

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FLORIDA CABLE  
TELECOMMUNICATIONS  
ASSOCIATION; COX COMMUNICATIONS  
GULF COAST, LLC, *et al.*

COMMISSION  
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Complainants,

P.A. No. 00-004

v.

GULF POWER COMPANY,

Respondent.

To: Enforcement Bureau

**GULF POWER COMPANY'S  
PETITION FOR RECONSIDERATION AND  
REQUEST FOR EVIDENTIARY HEARING**

Dated: June 23, 2003

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## Summary

This Petition for Reconsideration and Request for Evidentiary Hearing asks the Bureau to (1) reconsider the May 13, 2003 Order, and (2) allow Gulf Power an opportunity to meet the Eleventh Circuit's new standard. The pleadings and evidence in this proceeding closed on August 29, 2000. In November 2002, the Eleventh Circuit released its opinion in the related *Alabama Power Company v. FCC* case. That opinion announced a new standard that a pole owner must meet before it is entitled to compensation at any amount exceeding marginal cost. The Bureau applied this novel standard even though the standard did not exist at the time Gulf Power submitted its evidence in this proceeding. Such retroactive application of a new standard violates well-established legal principles. Furthermore, the Eleventh Circuit's standard, which imposes a per-pole evidentiary burden upon Gulf Power, conflicts with the FCC's practice of relying upon numerous presumptions in resolving pole attachment disputes. Additionally, the Eleventh Circuit's standard, which is based on the Court's creation of a new category of tangible private property (*i.e.*, "nonrivalrous" property), is simply unlawful. If the Eleventh Circuit's new standard ultimately is to be applied in this proceeding, at a minimum, Gulf Power should be given an opportunity to present evidence specifically targeted to meet the standard.

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Pursuant to Rule 1.106 of the Rules of Practice and Procedure of the Federal Communications Commission ("FCC") (47 C.F.R. § 1.106), Respondent Gulf Power Company ("Gulf Power") files this Petition for Reconsideration of the Memorandum Opinion and Order released by the Enforcement Bureau ("Bureau") on May 13, 2003 ("Order"). The Order granted the pole attachment complaint filed in this proceeding. The Bureau based its Order upon a legal standard articulated for the first time in the November 2002 opinion in *Alabama Power Company v. FCC*, 311 F.3d 1357 (11<sup>th</sup> Cir. 2002) ("*APCo v. FCC*").

This Petition for Reconsideration and Request for Evidentiary Hearing should be granted, and the Order ultimately reversed, because the Order is factually and legally erroneous, and it is based on a legal and evidentiary standard that was articulated for the first time over two years after the three-pleading cycle in this case was completed. Even if it is lawful and appropriate for the standard first set forth in *APCo v. FCC* to be applied in this case, the FCC should wait for it to become a final rule. In the event it becomes a final rule, Gulf Power should be given an opportunity to meet the new standard. Retroactive application of the Eleventh Circuit's standard - a standard heretofore unheard of in any physical takings case - to a record that has been shelved for more than two years is both unfair and unlawful.

### **Procedural History**

On July 10, 2000, Complainants filed their pole attachment complaint. The complaint challenged (1) Gulf Power's exercise of its express contractual right to terminate existing pole attachment agreements, and (2) its annual just compensation-based mandatory access charge of \$38.06 per pole. Complainants also filed a Petition for Temporary Stay to prevent Gulf Power from imposing its just compensation price or from removing attachments upon non-payment. Gulf Power responded to the Complainants' pleadings. Complainants submitted a Reply on August 29, 2000, which closed the pleadings and evidence in this proceeding.

On May 13, 2003 -- almost three years after the close of pleadings and evidence -- the Bureau's released its Order. Curiously, the Order stated, "Gulf Power has had numerous and adequate opportunities to supplement the record . . . . Having failed to do so, . . . the record is now closed." Order, ¶ 1, n.2. The Bureau did not explain what these "numerous and adequate opportunities" were. If the record remained open, Gulf Power certainly was not aware of that fact. The very procedural rules governing this proceeding provide that, upon the filing of a

complainant's reply, "no other filing and no motions other than for extension of time will be considered unless authorized by the Commission." 47 C.F.R. § 1.1407(a).<sup>1</sup>

The Bureau's Order was released on May 13, 2003. On June 9, 2003, the FCC granted Gulf Power's unopposed request for an extension of time to file a petition for reconsideration of the May 13 Order.

### **The Related ACTA v. APCo Proceeding**

Concurrent with the proceeding against Gulf Power, a nearly identical proceeding against Alabama Power Company was moving forward. On September 8, 2000, the Cable Bureau issued an order granting the complaint filed by the Alabama Cable Telecommunications Association ("ACTA").<sup>2</sup> In the September 8, 2000 Order, the Cable Bureau rejected Alabama Power's attempt to exercise its express contractual right to terminate its agreements with cable and telecom attaching entities and prohibited Alabama Power from charging its mandatory access, just compensation-based price. Alabama Power filed an Application for Review of the order with the FCC. Believing that review by the full Commission was futile, Alabama Power also filed a Petition for Review of the order with the Eleventh Circuit. On May 25, 2001, the full Commission affirmed the Cable Bureau's order.<sup>3</sup> Alabama Power then petitioned the Eleventh Circuit for review of the full Commission's order, and the two Eleventh Circuit petitions were consolidated.

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<sup>1</sup> The Commission has not shown a willingness to allow supplemental evidence. *See e.g., Teleport Communications Atlanta, Inc. v. Georgia Power Company*, 17 FCC Rcd 19859, ¶ 22 (2002) (upholding Bureau's decision to reject supplemental evidence and to deny request for evidentiary hearing).

<sup>2</sup> *Alabama Cable Telecommunications Association, et al. v. Alabama Power Company* ("ACTA v. APCo"), 15 FCC Rcd 17346 (2000).

<sup>3</sup> *ACTA v. APCo*, 16 FCC Rcd 12209 (2001) ("May 25 Order").

On November 14, 2002, the Eleventh Circuit issued an opinion upholding the May 25 Order, but on grounds substantially different from those articulated by either the Cable Bureau or the Commission. *APCo v. FCC*, 311 F.3d 1357 (11<sup>th</sup> Cir. 2002). The Eleventh Circuit created an entirely new legal standard by holding that certain types of property (such as a utility's pole space) are "nonrivalrous" -- a concept not found in any previously published takings case. 311 F.3d at 1369. Under the Eleventh Circuit's analysis, just compensation for a utility's pole space (labeled by the Court as "nonrivalrous" property) will never exceed marginal cost unless the pole owner can meet a new and heightened evidentiary burden:

[B]efore a power company can seek compensation above marginal cost, it must show with regard to each pole that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is able to put the space to a higher-valued use with its own operations.

*Id.*, at 1370.

Alabama Power filed Petitions for Rehearing and Rehearing En Banc; both petitions were denied. On February 4, 2003, the Eleventh Circuit issued an order staying the issuance of the mandate. Alabama Power timely filed a Petition for a Writ of Certiorari to the Supreme Court on April 4, 2003 (Case No. 02-1474). That Petition for Certiorari remains pending.<sup>4</sup>

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<sup>4</sup> While the outcome of the potential Supreme Court consideration remains uncertain, the debate sparked by the Eleventh Circuit's novel holding is not. See Daniel F. Spulber and Christopher S. Yoo, *Access to Networks: Economic and Constitutional Connections*, 88 Cornell L. Rev. 885 (May, 2003). According to Spulber and Yoo, "[t]he FCC's arguments are unconvincing" and, as Alabama Power, Gulf Power and other electric utilities have maintained, the proper compensation for compelled access to utility networks is "market value." *Id.*, at 1000; see generally, at 891-92, 913-14, 986, 1000-01. Concerning the Eleventh Circuit's "nonrivalrous" analysis, Spulber and Yoo explain: "It simply does not follow that a person who is not currently using a particular piece of property will give it away for free." *Id.*, at 1001.

## The Bureau Order Should Be Reversed

### A. The Retroactive Application of the Eleventh Circuit's Novel Standard Violates Well-Established Legal Principles.

In contrast to the Cable Bureau's speedy resolution of the complaint against Alabama Power, this proceeding had been languishing in the FCC for nearly three years when the Enforcement Bureau released its May 13, 2003 Order. The May 13 Order stated that "Gulf Power fails utterly to justify its proposed annual pole attachment rate . . . using the Cable Formula" and held that Gulf Power was not entitled to receive any amount above marginal cost because it "has submitted no evidence in this proceeding that would satisfy the test articulated by the Eleventh Circuit." Order, ¶¶ 17, 15. Though Gulf Power disputes the Bureau's characterization of its evidence, Gulf Power concedes that its submissions were not targeted to meet a "test" that did not exist until over two years after the pleadings closed.

The May 13 Order faulted Gulf Power for failing to meet an evidentiary burden that did not exist at the time it submitted its proof. *Id.* Notwithstanding a stay of the mandate in the *APCo v. FCC* case, without awaiting a final resolution of that case, without providing Gulf Power notice of its intent to apply the new standard, and without providing Gulf Power an opportunity to meet the new evidentiary standard, the Bureau denied Gulf Power the relief it sought based principally (if not exclusively) on the Eleventh Circuit's new standard.<sup>5</sup> The Bureau's actions are unlawful and unfair.

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<sup>5</sup> The Commission must be consistent in application of its procedures. *See, e.g., Vargas v. INS*, 938 F.2d 358, 362 (2d Cir. 1991) ("[I]nconsistent application of agency standards to similar situations lacks rationality and is arbitrary."). In *ACTA v. APCo*, the full Commission refused to apply the Eleventh Circuit's holding in *Gulf Power Company v. FCC*, 208 F.2d 1263 (11<sup>th</sup> Cir. 2000), explaining that "further litigation in this matter is in progress," and the decision "was not final." *See* May 25 Order, ¶ 9. The Eleventh Circuit stayed the issuance of the mandate in the *APCo v. FCC* case on February 4, 2003. Yet, the Bureau issued its May 13 Order in full reliance on the opinion.



Gulf Power submitted ample evidence that was designed to meet the burden of proof in settled just compensation takings cases. The new standard articulated by the Eleventh Circuit substantially changed the nature (and quantity) of evidence required of utilities in such cases. The Bureau should not, therefore, have applied the new standard retroactively. *See, e.g., Heckler v. Community Health Services, Inc.*, 467 U.S. 51, 61, n.12 (1984) (“[A]n administrative agency may not apply a new rule retroactively when to do so would unduly intrude upon reasonable reliance interests.”); *Lehman v. Burnley*, 866 F.2d 33, 37 (2d Cir. 1989) (quoting *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1998)) (“Retroactivity is not favored in the law. . . . Even where some substantial justification for retroactive [application of an agency ruling] is presented, courts should be reluctant to find such authority [to apply rulings retroactively] absent an express statutory grant.”).

Applying the Eleventh’s Circuit’s new rule changed the “nature of the burden of proof so that additional facts of a different kind [are now] relevant for the first time.” *Hatch v. FERC*, 654 F.2d 825, 835 (D.C. Cir. 1981). In the interest of fairness, the Bureau should have notified Gulf Power that it intended to impose the new standard and offered Gulf Power the opportunity to submit evidence bearing on that standard. *Puerto Rico Aqueduct and Sewer Authority v. EPA*, 35 F.3d 600, 607 (1<sup>st</sup> Cir. 1994) (“As a general matter, when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obligated to give litigants proper notice and a meaningful opportunity to adjust.”); *Hatch*, 654 F.2d at 835 (“Court have uniformly held that for an agency to . . . apply [a standard of law] retroactively in an adjudicatory setting, the party before the agency must be given notice and an opportunity to introduce evidence bearing on the new standard.”). The Bureau did not allow

Gulf Power an opportunity to introduce evidence specifically targeted to meet the new standard in violation of principles of law and fairness.

B. The New Standard Is a Departure from FCC Policies and Practices.

It is contradictory and unreasonable for the FCC to impose a standard that requires Gulf Power to present evidence “with regard to each pole” in order to meet the Eleventh Circuit’s two-part test when (1) Congress never intended to impose such a burden, (2) the FCC’s regulations do not contemplate such a per-pole burden, and (3) the FCC itself relies heavily on presumptions about a utility’s poles. Order, ¶ 15. The Bureau’s imposition of the new standard is particularly egregious given that the FCC never required a per-pole showing before the Order was issued, and considering that a per-pole showing was never intended for the resolution of pole attachment arrangements.

The legislative history of the Pole Attachment Act illustrates the conflict between the new standard and Congress’ intended purpose. Congress directed the FCC to “institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation.” S. Rep. No. 95-234, at 21, *reprinted in*, 1978 U.S.C.C.A.N 129. This undisputed congressional command is entirely at odds with an evidentiary burden that requires utilities to establish *anything* “with regard to each pole.”

The FCC’s rules pertaining to pole attachment rates rely heavily on the use of presumptions that specifically avoid the need for evidence “with regard to each pole.” Under the FCC’s rules, presumptions governing the specifications of utilities’ poles inhere every aspect of the cable and telecom rate formulas. For example, the formulas are based on the presumptions that poles are an average of 37.5 feet in height, that poles have a minimum ground clearance of

18 feet, that there are 13.5 feet of usable space on a pole, that attaching entities occupy one foot of space on a pole, and that entities attaching in conduit use one-half of the duct. *See In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, at ¶ 48-52 and ¶ 95 (2001); *see also In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777, at ¶¶ 83-91 and ¶ 115 (1998). Indeed, the FCC's presumptions demonstrate that Gulf Power's pole space is limited and therefore "rivalrous." Applying the presumptions, Gulf Power has space for *one* attaching entity. There are at least five Complainants in this case. Obviously, Gulf Power's poles are "crowded."

In justifying its use of presumptions in both attachment formulas, the FCC explained

The use of presumptions provides a level of predictability and efficiency in calculating the appropriate rate. Fairness is preserved because the presumptions may be overcome through contrary evidence. We seek to maintain predictability, efficiency and fairness in determining the costs [associated with] a pole. In the Notice, the Commission stated that *a pole-by-pole inventory* of [certain specifications] on each pole *would be too costly*.

13 FCC Rcd 6777, at ¶ 74 (emphasis added).

The May 13 Order abandoned this long-standing practice of relying on presumptions by imposing upon Gulf Power an evidentiary burden that mandates factual evidence as to *each pole*. Order, ¶ 15. The FCC cannot have it both ways. It may not remain devoted to its preference for presumptions in establishing rates, yet summarily reject a utility's just compensation evidence for failing to provide information as to *each pole*. Such conduct constitutes arbitrary and capricious decision making and runs afoul of the legal precedents requiring consistency and fairness in administrative agency actions. *See, e.g., Vargas v. INS*, 938 F.2d 358, 362 (2d Cir. 1991) ("Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary.").

C. The Eleventh Circuit's Standard Is Unlawful.

Aside from the procedural and legal errors outlined in parts A and B, *supra*, the Bureau's reliance on the Eleventh Circuit's new standard cannot be sustained because the standard has no basis in just compensation jurisprudence. The Eleventh Circuit's opinion in *APCo v. FCC* is entirely at odds with the takings decisions of the Supreme Court. The FCC should respect Supreme Court authority, recognize the erroneous nature of Eleventh Circuit's analysis, and apply the just compensation principles as articulated by the Supreme Court. The Eleventh Circuit's holding that a utility's tangible private property (space on a utility pole) is "nonrivalrous" -- meaning that "use by one entity does not necessarily diminish the use and enjoyment of others" -- is inconsistent with law, logic, and empirical observation. *APCo v. FCC*, 311 F.3d at 1369. Space on a utility pole is physical, tangible property that, once taken, is lost to the owner. As such, it cannot be classified as "nonrivalrous."

The Eleventh Circuit failed to reconcile its opinion with Supreme Court precedent stating that just compensation is the "full monetary equivalent of the property taken." *United States v. Reynolds*, 397 U.S. 14, 16 (1970). The Court ignored the "market value" standard for determining the value of the property taken (*Palazzolo v. Rhode Island*, 533 U.S. 606, 625 (2001)) and rejected the long-standing use of a "hypothetical willing buyer/willing seller" price to measure just compensation (*United States v. Miller*, 317 U.S. 369, 374 (1943)). Also, the Court in *APCo v. FCC* ignored well-established proxies used to measure just compensation where no market for the property exists. *United States v. 564.54 Acres of Land in Monroe and Pike Counties, Penn.*, 441 U.S. 506, 512 (1979).<sup>6</sup>

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<sup>6</sup> See also Spulber and Yoo, *supra*, at 901-903.

The Eleventh Circuit labeled utility pole space as “nonrivalrous” based on its presumption that the “use by one entity does not necessarily diminish the use and enjoyment of others.” *APCo v. FCC*, 311 F.3d at 1369. While this may, indeed, be true with respect to the hypothetical one-million foot utility pole that the Eleventh Circuit created (311 F.3d at 1369), it is not true for Gulf Power’s poles. Indeed, the Bureau presumes that Gulf Power’s poles are 37.5 feet tall, with only one and one-half feet of space usable for cable and telecommunication allotments. Order, ¶ 16; *see also* pp. 10-11, *supra*. The FCC cannot both adhere to its own presumptions and apply a rule based on the premise of unlimited and infinite pole space. The FCC should recognize the Eleventh Circuit’s error and apply Supreme Court precedent to arrive at a decision that is consistent with long-standing just compensation authorities.

#### **Request for Evidentiary Hearing**

The Bureau retroactively imposed a new rule and evidentiary standard upon Gulf Power, without affording Gulf Power an opportunity to present evidence to meet the new standard. Gulf Power respectfully requests that the Bureau set this proceeding for a full evidentiary hearing to allow it an opportunity to present evidence specifically targeted to meet the new standard. Putting aside for a moment its non-final status, if Gulf Power is required to meet a new standard in order to justify a pole attachment charge exceeding marginal cost, at a bare minimum, it should be given a chance to do so.

The granting of such a request is expressly authorized by the FCC’s rules concerning petitions for reconsideration as well as its pole attachment regulations. Rule 1.106(d)(2) states that a petition for reconsideration “may request that additional findings of fact and conclusions of law be made.” 47 C.F.R. § 1.106(d)(2). Although petitions for reconsideration may not rely on facts not previously presented to the Bureau (Rule 1.106(c)), such facts may be raised if they

relate to “circumstances which have changed since the last opportunity to present such matters.” Rule 1.106(c)(1) and (b)(2)(i). The Eleventh Circuit’s new evidentiary standard presents a significantly “changed circumstance” to merit the Bureau’s allowance of additional evidence on reconsideration, particularly since the existing record evidence was submitted nearly three years ago and was not specifically targeted to meet the new standard.

In addition to these generally applicable rules, in its consideration of pole attachment complaints, the FCC may request parties to “make additional filings or provide additional information,” and it may “order evidentiary procedures upon any issues it finds to have been raised by the filings.” 47 C.F.R. § 1.1409(a). Accordingly, it is procedurally appropriate and within the Bureau’s authority to set this proceeding for an evidentiary hearing, even at this stage. *See, e.g., In re Meadville Master Antenna, Inc.*, 36 FCC2d 591, 593 (1971) (ordering evidentiary hearing where there were “substantial and material issues of fact which require a hearing for their resolution”); *In re Applications of Westall Samoa, Inc.*, 13 FCC Rcd 6342, 6344-45 (1998) (discussing the FCC’s jurisdiction to order evidentiary hearings).

Gulf Power requests an evidentiary hearing in order to submit additional evidence specifically targeted to proving, among other things, that (1) its poles are crowded or full; (2) there are other ready and willing buyers for space on Gulf Power’s poles; (3) Gulf Power’s pole space can be put to higher-valued uses; (4) Gulf Power has identifiable lost opportunities; and (5) there is an active willing buyer/willing seller market for network access on Gulf Power’s poles. Specific evidence that Gulf Power requests the opportunity to present includes, but is not limited to, the following:

- (1) Photographic and engineering evidence regarding crowding on Gulf Power’s poles, *see, e.g.*, Tab A;

- (2) Documentary evidence (agreements, invoicing, other accounting evidence) showing that other attaching entities (including entities that are and are not protected by the Pole Attachment Act) are voluntarily paying an annual pole attachment charge of \$38.06 or higher, *see, e.g.*, Tab B;
- (3) Testimony of inquiries to Gulf Power regarding possible pole attachment arrangements;
- (4) Testimony and documentary evidence of the value to Gulf Power in excluding attachers at a regulated rate;
- (5) Testimony and documentary evidence concerning Gulf Power's lost opportunities and the rivalrous nature of its pole space, *see e.g.*, Tab C.<sup>7</sup>

Even assuming the Bureau's retroactive application of the Eleventh Circuit's newly created evidentiary burden to Gulf Power's nearly three-year-old evidence was not unlawful, the Bureau at least should give Gulf Power the opportunity to present evidence that is specifically targeted to meet the Eleventh Circuit's test.

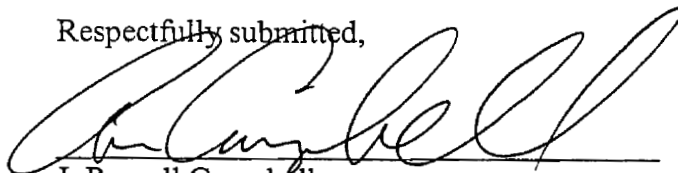
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<sup>7</sup> Given the short time period Gulf Power had to prepare and submit this Petition for Reconsideration and Request for Evidentiary Hearing, the entirety of its evidence could not be assembled to be submitted with this filing. This list is intended to serve as a proffer of the type of evidence that Gulf Power would submit at an evidentiary hearing through both direct and cross-examination of appropriate witnesses.

**Conclusion**

WHEREFORE, Respondent Gulf Power Company respectfully requests that the Enforcement Bureau (1) reconsider the findings and conclusions set forth in the May 13, 2003 Order and (2) set this proceeding for a full evidentiary hearing to allow Gulf Power a full opportunity to present evidence specifically targeted to meet the new Eleventh Circuit standard.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon the following on this the 23<sup>rd</sup> day of June, 2003:

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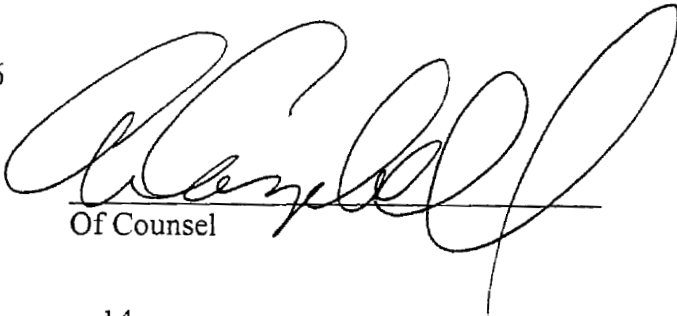
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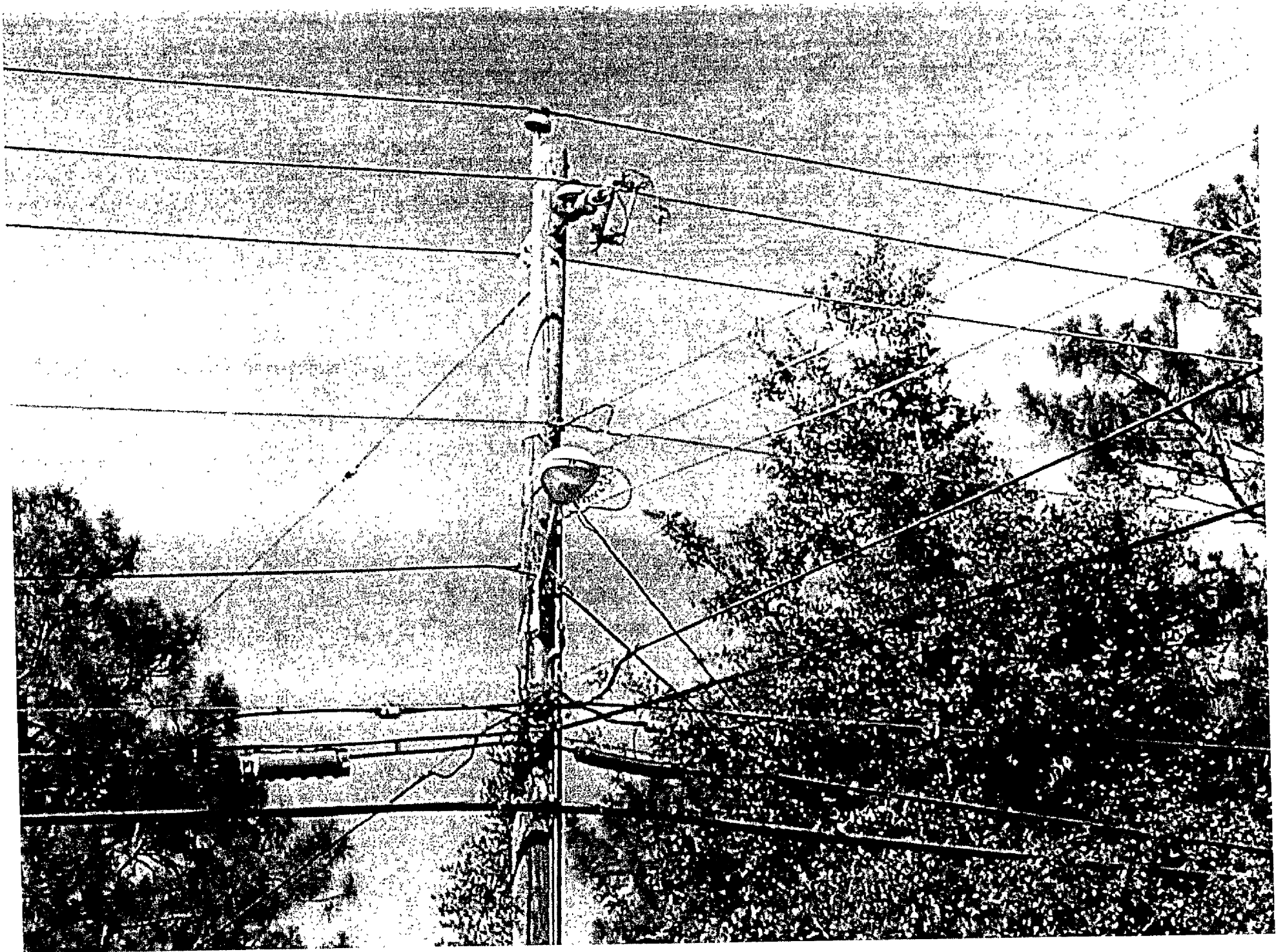
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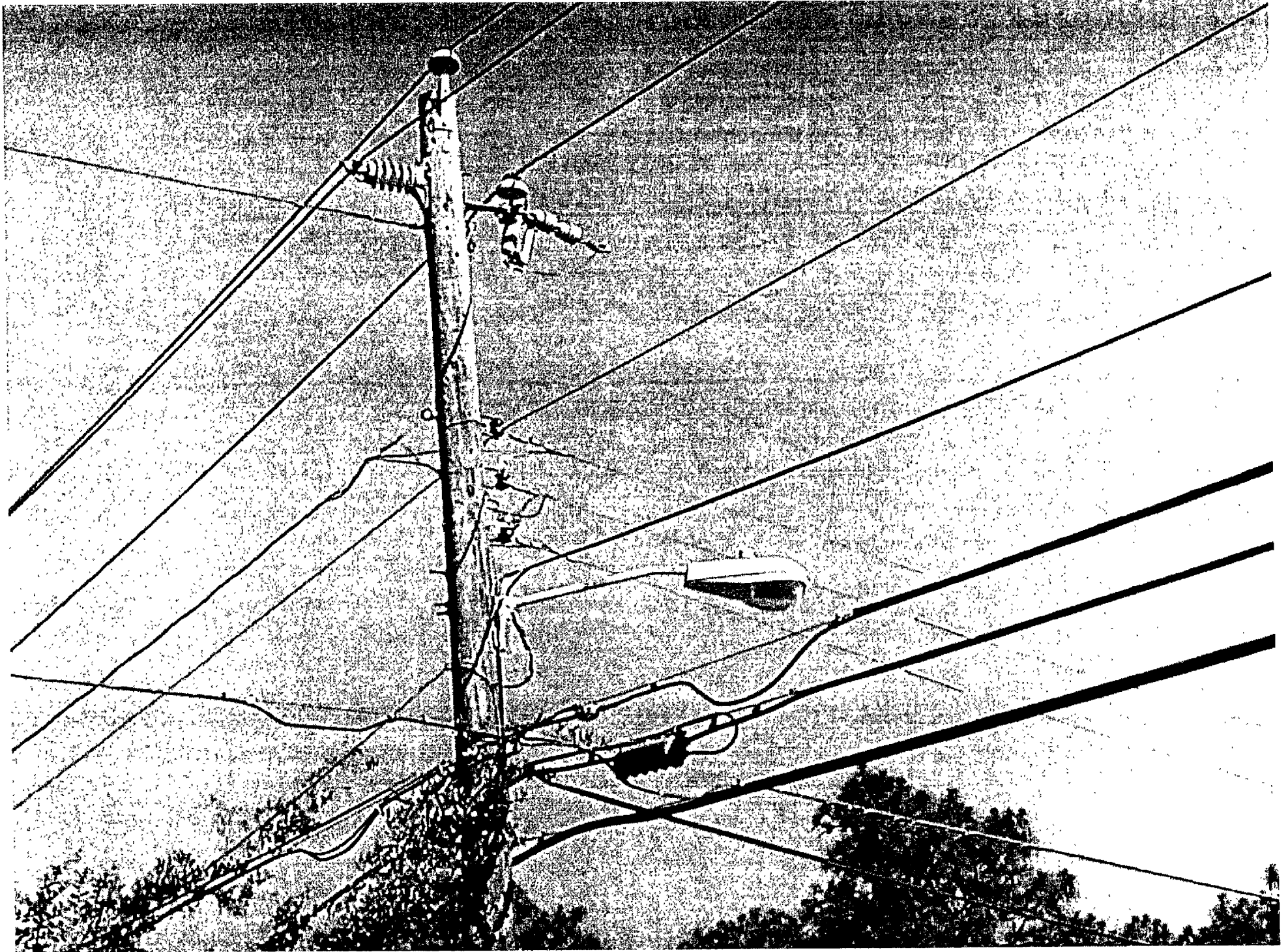
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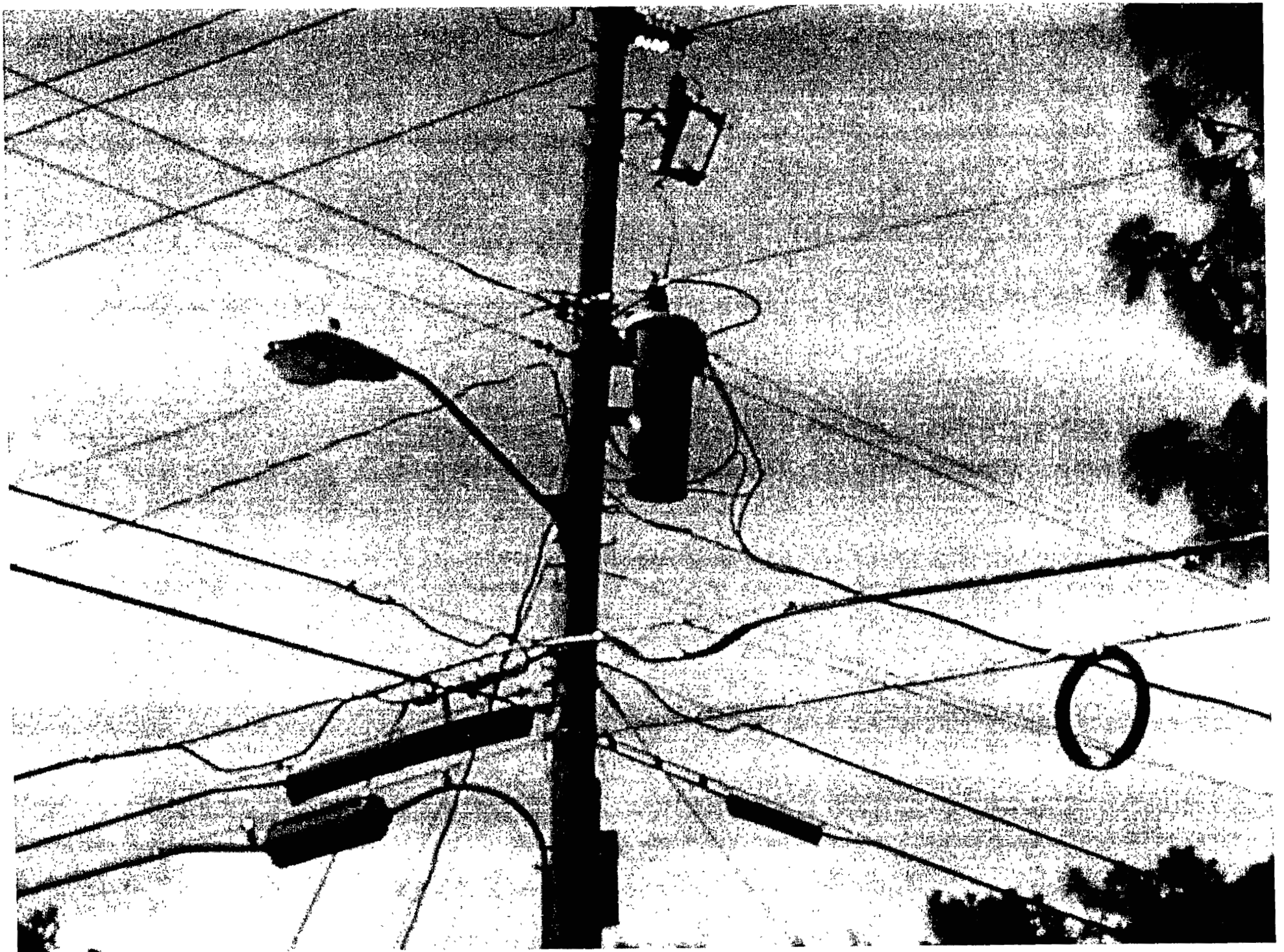
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Of Counsel

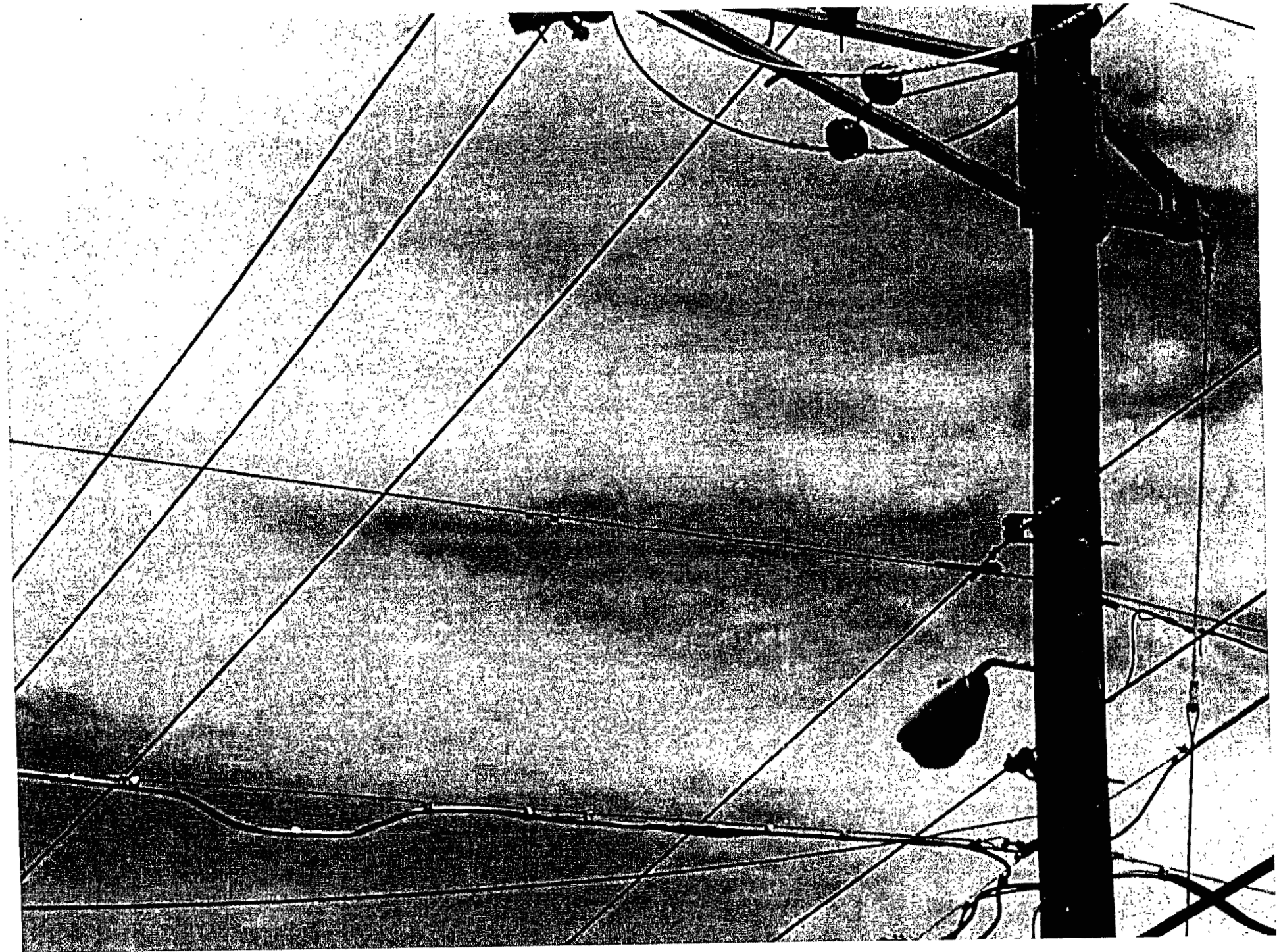
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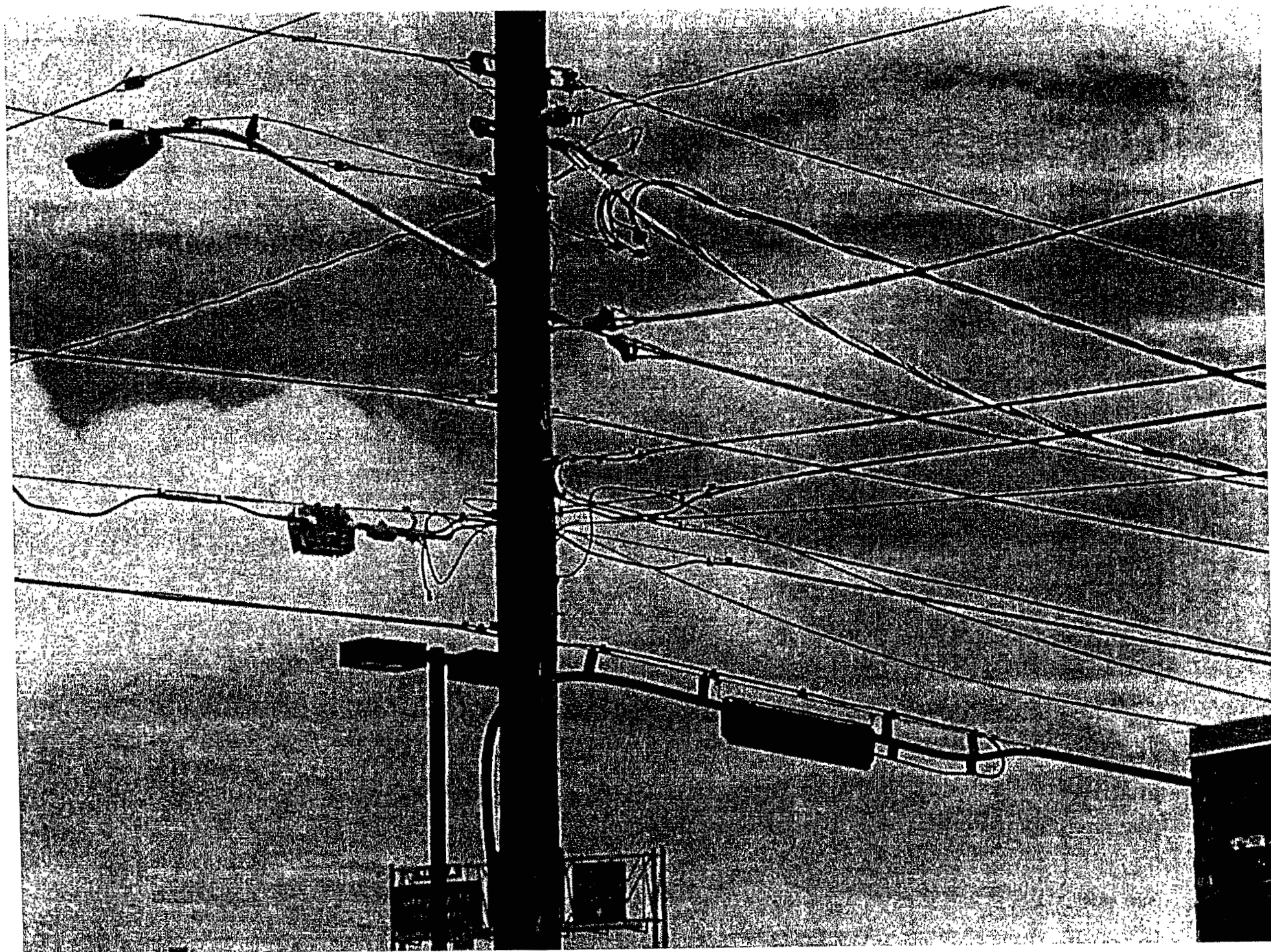




