaining book value of the removed facilities.

Accordingly, we approve the following formula for determining CIAC for the West side:

+ Total cost of installation of underground system
- Cost of upgrades performed by FPL in 1991
- Salvage value of removed facilities
= CIAC due from Town

Thus, the CIAC payable by the Town for the west side shall be the lesser of actual, or estimated plus 10 percent, of the cost of the new underground installation, including the cost of removal of the overhead installation, less the cost of the 1991 refurbishment, less salvage value of removed facilities.

Town's Undergrounding as Only Alternative Argument.

The Town also failed to show that underground was the only way to provide adequate service; therefore, we find that any conversion is optional. Golden Beach's Witness, Mr. Duffner, cited leaning poles as a flaw with current electrical service, and he also stated that these leaning poles contribute to the lack of reliable service in Golden Beach. However, there was no evidence showing that leaning or fallen poles have affected service quality in the Town. Many of the electric service interruptions experienced by Golden Beach were attributable to events outside the community, which would have occurred even if the Town's distribution system had been undergrounded. We find there was no evidence presented to dispute FPL's contention that a properly designed overhead system, with improved management oversight, will provide reasonably sufficient, adequate, efficient, and safe electric service.

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Terms and Conditions

The Town failed to present any evidence to support its contention that it should be granted special financing for the cost of undergrounding by FPL. Because the Town is the entity requesting the undergrounding, it must assume responsibility for securing compliance with all conditions listed below and for payment in full upon completion of the installation. Golden Beach must resolve internally how it shall recoup expenditure from its constituents. We find that FPL need not act above and beyond the terms and conditions the utility would extend to any other customer requesting special construction. It is the Town's responsibility to raise sufficient revenue to pay for undergrounding within its legally authorized means. Thus, we find that payment for any CIAC in this instance shall follow the guidelines used for any other CIAC payment.

We find that Golden Beach must meet the following conditions in order to qualify for converting the west side:

1. Requesting entity has executed agreements with all other utilities, CATV companies, or other licensees, occupying the electric utility pole lines being converted, and that these agreements provide that those other utilities, CATV companies, and other licensees shall simultaneously convert, in conjunction with FPL, the existing overhead facilities to an underground configuration.
2. Requesting entity secures all easements necessary to accommodate the requested underground system and provides these easements with an opinion of title to FPL.
3. Requesting entity accepts responsibility for all undergrounding costs including service laterals for all affected customers, whether or not such laterals are actually installed. In the event a customer fails to convert service, the requesting entity shall be responsible for any additional costs FPL may incur in maintaining overhead service to that customer. Enforcement of the requirement to convert service laterals to underground shall be the responsibility of the requesting entity.
4. Requesting entity agrees to be responsible for all restoration of, repair of, or compensation for, property affected, damaged, or destroyed, to

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accommodate the installation of underground facilities and the removal of FPL's overhead facilities, absent a showing of negligence on the part of FPL.

5. Requesting entity agrees to indemnify FPL from any claim, suit, or other proceeding, which seeks the restoration, or repair of, or compensation for, property affected, damaged, or destroyed, to remove existing facilities or to accommodate the installation of underground distribution facilities arising from or brought as a result of the installation of underground facilities, absent a showing of negligence on the part of FPL.
6. Requesting entity agrees to pay the cost of a firm estimate for the conversion prior to commencement of the estimating process. This cost shall be credited by FPL to the total cost of the project upon initiation of construction.
7. Requesting party agrees to prepay the amount shown in the firm estimate prior to commencement of construction.
8. FPL shall collect no more than 10 percent above the amount shown in the firm estimate paid for by the requesting entity, without regard to the total cost of the completed project. If the actual cost is less than the estimated cost, FPL shall refund any payment in excess of actual cost.
9. The area to be converted must be contiguous unless FPL agrees otherwise.

When Witness Duffner described the leaning pole problem, he pointed out that there are some old poles still remaining because Southern Bell and cable television facilities still use them. He further stated that these entities can relocate to new poles if electric facilities are underground, but that they have objected to doing so. Witness Duffner also stated that Golden Beach has "an offer we are very seriously considering" from Southern Bell to underground its facilities, but that the Town has not yet accepted this Southern Bell offer. Because negotiations could continue indefinitely, this could leave FPL with the cost of maintaining poles when all electric facilities have been placed underground. Accordingly, we find that the Town shall obtain a secured agreement

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for the concurrent undergrounding of all pole attachments prior to the commencement of any undergrounding work by FPL.

Witness Duffner stated that the citizens of Golden Beach will convert "because we have an ordinance in town requiring it" Nonetheless, simply adopting an ordinance concerning converting service laterals is not sufficient. This is because FPL has no control over the enforcement of this provision. The Town must be willing to reimburse FPL for any additional costs incurred because of customers failing to underground facilities in a timely manner. As the party requesting installation, Golden Beach should also be responsible for any and all costs associated with the repair or compensation for damage to property or landscaping which results from undergrounding of electrical facilities, unless such damage results from negligence on the part of the utility.