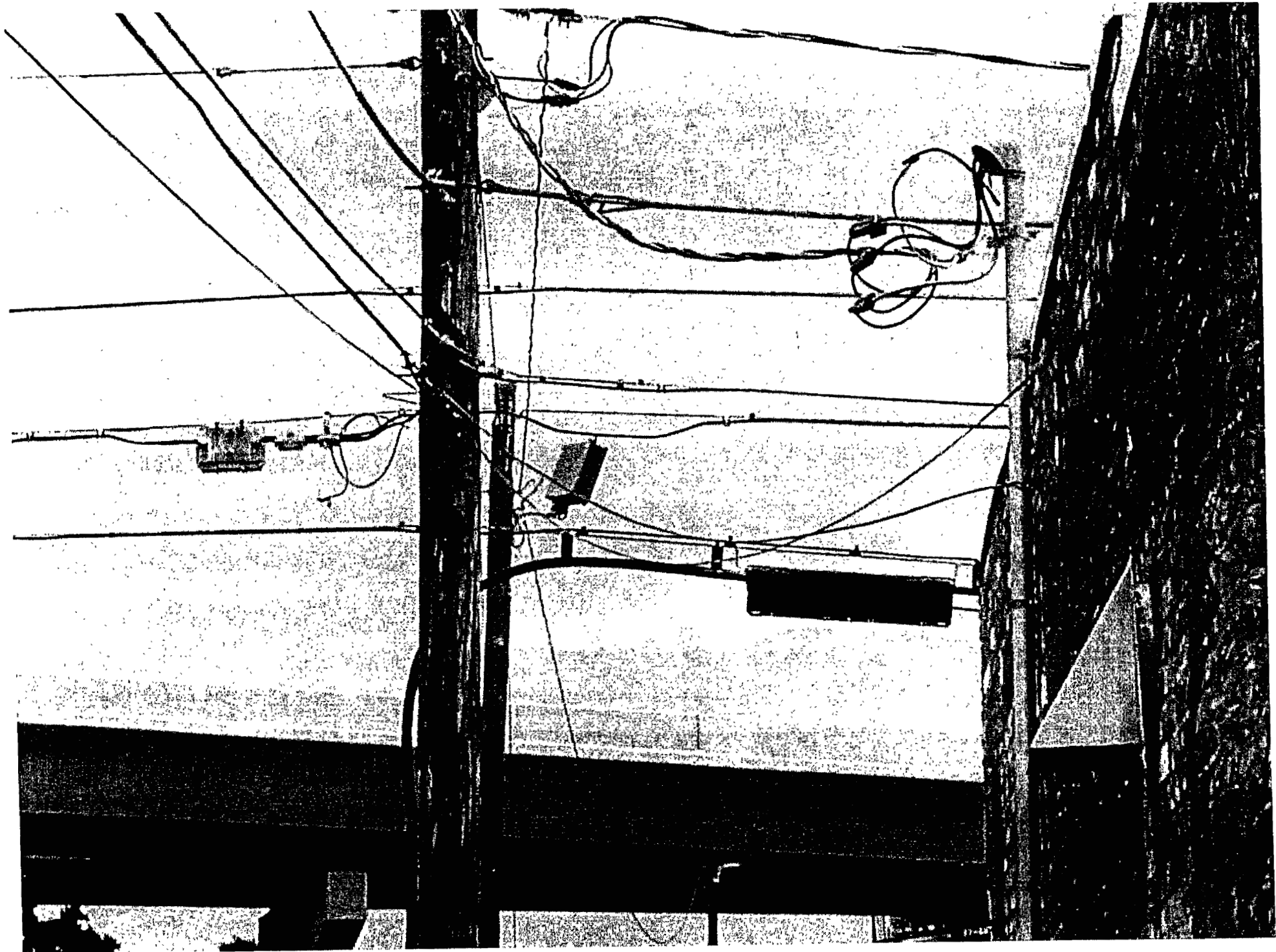


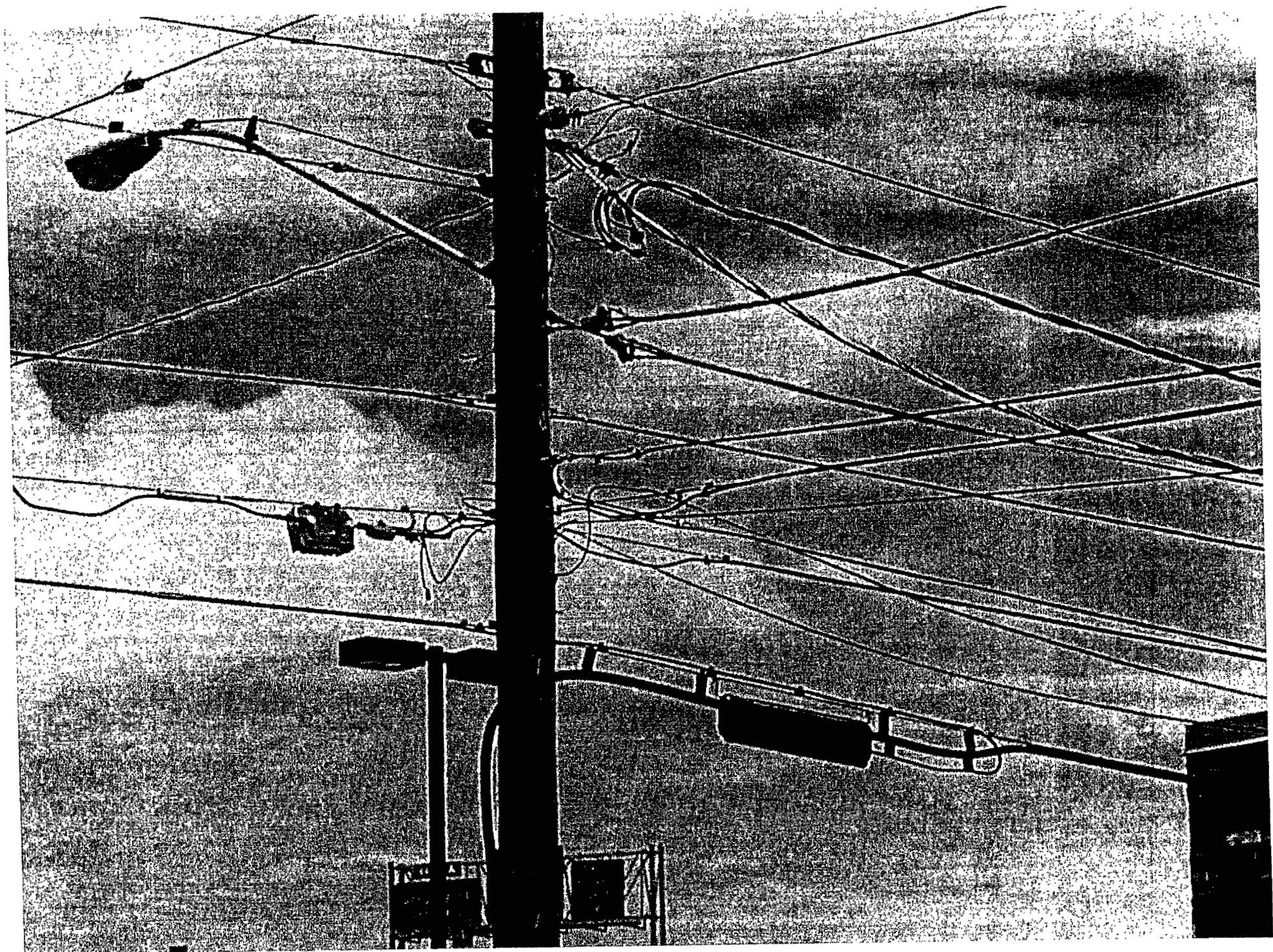




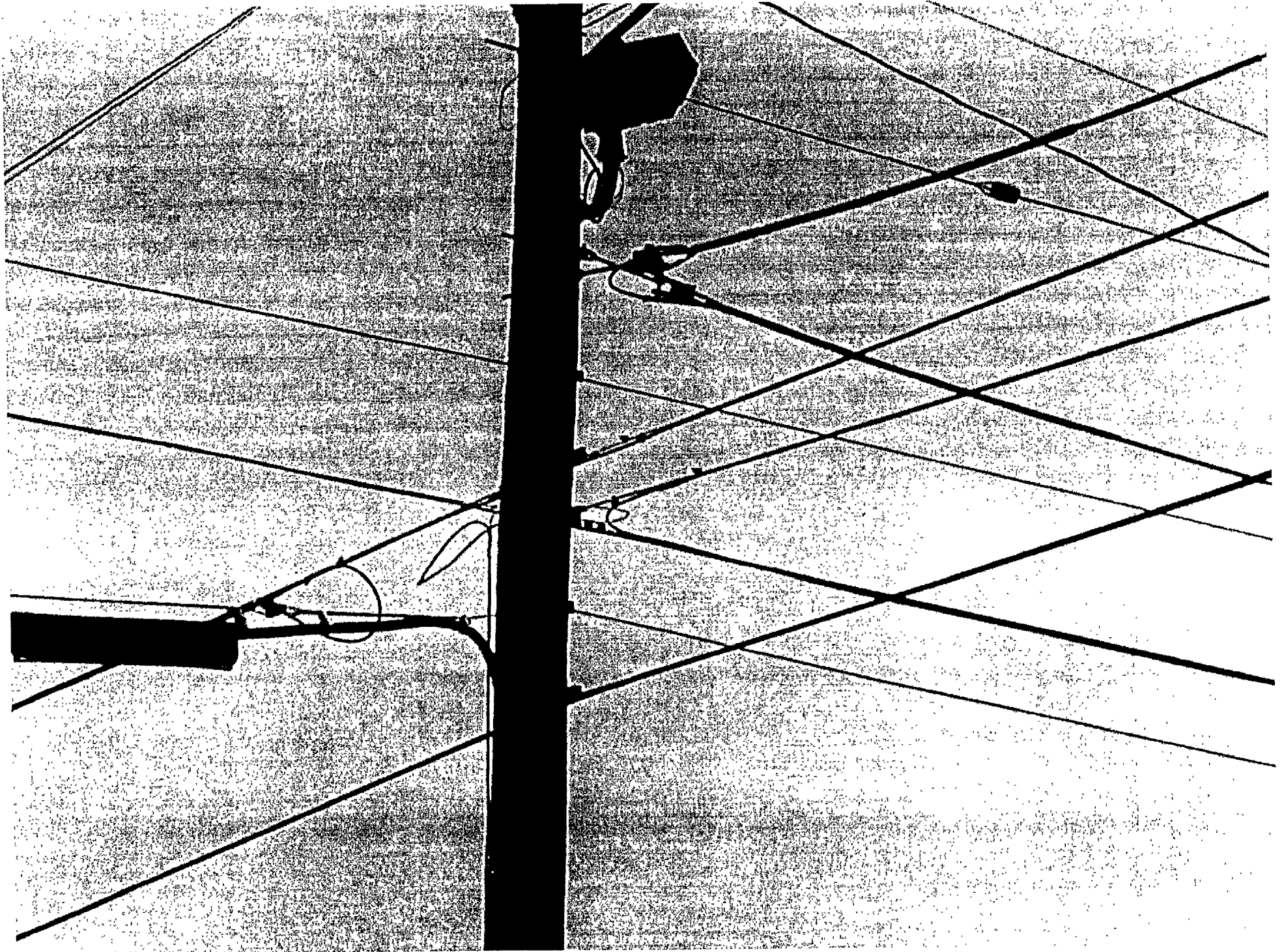


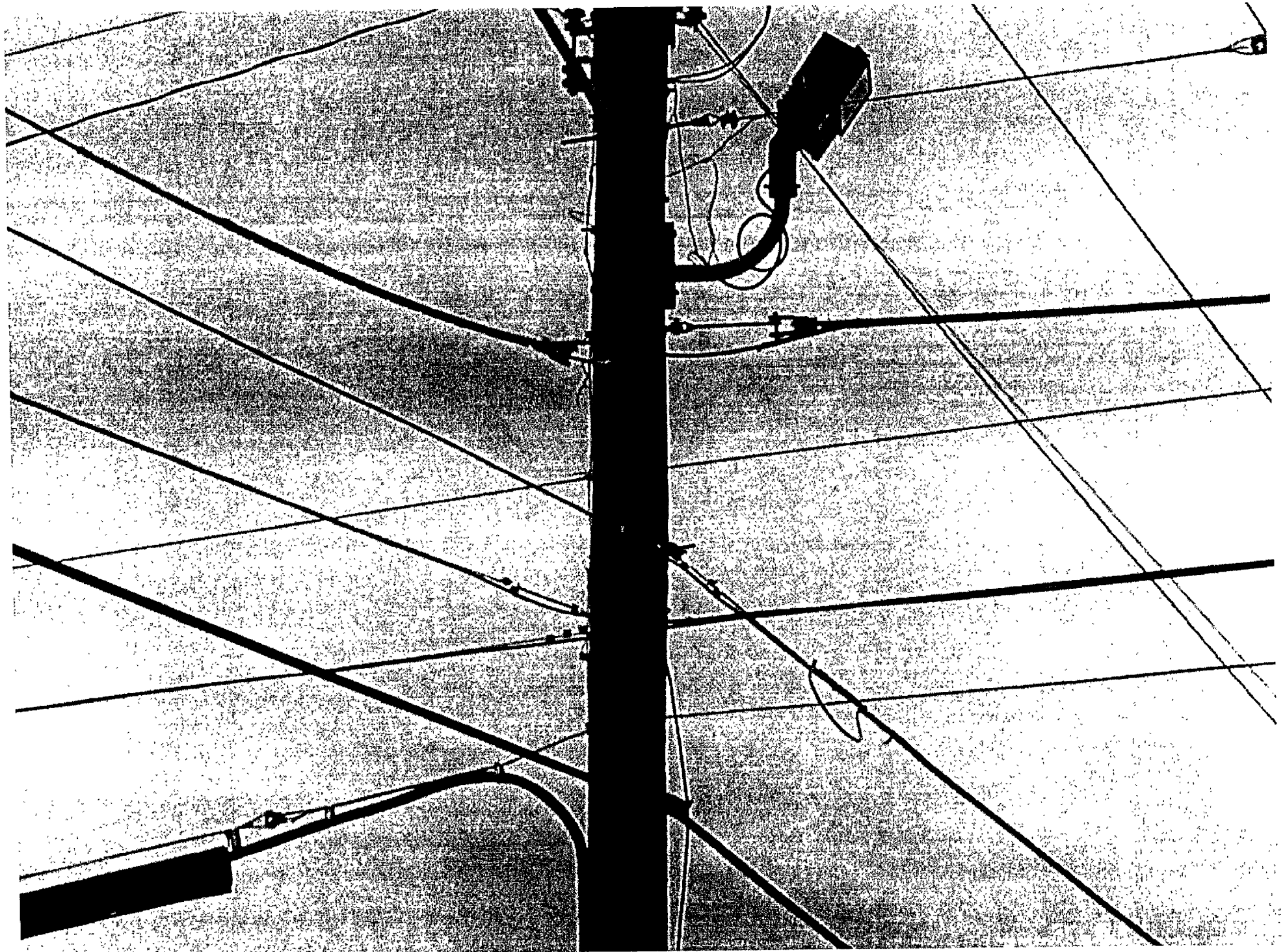


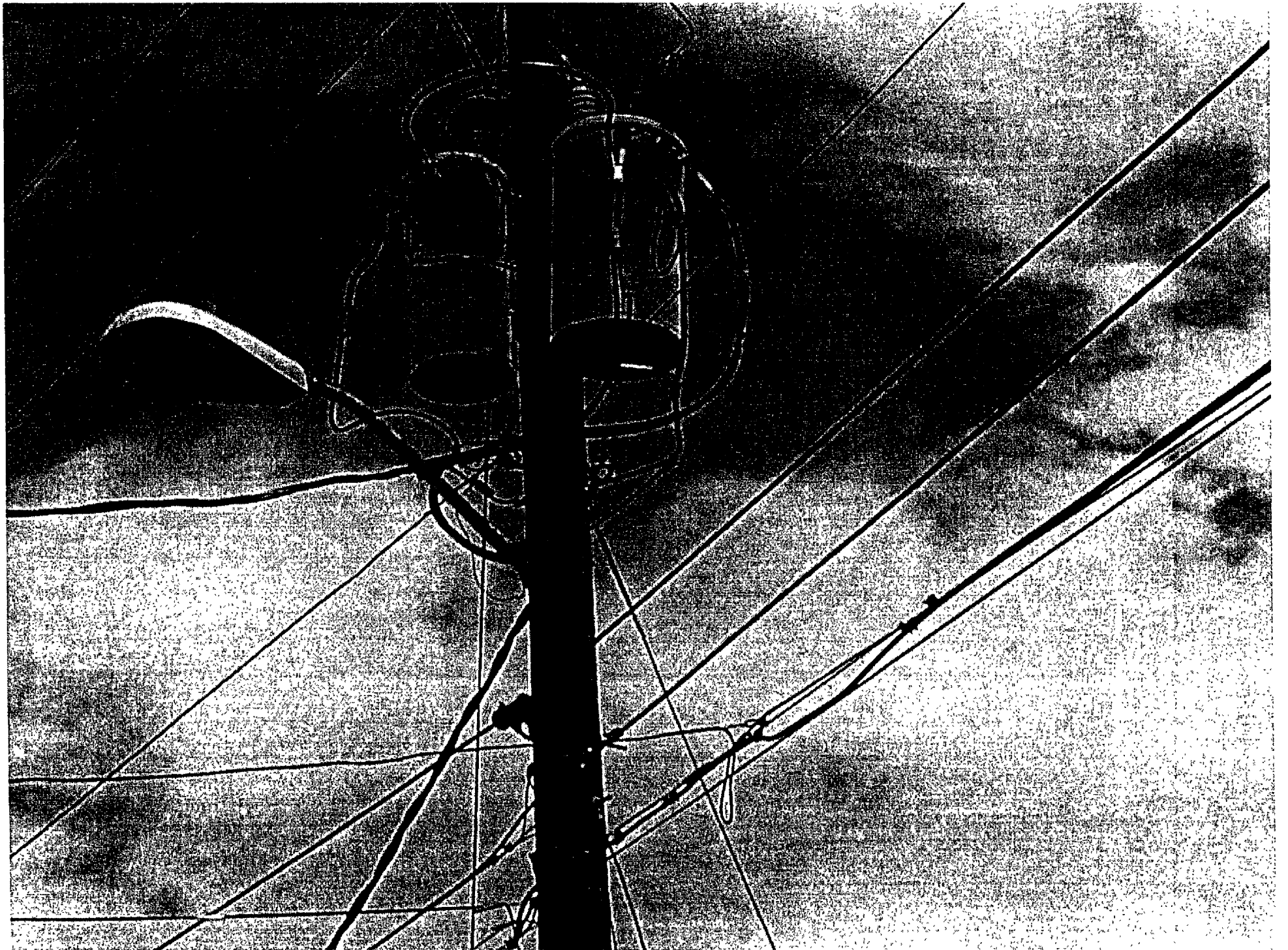


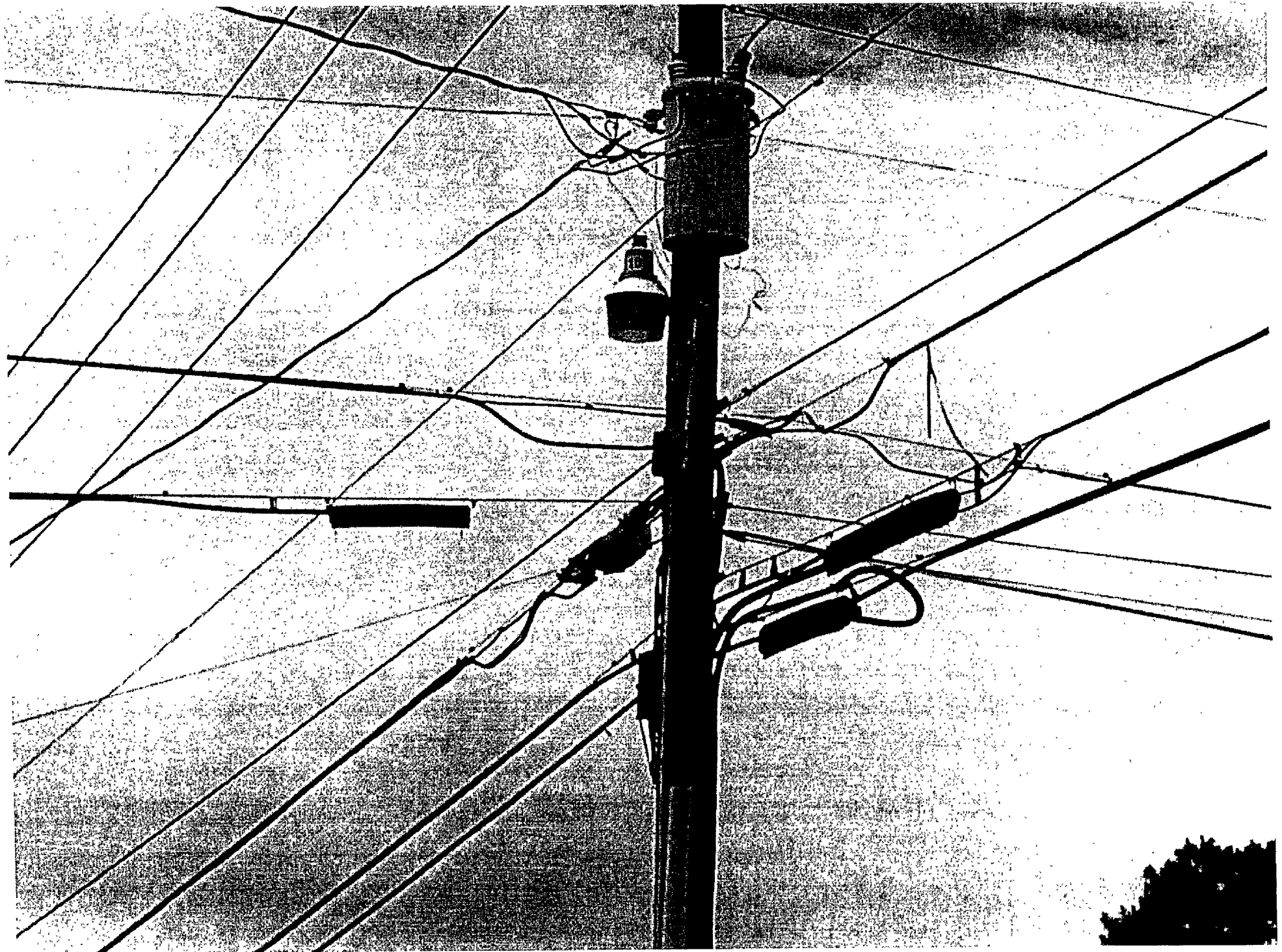


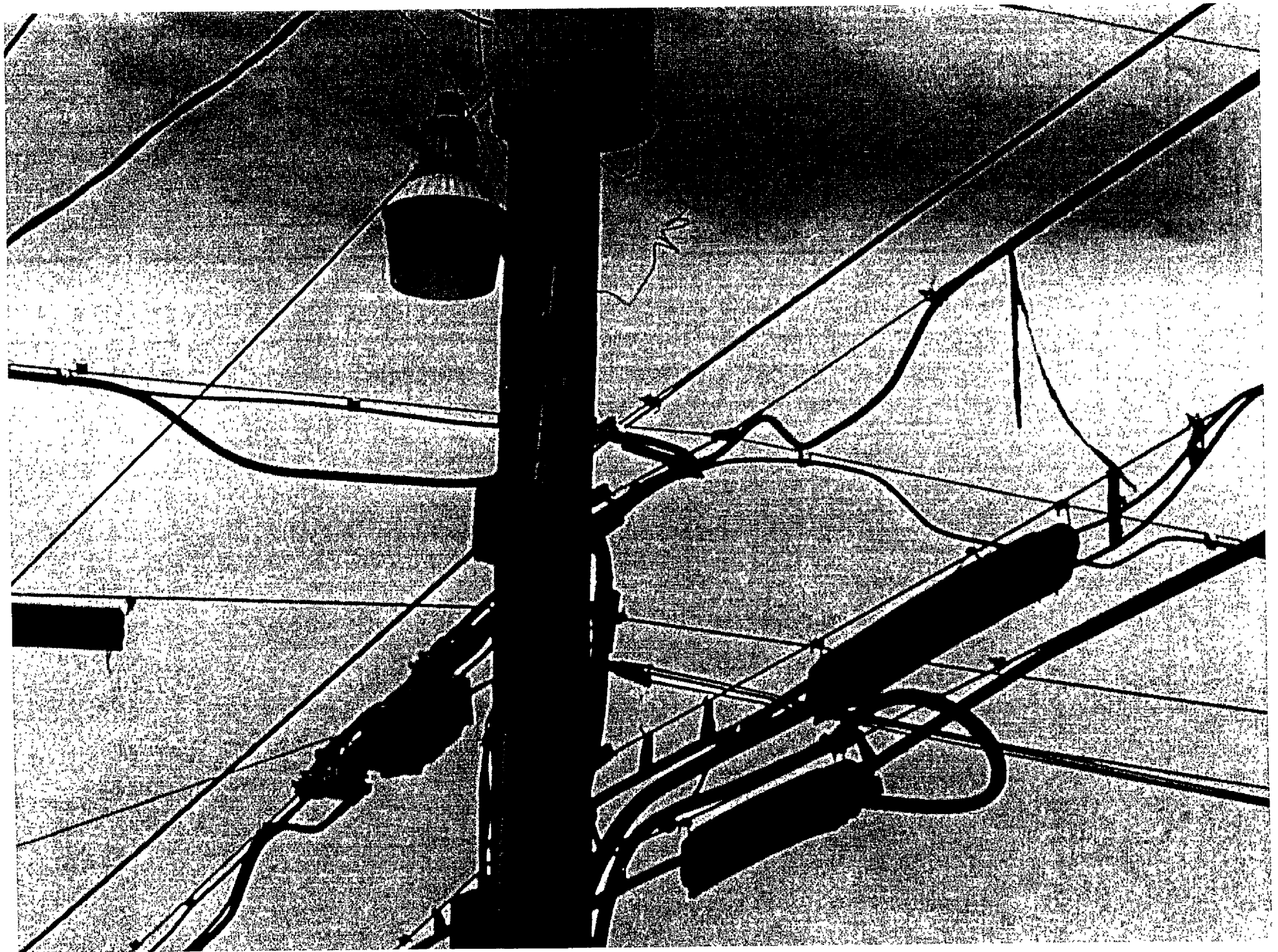




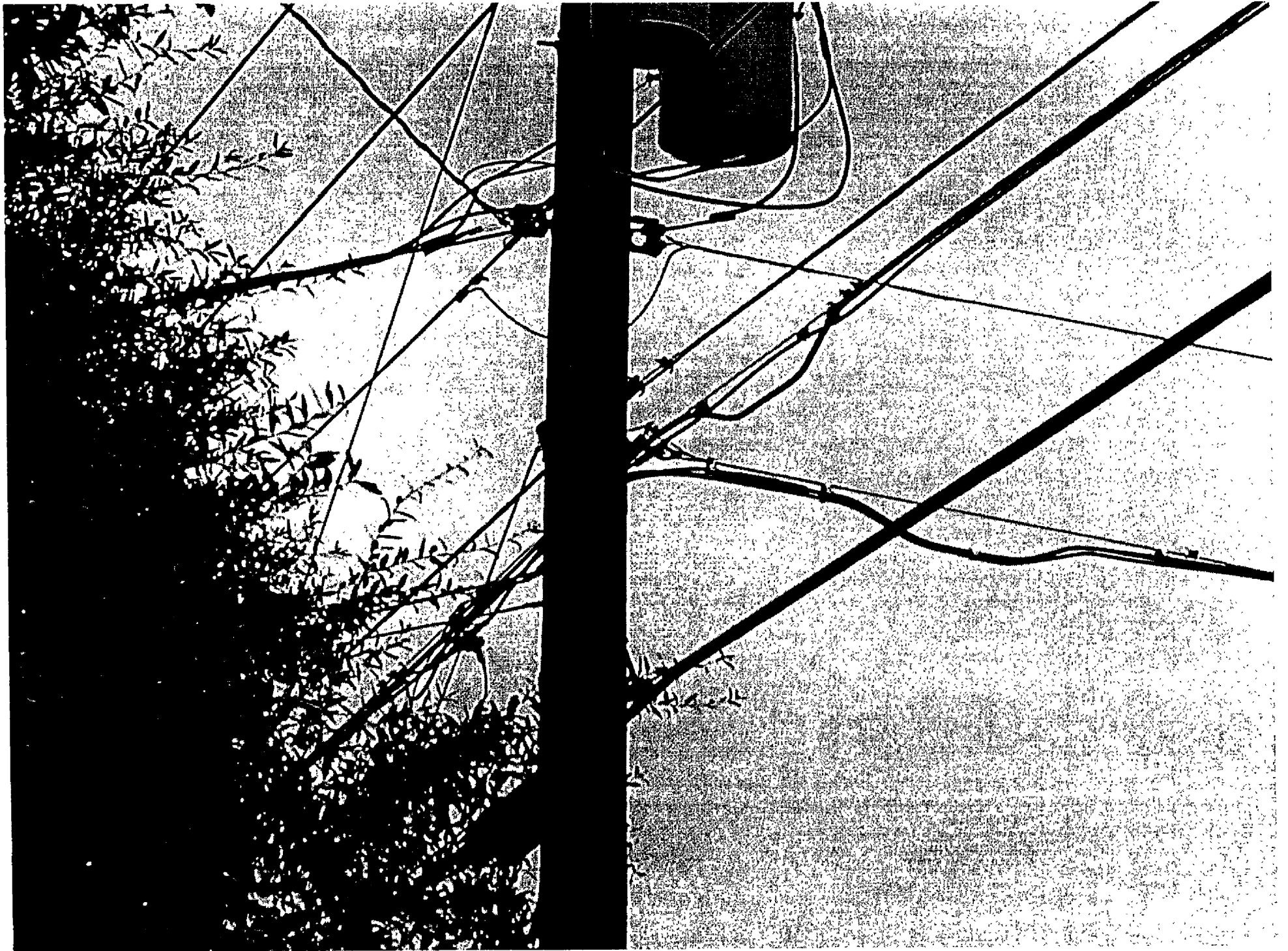














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**TAB B**

## POLE ATTACHMENT AGREEMENT

This Agreement is made and entered into the 1st day of May, 1998, by and between Gulf Power Company, a Maine corporation, hereinafter called "Gulf," and **KMC Telecom II, Inc.**, hereinafter called "Licensee."

WITNESSETH:

WHEREAS, Licensee desires to furnish telecommunication services in the area described in Exhibit A, attached hereto, which service will require the installation and maintenance of cables, wires and appliances; and

WHEREAS, Licensee desires to attach certain cables, wires and appliances to the poles of Gulf; and

WHEREAS, Gulf is willing to allow the attachment of cables, wires and appliances to its poles in the area described in Exhibit A, in accordance with applicable law, where, in Gulf's judgment, that attachment will not interfere with its own service requirements, including considerations of economy and safety, and where Gulf is protected and indemnified against all costs to and liabilities against it arising from such attachment.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained Gulf and Licensee hereby agree and contract with each other as follows:

1. Term of Agreement. The term of this Agreement shall commence on the 1st day of May, 1998 and subject to all of the provisions of this Agreement, shall continue in full force and effect thereafter until the 31st day of December, 2002, unless earlier terminated according to the provisions of this Agreement. The parties may agree to extend this Agreement for an additional five (5) year period and for consecutive five (5) year periods upon agreement as to terms, including fees and charges, for each additional extension period.

2. Conditions Precedent. As conditions to Gulf accepting a permit application from the Licensee or granting a permit to the Licensee to attach to Gulf's distribution poles, Licensee shall submit evidence satisfactory to Gulf of the following:

A. Licensee's authority to erect and maintain its facilities within public streets, highways and other thoroughfares, and any necessary consent or franchise from state or municipal authorities or from the owners of the property upon which the poles are located to construct and maintain its facilities on them; provided, however, at Licensee's request and expense, Gulf may assist Licensee in obtaining any rights-of-way, easements, licenses, authorizations, permits, exceptions and consents from federal, state, and municipal authorities or private property owners that may be required, in addition to those already received by Gulf, for Licensee to place facilities on Gulf's poles;

B. Licensee's financial stability;

C. Certificate of Insurance required under Paragraph 20; and

D. Licensee's operational expertise.

Copies of the necessary consents or franchises from state or municipal authorities are attached hereto as Exhibit C.

3. Application and Permits.

A. Before attaching to any of Gulf's distribution poles (hereinafter referred to as "Gulf's poles"), Licensee shall submit to Gulf an "Application for Pole Attachment Permit." The only exception shall be as provided in Section 3.B. The application and permit form is set forth in Exhibit B, attached hereto. The application shall be accompanied by two (2) detailed copies of Licensee's construction drawings which clearly identify the poles to which the Licensee will attach if a permit is granted. If the proposed attachment is satisfactory to Gulf, a permit will be granted upon payment of a one time permit fee of \$1.00 per attachment plus Make Ready costs as described in Section 12.A.. Prior to commencement of construction by the Licensee, Gulf may

require a pre-construction conference, at Gulf's discretion. Notwithstanding the issuance of an attachment permit, Licensee shall at no time make or maintain an attachment to Gulf's pole or substitute pole if the spacing on the pole, the ground clearance, or other characteristics of the attachment are not in strict conformity with the National Electrical Safety Code (the "Code") and any other applicable codes, rules or regulations of any governing body having jurisdiction. Except as provided in Section 3.B., the failure of the Licensee to obtain such a permit prior to making an attachment shall constitute a trespass and a violation of this Agreement. Gulf may forbid new attachments to its poles by Licensee in the event Licensee is in default hereunder.

B. Attachment to Gulf's poles without obtaining a prior permit shall be allowed only for service drops. Licensee shall ensure that such attachments are in strict conformity with the National Electrical Safety Code and any other applicable codes, rules or regulations of any governing body having jurisdiction. In particular, Licensee shall not attach if Make Ready work is required to obtain adequate clearance or for any other reason. Any attachment made not in conformity with these requirements constitutes a default under this Agreement. Gulf reserves the right to suspend this provision in the event it is determined that Licensee is not properly reporting the installation of service drops.

At the end of each month, Licensee shall submit a permit application (Exhibit D) listing all such service drop attachments not previously permitted. The listing shall include the location or address, TLM pole number, number of poles attached to, and date of attachment. Each application shall include a one time permit fee of \$1.00 per attachment.

4. Payment and Billing. Licensee shall pay Gulf a semi-annual rent of \$3.15 per pole for the years of 1998 through 2000. The rental rate for 2001 will be calculated in December, 2000 and the rental rate for 2002 will be calculated in December, 2001, to the extent permitted by applicable law. Bills for rent shall be rendered by Gulf on or

before January 15th and July 15th of each year. All attachments permitted and those which exist on Gulf's poles on December 31st and June 30th of each year will be invoiced. Licensee shall pay Gulf in advance for the succeeding six (6) months and such payment shall be based on the number of attachments permitted whether an attachment has been made or continues. Upon the issuance of each attachment permit, Licensee shall pay Gulf rental for such attachment based on the time remaining between the date the permit is granted and the end of the semi-annual rental period. Thereafter, such attachment shall be billed by Gulf with all other attachments on a semi-annual basis. In the event a field survey, as described in Section 15.B., indicates that not all attachments have been permitted, the difference between the number of attachments counted and the number of attachments permitted shall be billed as if all such attachments were in place 2 1/2 years prior to the field survey. The amount due from Licensee for such attachments shall be based on the semi-annual billing rate in effect during each of the prior billing periods, plus eighteen (18%) percent interest per annum. Gulf shall notify Licensee of the amount due and payment shall be due upon receipt of such notice. All bills for semi-annual rent, for inspections and for other charges under this Agreement shall be due upon receipt. Failure to pay bills within thirty (30) days after receipt is a default hereunder for which Gulf may terminate this Agreement. All bills thirty-one (31) days past due shall bear interest at eighteen (18%) percent per annum and interest shall begin to accrue as of the date due.

5. Bond. At the beginning of or during the contract period Licensee may be required at Gulf's discretion to furnish bond or satisfactory evidence of contractual insurance coverage to guarantee the payment of any sums which may become due to Gulf for rentals, for work performed for the benefit of Licensee, and for other charges under this Agreement including the removal of attachments upon termination of this Agreement in the amount as specified in the following schedule:

<u>Number of Attachments</u>	<u>Amounts of Coverage</u>
0-500	\$10,000
501-1000	20,000
1001-1500	30,000
1501-2000	40,000
2001-2500	50,000

Bond shall continue to increase by \$10,000 for each increase in number of attachments by increments of 500 up to a maximum of \$250,000.

6. Attachment and Maintenance. As used herein, an attachment is defined as the material or apparatus which is used by Licensee in the construction, operation, or maintenance of its plant and which is attached to Gulf's poles. One attachment is defined as a single wire or cable attached to the pole and other equipment, apparatus or facilities of Licensee lashed to such wire or cable or (except in the case of additional wires or cables) attached to the pole and occupying a vertical section of the pole not exceeding six (6) inches above and below the point of attachment of the single wire or cable. Licensee shall erect and maintain at its own expense cables, wires and appliances in safe condition and in thorough repair. It shall be the sole obligation of Licensee to ensure compliance with the applicable requirements and specifications of the National Electrical Safety Code and amendments thereto, including clearance requirements between power and cable lines, safe work practices, and any other applicable codes, rules or regulations now in effect or which hereafter may be issued of any governing body having jurisdiction. Upon identification of any violation by Licensee of any code, rule, or regulation Licensee shall immediately institute corrective action, at its own expense. In the event Licensee fails to correct any violation within a reasonable time, Gulf may take whatever corrective action it deems appropriate in its sole discretion. Recognizing that strict compliance with the terms of this agreement is essential to the fair and equitable allocation of limited pole space among competing Licensees, and as a deterrent to such non-compliance in order to preserve the public



welfare, Licensee shall pay Gulf its actual costs for such corrective action plus fifteen (15%) percent. Licensee further agrees to indemnify and hold Gulf harmless for any injury or damages, including but not limited to actual damage awards, fines, settlements, attorney's fees and court or administrative costs, resulting from Licensee's noncompliance with any applicable code, rule or regulation as described above.

Licensee shall also comply with Gulf's specifications for construction. Licensee shall be responsible for installing anchors and guys of sufficient size and strength to accommodate their own load. In order to avoid placing undue stress on Gulf's poles, necessary anchors and guys shall be installed prior to tensioning of the cable strand. Attached hereto are drawings marked Plates 1 through 11 inclusive which are descriptive of required construction under some conditions and are to serve as construction guides but may not apply in all situations. These drawings may be changed from time to time by Gulf and do not supersede any applicable National Electrical Safety Code requirements, except to the extent that they are more stringent than the Code.

7. Attachment Identification. - Licensee may be required to mark its facilities in accordance with the Florida Utilities Coordinating Committee guidelines, or other method acceptable to Gulf. In any given area, the requirement to mark will depend on the date of the original agreement between Licensee and Gulf for that area, or the date of any amendment to such agreement to expand to that area. The Licensee with the earliest agreement or amendment for a given area shall not be required to mark its facilities. Subsequent Licensees shall be required to mark all facilities installed in the given area.

If Licensee follows Florida Utilities Coordinating Committee guidelines, Licensee shall request registration of a unique marking tag for its attachments, if not already registered. Gulf will forward Licensee's request to the appropriate authority.

8. Gulf's Service Requirements. Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner best suited to fulfill its own service requirements, including considerations of economy and safety. Use of Gulf's poles under this Agreement will create or vest in Licensee no ownership or property rights in Gulf's poles, notwithstanding the length of use. Gulf is in no way required to keep in place any of its poles or other facilities for a period longer than is necessary to meet its own service requirements. Gulf reserves the right to refuse to grant an attachment permit to any pole on the basis of insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. Gulf will exercise due care to avoid interfering with Licensee facilities. However, Gulf will in no way be liable to Licensee for interruption of Licensee's service or for interference with the operation of Licensee's cables, wires and appliances, except for Gulf's negligence.

9. No Interference. Licensee's attachments shall not interfere with the present or future use and maintenance of Gulf's poles by Gulf or with other parties' use of Gulf's poles nor interfere with the use and maintenance of facilities placed on the poles or which may from time to time be placed thereon, provided such other parties' use is in accordance with applicable regulations and specifications of Gulf and the National Electrical Safety Code, and other applicable codes, rules and regulations. Gulf shall be the sole judge as to the requirements for the present or future use of its poles and facilities and of any interference therewith.

10. Rules and Procedures. Gulf reserves the right to establish rules or procedures to implement and allocate Make Ready billing pursuant to Section 12.A. and to provide for an orderly process of pole attachment in the event Licensee and one or more other parties desire to attach to the same poles and Licensee shall adhere to such rules or procedures.

11. Order on the Pole.

A. The existing telephone companies (Local Exchange Carrier) contracting for attachments to Gulf's poles, pursuant to a joint use agreement, are to be assigned to the lowest relative position on any given pole. Other Licensees contracting with Gulf for pole attachments shall attach above the telephone facilities. Among two (2) or more Licensees, position of attachments on the pole shall be determined according to the date of the original agreement between the Licensee and Gulf for a given area, or the date of any amendment to such agreement to expand to a given area. In any given area, the Licensee with the earliest agreement or amended agreement shall occupy the first position above the telephone facilities, if space is available. The second Licensee shall attach to the second position above the telephone facilities, if space is available, and so on.

B. When two (2) or more Licensees desire to attach to the same Gulf poles, preference for attachment will be given in order of application for permit received. The attaching Licensee shall attach in their assigned space, according to Section 11.A., if space is available. If any company with priority under paragraph 11.A. above, has not exercised its right to attach to space on a given pole, companies attaching under subsequent agreements may make provisional attachment in the space which ordinarily would be available to the company with priority, if their own assigned space is not available. However, if the company having priority subsequently requests attachment rights, any other companies with attachments in the area to which the earlier companies have priority shall relinquish their position and reattach their facilities farther up the pole as provided in Section 12 below. The company requesting attachment rights shall pay all make ready costs, if any, associated with such reattachment, and contact the other companies to initiate their transfer.

12. Make Ready, Substitutions, Changes and Rearrangements.

A. Make Ready. If it should appear to Gulf that a pole is too short, or inadequate, or any rearrangement of Gulf's or other parties' facilities is required to accommodate the attachments of Licensee, Gulf shall notify Licensee of the pole substitutions, additions, changes and rearrangements which Gulf deems necessary and their estimated cost. Such notice shall constitute a denial of the applicable permit(s) unless Licensee authorizes Gulf to make the substitutions, additions, changes and rearrangements specified. Licensee shall authorize the make ready work within thirty (30) days after notification from Gulf, otherwise the permit will be denied. Upon such authorization, Licensee shall reimburse Gulf for all costs incurred by it in connection with such changes. Licensee shall reimburse the owner of any other facilities attached to that pole for any reasonable expense incurred by that owner in conjunction with such changes. Licensee shall pay to Gulf at the time of the issuance of each attachment permit Gulf's estimated cost of providing the space for all of the attachments covered by that permit pursuant to Section 3 of this Agreement.

In the event the Licensee elects to install their facilities underground in Gulf's pole line, they shall remain underground for a minimum of five (5) spans before attaching to Gulf's poles. Where Licensee shows sufficient reason, Gulf may grant a waiver of this provision in specific cases.

B. Substitutions, Changes, and Rearrangements. Licensee shall, at its own expense, install the attachments and maintain them in safe condition in a manner satisfactory to Gulf. Licensee shall, at its own expense, at any time requested by Gulf for good cause remove, relocate, replace, and renew its facilities on the poles, transfer them to substituted poles or perform any other work in connection with the facilities that Gulf may require. Licensee shall notify Gulf immediately after completing the requested work. If the Licensee fails to comply with Gulf's request within thirty (30) days of receipt of such request, Gulf may perform or have performed such work at Licensee's

expense with no liability therefor. Licensee shall pay Gulf its cost for such work plus fifteen (15%) percent.

In any case deemed by Gulf to be an emergency, Gulf shall attempt to notify Licensee, and the parties shall coordinate the performance of any emergency measures involving Licensee's facilities. If it is practicable under the circumstances, Licensee shall be provided the opportunity to perform the emergency measures on its facilities. When an emergency exists such that advance notice and/or coordination are not practicable, Gulf may, at the expense of Licensee, arrange to remove, relocate, replace or renew the facilities of Licensee, transfer them to substituted poles or perform any other work in connection with the facilities that may be required in the maintenance, replacement, removal or relocation of the poles or the facilities on them. Under such circumstances, Gulf shall notify Licensee as soon as practicable after taking such action. An emergency includes, but is not limited to, customer outages and circumstances that threaten to cause property damage and/or personal injury. Gulf will invoice Licensee for actual expenses incurred in performing these emergency measures.

13. Use of Qualified Employees and Contractors. The Licensee shall ensure that its employees and contractors are knowledgeable of the requirements of the NESC and other safe work practice codes for maintaining proper work practices in order to avoid dangerous conditions. Licensee expressly agrees to take all necessary steps to ensure that its employees and contractors are adequately trained and qualified to work with and around energized conductors, and shall further ensure that its employees and contractors are appropriately and strictly supervised while performing work on Gulf's poles. Licensee agrees to indemnify and hold harmless Gulf for any failure of Licensee, its employees or contractors to fulfill their obligations to perform work in a safe and proper manner.

14. Damage to Facilities. Licensee shall exercise caution to avoid damage to facilities of Gulf and of others on Gulf's poles. Licensee assumes responsibility for any and all loss or expense arising out of such damage caused by it and shall reimburse Gulf or others occupying Gulf's poles for such loss or expense. Licensee shall immediately report damage caused by it to Gulf and to others occupying Gulf's poles which are in any way affected by such damage.

15. Inspections and Surveys.

A. Inspections. Gulf reserves the right to inspect each new attachment and to make periodic inspections of all attachments as plant conditions may warrant. Licensee agrees to pay a \$25.00 per attachment violation fee for each Code violation found during such inspections. In addition, Licensee agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments found during these inspections. Gulf's right of inspection as provided herein in no way operates to relieve Licensee of any responsibility, obligation or liability arising hereunder nor does it impose any obligation on Gulf.

B. Field Surveys. Gulf reserves the right to make field surveys of its poles in the area described in Exhibit A as it may be amended from time to time pursuant to subparagraph C hereof, at intervals not more often than once every five (5) years, for the purpose of determining the actual number of Licensee attachments. Licensee agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments in excess of ten (10) or in excess of two percent (2%) of the last verified reported total, whichever is greater. Gulf shall bear the cost of such field surveys, unless the number of attachments counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued. In the event the number counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued, Licensee shall pay, in addition to the violation fee, the cost of field surveys attributable to the area described in Exhibit A as amended, pursuant to

Section 4 of this Agreement. Gulf shall notify Licensee at least thirty (30) days in advance of the field survey and shall specify the method to be used in performing the survey. Should Licensee disagree with results of the survey, a new survey may be performed by Gulf and Licensee at Licensee's sole expense.

C. Expansion of Service Area. Should at any time following execution of this Agreement the Licensee desire to expand or modify the area described in Exhibit A, Licensee shall provide Gulf in writing an amended Exhibit A which shall include such areas, and shall receive Gulf's written approval prior to such expansion or modification becoming a part of this agreement. No new attachments shall be made in the amended area before the amended Exhibit A is approved.

16. Franchises. Licensee shall provide copies of franchise renewals to Gulf immediately upon Licensee's receipt of same. In the event Licensee fails to acquire or retain a franchise required within the area described in Exhibit A, such failure shall operate as grounds upon which Gulf may cancel the permits in or terminate this Agreement as to the area affected by such franchise pursuant to Section 23.

17. Removal. Licensee may at any time remove its attachments from any pole upon prior written notice to Gulf. Upon verification by Licensee to Gulf that pole attachments have been removed, Gulf will reimburse Licensee the rental remaining from the date of the removal to the end of the semi-annual rental period which will be included as a credit on the next semi-annual bill.

18. Pole Abandonment. If Gulf desires at any time to abandon any pole, it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. Licensee may then purchase the pole from Gulf at fair market value; however, if at the expiration of such period Licensee has not removed all of its attachments therefrom or purchased the pole, Gulf may proceed to remove such attachments at the expense of Licensee with no liability therefor. Licensee shall pay Gulf for its cost of removal plus fifteen (15%) percent.

19. Indemnification. Licensee shall indemnify and hold harmless Gulf and its representatives, agents, officers and employees from and against any and all loss, damage, or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries (including death) to persons and for damages to property caused by or arising out of any negligent (including strict liability), wanton or intentional act or omission of Licensee, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, in any way associated or connected with the performance of the obligations herein, in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent, or contributory negligence of Gulf, or its representatives, agents, officers or employees. The indemnity obligations hereunder shall extend only to that proportion of the loss, damage or liability which is directly attributable to the negligence, wanton or intentional acts of the Licensee, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable. It is the expressed intent of the parties that Gulf shall be liable only for those damages attributable to its own negligence and shall not be liable for any damages (either economic or non-economic) attributable to the acts of any other person or entity. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements and judgments associated with such demands, claims, suits or actions. The Licensee shall make an immediate report to Gulf of the occurrence of any personal injury or property damage while working on Gulf's facilities.

20. Insurance. Licensee shall procure and maintain insurance to protect it and Gulf against claims for damage to property or injury to or death to persons, as described but not limited by Section 19, in the amount of at least \$1,000,000 for damages arising from one occurrence, which amount may be modified by Gulf for good cause upon thirty (30) days prior written notice to Licensee. Upon such notification, Licensee shall procure and maintain insurance in the amount specified in the



notification such amount not to exceed \$5,000,000. Licensee shall also carry such insurance as will protect it from Workmen's Compensation Laws in effect as may be applicable to it. All insurance requirements shall be kept in force by Licensee for the life of this Agreement and the company or companies issuing such insurance shall be approved by Gulf such approval not to be unreasonably withheld. Gulf shall be an additional insured under Licensee's liability insurance policy and Licensee shall furnish to Gulf, a certificate showing the issuance of such insurance and the insurance company's agreement that it will not cancel, terminate or change its policy except after thirty (30) days prior written notice to Gulf. Licensee's obligation to indemnify Gulf specified in Section 19 is not limited to the amount of liability insurance coverage purchased by Licensee.

21. Rights-of-Way. Gulf does not warrant the extent of its rights-of-way. Upon notice from Gulf to Licensee that the use of any pole is forbidden by governmental authorities or property owners, the permit covering the use of that pole shall immediately terminate, and Licensee shall remove its cables, wires and appliances immediately from the affected poles.

22. Types of Service. Licensee is authorized to attach its cable plant to Gulf's poles for the purpose of delivering telecommunication services to Licensee's commercial and residential subscribers in the area described in Exhibit A, pursuant to the authority granted by the appropriate governmental entities, as may be required.

23. Termination and Cancellation.

A. Default. This Agreement may be terminated by either party upon default of any term of this Agreement by the other party if such default is not cured within thirty (30) days of receipt of written notice; provided, however, in the event that either party begins to initiate action to cure a non-monetary default within thirty (30) days of notice and diligently continues such action until the default is fully cured, then, notwithstanding the foregoing, the non-defaulting party may not, at any time prior to

sixty (60) days from the date of the original default notice, terminate this Agreement or cancel the permits covering the poles as to which such default has occurred. During the continuance of any default after such notice and cure periods, the non-defaulting party may terminate this Agreement by giving written notice of termination to the defaulting party, and the non-defaulting party may exercise any other remedies it may have under this Agreement or at law. Should Licensee fail to cure or take diligent action to cure a default within the requisite period following written notice to cure by Gulf, Licensee shall immediately remove all affected attachments. Should Licensee fail to remove its attachments after such termination or cancellation within the (30) day period after Gulf's written notice to cure a default, Gulf may proceed to do so at the expense of Licensee with no liability to Gulf therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent. If Licensee fails to perform work required to cure a default, Gulf may elect to perform such work at the expense of Licensee with no liability therefor. Licensee shall pay Gulf its costs for performing such work plus fifteen (15%) percent.

B. Termination Due to Nonattachment. If Licensee has made no attachments to any of Gulf's poles within the area covered by an attachment agreement within one (1) year after the date of the agreement, Gulf may terminate the agreement immediately and shall provide notice to the Licensee of such termination thereafter. Likewise, if Licensee under an existing attachment agreement enters into an amendment to that agreement to include a new area but does not attach to any Gulf's poles within the new area within one (1) year after the date of the amendment, Gulf may terminate the amendment in the same manner as it would be able to terminate the agreement. Termination of any such amendment shall not affect the original agreement nor the area covered by the original agreement, if attachments are made under the original agreement within the applicable one (1) year period. If Licensee makes attachments to Gulf's poles under an agreement or amendment of agreement but

removes all such attachments and fails to make any new attachment for a period of one (1) year after the removal of the last attachment, Gulf may terminate the agreement or amendment of agreement as provided above.

C. Obligations Upon Expiration. Licensee shall, within thirty (30) days following the expiration of this Agreement remove its attachment from Gulf's poles. Should Licensee fail to remove its attachments within thirty (30) days after expiration of the term Gulf may proceed to do so at the expense of Licensee with no liability of Gulf therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent.

D. Obligations Prior to Removal of Attachments. Upon expiration or termination of this Agreement, the rights and obligations conferred hereunder shall remain in full force and effect until such time as Licensee's attachments are removed from Gulf's poles, in accordance with Section 23.C., except that no new attachments shall be made.

E. Temporary Extension of Agreement Beyond Expiration or Termination. Upon expiration or termination and with the prior written authorization of Gulf, all rights and obligations conferred hereunder may remain in full force and effect, including the right to apply for and make new attachments, in the event Gulf determines that the parties are actively and in good faith negotiating a new agreement. If, however, in Gulf's sole discretion it is determined that negotiations have been discontinued or are not proceeding in good faith, then no new attachments shall be permitted or made; all other rights and obligations conferred hereunder shall remain in full force and effect until Licensee's attachments have been removed from Gulf's poles. Gulf may terminate the negotiation period upon breakdown of negotiations or at any time upon thirty (30) days prior written notice to Licensee. Licensee shall remove its attachments from Gulf's poles within thirty (30) days after such notice. If not so removed, Gulf may remove such attachments at Licensee's expense with no liability therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent.

F. Termination or Modification upon a Change of Law. If, in a final and unappealable order or judgement, the Federal Communications Commission (the "FCC") or any governing body or court with appropriate jurisdiction repeals, overrules or modifies 47 U.S.C. Section 224 insofar as it requires Gulf to provide pole access to Licensee, then Gulf shall be entitled to terminate Licensee's rights hereunder including, but without limitation, Licensee's right to attach to any or all of Gulf's poles with sixty (60) days notice or after such period of notice as may be required by law, whichever is longer. If, in a final and unappealable order or judgement, the FCC or any governing body or court with appropriate jurisdiction repeals, overrules or modifies 47 U.S.C. Section 224 insofar as it sets a maximum attachment fee that Gulf may charge Licensee, then Gulf shall be entitled to modify the attachment fee set forth in Section 4. hereof to the extent then permitted by law. To the extent then permitted by law, Licensee shall pay to Gulf retroactive fees for all poles previously used by Licensee in an amount equal to the difference between the rate charged by Gulf after such repeal, overruling, or modification less the fees previously paid for such poles by Licensee.

24. Rights Previously Conferred. Nothing in this Agreement shall be construed as affecting the rights or privileges to use Gulf's poles previously conferred by Gulf to others who are not parties to this Agreement. Gulf may continue to confer such rights or privileges. The attachment privileges granted to Licensee in this Agreement are non-exclusive and subject to contracts and arrangements between Gulf and others who are not parties to this Agreement.

25. Waiver. Failure by Gulf to enforce any of the terms of this Agreement shall not constitute a waiver of future compliance with any such term or terms.

26. Notice. All notices regarding the attachment, maintenance or removal of Licensee's attachments shall be sent electronically using the National Joint Utilities Notification System. All other notices under this Agreement must be given in writing by

registered or certified mail, return receipt requested, and mailed with sufficient postage prepaid to the party to be given such notice. Notice to Gulf shall be addressed to:

**Project Services Administrator  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520**

Notice to Licensee shall be addressed to:

KMC Telecom II, Inc.

1545 Route 206, Suite 300

Bedminster, New Jersey 07921

ATTN: Michael A. Sternberg, President & CEO

27. Assignment. Licensee shall not assign, transfer or sublet the privilege hereby granted without the prior written consent of Gulf, which consent shall not be unreasonably withheld. Gulf shall grant or deny a request for Consent to Assignment within sixty (60) days from receipt of the request. Such request shall be accompanied by the information described in Section 2.

28. Enforcement. In the event enforcement of any provisions of this Agreement becomes necessary, each company shall pay its own costs incurred in pursuing such enforcement including reasonable attorney's fees.

29. Laws of State. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

30. Severability. In the event any covenant, condition, or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction after construing this Agreement, the invalidity or unenforceability thereof shall in no way affect any of the other covenants, conditions, or provisions hereof, provided that such remaining covenants, conditions, or provisions can thereafter

be applicable and effective without material prejudice to either Gulf or Licensee. This instrument embodies the entire Agreement of the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Gulf and Licensee and the authorized representatives of Gulf and Licensee.

IN WITNESS WHEREOF, Licensee and Gulf have caused this Agreement to be executed by their authorized representatives and be effective as of the day and year first written above.

WITNESS:

By: Jeanette Barretto  
Asst. Secretary

**KMC Telecom II, Inc.**

By: [Signature]  
Title: President

ATTEST:

By: Susan DiCanna  
ASST. SECRETARY

**Gulf Power Company**

By: [Signature]  
Vice President - Power Delivery and  
Customer Operations

EXHIBIT A

DESCRIPTION OF SERVICE AREA

Name of Company KMC Telecom II, Inc.

For Agreement Dated May 1, 1998

A description of the geographical boundaries of the Agreement by Township, Range and Section:

Starting at  
Range R 31 W, Township T 1 N, Section 28

East to  
Range R 29 W, Township T 1 N, Section 31

South to  
Range R 30 W, Township T 25, Section 46

West to  
Range R 31 W, Township T 25, Section 32

WITNESS:

By: *Jeanette Burnett*  
Asst. Secretary

KMC Telecom II, Inc.

By: *[Signature]*  
Title: President

ATTEST:

By: *Susan O'Connor*   
ASST. SECRETARY

Gulf Power Company

By: *[Signature]*  
Vice President - Power Delivery and  
Customer Operations

EXHIBIT B

APPLICATION FOR POLE ATTACHMENT PERMIT

City of \_\_\_\_\_  
State of \_\_\_\_\_  
County \_\_\_\_\_  
Date \_\_\_\_\_

NAME OF LICENSEE \_\_\_\_\_

In accordance with the terms of Agreement dated \_\_\_\_\_, 19\_\_\_\_,  
application is hereby made for permit to make attachments to the following poles:

<u>Location/ Pole No.</u>	<u>TLN Map No.</u>	<u>Location and Type of Attachments</u>
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By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensee

Permit granted \_\_\_\_\_, 19\_\_\_\_, except is subject to Licensee's approval below if pole rearrangements are required. Estimated cost of pole rearrangements required to provide space for Licensee's attachments: \$ \_\_\_\_\_ as shown on DSO No. \_\_\_\_\_.

GULF POWER COMPANY

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensor

The above charges  
for rearrangements approved

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensee

Permit No. \_\_\_\_\_  
Total Poles \_\_\_\_\_



EXHIBIT D

APPLICATION FOR POLE ATTACHMENT PERMIT  
AFTER-THE-FACT FORM FOR SERVICE DROPS

City of \_\_\_\_\_  
State of \_\_\_\_\_  
County \_\_\_\_\_  
Date \_\_\_\_\_

NAME OF LICENSEE \_\_\_\_\_

In accordance with the terms of Agreement dated \_\_\_\_\_, 19\_\_\_\_,  
application is hereby made for permit to make attachments to the following poles:

<u>Service Address</u>	<u>TLM Pole No. If Available</u>	<u>NO. of poles</u>	<u>Date of Attachments</u>
------------------------	--------------------------------------	-------------------------	--------------------------------

Licensee certifies that the above attachments have been installed on Gulf's poles in strict conformity with the National Electrical Safety Code and any other applicable codes, rules, or regulations of any governing body having jurisdiction.

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensee

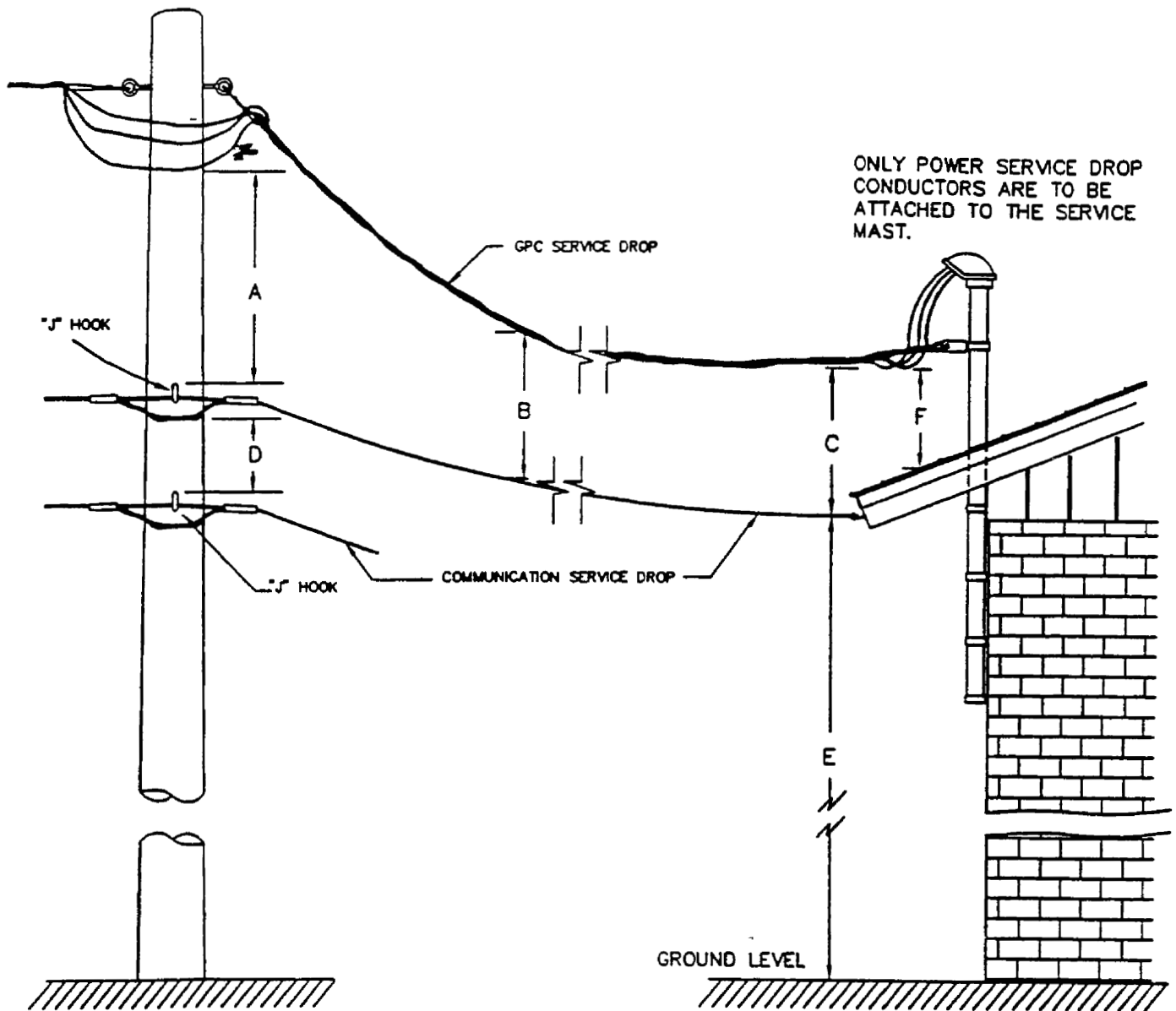
Permit granted this day of \_\_\_\_\_, 19\_\_\_\_.

GULF POWER COMPANY

Permit No.: \_\_\_\_\_  
Total Poles: \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Licensor

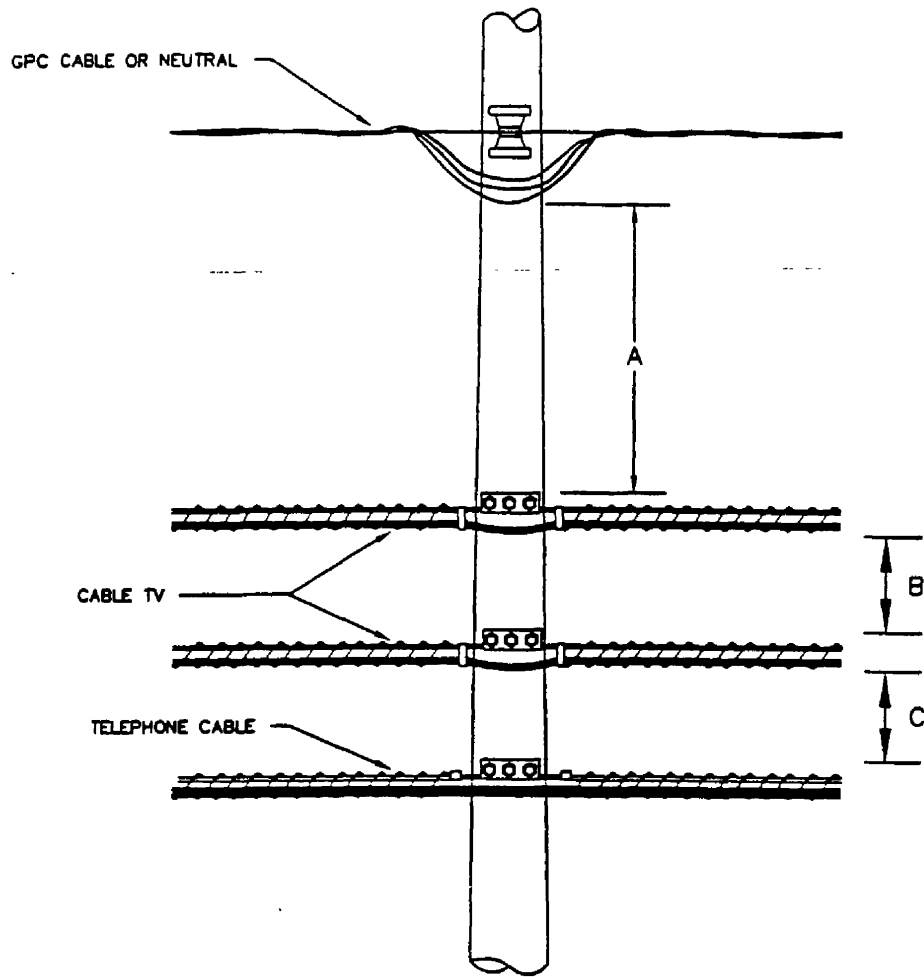
# SEPARATION OF SERVICE DROPS



DIMENSION LETTER	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	12 INCHES	235 C1 EXCEPTION ③
C	12 INCHES	235 C1 EXCEPTION ③
D	12 INCHES	GPC REQUIREMENT
E	9.5 FEET MIN.	TABLE 232-1
F	18 INCHES	234 C3

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE

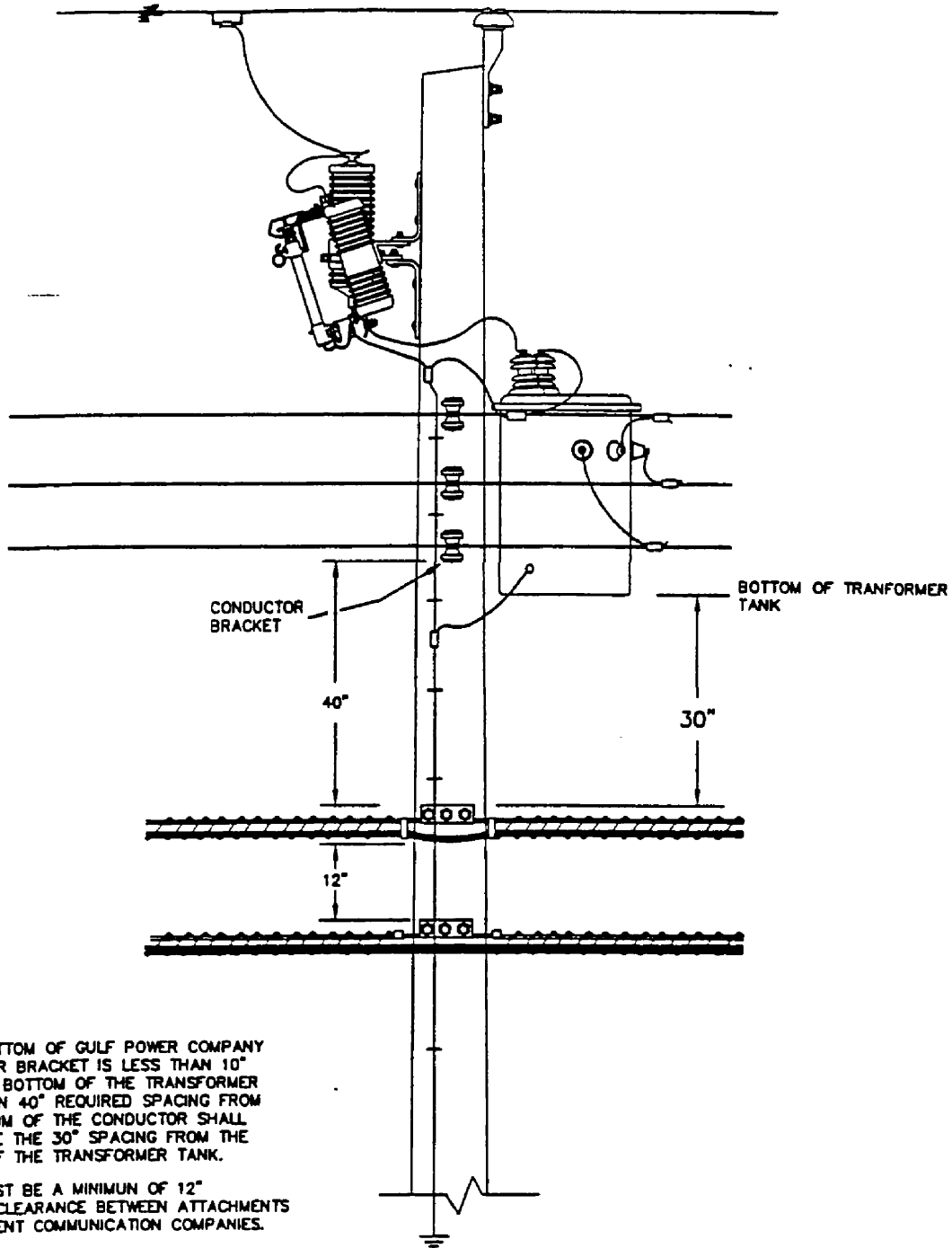
# SEPARATION AT POLE PARALLEL FACILITIES



DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	12 INCHES	GPC REQUIREMENT
C	12 INCHES	GPC REQUIREMENT

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE

# JOINT USE CONSTRUCTION TYPICAL SINGLE TRANSFORMER INSTALLATION 7.2 KV CONSTRUCTION



1. IF THE BOTTOM OF GULF POWER COMPANY CONDUCTOR BRACKET IS LESS THAN 10" FROM THE BOTTOM OF THE TRANSFORMER TANK, THEN 40" REQUIRED SPACING FROM THE BOTTOM OF THE CONDUCTOR SHALL SUPERSEDE THE 30" SPACING FROM THE BOTTOM OF THE TRANSFORMER TANK.
2. THERE MUST BE A MINIMUM OF 12" VERTICAL CLEARANCE BETWEEN ATTACHMENTS OF DIFFERENT COMMUNICATION COMPANIES.
3. THE DIMENSIONS OF THIS PLATE DO NOT SUPERCEDE ANY APPLICABLE NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.
4. THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

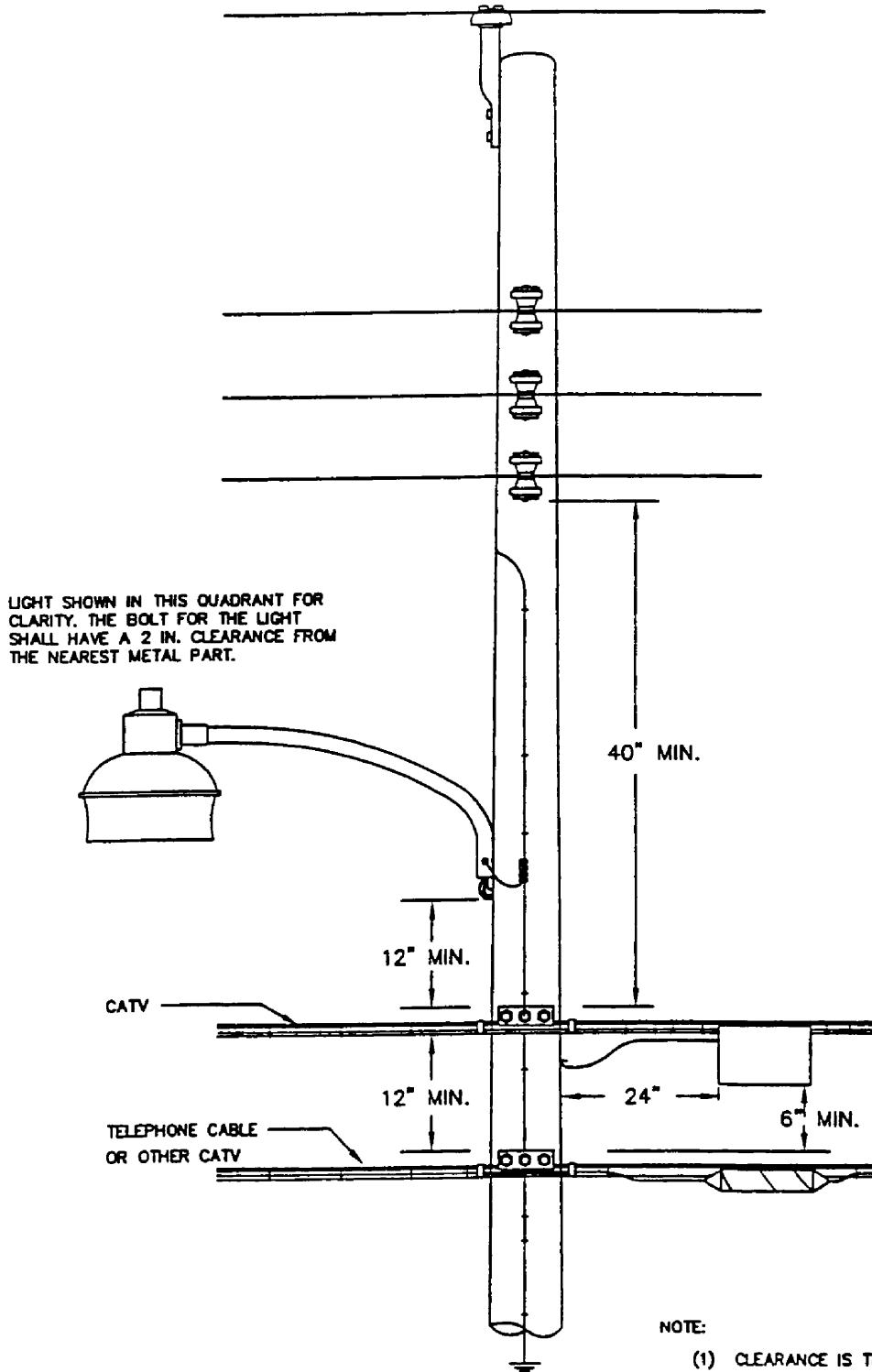
DATE 3/28/84  
ENG R.B. DRN E. L. W.

**GULF POWER COMPANY**

5/28/92 3/18/96

PLATE  
C-2

**JOINT USE CONSTRUCTION  
TYPICAL ATTACHMENT OF CATV DISTRIBUTION SYSTEMS TO  
GPCO POLES TYPICAL OUTDOOR LIGHT INSTALLATION**



**NOTE:**

- (1) CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE.
- (2) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

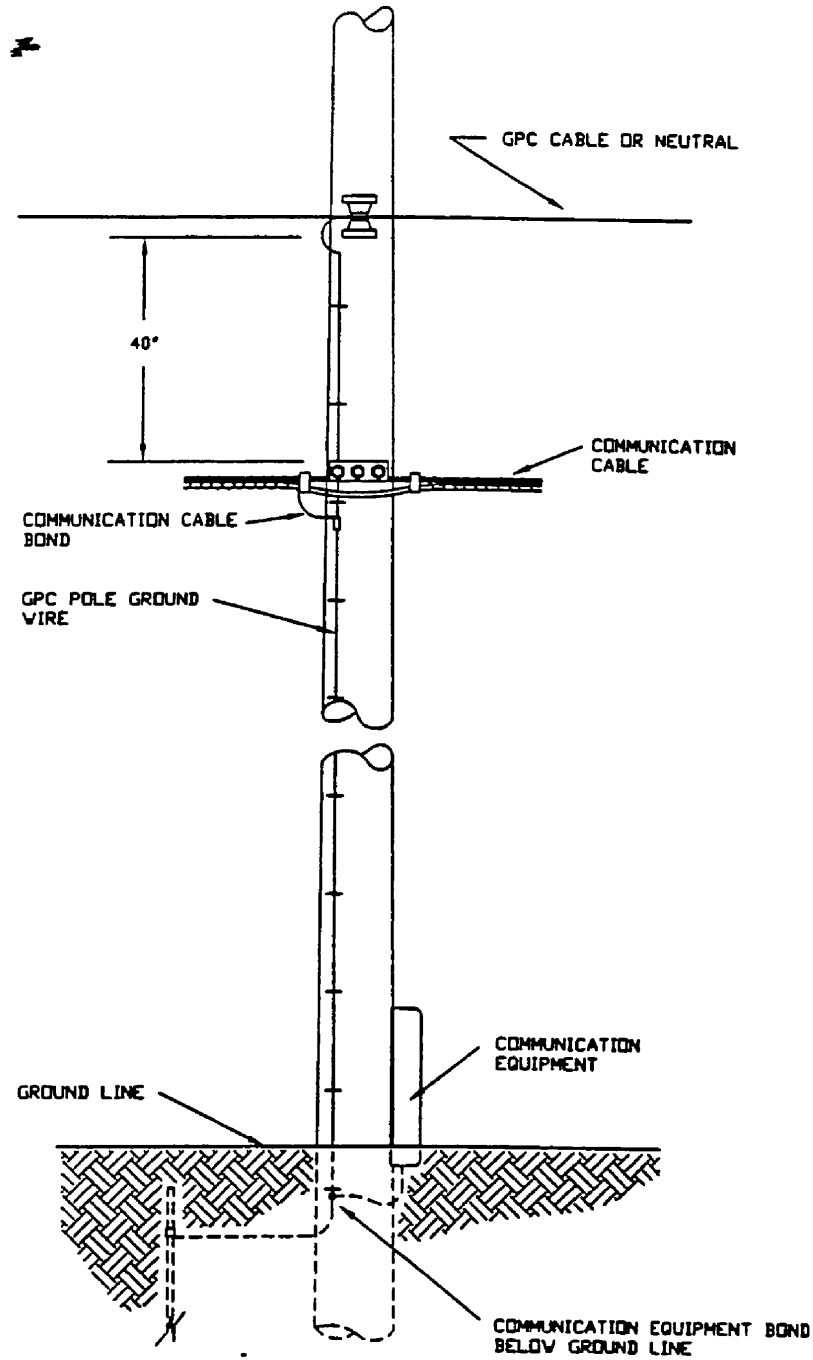
DATE 11/24/81

**GULF POWER COMPANY**

PLATE

8/30/88 5/25/88 5/11/92 3/18/96

# GROUNDING CONNECTIONS



DATE 06/16/92  
ENG R.B. DRN E. L. W.

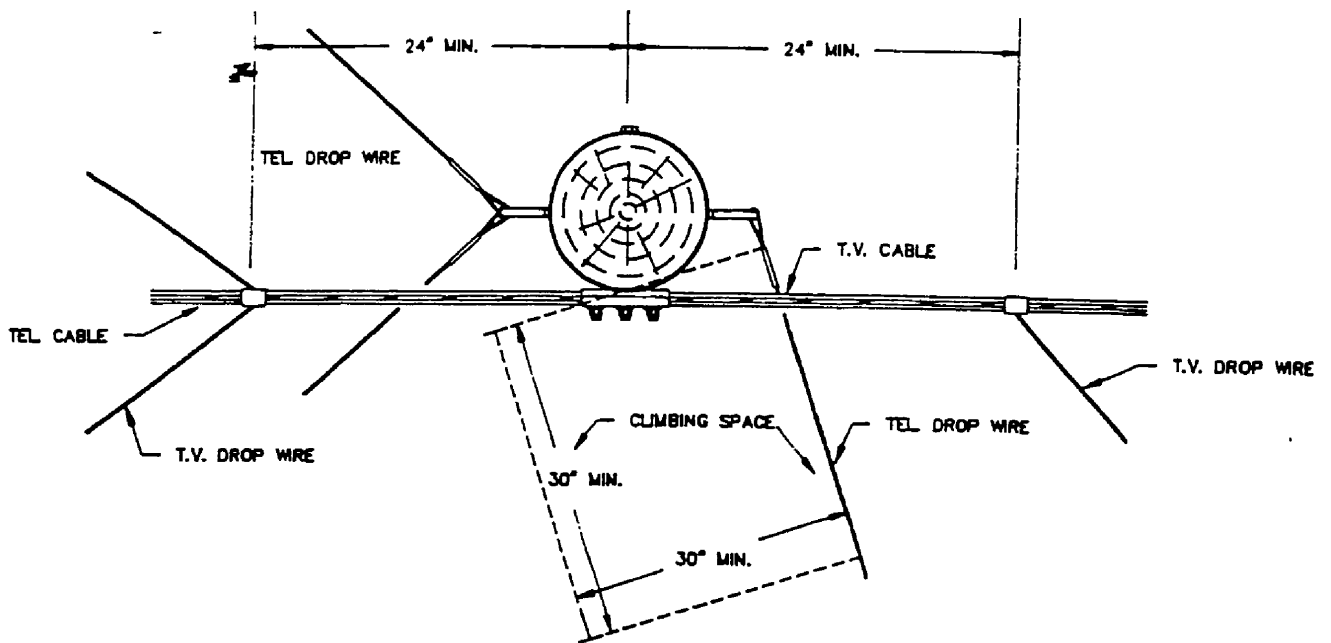
GULF POWER COMPANY

3/18/96

PLATE  
C-5

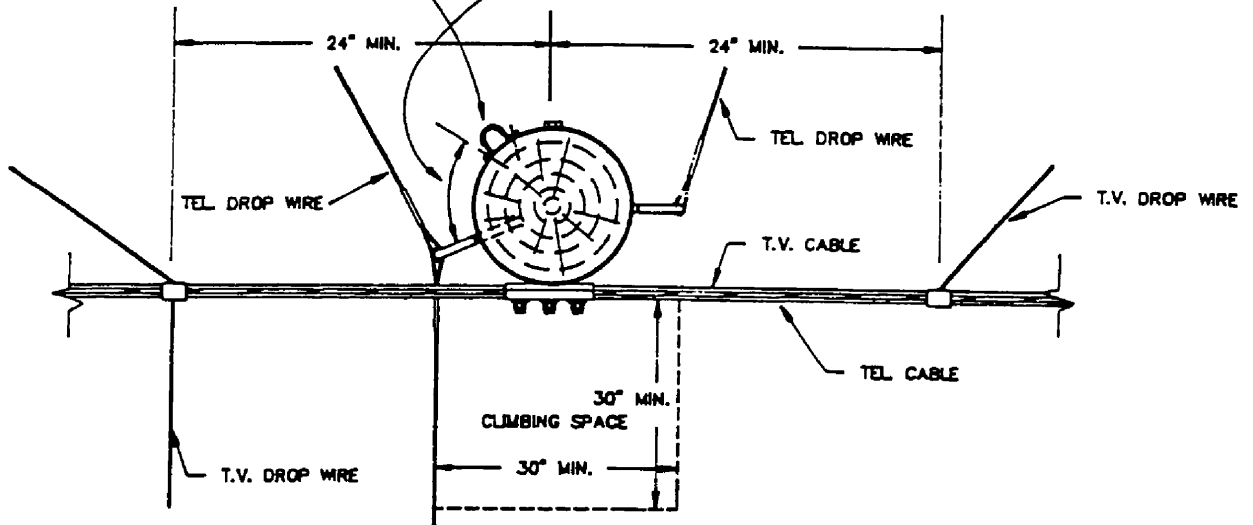
# JOINT USE CONSTRUCTION

## MINIMUM CLIMBING SPACE THROUGH COMMUNICATION CIRCUITS



POWER SYSTEM VERTICAL RUN OR GROUND WIRE

SEPARATION BETWEEN VERTICAL RUN, INCLUDING STAPLES OR OTHER DEVICES USED IN FASTENING IT TO THE POLE AND COMMUNICATION DRIVE HOOK SHALL BE AT LEAST 2 INCHES MEASURED IN ANY DIRECTION.



ALL COMMUNITY ANTENNA T.V. SERVICE DROPS TO BE MADE NO LESS THAN 24" EITHER DIRECTION FROM CENTER LINE OF POLE.

NOTE: (1.) THE DIMENSIONS OF THIS PLATE DO NOT SUPERSEDE ANY NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.

(2.) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

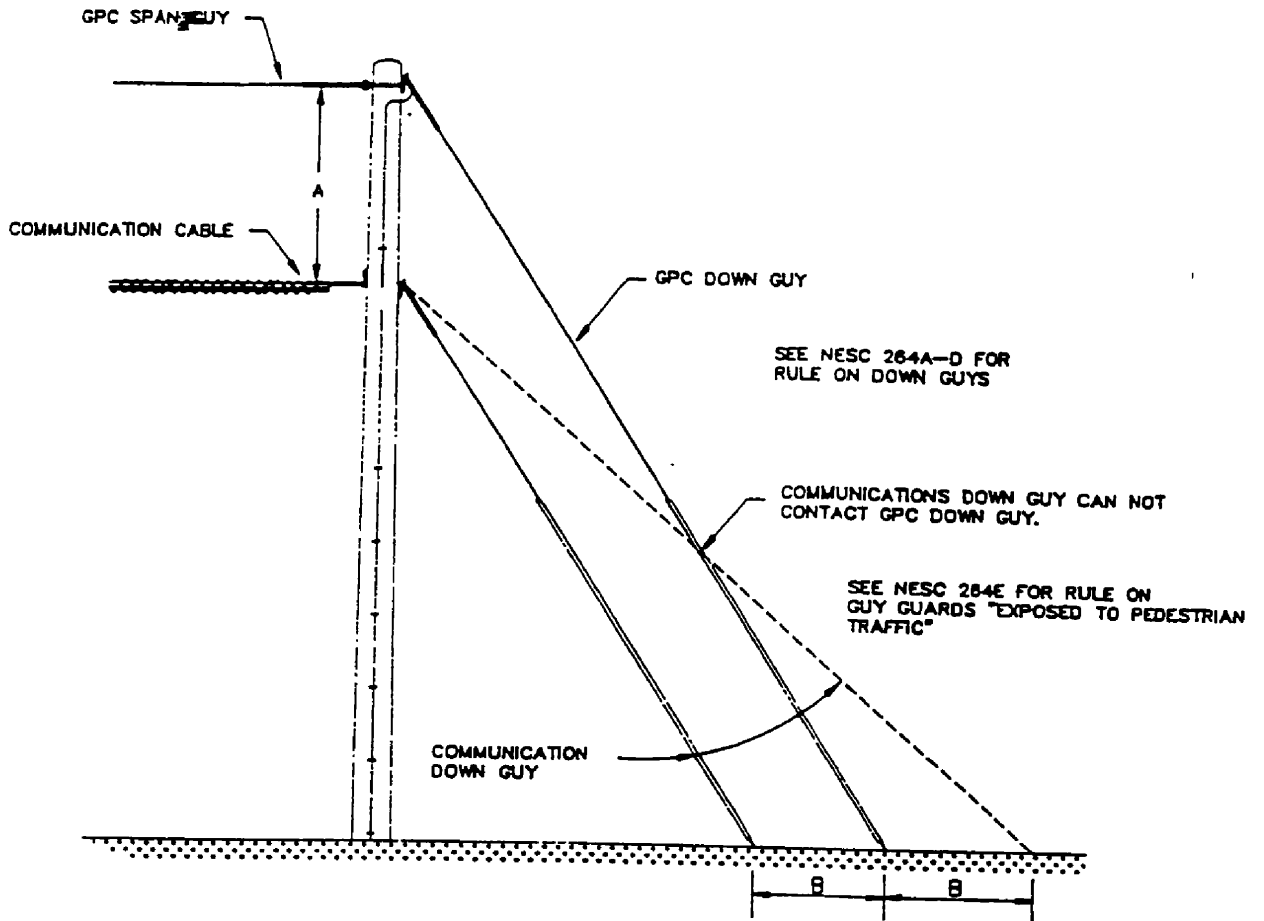
DATE 03/28/84  
 ENG J.M. *J.M.* H.W.T.  
*J.M.*

**GULF POWER COMPANY**

11/24/81  
 06/17/82

PLATE  
**C-6**

# SEPARATION OF DOWN GUYS



DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	4 FEET	GPC REQUIREMENT

DIMENSION B BASED ON ANCHOR HOLDING POWER AND CONE OF INFLUENCE OF ADJACENT ANCHORS.