FPL's construction cost estimating procedure was discussed by several witnesses. The Town viewed FPL's conversion estimate for the east side of \$66,400 as a fixed price. Witness Wright maintained that the party in control of both the cost estimates and the execution of a project should be responsible for providing accurate estimates. To do otherwise, Mr. Wright stated, would be to require a blank check from the requesting entity. Witness Marshall defended FPL's policy by stating that the estimate of \$66,400 was a "rough desk estimate," and that it did not include costs later found to be necessary due to actual field conditions.

Desk estimates, according to Witness Marshall, provide an order of magnitude cost. These estimates are based on some empirical data, but they do not include any on-site investigation. When a customer initially asks for an estimate, FPL most likely gives the customer such a desk estimate. FPL provides a more extensive field estimate if the customer indicates a desire to pursue the matter by signing a contract and by agreeing to pre-pay the estimated costs, subject to true-up, at the conclusion of the project. When FPL does a field estimate, which the utility calls a Mechanized Engineering and Construction Assemblies (MECA) analysis, FPL visits the site and determines the necessary components for completing the task given all information available at the time. According to FPL, detailed field estimates are expensive primarily because of the time required to physically lay out the job, determining exactly which pieces are required given the site specific conditions.

As discussed above, FPL's original estimate in the December 14, 1990, letter, fell far short of the actual cost. FPL asked the Town to pay the balance. FPL maintained that it was imprudent to incur substantial engineering costs to provide a more accurate

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estimate up front, when there was no assurance that the cost of the estimate would ever be recouped, and that if the Town did not pay the balance, the general body of ratepayers would. The Town asserted that FPL really wanted a blank check, with no idea of what the total cost would be.

We agree with Golden Beach that FPL has little incentive to estimate accurately when a customer is required to pay the total cost of the project, even when the total cost diverges significantly from the estimate. Therefore, we find that any party requesting undergrounding of facilities should pay for a detailed field study. FPL will then do a detailed field study to accurately determine the cost of undergrounding the subject facilities, prior to the signing of any contract. If the requesting party decided to undertake the conversion, the cost of the estimate shall be credited to the total charge for the project. If the customer pays for the estimate, FPL will not be allowed to recover more than 10 percent above the firm estimate provided. However, if the requesting entity declines to pay for such a detailed estimate, FPL would not be held to the 10 percent guideline. We find that this will provide FPL with the incentive to provide accurate estimates. We also find that this procedure eliminates the Town's "blank check" argument, while not burdening the general body of ratepayers with the cost of extensive engineering studies for projects never undertaken.

Bad Faith

Golden Beach presented evidence showing that FPL should have recognized certain problems, such as the cause of downed wires, earlier than the Utility did. However, we believe that any mismanagement on the part of FPL does not prove that FPL acted in bad faith in its dealings with the Town. In fact, we find that Golden Beach presented no evidence which shows that FPL, or any employee of FPL, acted in bad faith toward the Town regarding the Town's requests and efforts to obtain reasonably sufficient, adequate, efficient, and safe electric service, and to have portions of its distribution system converted from overhead-to-underground facilities. Because we find that FPL did not act in bad faith toward Golden Beach, there is no further action we should take in this matter.

Finally, this docket shall remain open until FPL files its Trouble Call Management System Report, and until Staff has administratively approved FPL's new trouble call system. In addition, this docket shall remain open until the resolution of Docket No. 910615-EU - Electric Utility Underground Wiring Research Report and Proposed Rule, and until we have determined whether the

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CIAC for the west side should be reduced according to our findings in Docket No. 910615-EU.

It is, therefore,

ORDERED by the Florida Public Service Commission that Florida Power and Light Company shall file, by April 3, 1992, the Trouble Call Management System Report detailed in the body of this Order. It is further

ORDERED that the Town of Golden Beach shall pay the balance of \$17,190 owed to Florida Power and Light Company for the conversion of the east side. It is further

ORDERED that Florida Power and Light Company shall write off the remaining balance of \$266,855 for the east side conversion below the line. It is further

ORDERED that if the Town of Golden Beach decides to convert the west side, the Contribution-in-Aid-of-Construction formula set out in the body of this Order shall be followed, and the Town of Golden Beach shall meet the Terms and Conditions of conversion set out in the body of this Order. It is further

ORDERED that if Golden Beach decides to convert the west side, this docket shall remain open until the resolution of Docket No. 910615-EU so that the appropriate west side CIAC can be reached. It is further

ORDERED that this docket shall remain open until Florida Power and Light Company's Trouble Call Management System Report has been administratively approved by us.

By ORDER of the Florida Public Service Commission, this
 3rd day of FEBRUARY, 1992.

STEVE TRIBBLE, Director
 Division of Records and Reporting

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by: Kay Ferguson
 Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.