DATE 6/3/92  
 ENG. R.B. DRN E.L.W.  
 APPROVED *ELW*

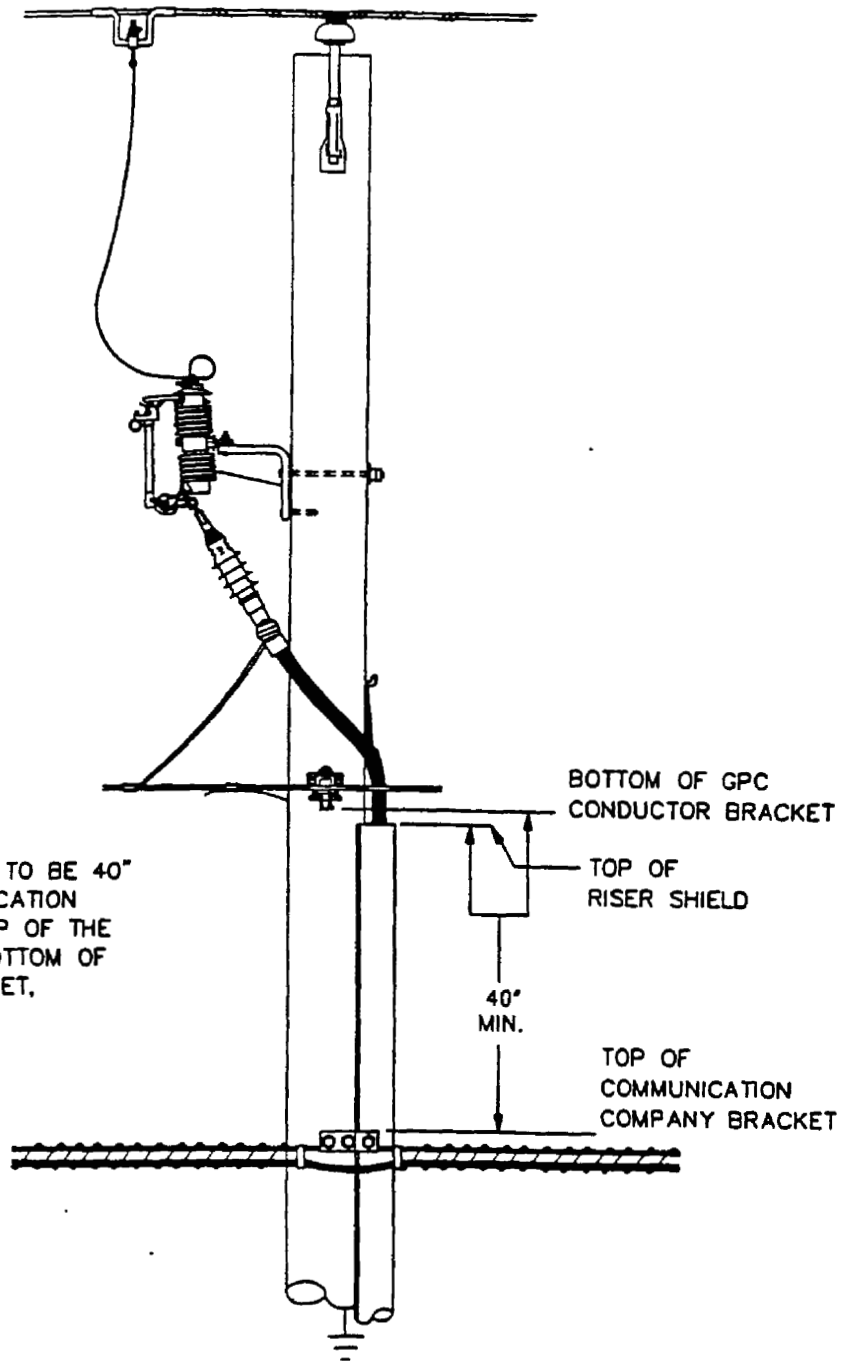
**GULF POWER COMPANY**

PLATE

**C-7**



# SEPARATION AT POLE UNDERGROUND RISERS



NOTE:  
COMMUNICATION CLEARANCE TO BE 40"  
FROM TOP OF THE COMMUNICATION  
BRACKET TO EITHER THE TOP OF THE  
RISER SHIELD OR TO THE BOTTOM OF  
THE GPC CONDUCTOR BRACKET,  
WHICHEVER IS LOWER.

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN  
TWO OBJECTS MEASURED SURFACE-TO-SURFACE.

DATE 8/23/95

ENG R.B. DRN E.L.W.

APPROVED *MDD*

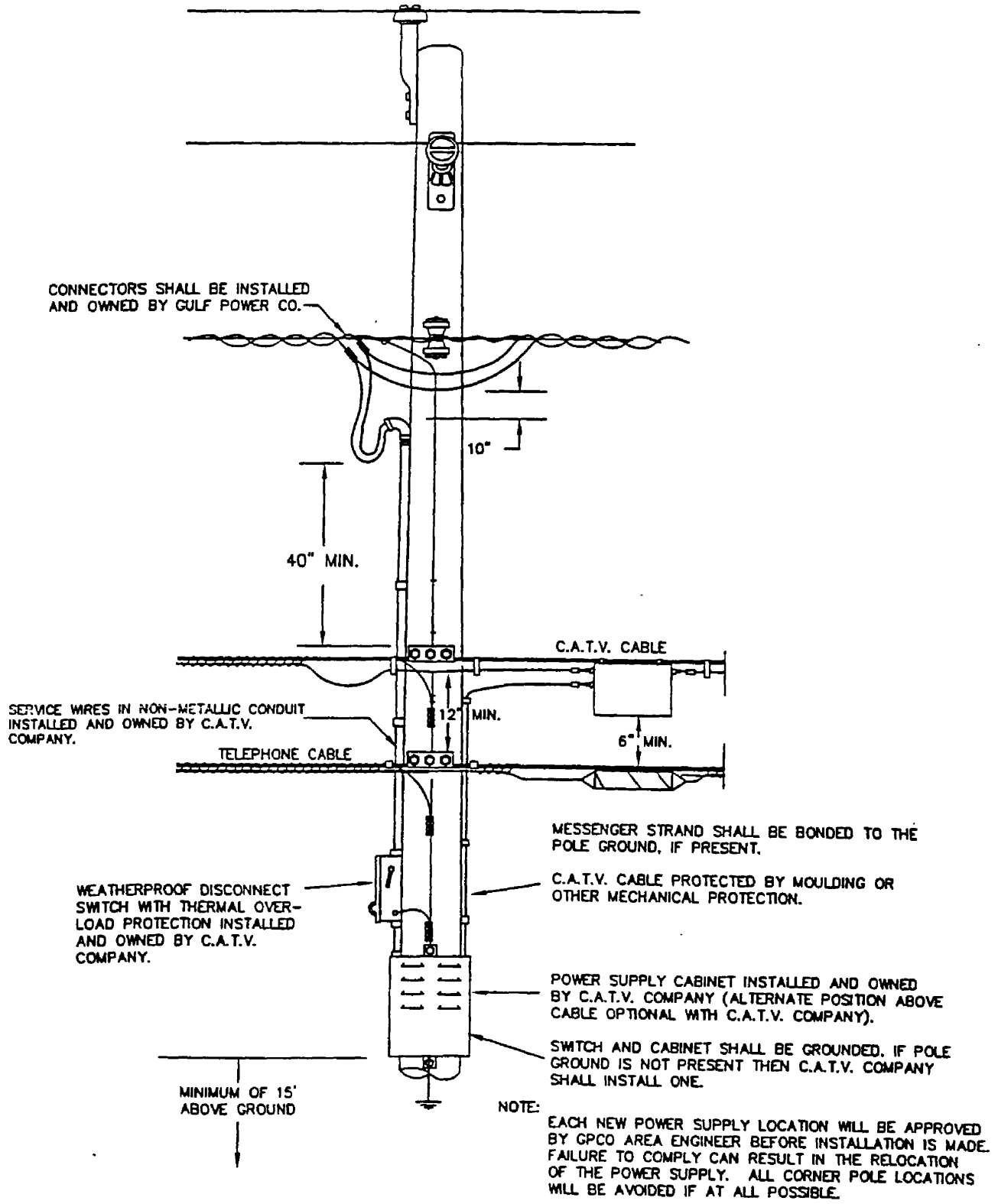
**GULF POWER COMPANY**

3/18/96

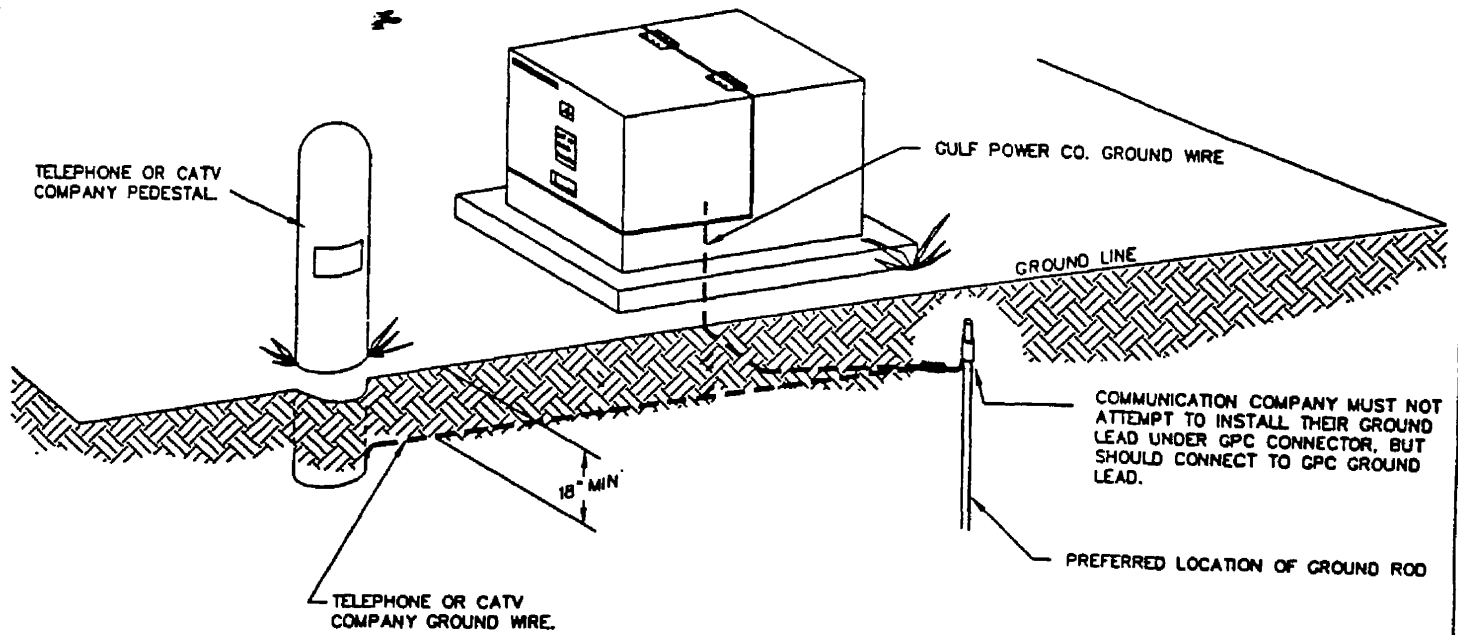
PLATE

C-8

# COMMUNICATION/SIGNAL TYPE ATTACHMENT C.A.T.V. POWER SUPPLY INSTALLATION

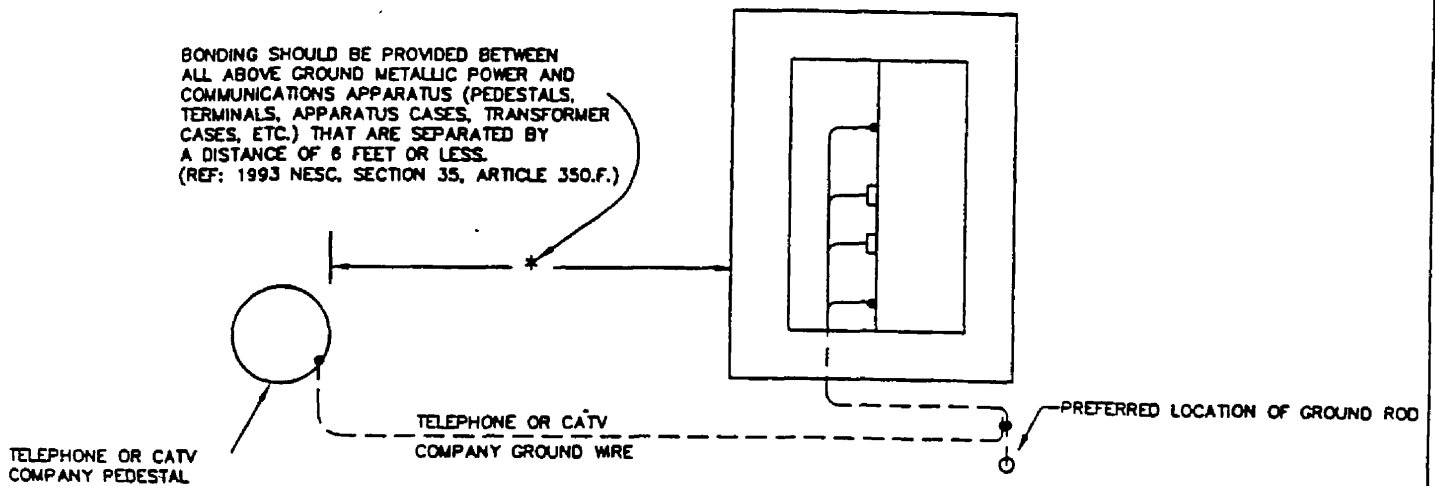


# BONDING OF PADMOUNT TRANSFORMER TO COMMUNICATION COMPANY FACILITIES



**ISOMETRIC VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL**

BONDING SHOULD BE PROVIDED BETWEEN ALL ABOVE GROUND METALLIC POWER AND COMMUNICATIONS APPARATUS (PEDESTALS, TERMINALS, APPARATUS CASES, TRANSFORMER CASES, ETC.) THAT ARE SEPARATED BY A DISTANCE OF 6 FEET OR LESS.  
(REF: 1993 NESC, SECTION 35, ARTICLE 350.F.)



**TOP VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL**

DATE 4/19/93  
 ENG R.B. ORN E. L. W.  
 APPROVED MRD

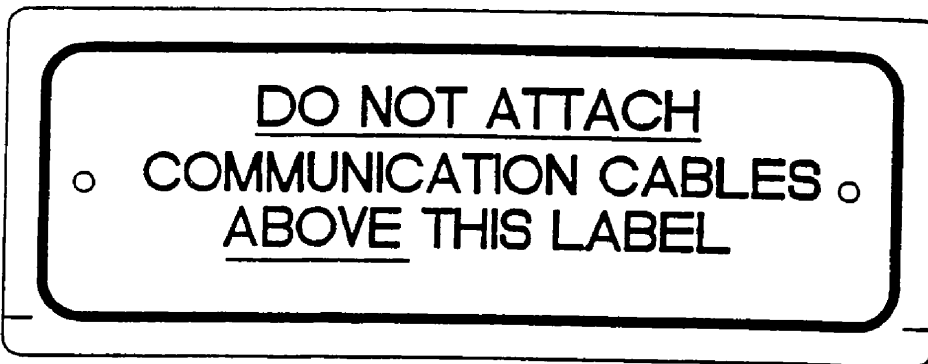
**GULF POWER COMPANY**

3/18/96

PLATE  
**C-10**

# JOINT USE CONSTRUCTION

## SEPARATION OF COMMUNICATION CABLES AND GULF POWER CO. FACILITIES

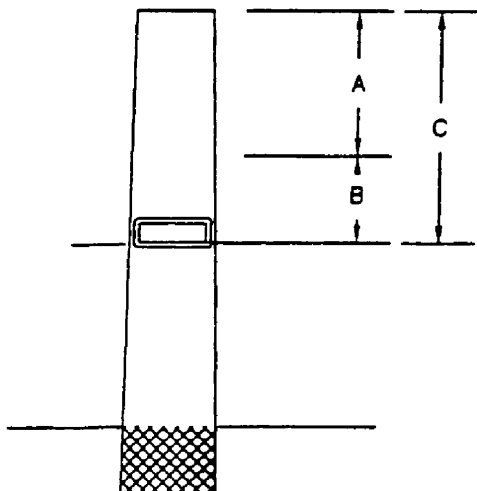


NOTE — — — — —

STORE CODE # 09-5550-4

THIS POLE MARKING LABEL SHOULD BE INSTALLED ON ANY POLE WHERE COMMUNICATION CABLES COULD ATTACH. REFER TO SPEC PLATES #C-1, C-2, C-3, C-4, C-5, C-7, C-8, AND C-9 FOR POINT OF ATTACHMENT.

- NOTE 1. BOTTOM LINE OF POLE MARKING LABEL SHOULD BE ON THE 40" MARK AND SHOULD BE INSTALLED WHERE IT WILL BE VISIBLE FROM THE STREET.
2. SEE ENGINEER CONCERNING ANY REQUEST OF ADDITIONAL POLE HEIGHT ON 45' AND ABOVE POLES.



POLE SIZE	A	B	C
35'	6'	40"	9'-4"
40'	8.5'	40"	11'-10"
45'	13'	40"	16'-4"

DATE 4/5/93  
 ENG J.D.M. DFN E. L. W.  
 APPROVED *[Signature]*

**GULF POWER COMPANY**

PLATE  
**C-11**

One Energy Place  
Pensacola, Florida 32520

850.444.6111



PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781

July 1, 2001  
Invoice No. 01-452

KMC Telecom II Inc.  
Accounts Payable  
220 W Garden St  
Pensacola, FL 32501

We Charge Your Account With:

\$14,881.46

Semi-Annual pole attachment rental billing for the period July 1, 2001 through December 31, 2001,  
at the annual rate of \$38.06 per pole.

	<u>Attachments</u>	<u>Semi-Annual Rates</u>	
Existing	765	19.03	14,557.95
New Attachments:	<u>17</u>	19.03	323.51
Total	<u>782</u>		<u>\$14,881.46</u>

---

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

---

For Internal Use Only:

Distribution:

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

DUE UPON RECEIPT

Credit: 143-99505

Amount: \$14,881.46

 COPY

**GULF POWER COMPANY**



**KMC Telecom II Inc.**

**New attachments since last semi annual bill  
received through June 30th**

<b>Pensacola</b>	<b>3/19/01</b>	<b>thru 06/30/01</b>	<b>PN99-20</b>	<b>17</b>
------------------	----------------	----------------------	----------------	-----------

<b>Total</b>				<u><u>17</u></u>
--------------	--	--	--	------------------

 **COPY**

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
52	01 Jul 2001	00165236	14,881.46	0.00	14,881.46

143-99505

Vendor Number	Name	Total Discounts		
0000000810	GULF POWER COMPANY	\$0.00		
Check Number	Date	Total Amount	Discounts Taken	Total Paid Amount
096686	10 Aug 2001	\$14,881.46	\$0.00	\$14,881.46

REMOVE DOCUMENT ALONG THIS PERFORATION

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND BROWN ARE PRESENT.

FIRST UNION NATIONAL BANK  
 WASHINGTON, DC 20001  
 Date: 10 Aug 2001  
 Pay Amount: \$14,881.46  
 FOURTEEN THOUSAND EIGHT HUNDRED EIGHTY ONE AND 46/100 DOLLAR

GULF POWER COMPANY  
 ONE ENERGY PLAZA  
 PENSACOLA, FL 32504

Authorized Signature: *[Signature]*  
 Authorized Signature

MOORE SECURITY MARK™ • MOORE SECURITY MARK™ • MOORE SECURITY MARK™

**COPY**

**POLE ATTACHMENT AGREEMENT**

**-BETWEEN-**

**GULF POWER COMPANY**

**-AND-**

**MADISON RIVER COMMUNICATIONS, LLC**

Effective ~~7-6~~ 2000

**COPY**



06/19/00



## **POLE ATTACHMENT AGREEMENT**

This Agreement is made and entered into the 6<sup>th</sup> day of July<sup>BB</sup>, 2000, by and between **Gulf Power Company**, a Maine corporation, hereinafter called "Gulf," and **Madison River Communications, LLC**, hereinafter called "Licensee."

### **WITNESSETH:**

**WHEREAS**, Licensee desires to furnish telecommunication services in the area described in Exhibit A, attached hereto, which service will require the installation and maintenance of cables, wires and appliances; and

**WHEREAS**, Licensee desires to attach certain cables, wires and appliances to the poles of Gulf; and

**WHEREAS**, Gulf is required under the provisions of Section 703 of the Telecommunications Act of 1996 to provide non-discriminatory access to its poles to telecommunications carriers and cable television systems; and

**WHEREAS**, to fulfill its obligations under Section 703 of the Telecommunications Act of 1996, Gulf is willing to allow the attachment of cables, wires and appliances to its poles in the area described in Exhibit A in accordance with and to the extent permitted under applicable law, where, in Gulf's judgment, that attachment will not interfere with its own service requirements, including considerations of economy and safety; and where Gulf is protected and indemnified against all costs to and liabilities against it arising from such attachment;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, Gulf and Licensee hereby agree as follows:

## **1. Term of Agreement**

The term of this Agreement shall commence on the 6<sup>th</sup> day of July 2000 and subject to all of the provisions of this Agreement, shall continue in full force and effect thereafter until the 30th day of June 2005, unless earlier terminated according to the provisions of this Agreement. The parties may agree to enter a new Agreement for an additional five (5) year period upon agreement as to terms, including fees and charges.

## **2. Conditions Precedent**

As conditions to Gulf accepting a permit application from the Licensee or granting a permit to the Licensee to attach to Gulf's distribution poles, Licensee shall submit evidence satisfactory to Gulf of the following:

- A. Licensee's authority to erect and maintain its facilities within public streets, highways and other thoroughfares, and any necessary consent or franchise from state or municipal authorities or from the owners of the property upon which the poles are located to construct and maintain its facilities on them; provided, however, at Licensee's request and expense, Gulf may assist Licensee in obtaining any rights-of-way, easements, licenses, authorizations, permits, exceptions and consents from federal, state, and municipal authorities or private property owners that may be required, in addition to those already received by Gulf, for Licensee to place facilities on Gulf's poles;
- B. Licensee's financial stability;
- C. Certificate of Insurance required under Paragraph 20; and
- D. Licensee's operational expertise.

The Licensee will attach copies of the necessary consents or franchises from state or municipal authorities hereto as Exhibit C.

### **3. Application and Permits**

- A. Before attaching to any of Gulf's distribution poles (hereinafter referred to as "Gulf's poles"), Licensee shall submit to Gulf an "Application for Pole Attachment Permit." The only exception shall be as provided in Section 3.B. The application and permit form is set forth in Exhibit B, attached hereto. The application shall be accompanied by two (2) detailed copies of Licensee's construction drawings which clearly identify the poles to which the Licensee will attach if a permit is granted. If the proposed attachment is satisfactory to Gulf, a permit will be granted upon payment of a one-time permit fee of \$1.00 per attachment plus Make Ready costs as described in Section 12.A. Prior to commencement of construction by the Licensee, Gulf may require a pre-construction conference, at Gulf's discretion. Notwithstanding the issuance of an attachment permit, Licensee shall at no time make or maintain an attachment to Gulf's pole or substitute pole if the spacing on the pole, the ground clearance, or other characteristics of the attachment are not in strict conformity with the National Electrical Safety Code (the "Code") and any other applicable codes, rules or regulations of any governing body having jurisdiction. Except as provided in Section 3.B., the failure of the Licensee to obtain such a permit prior to making an attachment shall constitute a trespass and a violation of this Agreement. Gulf may forbid new attachments to its poles by Licensee in the event Licensee is in default hereunder.
- B. Attachment to Gulf's poles without obtaining a prior permit shall be allowed only for service drops. Licensee shall ensure that such attachments are in strict conformity with the Code and any other applicable codes, rules or regulations of any governing body having jurisdiction. In particular, Licensee shall not attach if Make Ready work is required to obtain adequate clearance or for any other reason. Any attachment made not in conformity with these requirements

constitutes a default under this Agreement. Gulf reserves the right to suspend this provision in the event it is determined that Licensee is not properly reporting the installation of service drops.

- C. At the end of each month, Licensee shall submit a permit application (Exhibit D) listing all such service drop attachments not previously permitted. The listing shall include the location or address, pole location number (TLN), number of poles attached to, and date of attachment. Each application shall include a one-time permit fee of \$1.00 per attachment.

#### **4. Payment and Billing**

- A. Licensee shall make a semi-annual payment to Gulf for attachments to poles under this Agreement. The semi-annual payment amount per pole effective July 1, 2000 shall be as stated in Exhibit E attached hereto and made a part hereof. The semi-annual payment amount per pole is subject to an annual revision by Gulf prior to each July 1 billing. If revised, Exhibit E may be replaced without the necessity of an amendment to this Agreement by the attachment of a substitute Exhibit E which shall be identified by the effective date of the substitute Exhibit E and signed by an authorized representative of Gulf and sent to Licensee. Thereupon the substitute Exhibit E shall, on its effective date, automatically supersede all previous versions of Exhibit E and become part of this Agreement by incorporation and reference.
- B. Billing statements for the semi-annual payment shall be rendered by Gulf on or before January 15th and July 15th of each year. All attachments permitted and those which exist on Gulf's poles on December 31st and June 30th of each year will be invoiced. Licensee shall pay Gulf in advance for the succeeding six (6) months and such payment shall be based on the number of attachments permitted whether an attachment has been made or continues. Upon the

issuance of each attachment permit, Licensee shall make the payment to Gulf for such attachment based on the time remaining between the date the permit is granted and the end of the semi-annual period. Thereafter, such attachment shall be billed by Gulf with all other attachments on a semi-annual basis. If a field survey, as described in Section 15.B., indicates that not all of the attachments have been permitted, the difference between the number of attachments counted and the number of attachments permitted shall be billed as if the attachments were in place 2 1/2 years prior to the field survey. The amount due from Licensee for such attachments shall be based on the semi-annual billing amount per pole in effect during each of the prior billing periods, plus eighteen (18%) percent interest per annum. Gulf shall notify Licensee of the amount due and payment shall be due upon receipt of such notice. All bills for the semi-annual payment, for inspections, and for other charges under this Agreement shall be due upon receipt. Failure to pay bills within thirty (30) days after receipt is a default hereunder for which Gulf may terminate this Agreement. All bills thirty-one (31) days past due shall bear interest at eighteen (18%) percent per annum and interest shall begin to accrue as of the date due.

## **5. Bond**

At the beginning of or during the contract period Licensee may be required at Gulf's discretion to furnish bond or satisfactory evidence of contractual insurance coverage to guarantee the payment of any sums which may become due to Gulf for attachment payments, for work performed for the benefit of Licensee, and for other charges under this Agreement including the removal of attachments upon termination of this Agreement in the amount as specified in the following schedule:

Number of Attachments	Amounts of Coverage
0-500	\$10,000
501-1000	\$20,000
1001-1500	\$30,000
1501-2000	\$40,000
2001-2500	\$50,000

The amount of the bond shall continue to increase by \$10,000 for each increase in the number of attachments by increments of 500 up to a maximum of \$250,000.

## **6. Attachment and Maintenance**

- A. As used herein, an attachment is defined as the material or apparatus which is used by Licensee in the construction, operation, or maintenance of its plant and which is attached to Gulf's poles. One attachment is defined as a single wire or cable attached to the pole and other equipment, apparatus or facilities of Licensee lashed to such wire or cable or (except in the case of additional wires or cables) attached to the pole and occupying a vertical section of the pole not exceeding six (6) inches above and below the point of attachment of the single wire or cable. Licensee shall erect and maintain at its own expense cables, wires and appliances in safe condition and in thorough repair. It shall be the sole obligation of Licensee to ensure compliance with the applicable requirements and specifications of the Code and amendments thereto, including clearance requirements between power and cable lines, safe work practices, and any other applicable codes, rules or regulations now in effect or which hereafter may be issued of any governing body having jurisdiction. Upon identification of any violation by Licensee of any code, rule, or regulation Licensee shall immediately

institute corrective action, at its own expense. In the event Licensee fails to correct any violation within a reasonable time, Gulf may take whatever corrective action it deems appropriate in its sole discretion. Recognizing that strict compliance with the terms of this agreement is essential to the fair and equitable allocation of limited pole space among competing Licensees, and as a deterrent to such non-compliance in order to preserve the public welfare, Licensee shall pay Gulf its actual costs for such corrective action plus fifteen (15%) percent. Licensee further agrees to indemnify and hold Gulf harmless for any injury or damages, including but not limited to actual damage awards, fines, settlements, attorney's fees and court or administrative costs, resulting from Licensee's noncompliance with any applicable code, rule or regulation as described above.

- B. Licensee shall also comply with Gulf's specifications for construction. Licensee shall be responsible for installing anchors and guys of sufficient size and strength to accommodate their own load. In order to avoid placing undue stress on Gulf's poles, necessary anchors and guys shall be installed prior to tensioning of the cable strand. Attached hereto are drawings marked Plates 1 through 11 inclusive which are descriptive of required construction under some conditions and are to serve as construction guides but may not apply in all situations. These drawings may be changed from time to time by Gulf and do not supersede any applicable Code requirements, except to the extent that they are more stringent than the Code.

## **7. Attachment Identification**

- A. Licensee may be required to mark its facilities in accordance with the Florida Utilities Coordinating Committee guidelines, or other method acceptable to Gulf. In any given area, the requirement to mark will depend on the date of the original agreement between Licensee and Gulf for that area, or the date of any

amendment to such agreement to expand to that area. The Licensee with the earliest agreement or amendment for a given area shall not be required to mark its facilities. Subsequent Licensees shall be required to mark all facilities installed in the given area.

- B. If Licensee follows Florida Utilities Coordinating Committee guidelines, Licensee shall request registration of a unique marking tag for its attachments, if not already registered. Gulf will forward Licensee's request to the appropriate authority.

## **8. Gulf's Service Requirements**

Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner best suited to fulfill its own service requirements, including considerations of economy and safety. Use of Gulf's poles under this Agreement will neither create nor vest in Licensee any ownership or property rights in Gulf's poles, notwithstanding the length of use. Gulf is in no way required to keep in place any of its poles or other facilities for a period longer than is necessary to meet its own service requirements. Gulf reserves the right to refuse to grant an attachment permit to any pole on the basis of insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. Gulf will exercise due care to avoid interfering with Licensee facilities. However, Gulf will in no way be liable to Licensee for interruption of Licensee's service or for interference with the operation of Licensee's cables, wires and appliances, except for Gulf's negligence.

## **9. No Interference**

Licensee's attachments shall not interfere with the present or future use and maintenance of Gulf's poles by Gulf or with other parties' use of Gulf's poles nor interfere with the use and maintenance of facilities placed on the poles or which may



from time to time be placed thereon, provided such other parties' use is in accordance with applicable regulations and specifications of Gulf and the Code, and other applicable codes, rules and regulations. Gulf shall be the sole judge as to the requirements for the present or future use of its poles and facilities and of any interference therewith.

## **10. Rules and Procedures**

Gulf reserves the right to establish rules or procedures to implement and allocate Make Ready billing pursuant to Section 12.A. and to provide for an orderly process of pole attachment in the event Licensee and one or more other parties desire to attach to the same poles and Licensee shall adhere to such rules or procedures.

## **11. Order on the Pole**

- A. The existing telephone companies (Local Exchange Carrier) contracting for attachments to Gulf's poles, pursuant to a joint use agreement, are to be assigned to the lowest relative position on any given pole. Other Licensees contracting with Gulf for pole attachments shall attach above the telephone facilities. Among two (2) or more Licensees, position of attachments on the pole shall be determined according to the date of the original agreement between the Licensee and Gulf for a given area, or the date of any amendment to such agreement to expand to a given area. In any given area, the Licensee with the earliest agreement or amended agreement shall occupy the first position above the telephone facilities, if space is available. The second Licensee shall attach to the second position above the telephone facilities, if space is available, and so on.
- B. When two (2) or more Licensees desire to attach to the same Gulf poles, preference for attachment will be given in order of application for permit

received. The attaching Licensee shall attach in their assigned space, according to Section 11.A., if space is available. If any company with priority under paragraph 11.A. above, has not exercised its right to attach to space on a given pole, companies attaching under subsequent agreements may make provisional attachment in the space which ordinarily would be available to the company with priority, if their own assigned space is not available. However, if the company having priority subsequently requests attachment rights, any other companies with attachments in the area to which the earlier companies have priority shall relinquish their position and reattach their facilities farther up the pole as provided in Section 12 below. The company requesting attachment rights shall pay all make ready costs, if any, associated with such reattachment, and contact the other companies to initiate their transfer.

## **12. Make Ready, Substitutions, Changes and Rearrangements**

### **A. Make Ready.**

(1) If it should appear to Gulf that a pole is too short, or inadequate, or any rearrangement of facilities of Gulf or other parties is required to accommodate the attachments of Licensee, Gulf shall notify Licensee of the pole substitutions, additions, changes and rearrangements which Gulf deems necessary and their estimated cost. Such notice shall constitute a denial of the applicable permit(s) unless Licensee authorizes Gulf to make the substitutions, additions, changes and rearrangements specified. Licensee shall authorize the make ready work within thirty (30) days after notification from Gulf, otherwise the permit will be denied. Upon such authorization, Licensee shall reimburse Gulf for all costs incurred by it in connection with such changes. Licensee shall reimburse the owner of any other facilities attached to that pole for any reasonable expense incurred by that owner in conjunction with such changes.

Licensee shall pay to Gulf at the time of the issuance of each attachment permit Gulf's estimated cost of providing the space for all of the attachments covered by that permit pursuant to Section 3 of this Agreement.

(2) In the event the Licensee elects to install their facilities underground in Gulf's pole line, they shall remain underground for a minimum of five (5) spans before attaching to Gulf's poles. Where Licensee shows sufficient reason, Gulf may grant a waiver of this provision in specific cases.

**B. *Substitutions, Changes, and Rearrangements.***

(1) Licensee shall, at its own expense, install the attachments and maintain them in safe condition in a manner satisfactory to Gulf. Licensee shall, at its own expense, at any time requested by Gulf for good cause remove, relocate, replace, and renew its facilities on the poles, transfer them to substituted poles or perform any other work in connection with the facilities that Gulf may require. Licensee shall notify Gulf immediately after completing the requested work. If the Licensee fails to comply with Gulf's request within thirty (30) days of receipt of such request, Gulf may perform or have performed such work at Licensee's expense with no liability therefor. Licensee shall pay Gulf its cost for such work plus fifteen (15%) percent.

(2) In any case deemed by Gulf to be an emergency, Gulf shall attempt to notify Licensee, and the parties shall coordinate the performance of any emergency measures involving Licensee's facilities. If it is practicable under the circumstances, Licensee shall be provided the opportunity to perform the emergency measures on its facilities. When an emergency exists such that advance notice and/or coordination are not practicable, Gulf may, at the expense of Licensee, arrange to remove, relocate, replace or renew the facilities of Licensee, transfer them to substituted poles or perform any other work in connection with the facilities that may be required in the maintenance,

replacement, removal or relocation of the poles or the facilities on them. Under such circumstances, Gulf shall notify Licensee as soon as practicable after taking such action. An emergency includes, but is not limited to, customer outages and circumstances that threaten to cause property damage and/or personal injury. Gulf will invoice Licensee for actual expenses incurred in performing these emergency measures.

### **13. Use of Qualified Employees and Contractors**

The Licensee shall ensure that its employees and contractors are knowledgeable of the requirements of the Code and other safe work practice codes for maintaining proper work practices in order to avoid dangerous conditions. Licensee expressly agrees to take all necessary steps to ensure that its employees and contractors are adequately trained and qualified to work with and around energized conductors, and shall further ensure that its employees and contractors are appropriately and strictly supervised while performing work on Gulf's poles. Licensee agrees to indemnify and hold harmless Gulf for any failure of Licensee, its employees or contractors to fulfill their obligations to perform work in a safe and proper manner.

### **14. Damage to Facilities**

Licensee shall exercise caution to avoid damage to facilities of Gulf and of others on Gulf's poles. Licensee assumes responsibility for any and all loss or expense arising out of such damage caused by it and shall reimburse Gulf or others occupying Gulf's poles for such loss or expense. Licensee shall immediately report damage caused by it to Gulf and to others occupying Gulf's poles which are in any way affected by such damage.

## 15. Inspections and Surveys

- A. **Inspections.** Gulf reserves the right to inspect each new attachment and to make periodic inspections of all attachments as plant conditions may warrant. Licensee agrees to pay a \$25.00 per attachment violation fee for each Code violation found during such inspections. In addition, Licensee agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments found during these inspections. Gulf's right of inspection as provided herein in no way operates to relieve Licensee of any responsibility, obligation or liability arising hereunder nor does it impose any obligation on Gulf.
- B. **Field Surveys.** Gulf reserves the right to make field surveys of its poles in the area described in Exhibit A as it may be amended from time to time pursuant to subparagraph C hereof, at intervals not more often than once every five (5) years, for the purpose of determining the actual number of Licensee attachments. Licensee agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments in excess of ten (10) or in excess of two percent (2%) of the last verified reported total, whichever is greater. Gulf shall bear the cost of such field surveys, unless the number of attachments counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued. In the event the number counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued, Licensee shall pay, in addition to the violation fee, the cost of field surveys attributable to the area described in Exhibit A as amended, pursuant to Section 4 of this Agreement. Gulf shall notify Licensee at least thirty (30) days in advance of the field survey and shall specify the method to be used in performing the survey. Should Licensee disagree with results of the survey, a new survey may be performed by Gulf and Licensee at Licensee's sole expense.

C. **Expansion of Service Area.** Should at any time following execution of this Agreement the Licensee desire to expand or modify the area described in Exhibit A, Licensee shall provide Gulf in writing an amended Exhibit A which shall include such areas, and shall receive Gulf's written approval prior to such expansion or modification becoming a part of this agreement. No new attachments shall be made in the amended area before the amended Exhibit A is approved.

## **16. Franchises**

Licensee shall provide copies of franchise renewals to Gulf immediately upon Licensee's receipt of same. In the event Licensee fails to acquire or retain a franchise required within the area described in Exhibit A, such failure shall operate as grounds upon which Gulf may cancel the permits in or terminate this Agreement as to the area affected by such franchise pursuant to Section 23.

## **17. Removal**

Licensee may at any time remove its attachments from any pole upon prior written notice to Gulf. Upon verification by Licensee to Gulf that pole attachments have been removed, Gulf will reimburse Licensee the amount remaining from the date of the removal to the end of the semi-annual payment period which will be included as a credit on the next semi-annual bill.

## **18. Pole Abandonment**

If Gulf desires at any time to abandon any pole, it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. Licensee may then purchase the pole from Gulf at fair market value; however, if at the expiration of such period Licensee has not removed all of its attachments

therefrom or purchased the pole, Gulf may proceed to remove such attachments at the expense of Licensee with no liability therefor. Licensee shall pay Gulf for its cost of removal plus fifteen (15%) percent.

## **19. Indemnification**

Licensee shall indemnify and hold harmless Gulf and its representatives, agents, officers and employees from and against any and all loss, damage, or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries (including death) to persons and for damages to property caused by or arising out of any negligent (including strict liability), wanton or intentional act or omission of Licensee, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, in any way associated or connected with the performance of the obligations herein, in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent, or contributory negligence of Gulf, or its representatives, agents, officers or employees. The indemnity obligations hereunder shall extend only to that proportion of the loss, damage or liability which is directly attributable to the negligence, wanton or intentional acts of the Licensee, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable. It is the expressed intent of the parties that Gulf shall be liable only for those damages attributable to its own negligence and shall not be liable for any damages (either economic or non-economic) attributable to the acts of any other person or entity. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements and judgments associated with such demands, claims, suits or actions. The Licensee shall make an immediate report to Gulf of the occurrence of any personal injury or property damage while working on Gulf's facilities.

## **20. Insurance**

Licensee shall procure and maintain insurance to protect it and Gulf against claims for damage to property or injury to or death to persons, as described but not limited by Section 19, in the amount of at least \$1,000,000 for damages arising from one occurrence, which amount may be modified by Gulf for good cause upon thirty (30) days prior written notice to Licensee. Upon such notification, Licensee shall procure and maintain insurance in the amount specified in the notification such amount not to exceed \$5,000,000. Licensee shall also carry such insurance as will protect it from Workmen's Compensation Laws in effect as may be applicable to it. All insurance requirements shall be kept in force by Licensee for the life of this Agreement and the company or companies issuing such insurance shall be approved by Gulf such approval not to be unreasonably withheld. Gulf shall be an additional insured under Licensee's liability insurance policy and Licensee shall furnish to Gulf, a certificate showing the issuance of such insurance and the insurance company's agreement that it will not cancel, terminate or change its policy except after thirty (30) days prior written notice to Gulf. Licensee's obligation to indemnify Gulf specified in Section 19 is not limited to the amount of liability insurance coverage purchased by Licensee.

## **21. Rights-of-Way**

Gulf does not warrant the extent of its rights-of-way. Upon notice from Gulf to Licensee that the use of any pole is forbidden by governmental authorities or property owners, the permit covering the use of that pole shall immediately terminate, and Licensee shall remove its cables, wires and appliances immediately from the affected poles.

## **22. Types of Service**

Licensee is authorized to attach its cable plant to Gulf's poles for the purpose of delivering cable communication services to Licensee's commercial and residential



subscribers in the area described in Exhibit A, pursuant to the authority granted by the appropriate governmental entities, as may be required.

### **23. Termination and Cancellation**

- A. **Default.** This Agreement may be terminated by either party upon default of any term of this Agreement by the other party if such default is not cured within thirty (30) days of receipt of written notice; provided, however, in the event that either party begins to initiate action to cure a non-monetary default within thirty (30) days of notice and diligently continues such action until the default is fully cured, then, notwithstanding the foregoing, the non-defaulting party may not, at any time prior to sixty (60) days from the date of the original default notice, terminate this Agreement or cancel the permits covering the poles as to which such default has occurred. During the continuance of any default after such notice and cure periods, the non-defaulting party may terminate this Agreement by giving written notice of termination to the defaulting party, and the non-defaulting party may exercise any other remedies it may have under this Agreement or at law. Should Licensee fail to cure or take diligent action to cure a default within the requisite period following written notice to cure by Gulf, Licensee shall immediately remove all affected attachments. Should Licensee fail to remove its attachments after such termination or cancellation within the (30) day period after Gulf's written notice to cure a default, Gulf may proceed to do so at the expense of Licensee with no liability to Gulf therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent. If Licensee fails to perform work required to cure a default, Gulf may elect to perform such work at the expense of Licensee with no liability therefor. Licensee shall pay Gulf its costs for performing such work plus fifteen (15%) percent.

B. **Termination Due to Nonattachment.** If Licensee has made no attachments to any of Gulf's poles within the area covered by an attachment agreement within one (1) year after the date of the agreement, Gulf may terminate the agreement immediately and shall provide notice to the Licensee of such termination thereafter. Likewise, if Licensee under an existing attachment agreement enters into an amendment to that agreement to include a new area but does not attach to any Gulf's poles within the new area within one (1) year after the date of the amendment, Gulf may terminate the amendment in the same manner as it would be able to terminate the agreement. Termination of any such amendment shall not affect the original agreement nor the area covered by the original agreement, if attachments are made under the original agreement within the applicable one (1) year period. If Licensee makes attachments to Gulf's poles under an agreement or amendment of agreement but removes all such attachments and fails to make any new attachment for a period of one (1) year after the removal of the last attachment, Gulf may terminate the agreement or amendment of agreement as provided above.

C. **Obligations Upon Expiration.** Licensee shall, within thirty (30) days following the expiration of this Agreement remove its attachment from Gulf's poles. Should Licensee fail to remove its attachments within thirty (30) days after expiration of the term Gulf may proceed to do so at the expense of Licensee with no liability of Gulf therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent.

D. **Obligations Prior to Removal of Attachments.** Upon expiration or termination of this Agreement, the rights and obligations conferred hereunder shall remain in full force and effect until such time as Licensee's attachments are removed from Gulf's poles, in accordance with Section 23.C., except that no new attachments shall be made.

**E. *Temporary Extension of Agreement Beyond Expiration or Termination.***

Upon expiration or termination and with the prior written authorization of Gulf, all rights and obligations conferred hereunder may remain in full force and effect, including the right to apply for and make new attachments, in the event Gulf determines that the parties are actively and in good faith negotiating a new agreement. If, however, in Gulf's sole discretion it is determined that negotiations have been discontinued or are not proceeding in good faith, then no new attachments shall be permitted or made; all other rights and obligations conferred hereunder shall remain in full force and effect until Licensee's attachments have been removed from Gulf's poles. Gulf may terminate the negotiation period upon breakdown of negotiations or at any time upon thirty (30) days prior written notice to Licensee. Licensee shall remove its attachments from Gulf's poles within thirty (30) days after such notice. If not so removed, Gulf may remove such attachments at Licensee's expense with no liability therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent.

**F. *Termination or Modification upon a Change of Law.*** If, in a final and unappealable order or judgment, the Federal Communications Commission (the "FCC") or any governing body or court with appropriate jurisdiction repeals, overrules or modifies 47 U.S.C. § 224 insofar as it requires Gulf to provide pole access to Licensee, then Gulf shall be entitled to terminate Licensee's rights hereunder including, but without limitation, Licensee's right to attach to any or all of Gulf's poles with sixty (60) days notice or after such period of notice as may be required by law, whichever is longer. If, in a final and unappealable order or judgment, the FCC or any governing body or court with appropriate jurisdiction either (1) repeals, overrules or modifies 47 U.S.C. § 224 insofar as it sets an amount that Gulf may charge Licensee, or (2) orders or adjudges a payment

amount greater than the payment amount set forth in Section 4 and Exhibit E hereof, then Gulf shall be entitled to modify the payment amount for attachment set forth in Section 4 and Exhibit E hereof to the extent then permitted by law on a prospective basis.

#### **24. Rights Previously Conferred**

Nothing in this Agreement shall be construed as affecting the rights or privileges to use Gulf's poles previously conferred by Gulf to others who are not parties to this Agreement. Gulf may continue to confer such rights or privileges. The attachment privileges granted to Licensee in this Agreement are non-exclusive and subject to contracts and arrangements between Gulf and others who are not parties to this Agreement.

#### **25. Waiver**

Failure by Gulf to enforce any of the terms of this Agreement shall not constitute a waiver of future compliance with any such term or terms.

#### **26. Notices and Requests**

All notices and requests regarding the attachment, maintenance or removal of Licensee's attachments shall be sent electronically using the National Joint Utilities Notification System. All other notices and requests under this Agreement must be given in writing by registered or certified mail, return receipt requested, and mailed with sufficient postage prepaid to the party to be given such notice.

**Notice to Gulf shall be addressed to:**

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**Project Services Manager  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520**

**Notice to Licensee shall be addressed to:**

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**Director of Business Development  
Madison River Communications, LLC  
P.O. Drawer 670  
Foley, AL 36536**

## **27. Assignment**

Licensee shall not assign, transfer or sublet any right or privilege hereby granted in this Agreement; sublet or allow the use of its cable(s), equipment, facilities, or attachments; nor allow any third party to attach to its cable(s), equipment, facilities, or to the pole, without first requesting and receiving the prior written consent of Gulf. Such request shall be accompanied by the information described in Section 2 and delivered to Gulf in accordance with Section 26. Gulf shall grant or deny a request for consent to assign, transfer, or sublet within sixty (60) days from receipt of the request. Gulf will not unreasonably withhold consent; however, at its option, Gulf may require the execution of a new agreement in lieu of granting its consent for assigning, transferring, or subletting this Agreement or any of the rights and privileges hereunder. Before executing a new agreement or granting consent for assigning, transferring, or subletting this Agreement or any rights and privileges hereunder, Gulf, at its option and at Licensee's expense, may inspect Licensee's attachments and facilities to verify the number of attachments and to ensure compliance with Section 15 and the payment of all fees and amounts required under Sections 4 and 15. Failure by the Licensee to obtain the consent as required by this Section 27 shall constitute sufficient grounds for Gulf, at its option, to immediately deem and declare the Licensee in default and to

immediately terminate this Agreement, notwithstanding any other provision of this Agreement.

## **28. Enforcement**

If any of the terms and provisions of this agreement are breached by a party hereto, the other party may elect to seek enforcement of this agreement by seeking injunctive or legal relief and any and all remedies to which it may be entitled under state or federal law. In the event it becomes necessary for either party to seek judicial enforcement of this agreement or other remedies for breach thereof, the prevailing party shall be entitled to recover attorney's fees and court costs from the non-prevailing party.

## **29. Laws of State**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

## **30. Severability**

If any covenant, condition, or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction after construing this Agreement, the invalidity or unenforceability thereof shall in no way affect any of the other covenants, conditions, or provisions hereof, provided that such remaining covenants, conditions, or provisions can thereafter be applicable and effective without material prejudice to either Gulf or Licensee. This instrument embodies the entire Agreement of the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Gulf and Licensee and the authorized representatives of Gulf and Licensee.

IN WITNESS WHEREOF, Licensee and Gulf have caused this Agreement to be executed by their authorized representatives and be effective as of the day and year first written above.

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**Madison River Communications, LLC**

WITNESS:

By: Matthew Scrimgeour

By: Emily Hubler

Title: VP General Counsel & Asst. Sec'y

Title: VP, CTO, NECT

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**Gulf Power Company**

ATTEST:

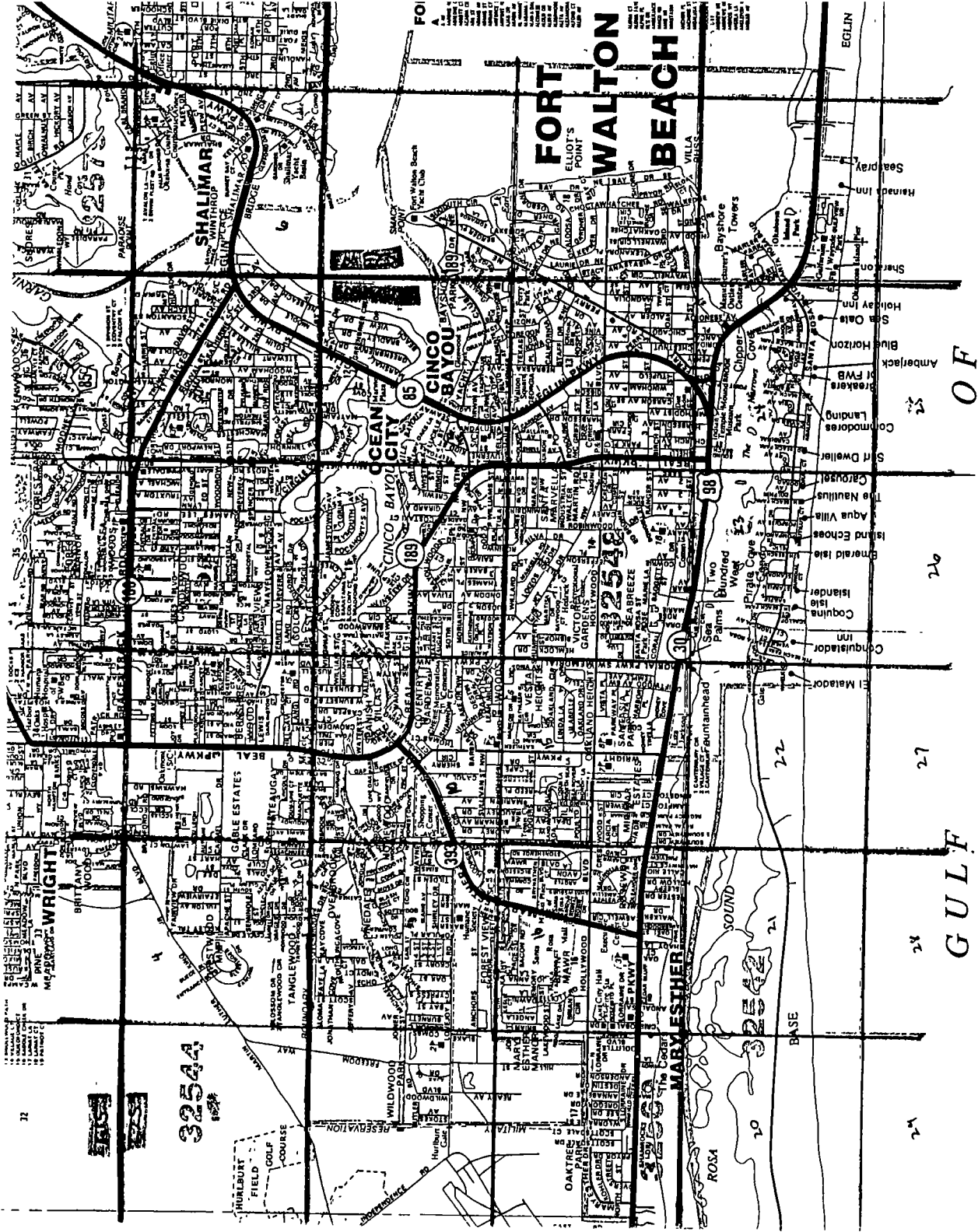
By: Lynda G. Melone

By: [Signature]

ASST.

Secretary

Vice President — Power Delivery  
and Customer Operations [Signature]



# FORT WALTON BEACH

ELIOT'S POINT

32544  
1929

GULF OF MEXICO

MARY ESTHER

ROSA SOUND

BASE

SHALIMAR

CINCO BAYOU CITY

CINCO BAYOU CITY

WRIGHT

22

21

23

27

26

25

10

21

22

98

95

189

100

237

237

237



**EXHIBIT A**

**DESCRIPTION OF SERVICE AREA**

Name of Company: Madison River Communications, LLC

For Agreement Dated: July 6<sup>th</sup>, 2000  
BB

A description of the geographical boundaries of the Agreement by  
Township, Range and Section:

T2S R 24W SECTION 10, 11, 12, 13, 14, 15

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**Madison River Communications, LLC**

**WITNESS:**

By: Deborah L. Burgett

By: [Signature]

Title: Contract Administrator

Title: DIRECTOR

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**Gulf Power Company**

**ATTEST:**

By: Linda G. Melone

By: [Signature]

A.S.T.  
Secretary

Vice President, Power Delivery  
and Customer Operations MB

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**EXHIBIT B**

**APPLICATION FOR POLE ATTACHMENT PERMIT**

City of \_\_\_\_\_  
State of \_\_\_\_\_  
County \_\_\_\_\_  
Date \_\_\_\_\_

NAME OF LICENSEE: Madison River Communications, LLC

In accordance with the terms of Agreement dated \_\_\_\_\_, 2000 application is hereby made for permit to make attachments to the following poles:

No.	TLN Number (If available)	No. of Poles	Service Address or Location
1.	-		
2.	-		
3.	-		
4.	-		
5.	-		
6.	-		
7.	-		
8.	-		
9.	-		
10.	-		
11.	-		
12.	-		
13.	-		
14.	-		
15.	-		
16.	-		

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Licensee

Permit granted \_\_\_\_\_, \_\_\_\_\_, except is subject to Licensee's approval below if pole rearrangements are required. Estimated cost of pole rearrangements required to provide space for Licensee's attachments: \$ \_\_\_\_\_ as shown on DSO No. \_\_\_\_\_.

**GULF POWER COMPANY**  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Licensor

The above charges for rearrangements approved  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Licensee

Permit No. \_\_\_\_\_  
Total Poles \_\_\_\_\_

**EXHIBIT D**  
**APPLICATION FOR POLE ATTACHMENT PERMIT**  
**AFTER-THE-FACT FORM FOR SERVICE DROPS**

City of \_\_\_\_\_  
 State of \_\_\_\_\_  
 County \_\_\_\_\_  
 Date \_\_\_\_\_

**NAME OF LICENSEE:** Madison River Communications, LLC

In accordance with the terms of Agreement dated \_\_\_\_\_, 2000 application is hereby made for permit to make attachments to the following poles:

No.	TLN Number (if available)	Service Address or Location	No. of Poles	Date Attached
1.	-			
2.	-			
3.	-			
4.	-			
5.	-			
6.	-			
7.	-			
8.	-			
9.	-			
10.	-			
11.	-			
12.	-			
13.	-			
14.	-			
15.	-			
16.	-			

Licensee certifies that the above attachments have been installed on Gulf's poles in strict conformity with the National Electrical Safety Code and any other applicable codes, rules, or regulations of any governing body having jurisdiction.

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Licensee

<b>GULF POWER COMPANY</b>	
Permit granted this day of _____, _____.	
Month	Year
By: _____	Permit No. _____
Title: _____	Total Poles _____

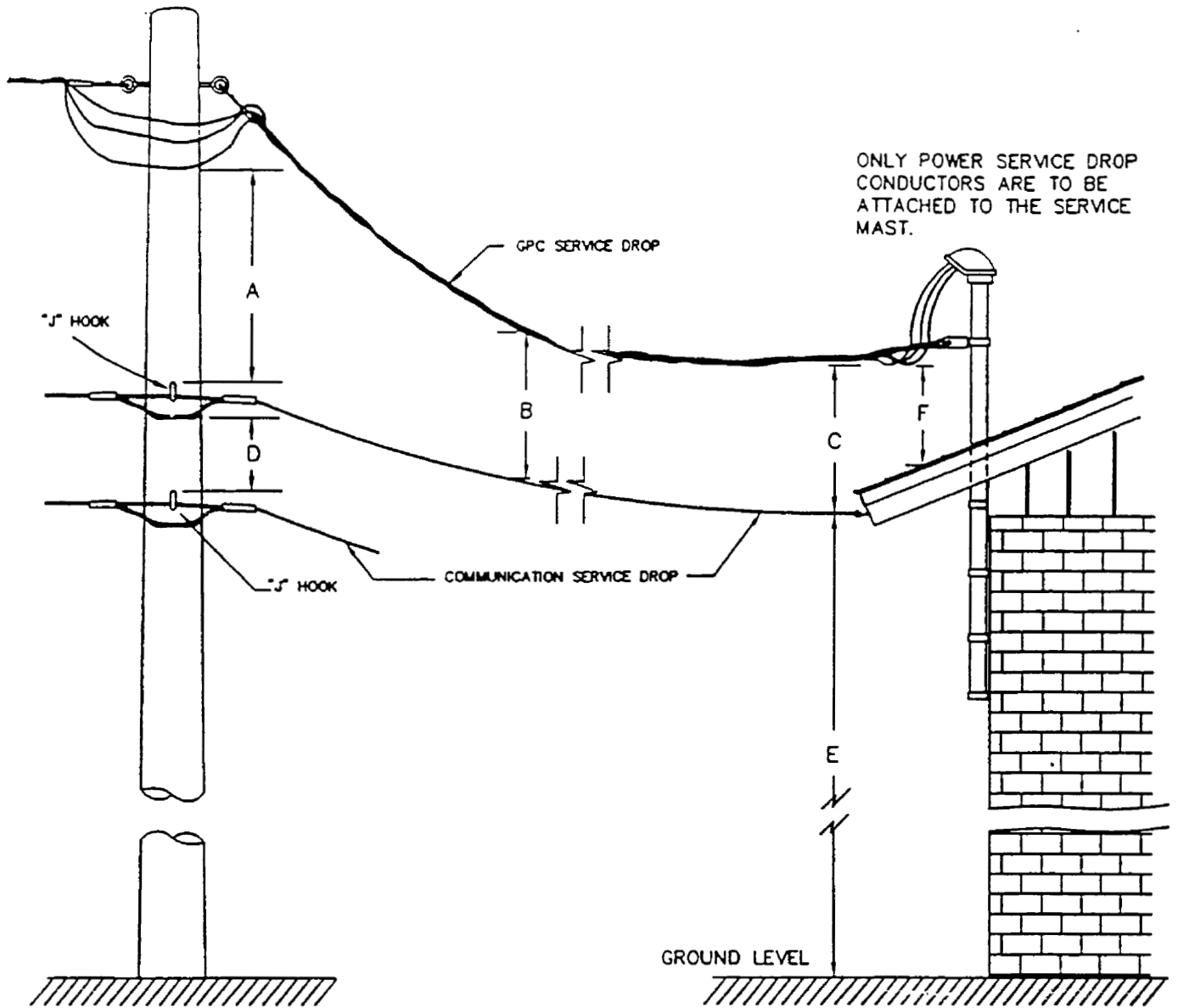
**EXHIBIT E**

**Madison River Communications, LLC**

**Semi-annual Payment Amount**

Effective July 1, 2000, the semi-annual payment to be made by Licensee, Madison River Communications, LLC, to Gulf Power Company under the Pole Attachment Agreement, dated 7-6-2000<sub>BB</sub>, 2000 is \$19.03 per pole. This payment amount per pole shall remain in effect unless revised by Gulf in accordance with Section 4 of the Pole Attachment Agreement.

# SEPARATION OF SERVICE DROPS

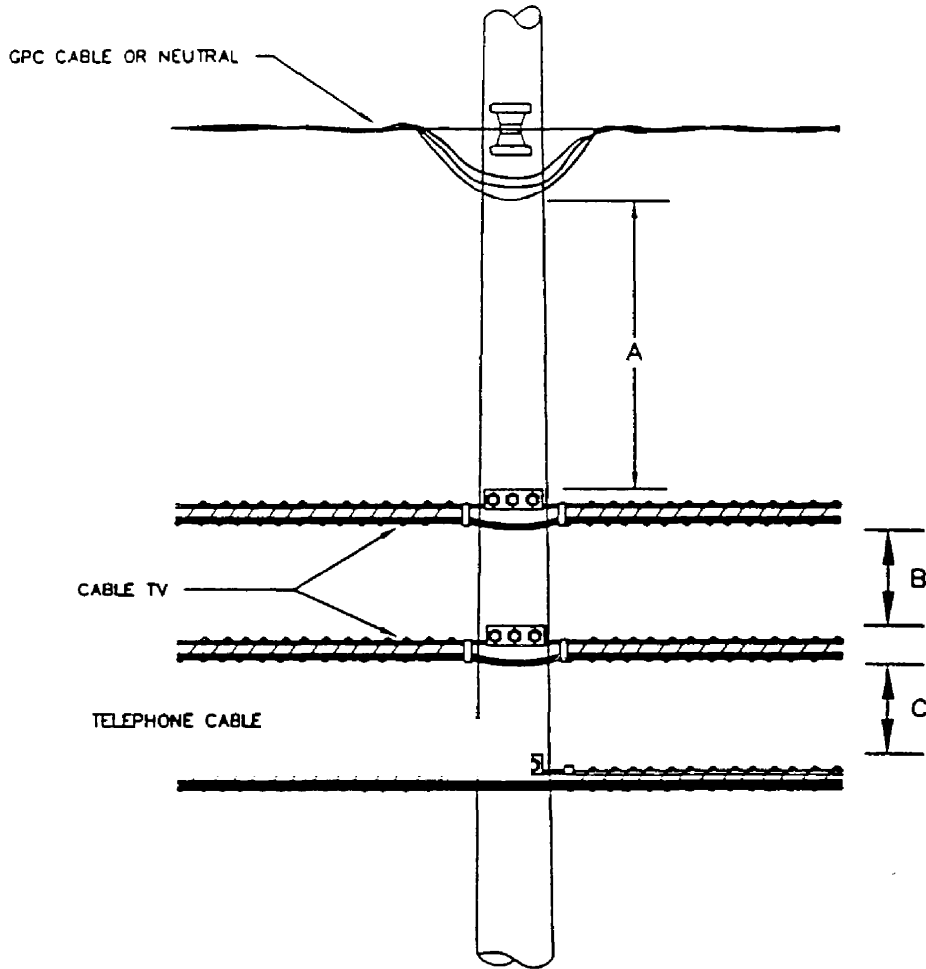


DIMENSION LETTER	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	12 INCHES	235 C1 EXCEPTION ③
C	12 INCHES	235 C1 EXCEPTION ③
D	12 INCHES	GPC REQUIREMENT
E	9.5 FEET MIN.	TABLE 232-1
F	18 INCHES	234 C3

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE

DATE <u>5/29/92</u>	<b>GULF POWER COMPANY</b>	PLATE
ENG. <u>R.B.</u> DRN. <u>E. L. W.</u>	<u>11/18/94</u>	<b>C-1</b>
APPROVED <u>[Signature]</u>	<u>3/20/95</u> <u>8/28/95</u>	

# SEPARATION AT POLE PARALLEL FACILITIES



DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	12 INCHES	GPC REQUIREMENT
C	12 INCHES	GPC REQUIREMENT

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS  
MEASURED SUFACE-TO-SURFACE

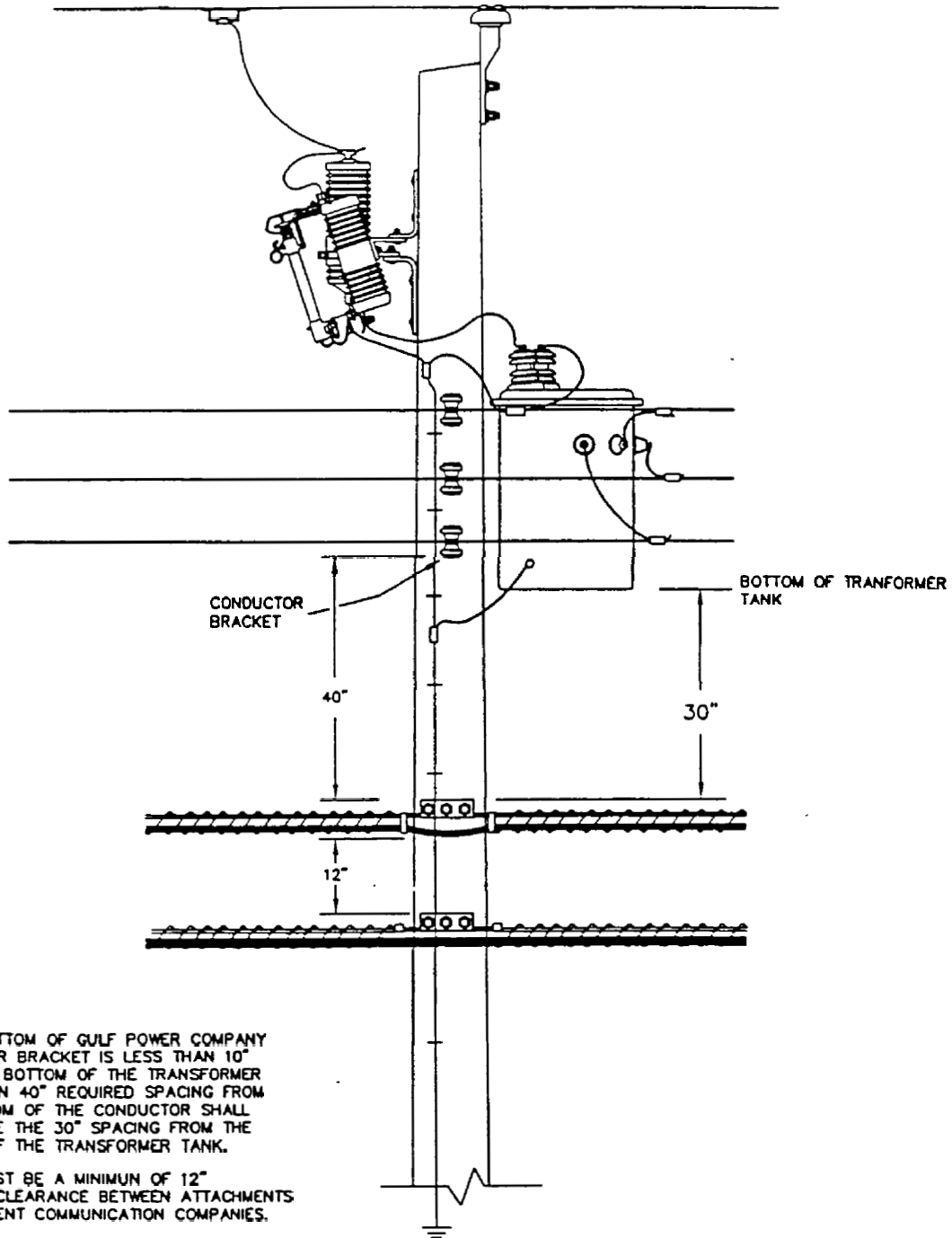
DATE 5/28/92  
 ENG R.B. DRN E. L. W.  
 APPROVED [Signature]

**GULF POWER COMPANY**

3/18/96 \_\_\_\_\_

PLATE  
**C-2**

# JOINT USE CONSTRUCTION TYPICAL SINGLE TRANSFORMER INSTALLATION 7.2 KV CONSTRUCTION



1. IF THE BOTTOM OF GULF POWER COMPANY CONDUCTOR BRACKET IS LESS THAN 10" FROM THE BOTTOM OF THE TRANSFORMER TANK, THEN 40" REQUIRED SPACING FROM THE BOTTOM OF THE CONDUCTOR SHALL SUPERSEDE THE 30" SPACING FROM THE BOTTOM OF THE TRANSFORMER TANK.
2. THERE MUST BE A MINIMUM OF 12" VERTICAL CLEARANCE BETWEEN ATTACHMENTS OF DIFFERENT COMMUNICATION COMPANIES.
3. THE DIMENSIONS OF THIS PLATE DO NOT SUPERCEDE ANY APPLICABLE NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.
4. THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

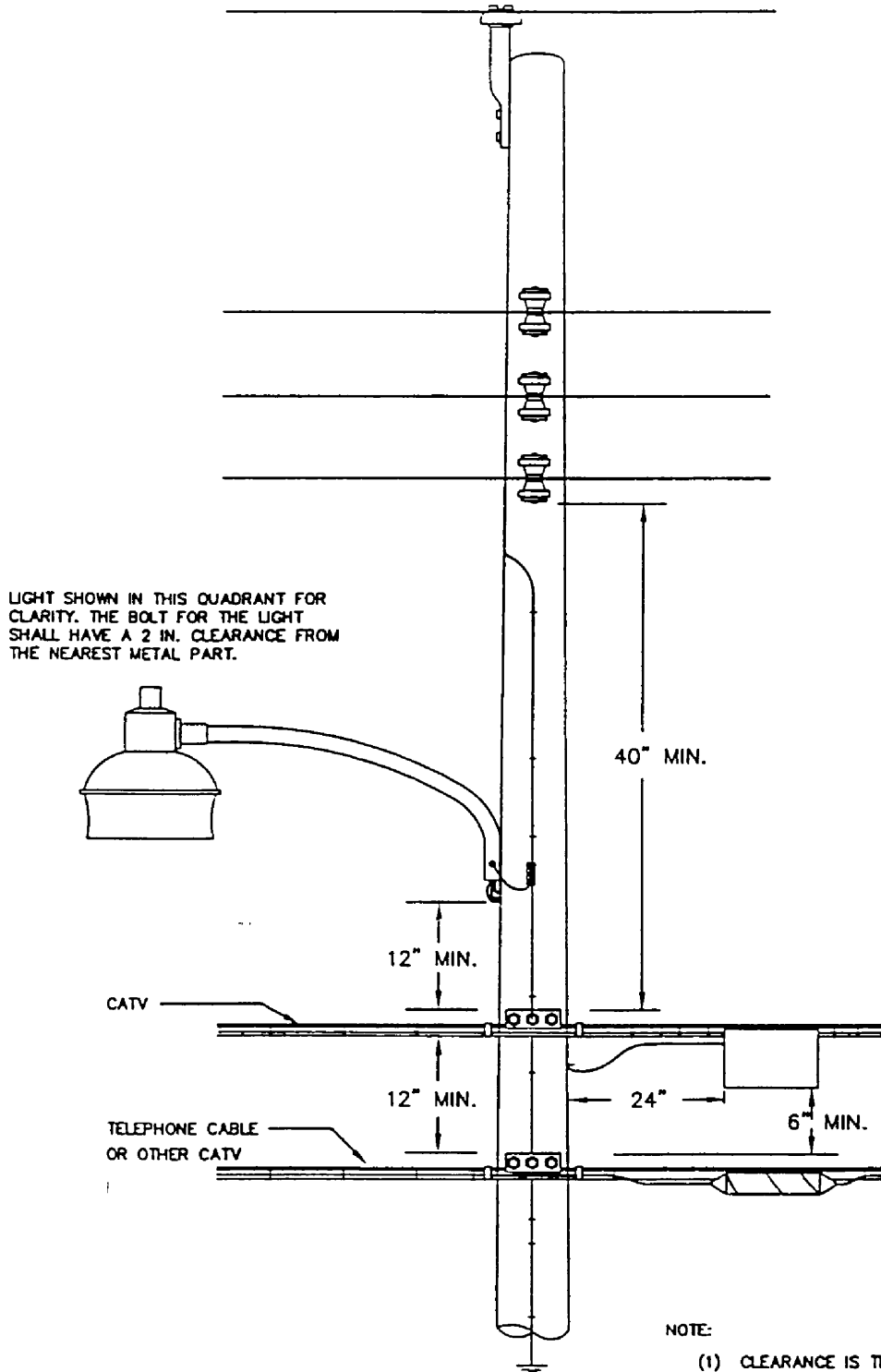
DATE 3/28/84  
 ENG R.B. DRN E. L. W.  
 APPROVED MRD

**GULF POWER COMPANY**

5/28/92 3/18/96

PLATE  
**C-3**

JOINT USE CONSTRUCTION  
 TYPICAL ATTACHMENT OF CATV DISTRIBUTION SYSTEMS TO  
 GPCO POLES TYPICAL OUTDOOR LIGHT INSTALLATION

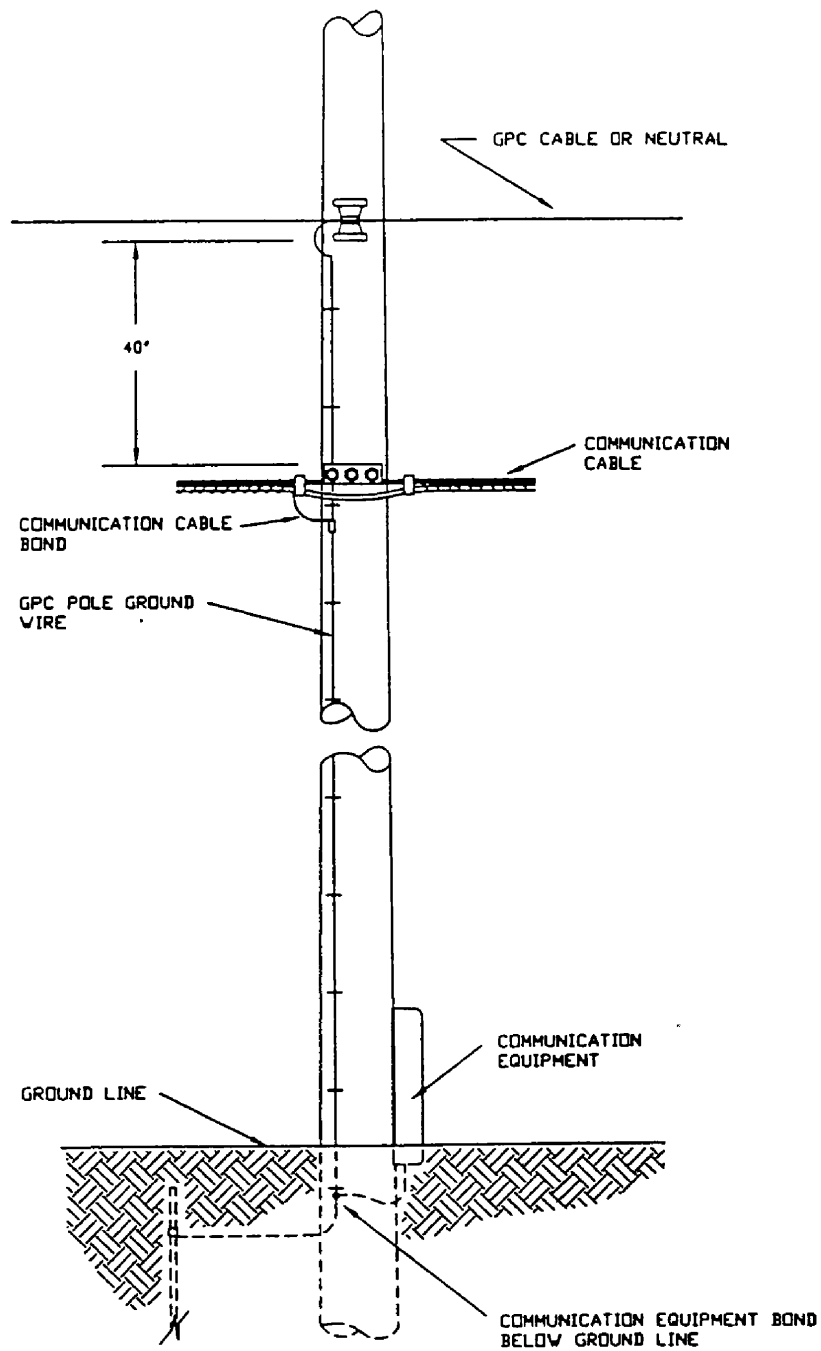


- NOTE:
- (1) CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE.
  - (2) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

DATE <u>11/24/81</u>	<b>GULF POWER COMPANY</b>				PLATE
ENG. <u>J.M.</u> DRN. <u>ELW.</u>	<u>8/30/88</u>	<u>5/25/88</u>	<u>5/11/92</u>	<u>3/18/96</u>	<b>C-4</b>
APPROVED <u>MRD</u>	<u>3/28/84</u>	<u>10/6/88</u>	<u>9/23/94</u>		



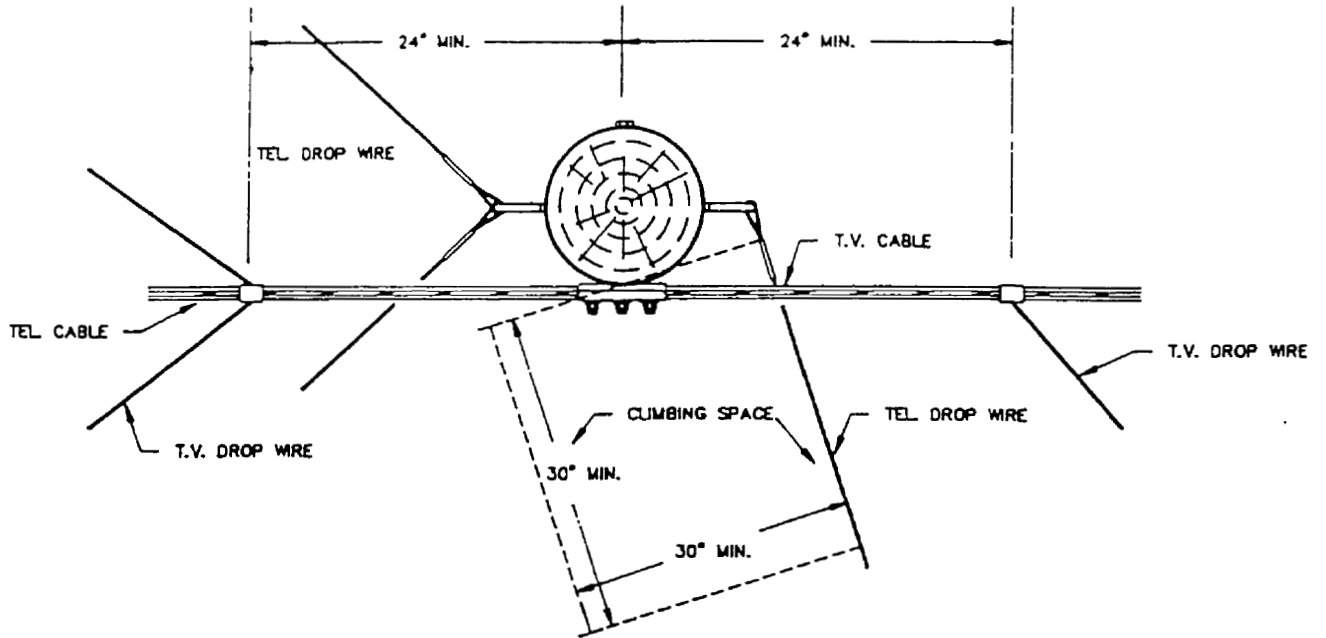
# GROUNDING CONNECTIONS



DATE <u>06/16/92</u> ENG <u>R.B.</u> <u>ORN</u> <u>E. L. W.</u> APPROVED <u>MRD</u>	<b>GULF POWER COMPANY</b> <u>3/18/96</u>	PLATE <b>C-5</b>
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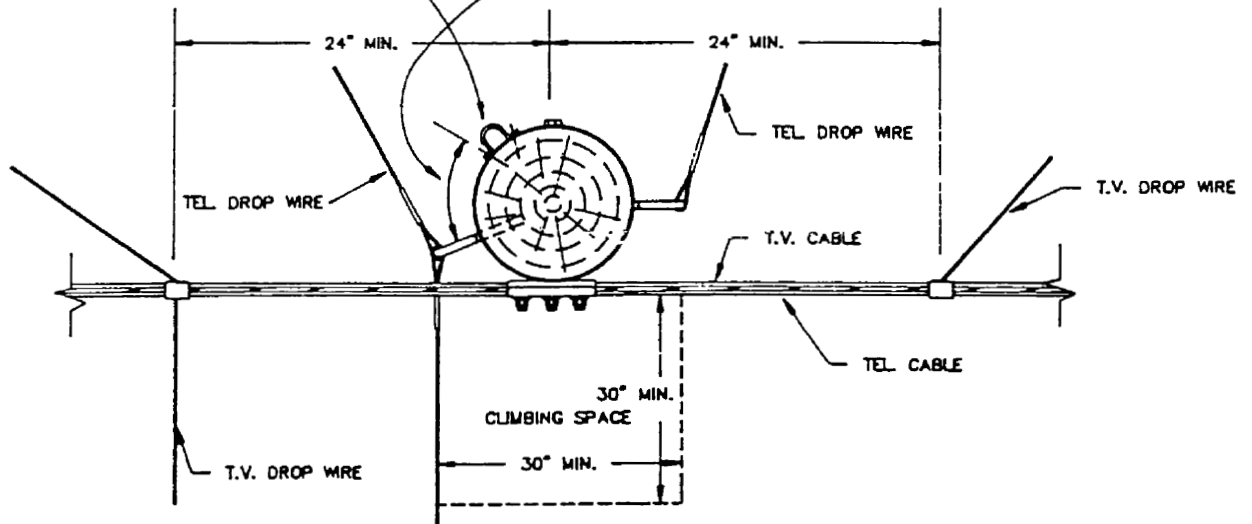
# JOINT USE CONSTRUCTION

## MINIMUM CLIMBING SPACE THROUGH COMMUNICATION CIRCUITS



POWER SYSTEM VERTICAL RUN OR GROUND WIRE

SEPARATION BETWEEN VERTICAL RUN, INCLUDING STAPLES OR OTHER DEVICES USED IN FASTENING IT TO THE POLE AND COMMUNICATION DRIVE HOOK SHALL BE AT LEAST 2 INCHES MEASURED IN ANY DIRECTION.



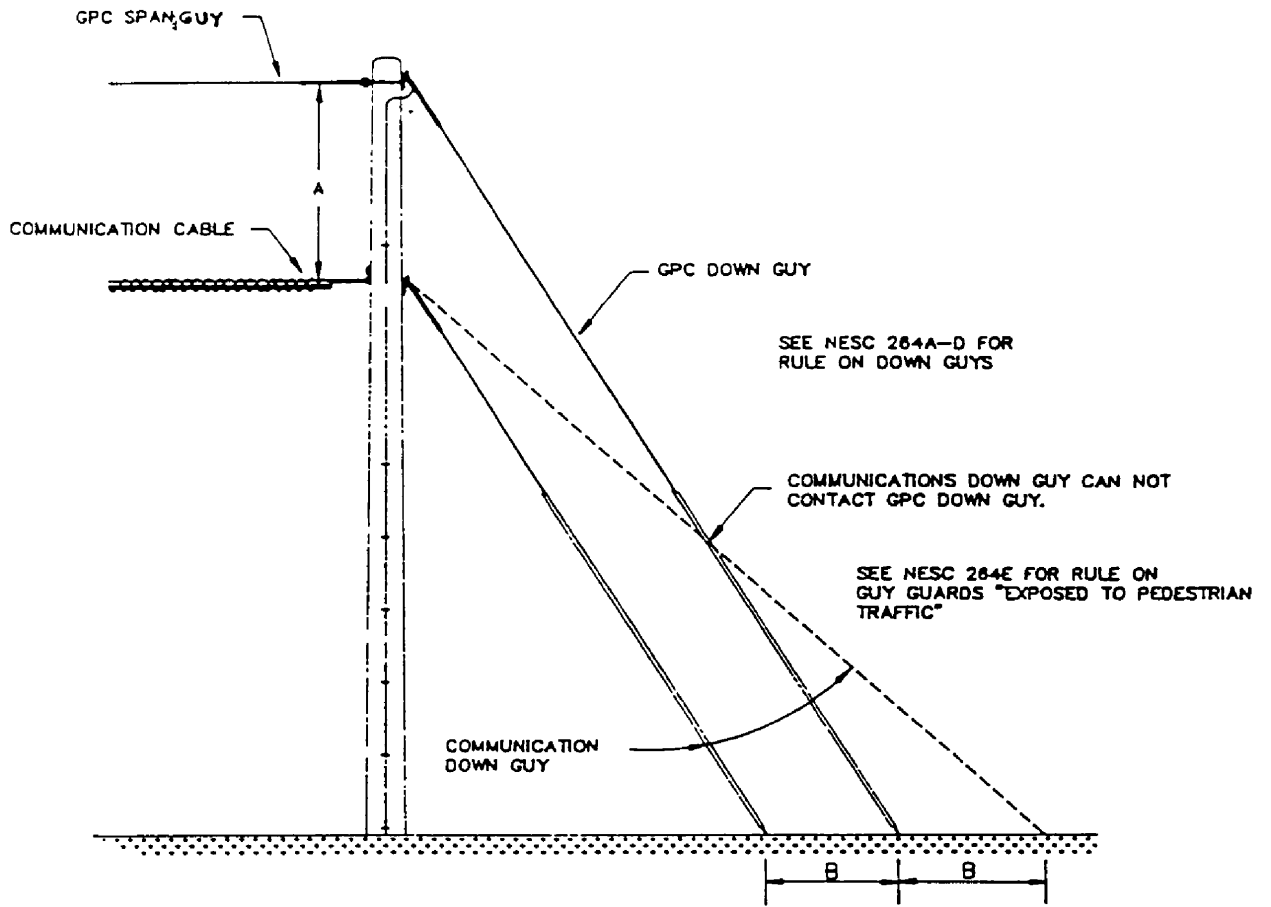
ALL COMMUNITY ANTENNA T.V. SERVICE DROPS TO BE MADE NO LESS THAN 24" EITHER DIRECTION FROM CENTER LINE OF POLE.

NOTE: (1.) THE DIMENSIONS OF THIS PLATE DO NOT SUPERSEDE ANY NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.

(2.) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

DATE 03/28/84	<b>GULF POWER COMPANY</b>	PLATE
ENG J.M. <i>J.M.</i> H.W.T.	11/24/81	C-6
APPROVED <i>[Signature]</i>	06/17/82	

# SEPARATION OF DOWN GUYS

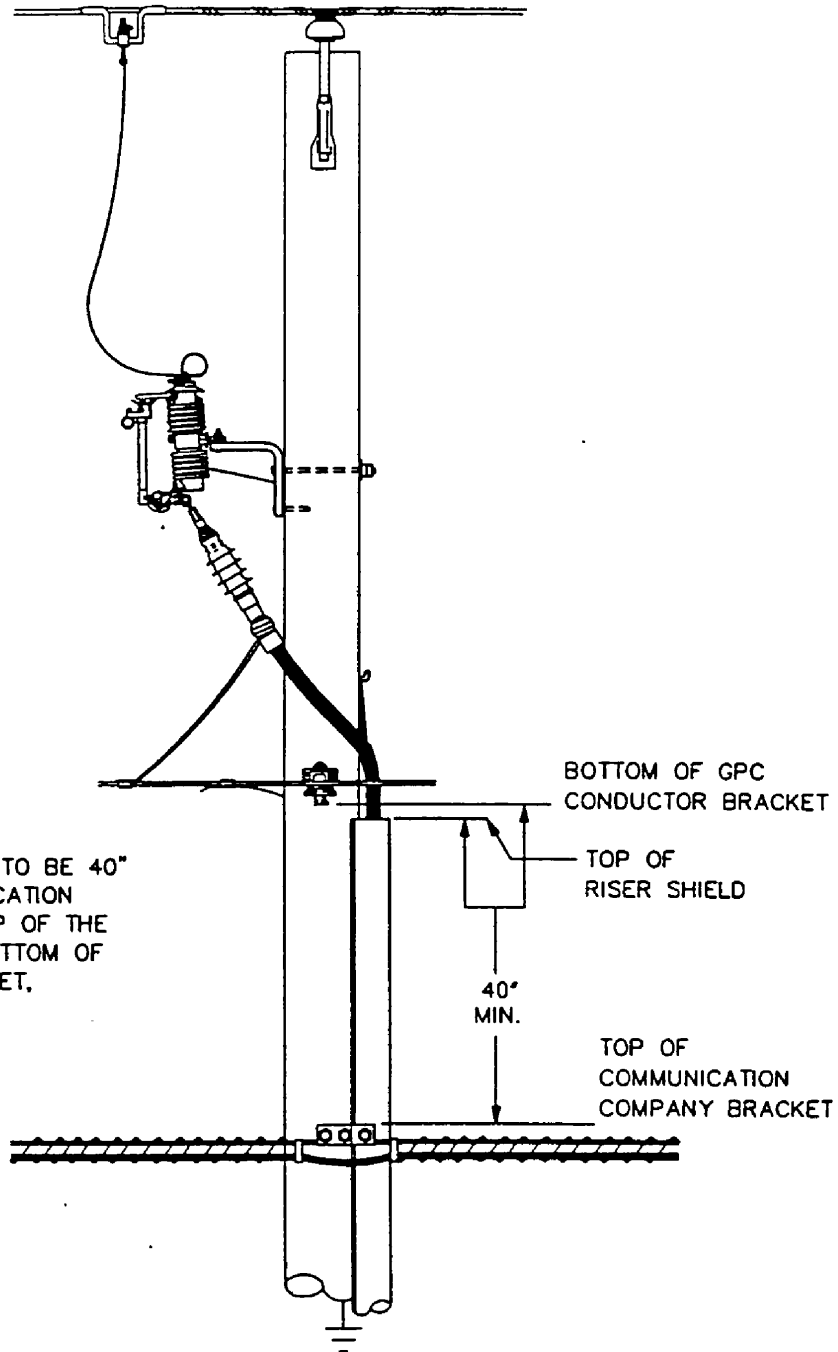


DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	4 FEET	GPC REQUIREMENT

DIMENSION B BASED ON ANCHOR HOLDING POWER AND CONE OF INFLUENCE OF ADJACENT ANCHORS.

DATE <u>6/3/92</u>	<b>GULF POWER COMPANY</b>	PLATE <b>C-7</b>
ENG <u>R.B.</u> <small>DRM</small> <u>E. L. W.</u>	<hr/> <hr/>	
APPROVED <u><i>[Signature]</i></u>	<hr/> <hr/>	

# SEPARATION AT POLE UNDERGROUND RISERS

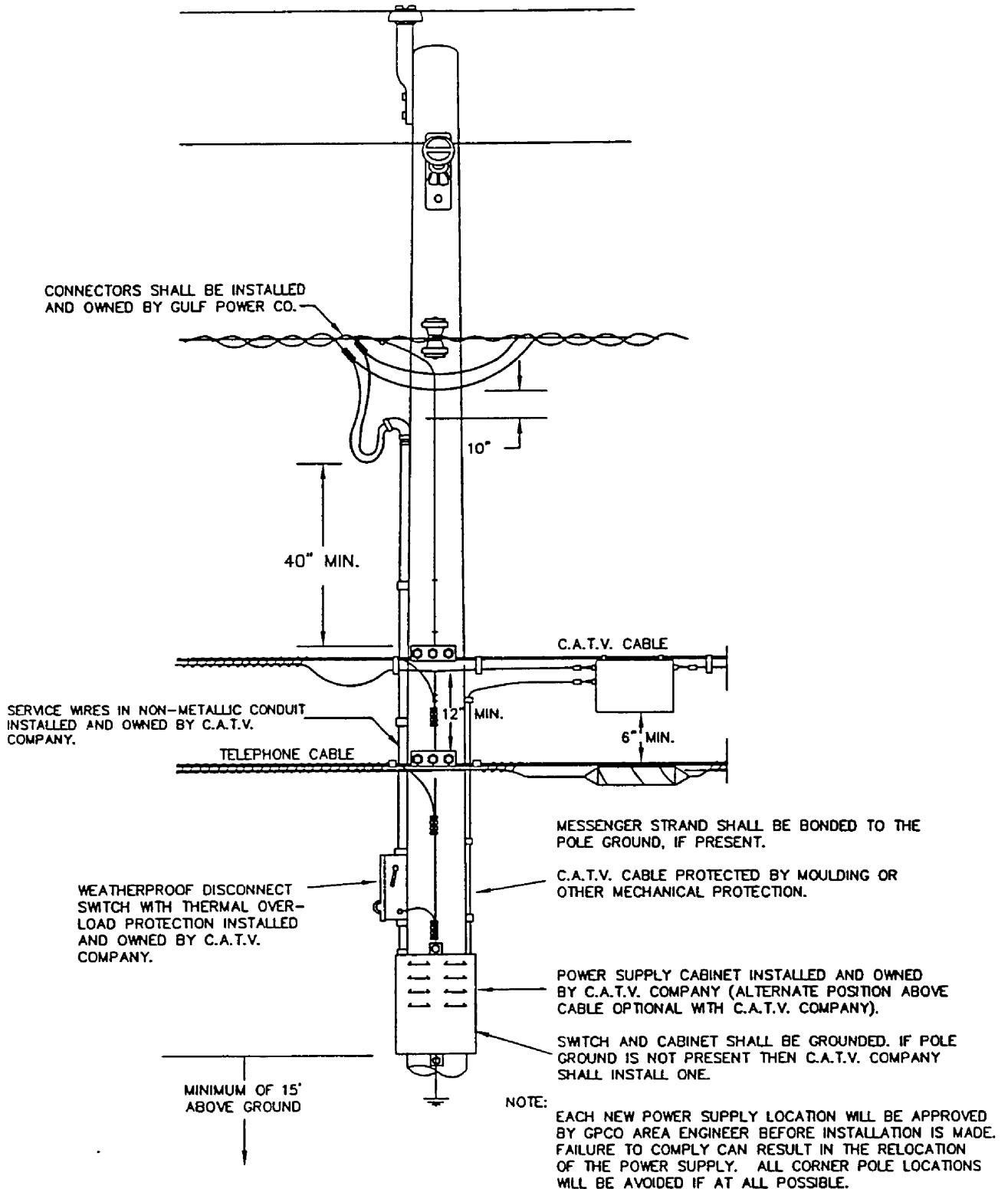


NOTE:  
 COMMUNICATION CLEARANCE TO BE 40"  
 FROM TOP OF THE COMMUNICATION  
 BRACKET TO EITHER THE TOP OF THE  
 RISER SHIELD OR TO THE BOTTOM OF  
 THE GPC CONDUCTOR BRACKET,  
 WHICHEVER IS LOWER.

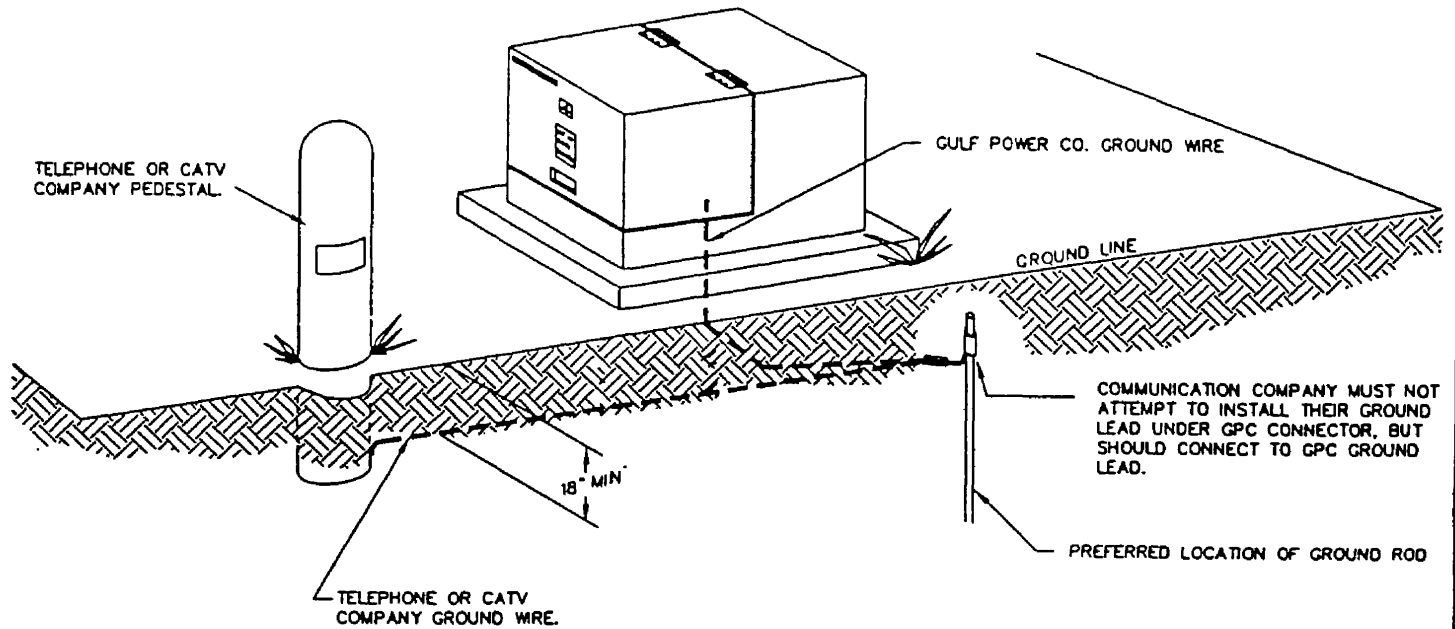
NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN  
 TWO OBJECTS MEASURED SURFACE-TO-SURFACE.

DATE <u>8/23/95</u>	<b>GULF POWER COMPANY</b>	PLATE
ENG <u>R.B.</u> DRN <u>E.L.W.</u>	<u>3/18/96</u>	<b>C-8</b>
APPROVED <i>MTC</i>		

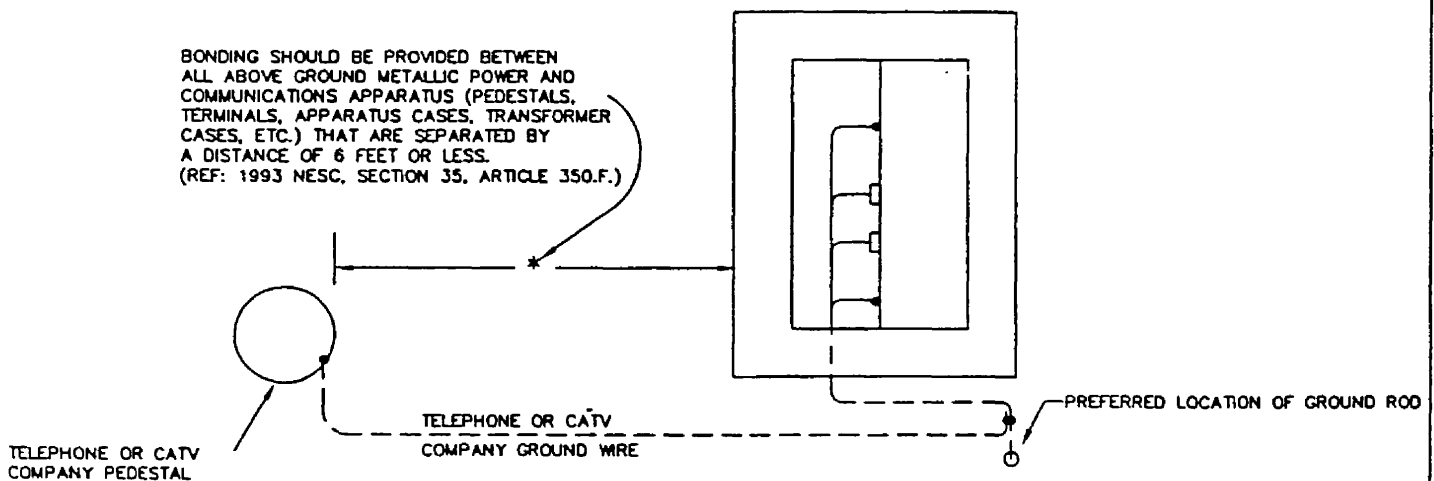
# COMMUNICATION/SIGNAL TYPE ATTACHMENT C.A.T.V. POWER SUPPLY INSTALLATION



# BONDING OF PADMOUNT TRANSFORMER TO COMMUNICATION COMPANY FACILITIES



**ISOMETRIC VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL**

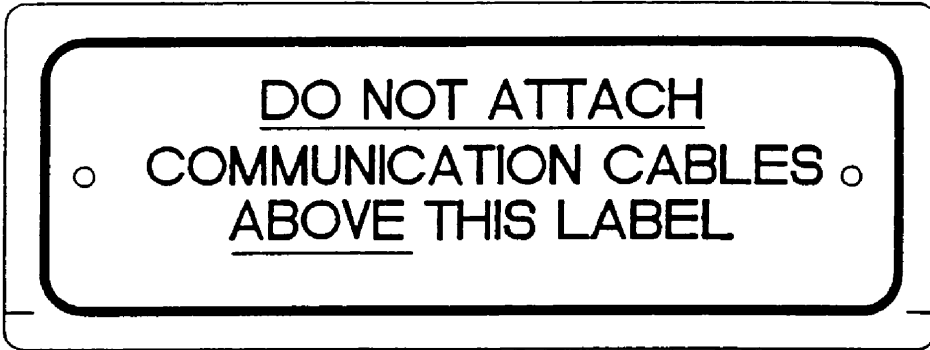


**TOP VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL**

DATE <u>4/19/93</u>	<b>GULF POWER COMPANY</b>	PLATE
ENG <u>R.B.</u> DRN <u>E L W.</u>	<u>3/18/96</u>	<b>C-10</b>
APPROVED <u>MRD</u>		

# JOINT USE CONSTRUCTION

## SEPARATION OF COMMUNICATION CABLES AND GULF POWER CO. FACILITIES

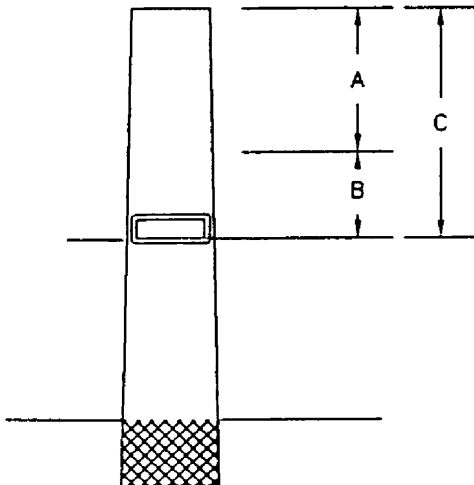


NOTE

STORE CODE # 09-5550-4

THIS POLE MARKING LABEL SHOULD BE INSTALLED ON ANY POLE WHERE COMMUNICATION CABLES COULD ATTACH. REFER TO SPEC PLATES #C-1, C-2, C-3, C-4, C-5, C-7, C-8, AND C-9 FOR POINT OF ATTACHMENT.

- NOTE 1. BOTTOM LINE OF POLE MARKING LABEL SHOULD BE ON THE 40" MARK AND SHOULD BE INSTALLED WHERE IT WILL BE VISIBLE FROM THE STREET.
2. SEE ENGINEER CONCERNING ANY REQUEST OF ADDITIONAL POLE HEIGHT ON 45' AND ABOVE POLES.



POLE SIZE	A	B	C
35'	6'	40"	9'-4"
40'	8.5'	40"	11'-10"
45'	13'	40"	16'-4"

DATE <u>4/5/93</u> ENG <u>J.D.M.</u> <small>DRN</small> <u>E. L. W.</u> APPROVED <u>[Signature]</u>	<b>GULF POWER COMPANY</b> <hr/> <hr/> <hr/>	PLATE <b>C-11</b>
---	--	----------------------

One Energy Place  
Pensacola, Florida 32520

850 444.6111



PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781

July 1, 2001  
Invoice No. 01-462

Madison River Communications  
ATTN Deborah Burgett  
2425 North McKenzie Street  
Foley, AL 36535

We Charge Your Account With:

\$209.33

Semi-Annual pole attachment rental billing for the period July 1, 2001 through December 31, 2001,  
at the annual rate of \$38.06 per pole.

	<u>Number of Attachments</u>		<u>Rates</u>		<u>Amount</u>
EXISTING	0	x	19.03		0.00
NEW: See Attachment	11	x	19.03		209.33
	<u>11</u>				<u>209.33</u>

---

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

---

For Internal Use Only:

Distribution:

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

DUE UPON RECEIPT

Credit: 143-99518  
Amount: \$209.33

 COPY



June 17, 2003

Cable Company	Billing Description	Date Rec by cable company	Amount Billed	Payments Received	Date payment Rec'd gy Gulf	Outstanding Balance (A)	Current month Interest Calculation 18% APR (A) X 1.5%	Current Balance Owed to Date 143-99518
<b>Madison River</b>	143-99518 253-306							
01-424	2nd quarter Interim billing	7/9/2001	161.26	161.26		-	-	-
01-462	July 2001 Semi Annual bill	7/16/2001	209.33	209.33		-	-	-
02-040	January 2002 Semi Annual Bill	1/16/2002	223.30	223.30		-	-	-
02-392	July 2002 Semi Annual bill	8/29/2002	223.30	223.30	9/27/2002	-	-	-
03-049	January 2003 Semi Annual bill		223.30	223.30		-	-	-
	Prior Interest Billings to Date					-		-
	<b>TOTAL</b>		<b>1,040.49</b>	<b>1,040.49</b>		-	-	-

# POLE ATTACHMENT AGREEMENT

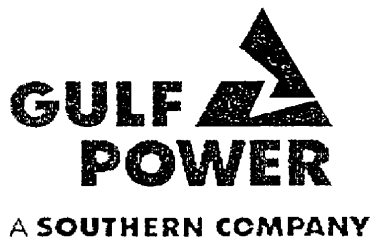
-BETWEEN-

**GULF POWER COMPANY**

-AND-

**SOUTHERN LIGHT, LLC**

Effective 1-1-2001



**COPY**

*Mailed original*

*3/1/01*

*L. Malone  
E. Daniels*

## **POLE ATTACHMENT AGREEMENT**

This Agreement is made and entered into the 1st day of March, 2001, by and between **Gulf Power Company**, a Maine corporation, hereinafter called "Gulf," and **Southern Light, LLC**, hereinafter called "Licensee."

### **WITNESSETH:**

**WHEREAS**, Licensee desires to furnish telecommunication services in the area described in Exhibit A, attached hereto, which service will require the installation and maintenance of cables, wires and appliances; and

**WHEREAS**, Licensee desires to attach certain cables, wires and appliances to the poles of Gulf; and

**WHEREAS**, Gulf is required under the provisions of Section 703 of the Telecommunications Act of 1996 to provide non-discriminatory access to its poles to telecommunications carriers and cable television systems; and

**WHEREAS**, to fulfill its obligations under Section 703 of the Telecommunications Act of 1996, Gulf is willing to allow the attachment of cables, wires and appliances to its poles in the area described in Exhibit A in accordance with and to the extent permitted under applicable law, where, in Gulf's judgment, that attachment will not interfere with its own service requirements, including considerations of economy and safety; and where Gulf is protected and indemnified against all costs to and liabilities against it arising from such attachment;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, Gulf and Licensee hereby agree as follows:

## **1. Term of Agreement**

The term of this Agreement shall commence on the 1<sup>st</sup> day of January 2001 and subject to all of the provisions of this Agreement, shall continue in full force and effect thereafter until the 31st day of December 2005, unless earlier terminated according to the provisions of this Agreement. The parties may agree to enter a new Agreement for an additional five (5) year period upon agreement as to terms, including fees and charges.

## **2. Conditions Precedent**

As conditions to Gulf accepting a permit application from the Licensee or granting a permit to the Licensee to attach to Gulf's distribution poles, Licensee shall submit evidence satisfactory to Gulf of the following:

- A. Licensee's authority to erect and maintain its facilities within public streets, highways and other thoroughfares, and any necessary consent or franchise from state or municipal authorities or from the owners of the property upon which the poles are located to construct and maintain its facilities on them; provided, however, at Licensee's request and expense, Gulf may assist Licensee in obtaining any rights-of-way, easements, licenses, authorizations, permits, exceptions and consents from federal, state, and municipal authorities or private property owners that may be required, in addition to those already received by Gulf, for Licensee to place facilities on Gulf's poles;
- B. Licensee's financial stability;
- C. Certificate of Insurance required under Paragraph 20; and
- D. Licensee's operational expertise.

The Licensee will attach copies of the necessary consents or franchises from state or municipal authorities hereto as Exhibit C.

### **3. Application and Permits**

- A. Before attaching to any of Gulf's distribution poles (hereinafter referred to as "Gulf's poles"), Licensee shall submit to Gulf an "Application for Pole Attachment Permit." The only exception shall be as provided in Section 3.B. The application and permit form is set forth in Exhibit B, attached hereto. The application shall be accompanied by two (2) detailed copies of Licensee's construction drawings which clearly identify the poles to which the Licensee will attach if a permit is granted. If the proposed attachment is satisfactory to Gulf, a permit will be granted upon payment of a one-time permit fee of \$1.00 per attachment plus Make Ready costs as described in Section 12.A. Prior to commencement of construction by the Licensee, Gulf may require a pre-construction conference, at Gulf's discretion. Notwithstanding the issuance of an attachment permit, Licensee shall at no time make or maintain an attachment to Gulf's pole or substitute pole if the spacing on the pole, the ground clearance, or other characteristics of the attachment are not in strict conformity with the National Electrical Safety Code (the "Code") and any other applicable codes, rules or regulations of any governing body having jurisdiction. Except as provided in Section 3.B., the failure of the Licensee to obtain such a permit prior to making an attachment shall constitute a trespass and a violation of this Agreement. Gulf may forbid new attachments to its poles by Licensee in the event Licensee is in default hereunder.
- B. Attachment to Gulf's poles without obtaining a prior permit shall be allowed only for service drops. Licensee shall ensure that such attachments are in strict conformity with the Code and any other applicable codes, rules or regulations of any governing body having jurisdiction. In particular, Licensee shall not attach if Make Ready work is required to obtain adequate clearance or for any other

reason. Any attachment made not in conformity with these requirements constitutes a default under this Agreement. Gulf reserves the right to suspend this provision in the event it is determined that Licensee is not properly reporting the installation of service drops.

- C. At the end of each month, Licensee shall submit a permit application (Exhibit D) listing all such service drop attachments not previously permitted. The listing shall include the location or address, pole location number (TLN), number of poles attached to, and date of attachment. Each application shall include a one-time permit fee of \$1.00 per attachment.

#### **4. Payment and Billing**

- A. Licensee shall make a semi-annual payment to Gulf for attachments to poles under this Agreement. The semi-annual payment amount per pole effective January 1, 2001 shall be as stated in Exhibit E attached hereto and made a part hereof. The semi-annual payment amount per pole is subject to an annual revision by Gulf prior to each July 1 billing. If revised, Exhibit E may be replaced without the necessity of an amendment to this Agreement by the attachment of a substitute Exhibit E which shall be identified by the effective date of the substitute Exhibit E and signed by an authorized representative of Gulf and sent to Licensee. Thereupon the substitute Exhibit E shall, on its effective date, automatically supersede all previous versions of Exhibit E and become part of this Agreement by incorporation and reference.
- B. Billing statements for the semi-annual payment shall be rendered by Gulf on or before January 15th and July 15th of each year. All attachments permitted and those which exist on Gulf's poles on December 31st and June 30th of each year will be invoiced. Licensee shall pay Gulf in advance for the succeeding six (6) months and such payment shall be based on the number of attachments

permitted whether an attachment has been made or continues. Upon the issuance of each attachment permit, Licensee shall make the payment to Gulf for such attachment based on the time remaining between the date the permit is granted and the end of the semi-annual period. Thereafter, such attachment shall be billed by Gulf with all other attachments on a semi-annual basis. If a field survey, as described in Section 15.B., indicates that not all of the attachments have been permitted, the difference between the number of attachments counted and the number of attachments permitted shall be billed as if the attachments were in place 2 1/2 years prior to the field survey. The amount due from Licensee for such attachments shall be based on the semi-annual billing amount per pole in effect during each of the prior billing periods, plus eighteen (18%) percent interest per annum. Gulf shall notify Licensee of the amount due and payment shall be due upon receipt of such notice. All bills for the semi-annual payment, for inspections, and for other charges under this Agreement shall be due upon receipt. Failure to pay bills within thirty (30) days after receipt is a default hereunder for which Gulf may terminate this Agreement. All bills thirty-one (31) days past due shall bear interest at eighteen (18%) percent per annum and interest shall begin to accrue as of the date due.

## **5. Bond**

At the beginning of or during the contract period Licensee may be required at Gulf's discretion to furnish bond or satisfactory evidence of contractual insurance coverage to guarantee the payment of any sums which may become due to Gulf for attachment payments, for work performed for the benefit of Licensee, and for other charges under this Agreement including the removal of attachments upon termination of this Agreement in the amount as specified in the following schedule:

Number of Attachments	Amounts of Coverage
0-500	\$10,000
501-1000	\$20,000
1001-1500	\$30,000
1501-2000	\$40,000
2001-2500	\$50,000

The amount of the bond shall continue to increase by \$10,000 for each increase in the number of attachments by increments of 500 up to a maximum of \$250,000.

## **6. Attachment and Maintenance**

- A. As used herein, an attachment is defined as the material or apparatus which is used by Licensee in the construction, operation, or maintenance of its plant and which is attached to Gulf's poles. One attachment is defined as a single wire or cable attached to the pole and other equipment, apparatus or facilities of Licensee lashed to such wire or cable or (except in the case of additional wires or cables) attached to the pole and occupying a vertical section of the pole not exceeding six (6) inches above and below the point of attachment of the single wire or cable. Licensee shall erect and maintain at its own expense cables, wires and appliances in safe condition and in thorough repair. It shall be the sole obligation of Licensee to ensure compliance with the applicable requirements and specifications of the Code and amendments thereto, including clearance requirements between power and cable lines, safe work practices, and any other applicable codes, rules or regulations now in effect or which hereafter may be issued of any governing body having jurisdiction. Upon identification of any



violation by Licensee of any code, rule, or regulation Licensee shall immediately institute corrective action, at its own expense. In the event Licensee fails to correct any violation within a reasonable time, Gulf may take whatever corrective action it deems appropriate in its sole discretion. Recognizing that strict compliance with the terms of this agreement is essential to the fair and equitable allocation of limited pole space among competing Licensees, and as a deterrent to such non-compliance in order to preserve the public welfare, Licensee shall pay Gulf its actual costs for such corrective action plus fifteen (15%) percent. Licensee further agrees to indemnify and hold Gulf harmless for any injury or damages, including but not limited to actual damage awards, fines, settlements, attorney's fees and court or administrative costs, resulting from Licensee's noncompliance with any applicable code, rule or regulation as described above.

- B. Licensee shall also comply with Gulf's specifications for construction. Licensee shall be responsible for installing anchors and guys of sufficient size and strength to accommodate their own load. In order to avoid placing undue stress on Gulf's poles, necessary anchors and guys shall be installed prior to tensioning of the cable strand. Attached hereto are drawings marked Plates 1 through 11 inclusive which are descriptive of required construction under some conditions and are to serve as construction guides but may not apply in all situations. These drawings may be changed from time to time by Gulf and do not supersede any applicable Code requirements, except to the extent that they are more stringent than the Code.

## **7. Attachment Identification**

- A. Licensee may be required to mark its facilities in accordance with the Florida Utilities Coordinating Committee guidelines, or other method acceptable to Gulf. In any given area, the requirement to mark will depend on the date of the original

agreement between Licensee and Gulf for that area, or the date of any amendment to such agreement to expand to that area. The Licensee with the earliest agreement or amendment for a given area shall not be required to mark its facilities. Subsequent Licensees shall be required to mark all facilities installed in the given area.

- B. If Licensee follows Florida Utilities Coordinating Committee guidelines, Licensee shall request registration of a unique marking tag for its attachments, if not already registered. Gulf will forward Licensee's request to the appropriate authority.

## **8. Gulf's Service Requirements**

Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner best suited to fulfill its own service requirements, including considerations of economy and safety. Use of Gulf's poles under this Agreement will neither create nor vest in Licensee any ownership or property rights in Gulf's poles, notwithstanding the length of use. Gulf is in no way required to keep in place any of its poles or other facilities for a period longer than is necessary to meet its own service requirements. Gulf reserves the right to refuse to grant an attachment permit to any pole on the basis of insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. Gulf will exercise due care to avoid interfering with Licensee facilities. However, Gulf will in no way be liable to Licensee for interruption of Licensee's service or for interference with the operation of Licensee's cables, wires and appliances, except for Gulf's negligence.

## **9. No Interference**

Licensee's attachments shall not interfere with the present or future use and maintenance of Gulf's poles by Gulf or with other parties' use of Gulf's poles nor

interfere with the use and maintenance of facilities placed on the poles or which may from time to time be placed thereon, provided such other parties' use is in accordance with applicable regulations and specifications of Gulf and the Code, and other applicable codes, rules and regulations. Gulf shall be the sole judge as to the requirements for the present or future use of its poles and facilities and of any interference therewith.

## **10. Rules and Procedures**

Gulf reserves the right to establish rules or procedures to implement and allocate Make Ready billing pursuant to Section 12.A. and to provide for an orderly process of pole attachment in the event Licensee and one or more other parties desire to attach to the same poles and Licensee shall adhere to such rules or procedures.

## **11. Order on the Pole**

- A. The existing telephone companies (Local Exchange Carrier) contracting for attachments to Gulf's poles, pursuant to a joint use agreement, are to be assigned to the lowest relative position on any given pole. Other Licensees contracting with Gulf for pole attachments shall attach above the telephone facilities. Among two (2) or more Licensees, position of attachments on the pole shall be determined according to the date of the original agreement between the Licensee and Gulf for a given area, or the date of any amendment to such agreement to expand to a given area. In any given area, the Licensee with the earliest agreement or amended agreement shall occupy the first position above the telephone facilities, if space is available. The second Licensee shall attach to the second position above the telephone facilities, if space is available, and so on.

B. When two (2) or more Licensees desire to attach to the same Gulf poles, preference for attachment will be given in order of application for permit received. The attaching Licensee shall attach in their assigned space, according to Section 11.A., if space is available. If any company with priority under paragraph 11.A. above, has not exercised its right to attach to space on a given pole, companies attaching under subsequent agreements may make provisional attachment in the space which ordinarily would be available to the company with priority, if their own assigned space is not available. However, if the company having priority subsequently requests attachment rights, any other companies with attachments in the area to which the earlier companies have priority shall relinquish their position and reattach their facilities farther up the pole as provided in Section 12 below. The company requesting attachment rights shall pay all make ready costs, if any, associated with such reattachment, and contact the other companies to initiate their transfer.

## **12. Make Ready, Substitutions, Changes and Rearrangements**

### **A. *Make Ready.***

(1) If it should appear to Gulf that a pole is too short, or inadequate, or any rearrangement of facilities of Gulf or other parties is required to accommodate the attachments of Licensee, Gulf shall notify Licensee of the pole substitutions, additions, changes and rearrangements which Gulf deems necessary and their estimated cost. Such notice shall constitute a denial of the applicable permit(s) unless Licensee authorizes Gulf to make the substitutions, additions, changes and rearrangements specified. Licensee shall authorize the make ready work within thirty (30) days after notification from Gulf, otherwise the permit will be denied. Upon such authorization, Licensee shall reimburse Gulf for all costs incurred by it in connection with such changes. Licensee shall

reimburse the owner of any other facilities attached to that pole for any reasonable expense incurred by that owner in conjunction with such changes. Licensee shall pay to Gulf at the time of the issuance of each attachment permit Gulf's estimated cost of providing the space for all of the attachments covered by that permit pursuant to Section 3 of this Agreement.

(2) In the event the Licensee elects to install their facilities underground in Gulf's pole line, they shall remain underground for a minimum of five (5) spans before attaching to Gulf's poles. Where Licensee shows sufficient reason, Gulf may grant a waiver of this provision in specific cases.

**B. *Substitutions, Changes, and Rearrangements.***

(1) Licensee shall, at its own expense, install the attachments and maintain them in safe condition in a manner satisfactory to Gulf. Licensee shall, at its own expense, at any time requested by Gulf for good cause remove, relocate, replace, and renew its facilities on the poles, transfer them to substituted poles or perform any other work in connection with the facilities that Gulf may require. Licensee shall notify Gulf immediately after completing the requested work. If the Licensee fails to comply with Gulf's request within thirty (30) days of receipt of such request, Gulf may perform or have performed such work at Licensee's expense with no liability therefor. Licensee shall pay Gulf its cost for such work plus fifteen (15%) percent.

(2) In any case deemed by Gulf to be an emergency, Gulf shall attempt to notify Licensee, and the parties shall coordinate the performance of any emergency measures involving Licensee's facilities. If it is practicable under the circumstances, Licensee shall be provided the opportunity to perform the emergency measures on its facilities. When an emergency exists such that advance notice and/or coordination are not practicable, Gulf may, at the expense of Licensee, arrange to remove, relocate, replace or renew the facilities

of Licensee, transfer them to substituted poles or perform any other work in connection with the facilities that may be required in the maintenance, replacement, removal or relocation of the poles or the facilities on them. Under such circumstances, Gulf shall notify Licensee as soon as practicable after taking such action. An emergency includes, but is not limited to, customer outages and circumstances that threaten to cause property damage and/or personal injury. Gulf will invoice Licensee for actual expenses incurred in performing these emergency measures.

### **13. Use of Qualified Employees and Contractors**

The Licensee shall ensure that its employees and contractors are knowledgeable of the requirements of the Code and other safe work practice codes for maintaining proper work practices in order to avoid dangerous conditions. Licensee expressly agrees to take all necessary steps to ensure that its employees and contractors are adequately trained and qualified to work with and around energized conductors, and shall further ensure that its employees and contractors are appropriately and strictly supervised while performing work on Gulf's poles. Licensee agrees to indemnify and hold harmless Gulf for any failure of Licensee, its employees or contractors to fulfill their obligations to perform work in a safe and proper manner.

### **14. Damage to Facilities**

Licensee shall exercise caution to avoid damage to facilities of Gulf and of others on Gulf's poles. Licensee assumes responsibility for any and all loss or expense arising out of such damage caused by it and shall reimburse Gulf or others occupying Gulf's poles for such loss or expense. Licensee shall immediately report damage caused by it to Gulf and to others occupying Gulf's poles which are in any way affected by such damage.

## 15. Inspections and Surveys

- A. **Inspections.** Gulf reserves the right to inspect each new attachment and to make periodic inspections of all attachments as plant conditions may warrant. Licensee agrees to pay a \$25.00 per attachment violation fee for each Code violation found during such inspections. In addition, Licensee agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments found during these inspections. Gulf's right of inspection as provided herein in no way operates to relieve Licensee of any responsibility, obligation or liability arising hereunder nor does it impose any obligation on Gulf.
- B. **Field Surveys.** Gulf reserves the right to make field surveys of its poles in the area described in Exhibit A as it may be amended from time to time pursuant to subparagraph C hereof, at intervals not more often than once every five (5) years, for the purpose of determining the actual number of Licensee attachments. Licensee agrees to pay a violation fee of \$25.00 per attachment for any unpermitted attachments in excess of ten (10) or in excess of two percent (2%) of the last verified reported total, whichever is greater. Gulf shall bear the cost of such field surveys, unless the number of attachments counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued. In the event the number counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued, Licensee shall pay, in addition to the violation fee, the cost of field surveys attributable to the area described in Exhibit A as amended, pursuant to Section 4 of this Agreement. Gulf shall notify Licensee at least thirty (30) days in advance of the field survey and shall specify the method to be used in performing the survey. Should Licensee disagree with results of the survey, a new survey may be performed by Gulf and Licensee at Licensee's sole expense.

C. **Expansion of Service Area.** Should at any time following execution of this Agreement the Licensee desire to expand or modify the area described in Exhibit A, Licensee shall provide Gulf in writing an amended Exhibit A which shall include such areas, and shall receive Gulf's written approval prior to such expansion or modification becoming a part of this agreement. No new attachments shall be made in the amended area before the amended Exhibit A is approved.

## **16. Franchises**

Licensee shall provide copies of franchise renewals to Gulf immediately upon Licensee's receipt of same. In the event Licensee fails to acquire or retain a franchise required within the area described in Exhibit A, such failure shall operate as grounds upon which Gulf may cancel the permits in or terminate this Agreement as to the area affected by such franchise pursuant to Section 23.

## **17. Removal**

Licensee may at any time remove its attachments from any pole upon prior written notice to Gulf. Upon verification by Licensee to Gulf that pole attachments have been removed, Gulf will reimburse Licensee the amount remaining from the date of the removal to the end of the semi-annual payment period which will be included as a credit on the next semi-annual bill.

## **18. Pole Abandonment**

If Gulf desires at any time to abandon any pole, it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. Licensee may then purchase the pole from Gulf at fair market value; however, if at the expiration of such period Licensee has not removed all of its attachments



therefrom or purchased the pole, Gulf may proceed to remove such attachments at the expense of Licensee with no liability therefor. Licensee shall pay Gulf for its cost of removal plus fifteen (15%) percent.

## **19. Indemnification**

Licensee shall indemnify and hold harmless Gulf and its representatives, agents, officers and employees from and against any and all loss, damage, or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries (including death) to persons and for damages to property caused by or arising out of any negligent (including strict liability), wanton or intentional act or omission of Licensee, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, in any way associated or connected with the performance of the obligations herein, in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent, or contributory negligence of Gulf, or its representatives, agents, officers or employees. The indemnity obligations hereunder shall extend only to that proportion of the loss, damage or liability which is directly attributable to the negligence, wanton or intentional acts of the Licensee, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable. It is the expressed intent of the parties that Gulf shall be liable only for those damages attributable to its own negligence and shall not be liable for any damages (either economic or non-economic) attributable to the acts of any other person or entity. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements and judgments associated with such demands, claims, suits or actions. The Licensee shall make an immediate report to Gulf of the occurrence of any personal injury or property damage while working on Gulf's facilities.

## **20. Insurance**

Licensee shall procure and maintain insurance to protect it and Gulf against claims for damage to property or injury to or death to persons, as described but not limited by Section 19, in the amount of at least \$1,000,000 for damages arising from one occurrence, which amount may be modified by Gulf for good cause upon thirty (30) days prior written notice to Licensee. Upon such notification, Licensee shall procure and maintain insurance in the amount specified in the notification such amount not to exceed \$5,000,000. Licensee shall also carry such insurance as will protect it from Workmen's Compensation Laws in effect as may be applicable to it. All insurance requirements shall be kept in force by Licensee for the life of this Agreement and the company or companies issuing such insurance shall be approved by Gulf such approval not to be unreasonably withheld. Gulf shall be an additional insured under Licensee's liability insurance policy and Licensee shall furnish to Gulf, a certificate showing the issuance of such insurance and the insurance company's agreement that it will not cancel, terminate or change its policy except after thirty (30) days prior written notice to Gulf. Licensee's obligation to indemnify Gulf specified in Section 19 is not limited to the amount of liability insurance coverage purchased by Licensee.

## **21. Rights-of-Way**

Gulf does not warrant the extent of its rights-of-way. Upon notice from Gulf to Licensee that the use of any pole is forbidden by governmental authorities or property owners, the permit covering the use of that pole shall immediately terminate, and Licensee shall remove its cables, wires and appliances immediately from the affected poles.

## **22. Types of Service**

Licensee is authorized to attach its cable plant to Gulf's poles for the purpose of delivering telecommunication services to Licensee's commercial and residential

subscribers in the area described in Exhibit A, pursuant to the authority granted by the appropriate governmental entities, as may be required.

### **23. Termination and Cancellation**

A. **Default.** This Agreement may be terminated by either party upon default of any term of this Agreement by the other party if such default is not cured within thirty (30) days of receipt of written notice; provided, however, in the event that either party begins to initiate action to cure a non-monetary default within thirty (30) days of notice and diligently continues such action until the default is fully cured, then, notwithstanding the foregoing, the non-defaulting party may not, at any time prior to sixty (60) days from the date of the original default notice, terminate this Agreement or cancel the permits covering the poles as to which such default has occurred. During the continuance of any default after such notice and cure periods, the non-defaulting party may terminate this Agreement by giving written notice of termination to the defaulting party, and the non-defaulting party may exercise any other remedies it may have under this Agreement or at law. Should Licensee fail to cure or take diligent action to cure a default within the requisite period following written notice to cure by Gulf, Licensee shall immediately remove all affected attachments. Should Licensee fail to remove its attachments after such termination or cancellation within the (30) day period after Gulf's written notice to cure a default, Gulf may proceed to do so at the expense of Licensee with no liability to Gulf therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent. If Licensee fails to perform work required to cure a default, Gulf may elect to perform such work at the expense of Licensee with no liability therefor. Licensee shall pay Gulf its costs for performing such work plus fifteen (15%) percent.

- B. ***Termination Due to Nonattachment.*** If Licensee has made no attachments to any of Gulf's poles within the area covered by an attachment agreement within one (1) year after the date of the agreement, Gulf may terminate the agreement immediately and shall provide notice to the Licensee of such termination thereafter. Likewise, if Licensee under an existing attachment agreement enters into an amendment to that agreement to include a new area but does not attach to any Gulf's poles within the new area within one (1) year after the date of the amendment, Gulf may terminate the amendment in the same manner as it would be able to terminate the agreement. Termination of any such amendment shall not affect the original agreement nor the area covered by the original agreement, if attachments are made under the original agreement within the applicable one (1) year period. If Licensee makes attachments to Gulf's poles under an agreement or amendment of agreement but removes all such attachments and fails to make any new attachment for a period of one (1) year after the removal of the last attachment, Gulf may terminate the agreement or amendment of agreement as provided above.
- C. ***Obligations Upon Expiration.*** Licensee shall, within thirty (30) days following the expiration of this Agreement remove its attachment from Gulf's poles. Should Licensee fail to remove its attachments within thirty (30) days after expiration of the term Gulf may proceed to do so at the expense of Licensee with no liability of Gulf therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent.
- D. ***Obligations Prior to Removal of Attachments.*** Upon expiration or termination of this Agreement, the rights and obligations conferred hereunder shall remain in full force and effect until such time as Licensee's attachments are removed from Gulf's poles, in accordance with Section 23.C., except that no new attachments shall be made.

**E. *Temporary Extension of Agreement Beyond Expiration or Termination.***

Upon expiration or termination and with the prior written authorization of Gulf, all rights and obligations conferred hereunder may remain in full force and effect, including the right to apply for and make new attachments, in the event Gulf determines that the parties are actively and in good faith negotiating a new agreement. If, however, in Gulf's sole discretion it is determined that negotiations have been discontinued or are not proceeding in good faith, then no new attachments shall be permitted or made; all other rights and obligations conferred hereunder shall remain in full force and effect until Licensee's attachments have been removed from Gulf's poles. Gulf may terminate the negotiation period upon breakdown of negotiations or at any time upon thirty (30) days prior written notice to Licensee. Licensee shall remove its attachments from Gulf's poles within thirty (30) days after such notice. If not so removed, Gulf may remove such attachments at Licensee's expense with no liability therefor. Licensee shall pay Gulf its cost for such removal plus fifteen (15%) percent.

**F. *Termination or Modification upon a Change of Law.*** If, in a final and unappealable order or judgment, the Federal Communications Commission (the "FCC") or any governing body or court with appropriate jurisdiction repeals, overrules or modifies 47 U.S.C. § 224 insofar as it requires Gulf to provide pole access to Licensee, then Gulf shall be entitled to terminate Licensee's rights hereunder including, but without limitation, Licensee's right to attach to any or all of Gulf's poles with sixty (60) days notice or after such period of notice as may be required by law, whichever is longer. If, in a final and unappealable order or judgment, the FCC or any governing body or court with appropriate jurisdiction either (1) repeals, overrules or modifies 47 U.S.C. § 224 insofar as it sets an amount that Gulf may charge Licensee, or (2) orders or adjudges a payment

amount greater than the payment amount set forth in Section 4 and Exhibit E hereof, then Gulf shall be entitled to modify the payment amount for attachment set forth in Section 4 and Exhibit E hereof to the extent then permitted by law on a prospective basis.

#### **24. Rights Previously Conferred**

Nothing in this Agreement shall be construed as affecting the rights or privileges to use Gulf's poles previously conferred by Gulf to others who are not parties to this Agreement. Gulf may continue to confer such rights or privileges. The attachment privileges granted to Licensee in this Agreement are non-exclusive and subject to contracts and arrangements between Gulf and others who are not parties to this Agreement.

#### **25. Waiver**

Failure by Gulf to enforce any of the terms of this Agreement shall not constitute a waiver of future compliance with any such term or terms.

#### **26. Notices and Requests**

All notices and requests regarding the attachment, maintenance or removal of Licensee's attachments shall be sent electronically using the National Joint Utilities Notification System. All other notices and requests under this Agreement must be given in writing by registered or certified mail, return receipt requested, and mailed with sufficient postage prepaid to the party to be given such notice.

Notice to Gulf shall be addressed to:

**Project Services Manager  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520**

Notice to Licensee shall be addressed to:

**Vice President of Business Development  
Southern Light, LLC  
P.O. Box 91127  
Mobile, AL 36691**

## **27. Assignment**

Licensee shall not assign, transfer or sublet any right or privilege hereby granted in this Agreement; sublet or allow the use of its cable(s), equipment, facilities, or attachments; nor allow any third party to attach to its cable(s), equipment, facilities, or to the pole, without first requesting and receiving the prior written consent of Gulf. Such request shall be accompanied by the information described in Section 2 and delivered to Gulf in accordance with Section 26. Gulf shall grant or deny a request for consent to assign, transfer, or sublet within sixty (60) days from receipt of the request. Gulf will not unreasonably withhold consent; however, at its option, Gulf may require the execution of a new agreement in lieu of granting its consent for assigning, transferring, or subletting this Agreement or any of the rights and privileges hereunder. Before executing a new agreement or granting consent for assigning, transferring, or subletting this Agreement or any rights and privileges hereunder, Gulf, at its option and at Licensee's expense, may inspect Licensee's attachments and facilities to verify the number of attachments and to ensure compliance with Section 15 and the payment of all fees and amounts required under Sections 4 and 15. Failure by the Licensee to obtain the consent as required by this Section 27 shall constitute sufficient grounds for Gulf, at its option, to immediately deem and declare the Licensee in default and to

immediately terminate this Agreement, notwithstanding any other provision of this Agreement.

## **28. Enforcement**

If any of the terms and provisions of this agreement are breached by a party hereto, the other party may elect to seek enforcement of this agreement by seeking injunctive or legal relief and any and all remedies to which it may be entitled under state or federal law. In the event it becomes necessary for either party to seek judicial enforcement of this agreement or other remedies for breach thereof, the prevailing party shall be entitled to recover attorney's fees and court costs from the non-prevailing party.

## **29. Laws of State**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

## **30. Severability**

If any covenant, condition, or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction after construing this Agreement, the invalidity or unenforceability thereof shall in no way affect any of the other covenants, conditions, or provisions hereof, provided that such remaining covenants, conditions, or provisions can thereafter be applicable and effective without material prejudice to either Gulf or Licensee. This instrument embodies the entire Agreement of the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Gulf and Licensee and the authorized representatives of Gulf and Licensee.



IN WITNESS WHEREOF, Licensee and Gulf have caused this Agreement to be executed by their authorized representatives and be effective as of the day and year first written above.

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**Southern Light, LLC**

**WITNESS:**

By: <u>Christie A. Cooper</u>	By: <u>Eric R. Daniels</u>
Print Name: <u>Christie G. Cooper</u>	Print Name: <u>ERIC R. DANIELS</u>
Title: <u>Office Manager</u>	Title: <u>VP BUSINESS DEVELOPMENT</u>

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**Gulf Power Company**

**ATTEST:**

By: <u>Linda G. Malone</u>	By: <u>F M Fisher, Jr.</u>
Print Name: <u>LINDA G. MALONE</u>	Print Name: <u>F M Fisher, Jr.</u>
Title: <u>ASST. SECRETARY</u>	Title: <u>Vice President</u>

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**EXHIBIT A**

**DESCRIPTION OF SERVICE AREA**

Name of Company: Southern Light, LLC

For Agreement Dated: January 1, 2001

A description of the geographical boundaries of the Agreement by  
Township, Range and Section:

*Escambia County, Florida*

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**Southern Light, LLC**

**WITNESS:**

By: *Christie H. Cooper* By: *Eric R. Daniels*

Print Name: *Christie Cooper* Print Name: *ERIC R. DANIELS*

Title: *Office Manager* Title: *VP BUSINESS DEVELOPMENT*

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**Gulf Power Company**

**ATTEST:**

By: *Linda G. Malone* By: *FM Fisher, Jr.*

Print Name: *LINDA G. MALONE* Print Name: *FM Fisher, Jr.*  
*ASST. SECRETARY*

Title: \_\_\_\_\_ Vice President

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**EXHIBIT B**  
**APPLICATION FOR POLE ATTACHMENT PERMIT**

City of \_\_\_\_\_  
 State of \_\_\_\_\_  
 County \_\_\_\_\_  
 Date \_\_\_\_\_

**NAME OF LICENSEE:** Southern Light, LLC

In accordance with the terms of Agreement dated January 1, 2001 application is hereby made for permit to make attachments to the following poles:

No.	TLN Number (if available)	No. of Poles	Service Address or Location
1.	-		
2.	-		
3.	-		
4.	-		
5.	-		
6.	-		
7.	-		
8.	-		
9.	-		
10.	-		
11.	-		
12.	-		
13.	-		
14.	-		
15.	-		
16.	-		

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Licensee

Permit granted \_\_\_\_\_, \_\_\_\_\_, except is subject to Licensee's approval below if pole rearrangements are required. Estimated cost of pole rearrangements required to provide space for Licensee's attachments: \$ \_\_\_\_\_ as shown on DSO No. \_\_\_\_\_.

**GULF POWER COMPANY**  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Licensor

The above charges for rearrangements approved  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Licensee

Permit No. \_\_\_\_\_  
 Total Poles \_\_\_\_\_

**EXHIBIT D**  
**APPLICATION FOR POLE ATTACHMENT PERMIT**  
**AFTER-THE-FACT FORM FOR SERVICE DROPS**

City of \_\_\_\_\_  
 State of \_\_\_\_\_  
 County \_\_\_\_\_  
 Date \_\_\_\_\_

**NAME OF LICENSEE:** Southern Light, LLC

In accordance with the terms of Agreement dated January 1, 2001 application is hereby made for permit to make attachments to the following poles:

No.	TLN Number (if available)	Service Address or Location	No. of Poles	Date Attached
1.	-			
2.	-			
3.	-			
4.	-			
5.	-			
6.	-			
7.	-			
8.	-			
9.	-			
10.	-			
11.	-			
12.	-			
13.	-			
14.	-			
15.	-			
16.	-			

Licensee certifies that the above attachments have been installed on Gulf's poles in strict conformity with the National Electrical Safety Code and any other applicable codes, rules, or regulations of any governing body having jurisdiction.

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Licensee

<b>GULF POWER COMPANY</b>	
Permit granted this day of _____	
Month	Year
By: _____	Permit No. _____
Title: _____	Total Poles _____

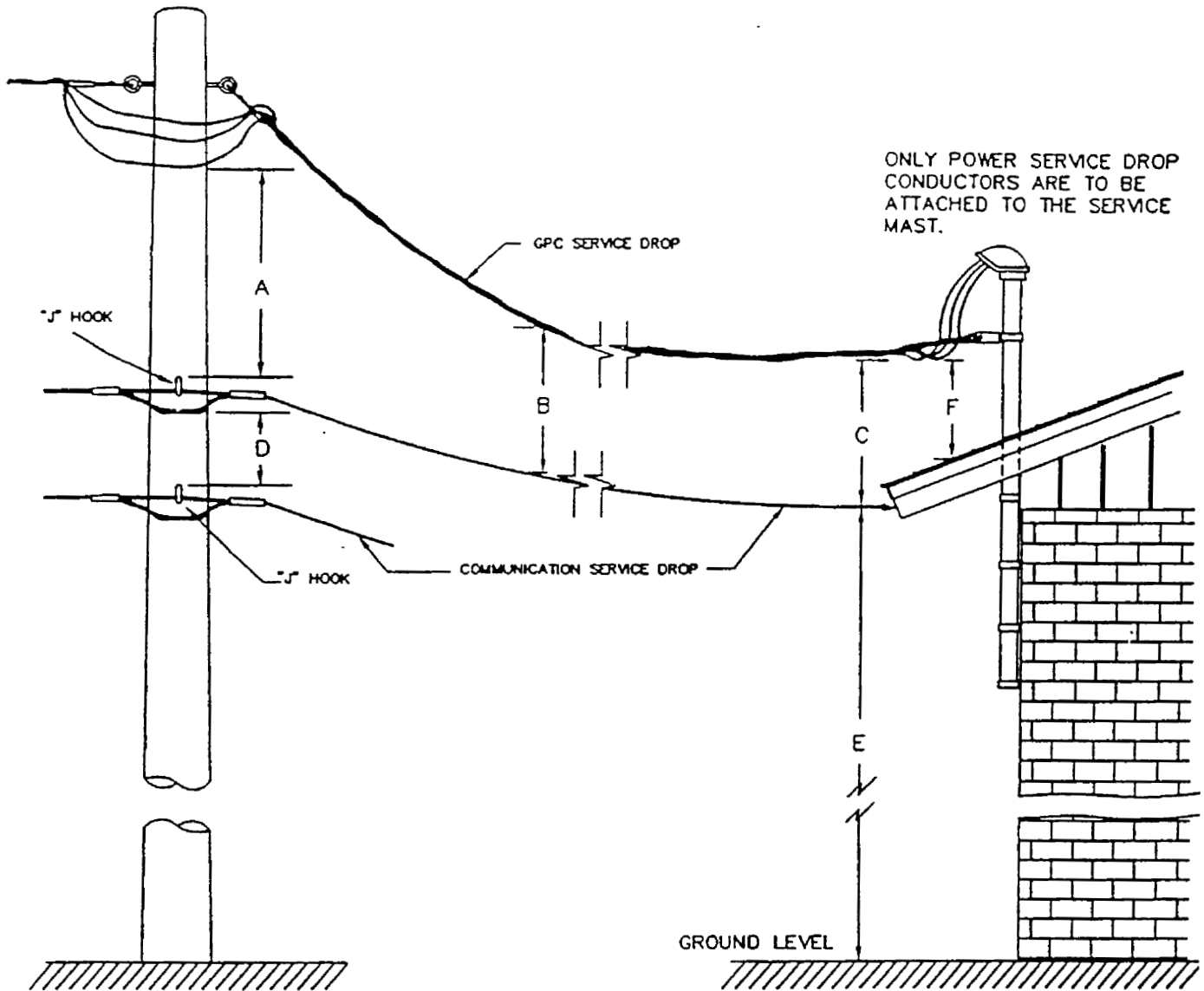
**EXHIBIT E**

**Southern Light, LLC**

**Semi-annual Payment Amount**

Effective July 1, 2000, the semi-annual payment to be made by Licensee, Southern Light, LLC, to Gulf Power Company under the Pole Attachment Agreement, dated January 1, 2001 is \$19.03 per pole. This payment amount per pole shall remain in effect unless revised by Gulf in accordance with Section 4 of the Pole Attachment Agreement.

# SEPARATION OF SERVICE DROPS

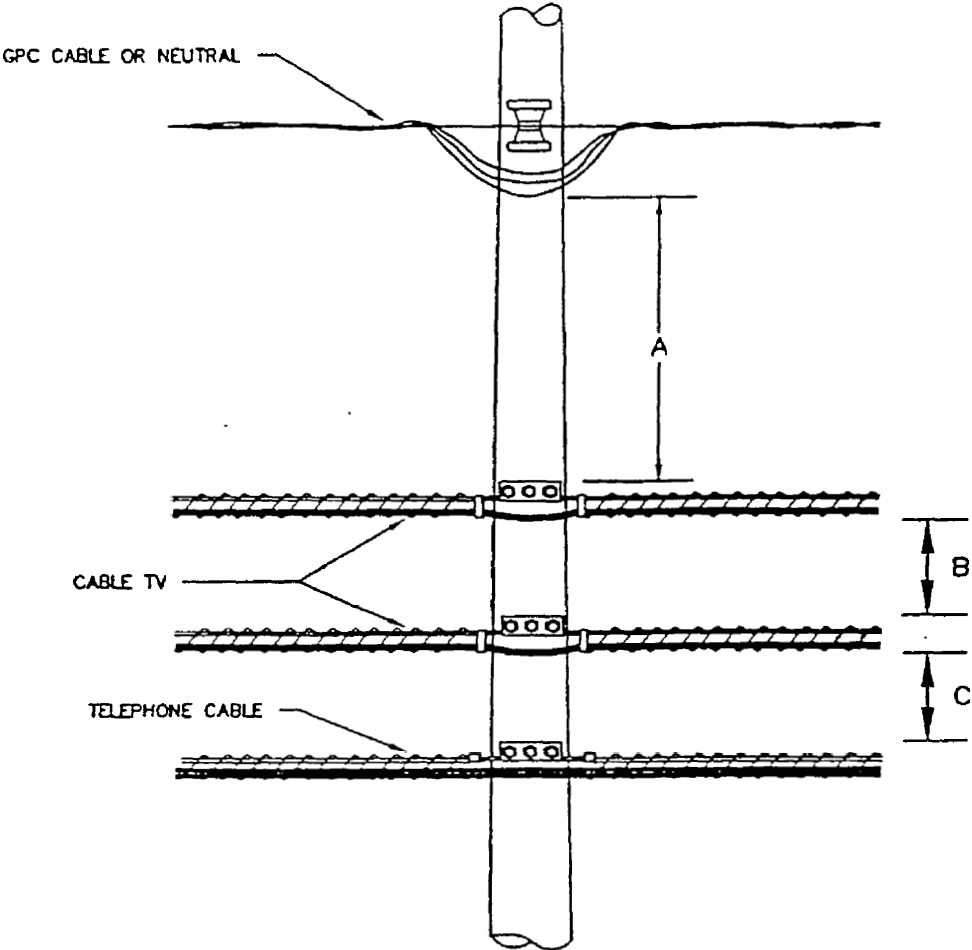


DIMENSION LETTER	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	12 INCHES	235 C1 EXCEPTION ③
C	12 INCHES	235 C1 EXCEPTION ③
D	12 INCHES	GPC REQUIREMENT
E	9.5 FEET MIN.	TABLE 232-1
F	18 INCHES	234 C3

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE

Original Date: 05/29/92		<b>GULF POWER COMPANY</b>			PLATE <b>C-1</b>
ENG: R.B.	DRN: E.L.W	11/18/94	08/28/95		
Approved:	M. R. Dunn	03/20/95			

# SEPARATION AT POLE PARALLEL FACILITIES

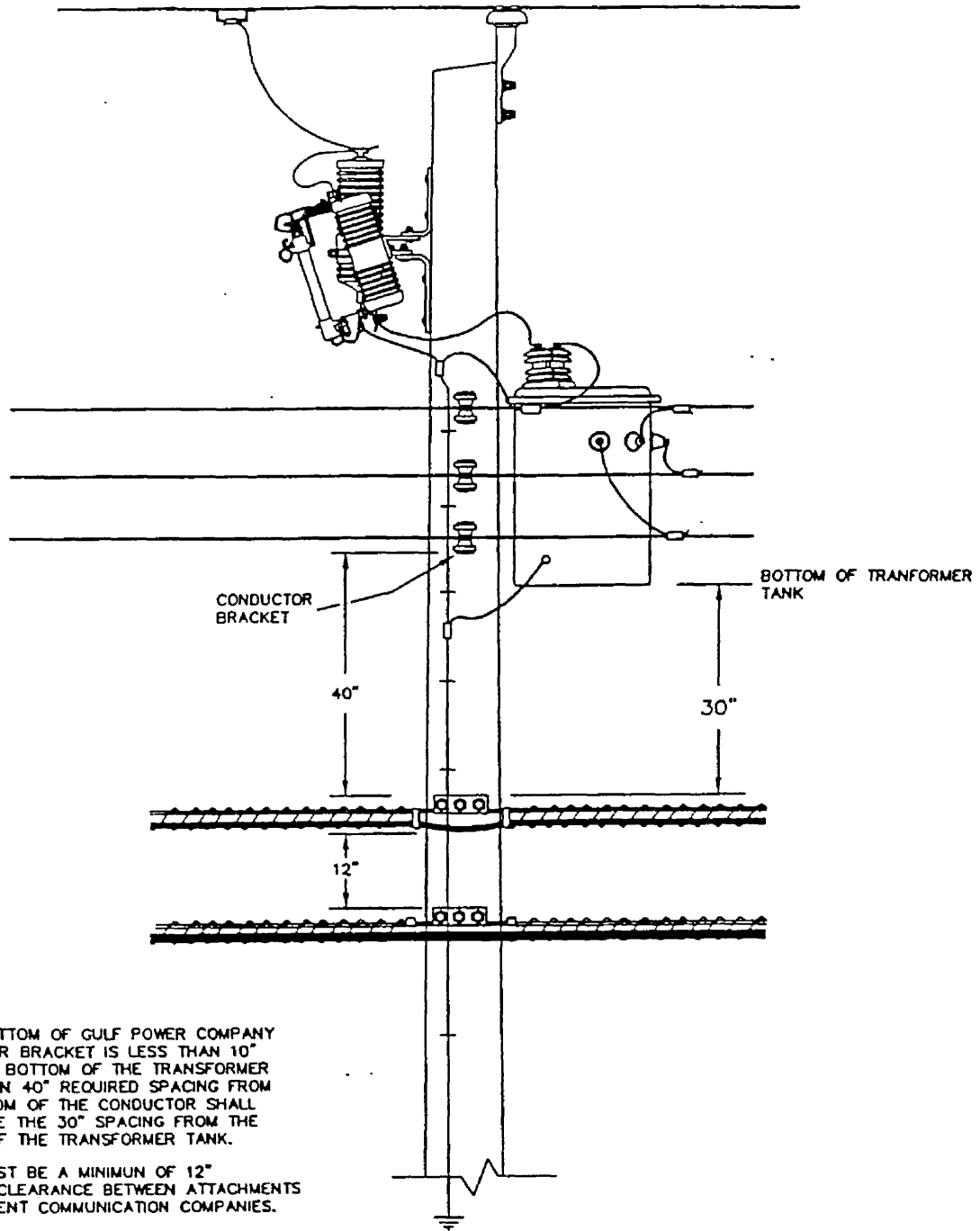


DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	12 INCHES	GPC REQUIREMENT
C	12 INCHES	GPC REQUIREMENT

NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE

Original Date: 05/29/92	GULF POWER COMPANY			PLATE <b>C-2</b>
ENG: R.B.    DRN: E.L.W	03/18/96			
Approved: M. R. Dunn				

# JOINT USE CONSTRUCTION TYPICAL SINGLE TRANSFORMER INSTALLATION 7.2 KV CONSTRUCTION

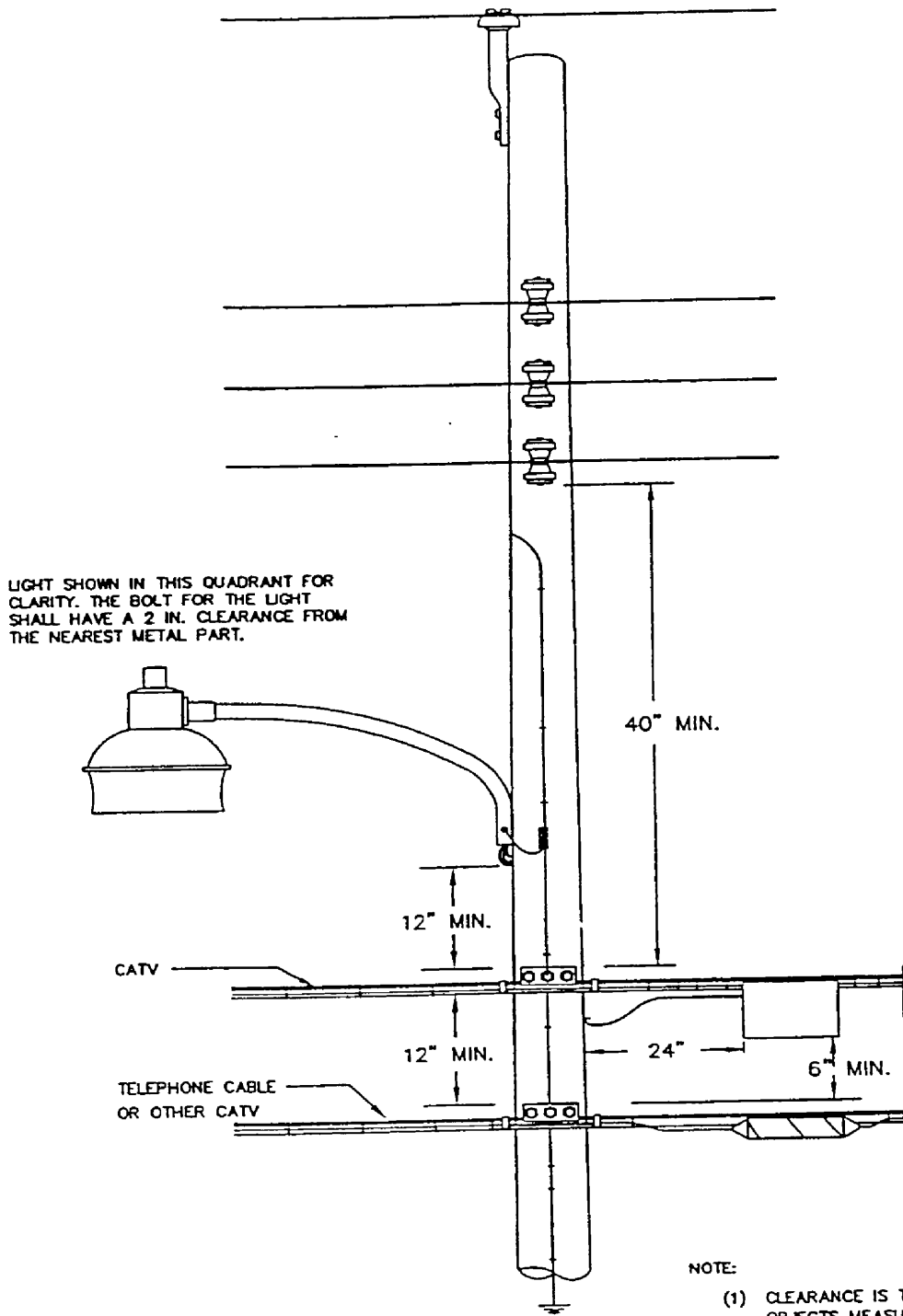


1. IF THE BOTTOM OF GULF POWER COMPANY CONDUCTOR BRACKET IS LESS THAN 10" FROM THE BOTTOM OF THE TRANSFORMER TANK, THEN 40" REQUIRED SPACING FROM THE BOTTOM OF THE CONDUCTOR SHALL SUPERSEDE THE 30" SPACING FROM THE BOTTOM OF THE TRANSFORMER TANK.
2. THERE MUST BE A MINIMUM OF 12" VERTICAL CLEARANCE BETWEEN ATTACHMENTS OF DIFFERENT COMMUNICATION COMPANIES.
3. THE DIMENSIONS OF THIS PLATE DO NOT SUPERCEDE ANY APPLICABLE NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.
4. THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

Original Date: 03/28/84	GULF POWER COMPANY			PLATE <b>C-3</b>
ENG: R.B.    DRN: E.L.W	05/28/92			
Approved: M. R. Dunn	03/18/96			



**JOINT USE CONSTRUCTION  
TYPICAL ATTACHMENT OF CATV DISTRIBUTION SYSTEMS TO  
GPCO POLES TYPICAL OUTDOOR LIGHT INSTALLATION**

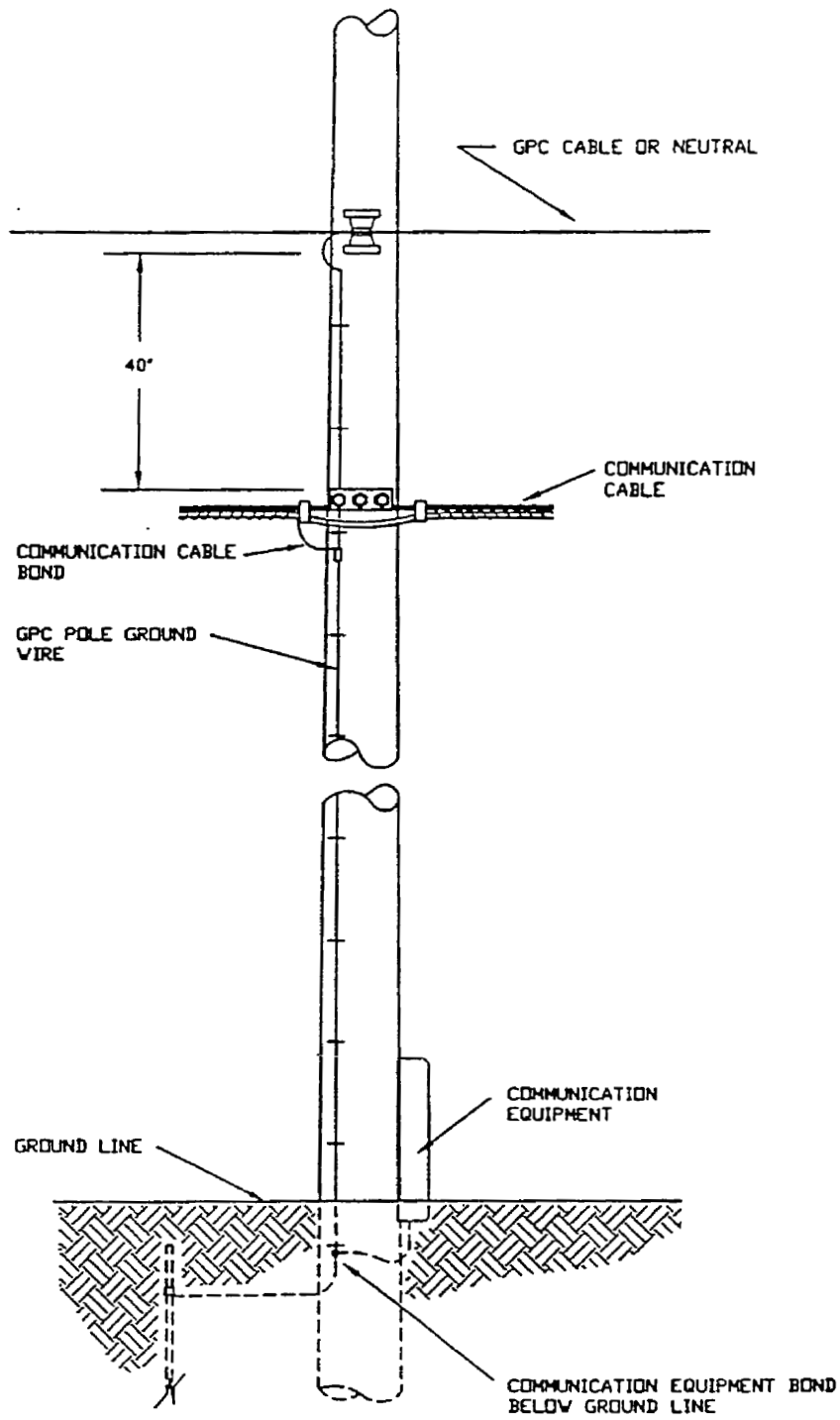


**NOTE:**

- (1) CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SURFACE-TO-SURFACE.
- (2) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

Original Date: 11/24/81	<b>GULF POWER COMPANY</b>			PLATE <b>C-4</b>
ENG: J.M.    DRN: E.L.W	08/30/88	10/06/88	09/23/94	
Approved: M. R. Dunn	03/28/84	05/11/92	03/18/96	

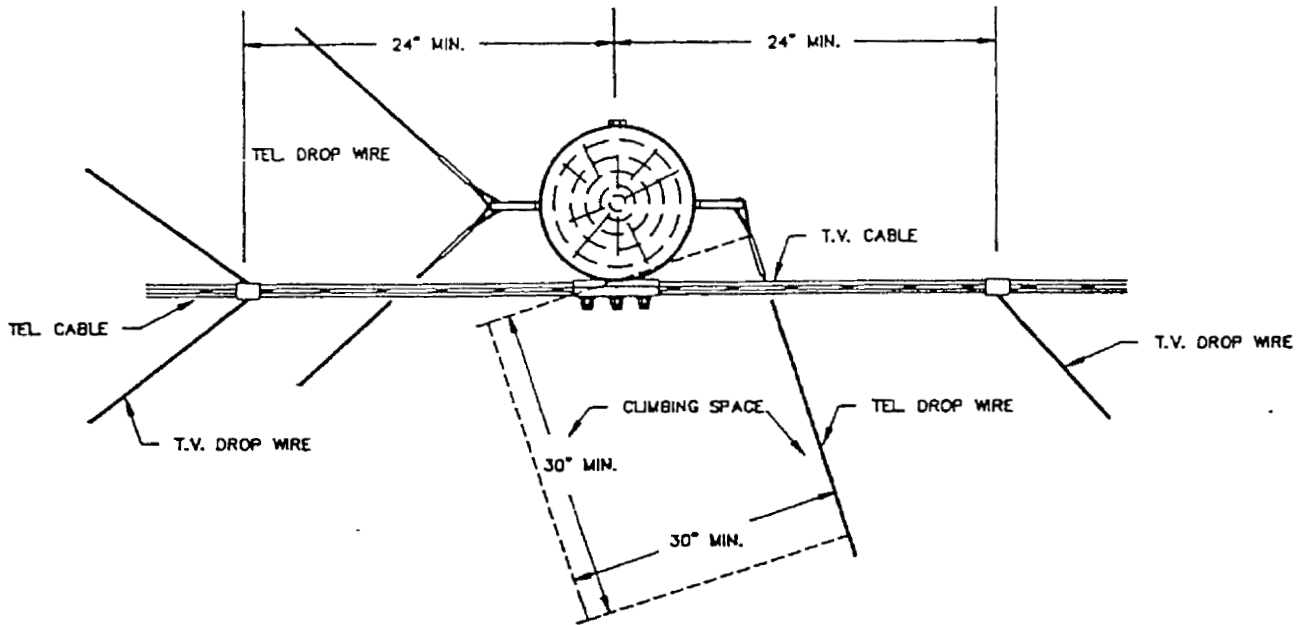
# GROUNDING CONNECTIONS



Original Date: 06/16/92	GULF POWER COMPANY			PLATE  <b>C-5</b>
ENG: R.B.    DRN: E.L.W	03/18/96			
Approved: M. R. Dunn				

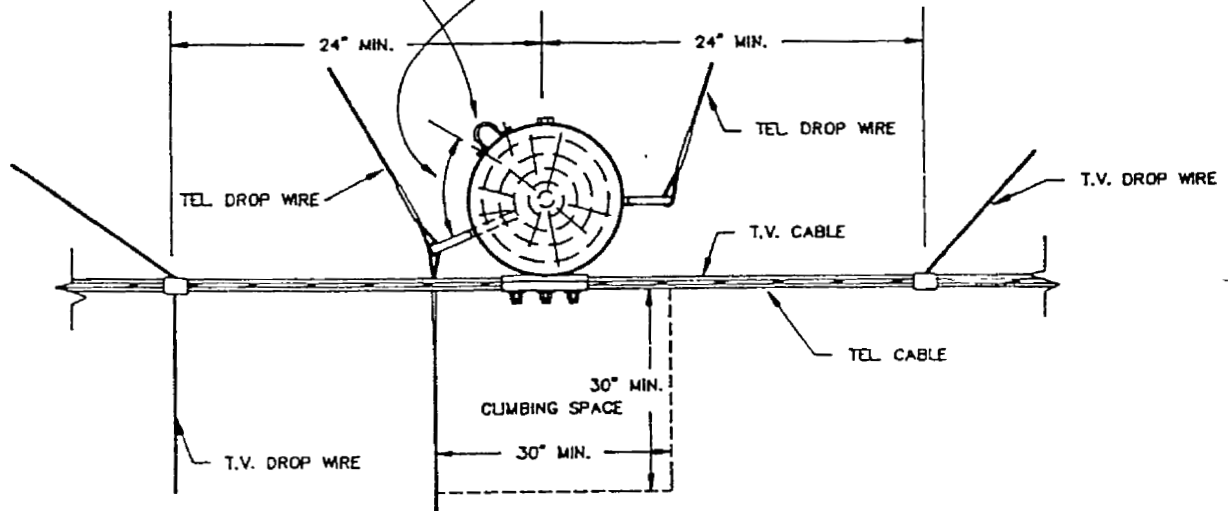
# JOINT USE CONSTRUCTION

## MINIMUM CLIMBING SPACE THROUGH COMMUNICATION CIRCUITS



POWER SYSTEM VERTICAL RUN OR GROUND WIRE

SEPARATION BETWEEN VERTICAL RUN, INCLUDING STAPLES OR OTHER DEVICES USED IN FASTENING IT TO THE POLE AND COMMUNICATION DRIVE HOOK SHALL BE AT LEAST 2 INCHES MEASURED IN ANY DIRECTION.



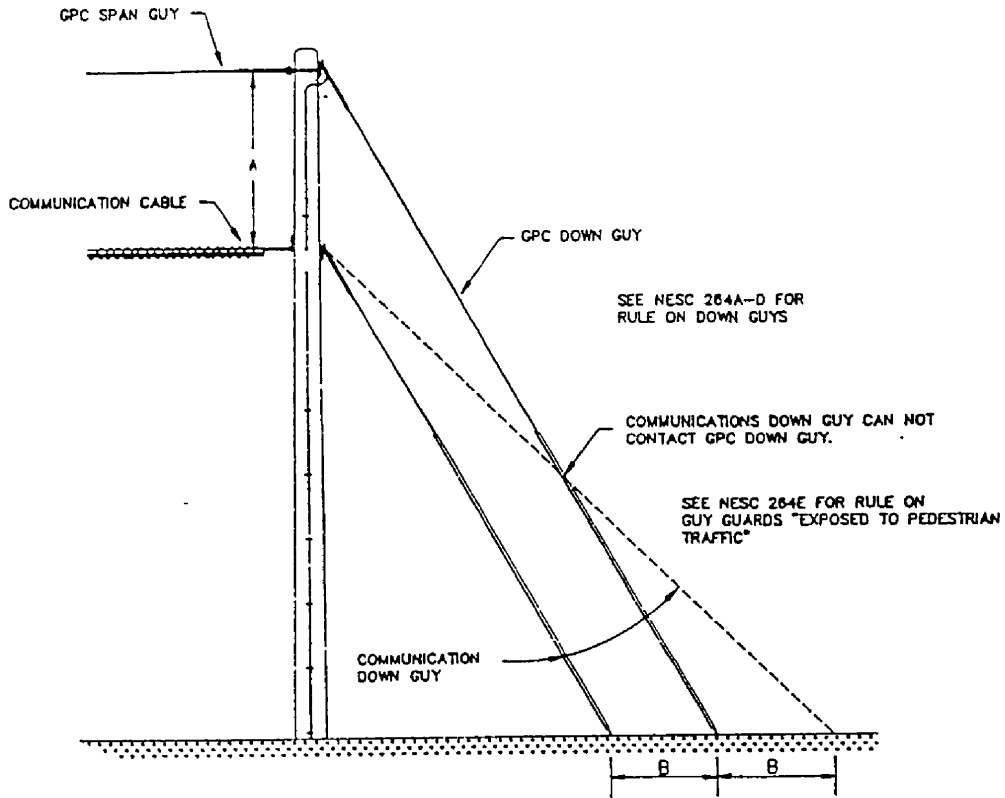
ALL COMMUNITY ANTENNA T.V. SERVICE DROPS TO BE MADE NO LESS THAN 24" EITHER DIRECTION FROM CENTER LINE OF POLE.

NOTE: (1.) THE DIMENSIONS OF THIS PLATE DO NOT SUPERSEDE ANY NATIONAL ELECTRICAL SAFETY CODE REQUIREMENTS.

(2.) THIS IS A TYPICAL ATTACHMENT AND MAY NOT APPLY IN ALL CASES.

Original Date: 03/24/84	GULF POWER COMPANY			PLATE <b>C-6</b>
ENG: J.M.    DRN: H.W.T	11/24/81			
Approved: L. ROUILLIER	06/17/92			

# SEPARATION OF DOWN GUYS

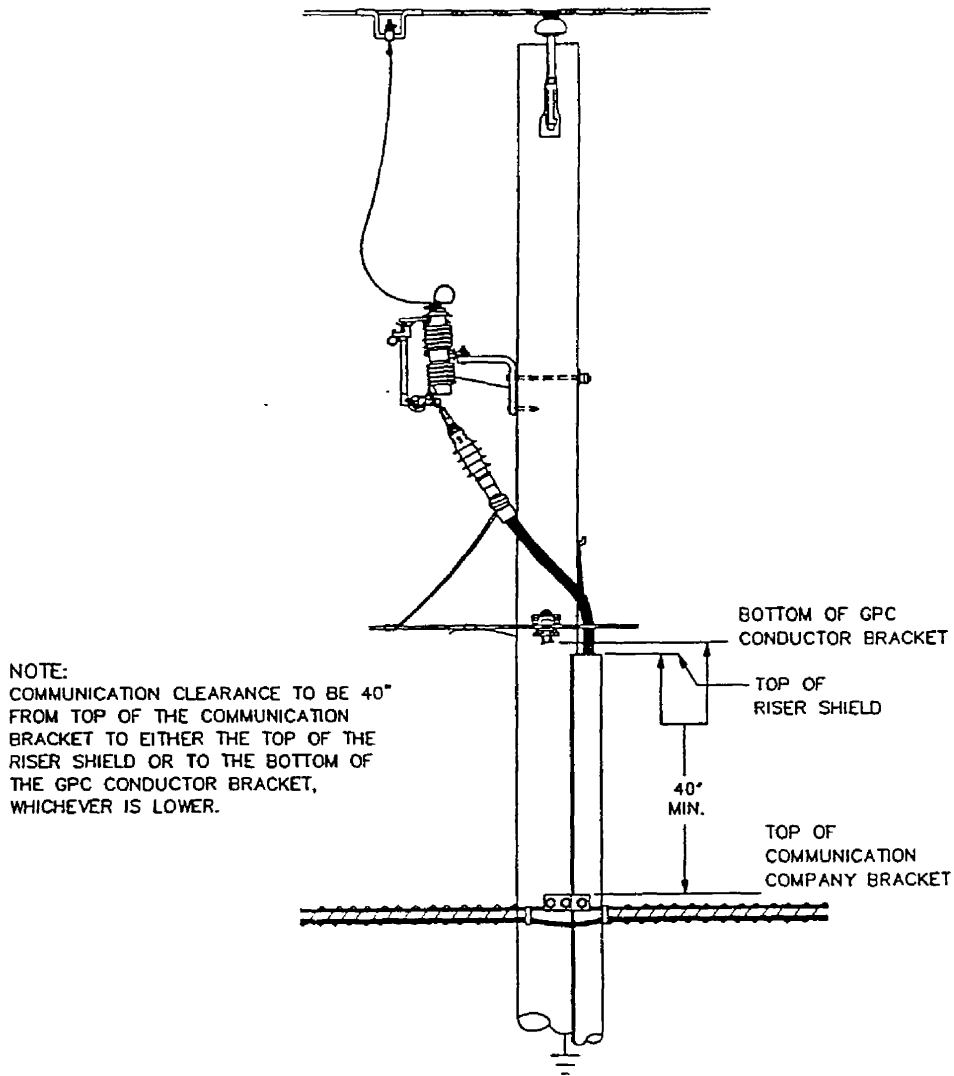


DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-B
B	4 FEET	GPC REQUIREMENT

DIMENSION B BASED ON ANCHOR HOLDING POWER AND CONE OF INFLUENCE OF ADJACENT ANCHORS.

Original Date: 06/03/92	<b>GULF POWER COMPANY</b>			PLATE  <b>C-7</b>
ENG: R.B.    DRN: E.L.W.				
Approved: L. ROUILLIER				

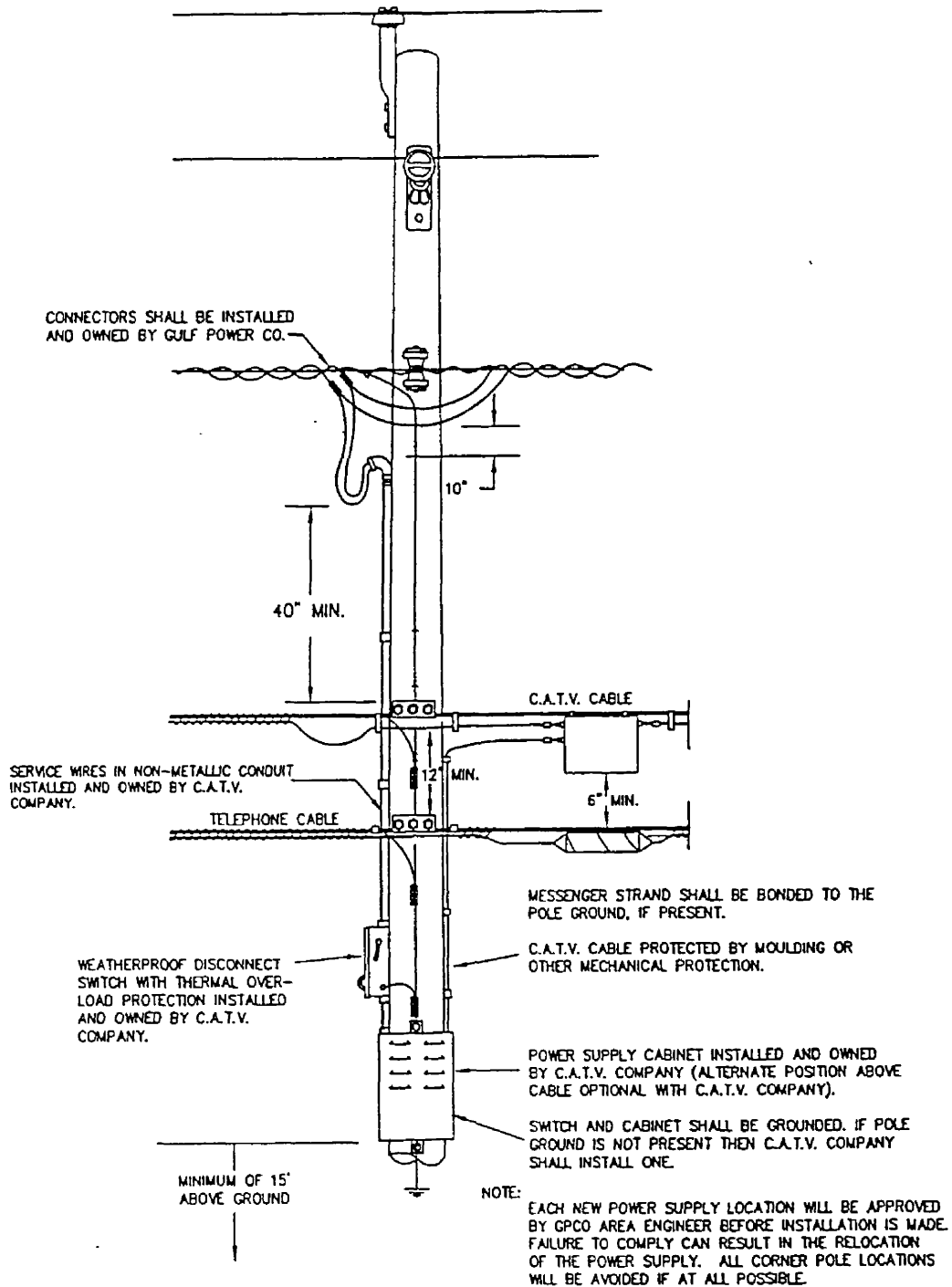
# SEPARATION AT POLE UNDERGROUND RISERS



NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN  
TWO OBJECTS MEASURED SURFACE-TO-SURFACE.

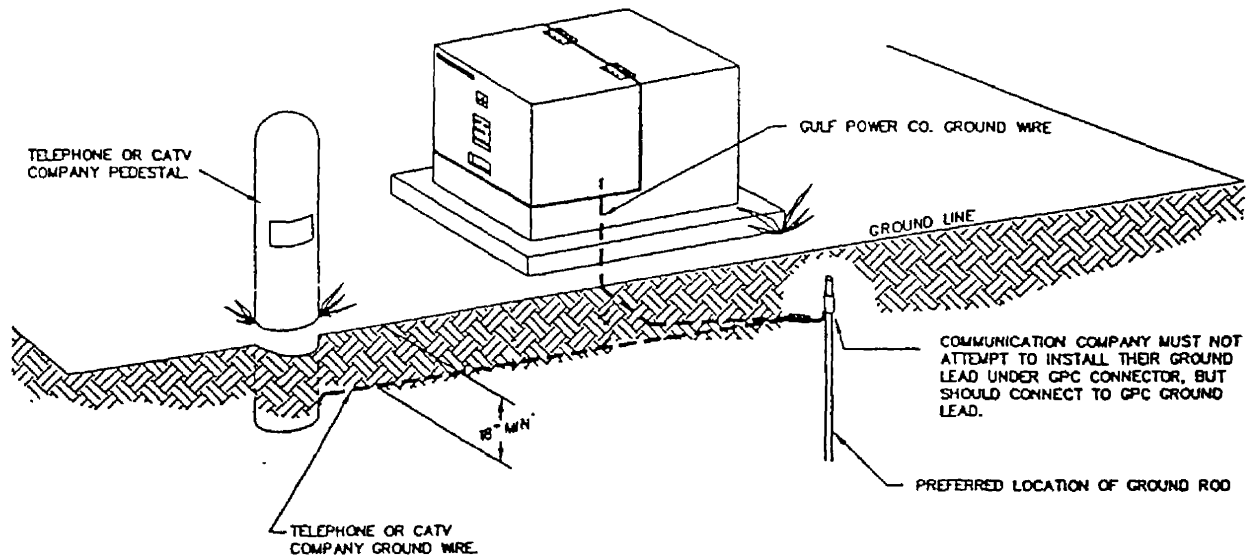
Original Date: 08/23/95	GULF POWER COMPANY			PLATE  <b>C-8</b>
ENG: R.B.      DRN:    E.L.W.	03/18/96			
Approved:      M. R. DUNN				

# COMMUNICATION/SIGNAL TYPE ATTACHMENT C.A.T.V. POWER SUPPLY INSTALLATION

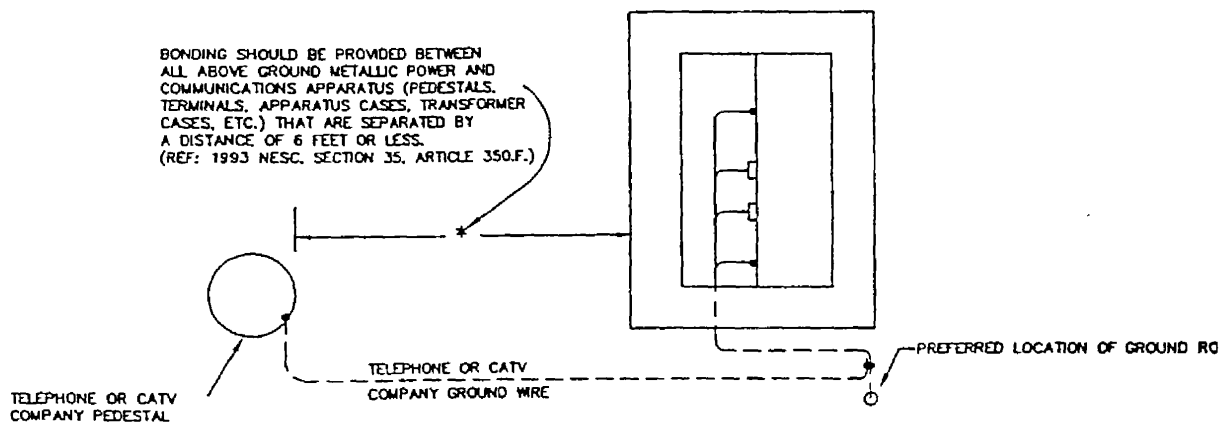


Original Date: 05/19/92		GULF POWER COMPANY			PLATE <b>C-9</b>
ENG: R.B.	DRN: E.L.W.	09/23/94			
Approved:	M.R. DUNN	03/18/96			

# BONDING OF PADMOUNT TRANSFORMER TO COMMUNICATION COMPANY FACILITIES



**ISOMETRIC VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL**

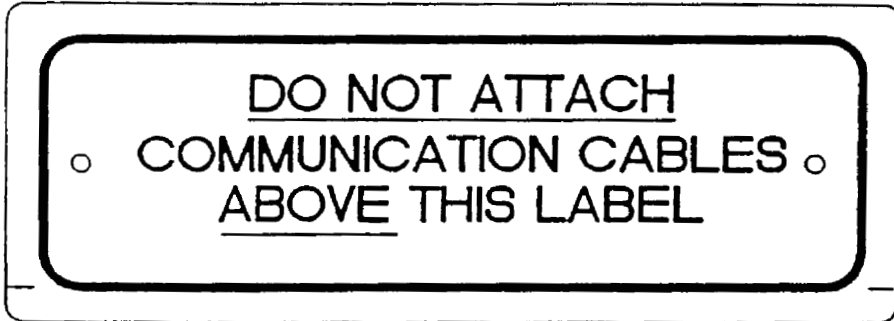


**TOP VIEW OF TRANSFORMER PAD  
SHOWING GROUNDING DETAIL**

Original Date: 04/19/93	<b>GULF POWER COMPANY</b>			PLATE  <b>C-10</b>
ENG: R.B.    DRN: E.L.W.	03/18/95			
Approved: M.R. DUNN				

# JOINT USE CONSTRUCTION

## SEPARATION OF COMMUNICATION CABLES AND GULF POWER CO. FACILITIES

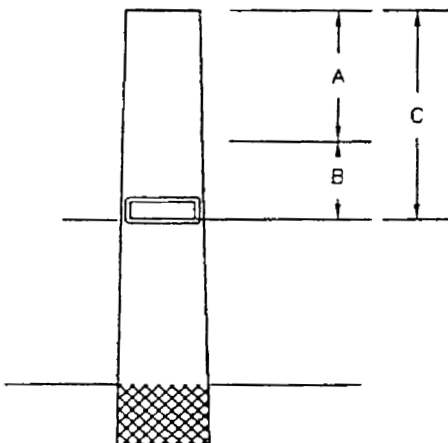


NOTE ---

STORE CODE # 09-5550-4

THIS POLE MARKING LABEL SHOULD BE INSTALLED ON ANY POLE WHERE COMMUNICATION CABLES COULD ATTACH. REFER TO SPEC PLATES #C-1, C-2, C-3, C-4, C-5, C-7, C-8, AND C-9 FOR POINT OF ATTACHMENT.

- NOTE 1. BOTTOM LINE OF POLE MARKING LABEL SHOULD BE ON THE 40" MARK AND SHOULD BE INSTALLED WHERE IT WILL BE VISIBLE FROM THE STREET.
2. SEE ENGINEER CONCERNING ANY REQUEST OF ADDITIONAL POLE HEIGHT ON 45' AND ABOVE POLES.



POLE SIZE	A	B	C
35'	6'	40"	9'-4"
40'	8.5'	40"	11'-10"
45'	13'	40"	16'-4"

Original Date: 04/05/93	GULF POWER COMPANY			PLATE <b>C-11</b>
ENG: J.D.M.    DRN: E.L.W.				
Approved: M.R. DUNN				



June 17, 2003

Cable Company	Billing Description	Date Rec by cable company	Amount Billed	Payments Received	Date payment Rec'd gy Guif	Outstanding Balance (A)	Current month Interest Calculation 18% APR (A) X 1.5%	Current Balance Owed to Date 143-99520
<b>Southern Light</b>	143-99520      253-307					-	-	-
02-380	2nd quarter interim billing	7/11/2002	1,949.35	1,949.35	8/29/2002	-	-	-
02-399	July 2002 Semi Annual bill	7/12/2002	6,353.90	6,353.90	8/29/2002	-	-	-
02-633	3rd quarter interim billing		1,605.95	1,605.95	12/26/2002	-	-	-
03-042	4th quarter interim billing	2/26/2003	1,136.23	1,136.23	3/27/2003	-	-	-
03-059	January 2003 Semi Annual Bill	2/26/2003	11,388.30	11,388.30	3/27/2003	-	-	-
03-213	1st quarter 2003 Interim billing	5/15/2003	9,893.55			9,893.55		9,893.55
	<b>Prior Interest Billings to Date</b>		<b>48.18</b>	<b>48.18</b>		-		-
	<b>TOTAL</b>		<b>32,375.46</b>	<b>22,481.91</b>		<b>9,893.55</b>	-	<b>9,893.55</b>

STATE OF FLORIDA  
COUNTY OF BAY

LEASE AGREEMENT

THIS AGREEMENT made and entered into as of this 6th day of April, 1998,  
by and between GULF POWER COMPANY, hereinafter referred to as "Gulf", a corporation  
organized and existing under the laws of the State of Maine, and authorized to do business in  
Florida, and R. L. Singletary, Inc., hereinafter referred to as "Lessee"

WITNESSETH:

WHEREAS, Gulf owns and operates an electric utility system in the State of Florida; and

WHEREAS, Lessee owns or leases properties which are located in the area, said  
properties being more fully described in Exhibit A attached hereto; and

WHEREAS, Lessee owns and operates its own internal communication system within the  
improvements located on the properties described in Exhibit A; and

WHEREAS, Lessee is desirous of interconnecting its internal communication system and  
in order to do so, finds it is necessary to have installed and maintained the necessary cables,  
wires and appliances to facilitate such interconnection; and

WHEREAS, Gulf is willing to lease its poles and permit the attachment of cables, wires  
and appliances to such poles in the manner and along the route described in Exhibit A, where in  
Gulf's judgment, such use will not interfere with its service requirements.

NOW, THEREFORE, in consideration of the above premises and the mutual benefits from the covenants herein set forth, the parties hereto do hereby agree to the following:

Section 1 - Term: This agreement shall become effective upon being properly executed by both parties and if not otherwise terminated will continue in effect for five (5) years and thereafter until terminated by either party by giving to the other party at least six (6) months' written notice of termination. Upon termination of this agreement, Lessee relinquishes all rights whatsoever to attach its lines to the poles owned by Gulf Power.

Section 2 - Ownership, Installation and Maintenance: Lessee shall purchase, and will own, all cables, wires and appliances necessary to effect the interconnection of its internal communication system. Lessee or Lessee's representative shall install and maintain the facilities on the poles in a workmanlike manner, and in accordance with applicable codes, rules or regulations. In the installation and maintenance of its facilities, Lessee shall use employees and contractors who are experienced in working with or around energized electrical conductors. Lessee shall exercise caution to avoid damage to facilities of Gulf and of others on the poles and assumes responsibility for any and all loss or expense arising from such damage. Lessee will make an immediate report to Gulf of the occurrence of any damage.

Lessee assumes full responsibility for installation, repair and upkeep of its facilities on the poles of Gulf. In entering into this lease agreement, Gulf has relied upon Lessee's representations that Lessee or Lessee's representative is well able to install and maintain its facilities in accordance with applicable codes, rules and regulations, and Lessee recognizes that nothing in this Lease Agreement imposes any duty upon Gulf to supervise or oversee the installation, upkeep and maintenance of Lessee's facilities. Lessee's failure to maintain its attachments in conformity with applicable codes, rules, and regulations constitutes a default for which Gulf may terminate the agreement under Section 9.

Section 3 – Rates and Charges: Lessee covenants and agrees to pay to Gulf, an annual charge of \$40.00 per pole, or a minimum of \$200.00 per year, payable in advance, receipt of the first year's charge being hereby acknowledged.

Section 4 - Maintaining of Attachments: Lessee agrees to transfer its attachments at Lessee's sole expense in the event transfer to a new pole is required, such transfer to be performed by Lessee or Lessee's representative no later than thirty (30) days after the date notice of transfer is given by Gulf. If Lessee fails to perform the required work within said period Gulf may at its option, transfer the attachments on Lessee's behalf, and in such case will bill Lessee for the cost of such work plus fifteen (15%) percent, or may remove Lessee's attachments without any liability therefore. Any maintenance of the Lessee's cables, wires and appliances is the responsibility of the Lessee.

Section 5 - Reservation of Rights: Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner that will best enable it to fulfill its own service requirements. Gulf will not be liable to Lessee for any interruption of the service of Lessee, interference with the operation of Lessee, or losses resulting from such interruption or interference.

Section 6 - Indemnification and Insurance: Lessee shall protect, indemnify, defend and save harmless Gulf from and against any and all loss, claim, damage, judgment or liability including payments made under any Worker's Compensation Law or any plan for employees' disability and death benefits arising out of or relating to the erection, maintenance, presence, use, abandonment or removal of Lessee's attachments or by the proximity of Lessee's attachments to facilities belonging to Gulf or others jointly using Gulf's poles, or by any act of Lessee on or in the vicinity of Gulf's poles, whether or not such loss, claim, damage, judgment or liability arises out of the joint or concurrent negligence of the parties hereto. Lessee further agrees to indemnify and

hold harmless Gulf Power Company for any failure of Lessee, its employees or contractors to fulfill their obligations to perform work in a safe and proper manner, whether or not such failure is contributed to by the actions of Gulf, its employees, agents, or contractors. The Lessee shall make an immediate report to Gulf of the occurrence of any personal injury or property damage while working on Gulf's facilities.

Lessee will procure and maintain insurance to protect it and Gulf against claims or damage to property or injury to or death to persons in the amount of at least one million dollars for damages arising from one occurrence. Lessee's obligation to indemnify Gulf specified above is not limited to the amount of liability insurance coverage. Gulf will be an additional insured under Lessee's liability insurance, and Lessee will furnish to Gulf a certificate showing the issuance of such insurance and the insurance company's agreement that it will not cancel or change its policy except after thirty (30) days' notice to Gulf.

The duty to indemnify under this Section includes the duty to provide a full legal defense for any such claims arising out of or alleged to have been caused by this erection, presence or use of Lessee's facilities on Gulf's poles, whether or not such claims are disputed by Lessee. Failure to provide and maintain the liability insurance required by this Section shall, at the sole option of Gulf, constitute a default on the part of Lessee and its performance of the terms of this lease agreement.

Section 7 - Removal of Cable: Gulf shall have the right to remove Lessee's wire, cable and appliances from Gulf's poles immediately upon the expiration of this lease agreement, or upon any default by Lessee hereunder. If such wire, cable and appliances are removed pursuant to this section, they may be disposed of by Gulf in any manner deemed advisable by it.

Section 8 - No Warranties: Gulf does not warrant the extent of its rights-of-way. Upon notice from Gulf to Lessee that the use of any pole is forbidden by municipal authorities or property owners, this lease as it relates to such pole or poles shall immediately terminate and the

cables, wires and appliances of Lessee shall be removed by Gulf promptly from the affected pole. Gulf likewise does not warrant its right and ability to lease its poles for the purposes provided for herein. Upon notice from Gulf to Lessee that the use of Gulf's facilities for the purposes provided for herein is forbidden by any federal, state or local regulatory or governmental authority, this lease shall immediately terminate, and the cables, wires and appliances of Lessee shall be removed by Gulf promptly from the affected pole.

Gulf does not warrant the extent of its rights-of-way, nor does Gulf in any way warrant or represent that it has provided, or will provide, a safe place to work to Lessee, Lessee's employees, and employees of Lessee's contractors. Determination of a safe place to work shall be the sole responsibility of Lessee.

Section 9 - Default and Late Payment: If Lessee fails to comply with any of the provisions of this lease agreement and fails within thirty (30) days after written notice from Gulf to correct a breach, Gulf may terminate this agreement and remove the cable, wires and appliances of Lessee from Gulf's poles.

If Gulf retains attorneys to assist it in the enforcement of the provisions hereunder, Lessee shall pay reasonable attorneys' fees whether or not suit is necessary, and if proceedings are begun or had to enforce the provisions hereof or to terminate this lease, Lessee shall pay all costs, expenses and charges incurred in said proceedings, including costs and attorneys' fees incurred on any appeals.

Section 10 - Waiver: No failure, or successive failures on the part of Gulf to enforce any covenant or agreement, or no waiver or successive waivers, on its part of any condition, agreement, covenant or provision herein shall operate as a discharge thereof or render the same invalid, or impair the right of Gulf to enforce the same in event of any subsequent breach or breaches. The acceptance of the charges provided for herein by Gulf shall not be deemed a

waiver by it of any earlier breach by the Lessee, except as to such covenants and conditions as may relate to the charges so accepted.

Section 11 - Agreement Not to Affect Other Agreements: Nothing in this agreement shall be construed as affecting the rights or privileges previously conferred by Gulf to others who are not parties to this agreement to use any facilities of Gulf covered by this agreement. Gulf has the right to continue to confer such rights or privileges. The attachment privileges in this agreement are subject to those existing contracts and arrangements.

Section 12 - Assignment: Lessee will not assign, transfer or sublet its rights under this agreement without the prior written consent of Gulf.

Section 13 - No Ownership Rights: Use of Gulf's facilities under this agreement will not create or vest in Lessee any ownership or property rights in the facilities, no matter how long such use continues. This agreement shall not obligate Gulf to keep in place any of its facilities for a period longer than required by its own service requirements.

Section 14 - Notices: Any notice, demand, or request required or authorized by this lease agreement shall be given at the following addresses:

As to Gulf Power Company:      Project Services Administrator  
   Gulf Power Company  
   One Energy Place  
   Pensacola, FL 32520

As to Lessee:                              R. L. Singletary, Inc.  
   19979 Front Beach Road  
   Panama City Beach, FL 32413

Section 15 - Successors and Assigns: Subject to the provisions of Section 12, this agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

**R. L. Singletary, Inc.**

Attest:

Lisa Spann

By: R. L. Singletary  
Title: President

**Gulf Power Company**

Attest:

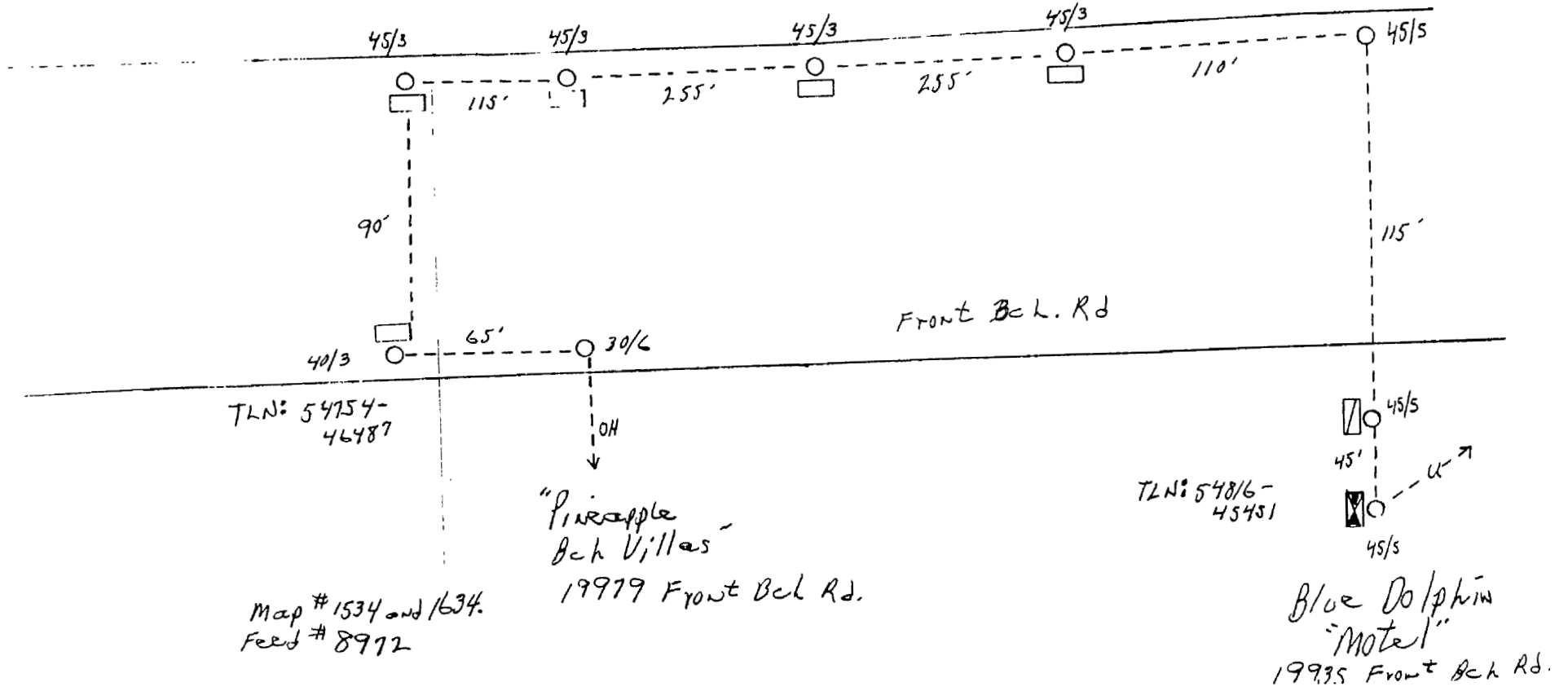
Linda G. Malone  
**ASST. SECRETARY**

[Signature]  
Vice President - Power Delivery and  
Customer Operations



4-8-78

"Communication Cable"  
to / From  
Pineapple Beach Villas  
and  
Blue Dolphin Motel



Energy Place  
Pensacola, Florida 32520

Tel 850 444.6111

PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781



A SOUTHERN COMPANY

January 10, 2003

Invoice No. 03-062

R.L. Singletary, Inc.  
d/b/a Pineapple Beach Resorts  
19979 Front Beach Road Suite 17-A  
Panama City Beach, Florida 32413

We Charge Your Account With:

\$360.00

Pole Attachment rental for the period January 1, 2003 through December 31, 2003 at the annual rate of \$40.00 per pole as stated in our contract.

Number of Attachments	Period	No. Days	Annual Rate		Pole Attachment Rental for Period
9	01/01/03 - 12/31/03	365/365	\$40.00	=	\$360.00
<b>Total Invoice Amount</b>					<u>\$360.00</u>

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

Distribution:

DUE UPON RECEIPT

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

Credit:

143-99514

Amount:

\$360.00

COPY

One Energy Place  
Pensacola, Florida 32520

Tel 850.444.6111

PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781



A SOUTHERN COMPANY

January 10, 2002

Invoice No. 02-043

R.L. Singletary, Inc.  
d/b/a Pineapple Beach Resorts  
19979 Front Beach Road Suite 17-A  
Panama City Beach, Florida 32413

We Charge Your Account With:

\$360.00

Pole Attachment rental for the period January 1, 2002 through December 31, 2002 at the annual rate of \$40.00 per pole as stated in our contract.

Number of Attachments	Period	No. Days	Annual Rate		Pole Attachment Rental for Period
9	01/01/02 - 12/31/02	365/365	\$40.00	=	\$360.00
Total Invoice Amount					<u>\$360.00</u>

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

 COPY

Distribution:

DUE UPON RECEIPT

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

Credit: 143-99514

Amount: \$360.00

One Energy Place  
Pensacola, Florida 32520

850 444 6111

PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781



A SOUTHERN COMPANY

January 1, 2001

Invoice No. 01-678

R.L. Singletary, Inc.  
d/b/a Pineapple Beach Resorts  
19979 Front Beach Road Suite 17-A  
Panama City Beach, Florida 32413

We Charge Your Account With:

\$360.00

Pole Attachment rental for the period January 1, 2001 through December 31, 2001 at the annual rate of \$40.00 per pole as stated in our contract.

Number of Attachments	Period	No. Days	Annual Rate		Pole Attachment Rental for Period
9	01/01/01 - 12/31/01	365/365	\$40.00	=	\$360.00
<b>Total Invoice Amount</b>					<u>\$360.00</u>

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

Distribution:

DUE UPON RECEIPT

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

Credit: 143-99514

Amount: \$360.00

Please return this portion with payment.



P. O. BOX 2448  
Panama City, FL 32402

CURRENT AMOUNT  
DELINQUENT AFTER  
01/31/2000

**FINAL BILL**

030206070000000000003600000000000000000036000000000000



R L SINGLETARY INC  
PINEAPPLE BEACH RESORTS  
8317 FRONT BCH RD STE 17-A  
PANAMA CITY BCH FL 32407

Remit To: 360.00 MiscChg80851282  
One Energy Place  
Pensacola FL  
32520-0714

ACCOUNT NUMBER 02060-70000 06

**TOTAL DUE 360.00**

S000002  
ACCOUNT NUMBER 02060-70000  
CUSTOMER NAME R L SINGLETARY INC  
SERVICE ADDRESS 8317 FRONT BCH RD STE 17-A

**GULF POWER COMPANY**  
1230 E. 15th. St.  
Panama City, FL 32405  
For Customer Service, Please Call:  
1-800-225-5797

RATE NAME	SERVICE FROM	PERIOD TO	METER NUMBER	READING TYPE	METER READING		METER CONSTANT	USAGE
					PREVIOUS	PRESENT		

EXPLANATION OF CHARGES

PAYMENTS SINCE LAST BILLING

Joint Use Agreement 360.00  
JOINT-USE AGREE INV NESB 512387  
Final Bill

CURRENT AMOUNT  
DELINQUENT AFTER  
01/31/2000

**TOTAL DUE  
360.00**

ACCOUNT NUMBER 02060-70000

STATE OF FLORIDA  
COUNTY OF BAY

LEASE AGREEMENT

THIS AGREEMENT made and entered into as of this 6th day of April, 1998,  
by and between GULF POWER COMPANY, hereinafter referred to as "Gulf", a corporation  
organized and existing under the laws of the State of Maine, and authorized to do business in  
Florida, and The Crest Corporation of Panama City Beach, hereinafter referred to as "Lessee"

WITNESSETH:

WHEREAS, Gulf owns and operates an electric utility system in the State of Florida; and

WHEREAS, Lessee owns or leases properties which are located in the area, said  
properties being more fully described in Exhibit A attached hereto; and

WHEREAS, Lessee owns and operates its own internal communication system within the  
improvements located on the properties described in Exhibit A; and

WHEREAS, Lessee is desirous of interconnecting its internal communication system and  
in order to do so, finds it is necessary to have installed and maintained the necessary cables,  
wires and appliances to facilitate such interconnection; and

WHEREAS, Gulf is willing to lease its poles and permit the attachment of cables, wires  
and appliances to such poles in the manner and along the route described in Exhibit A, where in  
Gulf's judgment, such use will not interfere with its service requirements.

NOW, THEREFORE, in consideration of the above premises and the mutual benefits from the covenants herein set forth, the parties hereto do hereby agree to the following:

Section 1 - Term: This agreement shall become effective upon being properly executed by both parties and if not otherwise terminated will continue in effect for five (5) years and thereafter until terminated by either party by giving to the other party at least six (6) months' written notice of termination. Upon termination of this agreement, Lessee relinquishes all rights whatsoever to attach its lines to the poles owned by Gulf Power.

Section 2 - Ownership, Installation and Maintenance: Lessee shall purchase, and will own, all cables, wires and appliances necessary to effect the interconnection of its internal communication system. Lessee or Lessee's representative shall install and maintain the facilities on the poles in a workmanlike manner, and in accordance with applicable codes, rules or regulations. In the installation and maintenance of its facilities, Lessee shall use employees and contractors who are experienced in working with or around energized electrical conductors. Lessee shall exercise caution to avoid damage to facilities of Gulf and of others on the poles and assumes responsibility for any and all loss or expense arising from such damage. Lessee will make an immediate report to Gulf of the occurrence of any damage.

Lessee assumes full responsibility for installation, repair and upkeep of its facilities on the poles of Gulf. In entering into this lease agreement, Gulf has relied upon Lessee's representations that Lessee or Lessee's representative is well able to install and maintain its facilities in accordance with applicable codes, rules and regulations, and Lessee recognizes that nothing in this Lease Agreement imposes any duty upon Gulf to supervise or oversee the installation, upkeep and maintenance of Lessee's facilities. Lessee's failure to maintain its attachments in conformity with applicable codes, rules, and regulations constitutes a default for which Gulf may terminate the agreement under Section 9.

Section 3 – Rates and Charges: Lessee covenants and agrees to pay to Gulf, an annual charge of \$40.00 per pole, or a minimum of \$200.00 per year, payable in advance, receipt of the first year's charge being hereby acknowledged.

Section 4 - Maintaining of Attachments: Lessee agrees to **transfer its attachments** at Lessee's sole expense in the event transfer to a new pole is required, such transfer to be performed by Lessee or Lessee's representative no later than thirty (30) days after the date notice of transfer is given by Gulf. If Lessee fails to perform the required work within said period Gulf may at its option, transfer the attachments on Lessee's behalf, and in such case will bill Lessee for the cost of such work plus fifteen (15%) percent, or may remove Lessee's attachments without any liability therefore. Any maintenance of the Lessee's cables, wires and appliances is the responsibility of the Lessee.

Section 5 - Reservation of Rights: Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner that will best enable it to fulfill its own service requirements. Gulf will not be liable to Lessee for any interruption of the service of Lessee, interference with the operation of Lessee, or losses resulting from such interruption or interference.

Section 6 - Indemnification and Insurance: Lessee shall protect, indemnify, defend and save harmless Gulf from and against any and all loss, claim, damage, judgment or liability including payments made under any Worker's Compensation Law or any plan for employees' disability and death benefits arising out of or relating to the erection, maintenance, presence, use, abandonment or removal of Lessee's attachments or by the proximity of Lessee's attachments to facilities belonging to Gulf or others jointly using Gulf's poles, or by any act of Lessee on or in the vicinity of Gulf's poles, whether or not such loss, claim, damage, judgment or liability arises out of the joint or concurrent negligence of the parties hereto. Lessee further agrees to indemnify and



hold harmless Gulf Power Company for any failure of Lessee, its employees or contractors to fulfill their obligations to perform work in a safe and proper manner, whether or not such failure is contributed to by the actions of Gulf, its employees, agents, or contractors. The Lessee shall make an immediate report to Gulf of the occurrence of any personal injury or property damage while working on Gulf's facilities.

Lessee will procure and maintain insurance to protect it and Gulf against claims or damage to property or injury to or death to persons in the amount of at least one million dollars for damages arising from one occurrence. Lessee's obligation to indemnify Gulf specified above is not limited to the amount of liability insurance coverage. Gulf will be an additional insured under Lessee's liability insurance, and Lessee will furnish to Gulf a certificate showing the issuance of such insurance and the insurance company's agreement that it will not cancel or change its policy except after thirty (30) days' notice to Gulf.

The duty to indemnify under this Section includes the duty to provide a full legal defense for any such claims arising out of or alleged to have been caused by this erection, presence or use of Lessee's facilities on Gulf's poles, whether or not such claims are disputed by Lessee. Failure to provide and maintain the liability insurance required by this Section shall, at the sole option of Gulf, constitute a default on the part of Lessee and its performance of the terms of this lease agreement.

Section 7 - Removal of Cable: Gulf shall have the right to remove Lessee's wire, cable and appliances from Gulf's poles immediately upon the expiration of this lease agreement, or upon any default by Lessee hereunder. If such wire, cable and appliances are removed pursuant to this section, they may be disposed of by Gulf in any manner deemed advisable by it.

Section 8 - No Warranties: Gulf does not warrant the extent of its rights-of-way. Upon notice from Gulf to Lessee that the use of any pole is forbidden by municipal authorities or property owners, this lease as it relates to such pole or poles shall immediately terminate and the

cables, wires and appliances of Lessee shall be removed by Gulf promptly from the affected pole. Gulf likewise does not warrant its right and ability to lease its poles for the purposes provided for herein. Upon notice from Gulf to Lessee that the use of Gulf's facilities for the purposes provided for herein is forbidden by any federal, state or local regulatory or governmental authority, this lease shall immediately terminate, and the cables, wires and appliances of Lessee shall be removed by Gulf promptly from the affected pole.

Gulf does not warrant the extent of its rights-of-way, nor does Gulf in any way warrant or represent that it has provided, or will provide, a safe place to work to Lessee, Lessee's employees, and employees of Lessee's contractors. Determination of a safe place to work shall be the sole responsibility of Lessee.

Section 9 - Default and Late Payment: If Lessee fails to comply with any of the provisions of this lease agreement and fails within thirty (30) days after written notice from Gulf to correct a breach, Gulf may terminate this agreement and remove the cable, wires and appliances of Lessee from Gulf's poles.

If Gulf retains attorneys to assist it in the enforcement of the provisions hereunder, Lessee shall pay reasonable attorneys' fees whether or not suit is necessary, and if proceedings are begun or had to enforce the provisions hereof or to terminate this lease, Lessee shall pay all costs, expenses and charges incurred in said proceedings, including costs and attorneys' fees incurred on any appeals.

Section 10 - Waiver: No failure, or successive failures on the part of Gulf to enforce any covenant or agreement, or no waiver or successive waivers, on its part of any condition, agreement, covenant or provision herein shall operate as a discharge thereof or render the same invalid, or impair the right of Gulf to enforce the same in event of any subsequent breach or breaches. The acceptance of the charges provided for herein by Gulf shall not be deemed a

waiver by it of any earlier breach by the Lessee, except as to such covenants and conditions as may relate to the charges so accepted.

Section 11 - Agreement Not to Affect Other Agreements: Nothing in this agreement shall be construed as affecting the rights or privileges previously conferred by Gulf to others who are not parties to this agreement to use any facilities of Gulf covered by this agreement. Gulf has the right to continue to confer such rights or privileges. The attachment privileges in this agreement are subject to those existing contracts and arrangements.

Section 12 - Assignment: Lessee will not assign, transfer or sublet its rights under this agreement without the prior written consent of Gulf.

Section 13 - No Ownership Rights: Use of Gulf's facilities under this agreement will not create or vest in Lessee any ownership or property rights in the facilities, no matter how long such use continues. This agreement shall not obligate Gulf to keep in place any of its facilities for a period longer than required by its own service requirements.

Section 14 - Notices: Any notice, demand, or request required or authorized by this lease agreement shall be given at the following addresses:

As to Gulf Power Company:	Project Services Administrator
	Gulf Power Company
	One Energy Place
	Pensacola, FL 32520
As to Lessee:	The Crest Corporation
	Attn: Mr. Bill Young
	6201 Thomas Drive
	Panama City Beach, FL 32408

Section 15 - Successors and Assigns: Subject to the provisions of Section 12, this agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

**The Crest Corporation of Panama City Beach**

Attest:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten Signature]*  
\_\_\_\_\_  
Pres / CEO

**Gulf Power Company**

Attest:

*Linda G. Malone*  
\_\_\_\_\_  
ASST. SECRETARY

*[Handwritten Signature]*  
\_\_\_\_\_  
Vice President – Power Delivery and  
Customer Operations

SUBJECT

The Crest Corporation

DATE

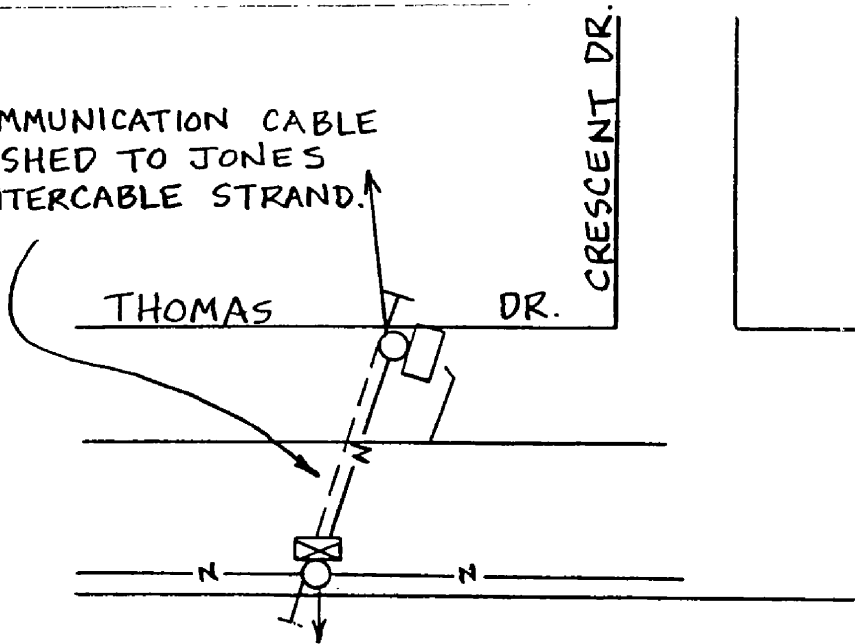
4-7-98

BY

R. Brooks



COMMUNICATION CABLE  
LASHED TO JONES  
INTERCABLE STRAND.



WATERCREST

Exhibit A

Energy Place  
Pensacola, Florida 32520

Tel 850 444.6111

PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781



January 10, 2003  
Invoice No. 03-063

The Crest Corporation of Panama City Beach Inc.  
d/b/a Tropical Getaway Beach Rental  
6126 Thomas Drive  
Panama City Beach, FL 32408

We Charge Your Account With:

\$200.00

Pole Attachment rental for the period January 1, 2003, through December 31, 2003 at the annual rate of \$40.00 per pole, subject to a minimum charge of \$200.00, as stated in our contract.

<u>Number of Attachments</u>	<u>Period</u>	<u>No. Days</u>	<u>Annual Rate</u>	<u>Pole Attachment Rental Calculation</u>	<u>Pole Attachment Rental for Period</u>
2	01/01/03 - 12/31/03	365	\$200.00	365/365 X 200 =	\$200.00
<b>Total Invoice Amount</b>					<u>\$200.00</u>

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

For Internal Use Only:

Distribution:

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

DUE UPON RECEIPT

Credit: 143-99515

Amount: \$200.00

COPY

One Energy Place  
Pensacola, Florida 32520

Tel 850.444.6111

PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781



January 10, 2002  
Invoice No. 02-044

The Crest Corporation of Panama City Beach Inc.  
d/b/a Tropical Getaway Beach Rental  
6126 Thomas Drive  
Panama City Beach, FL 32408

We Charge Your Account With:

\$200.00

Pole Attachment rental for the period January 1, 2002, through December 31, 2002 at the annual rate of \$40.00 per pole, subject to a minimum charge of \$200.00, as stated in our contract.

<u>Number of Attachments</u>	<u>Period</u>	<u>No. Days</u>	<u>Annual Rate</u>	<u>Pole Attachment Rental Calculation</u>	<u>Pole Attachment Rental for Period</u>
2	01/01/02 - 12/31/02	365	\$200.00	365/365 X 200 =	\$200.00
<b>Total Invoice Amount</b>					<u>\$200.00</u>

 **COPY**

Any questions or communications disputing these charges should be directed to:  
Name: Michael Dunn Telephone: (904) 444-6422

For Internal Use Only:

Distribution:

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

DUE UPON RECEIPT

Credit: 143-99515

Amount: \$200.00

One Energy Place  
Pensacola, Florida 32520

850.444.6111

PLEASE RETURN INVOICE WITH PAYMENT TO

Gulf Power Company  
One Energy Place  
Pensacola, Florida 32520-0781



January 1, 2001  
Invoice No. 01-679

The Crest Corporation of Panama City Beach Inc.  
d/b/a Tropical Getaway Beach Rental  
6126 Thomas Drive  
Panama City Beach, FL 32408

We Charge Your Account With:

\$200.00

Pole Attachment rental for the period January 1, 2001, through December 31, 2001 at the annual rate of \$40.00 per pole, subject to a minimum charge of \$200.00, as stated in our contract.

<u>Number of Attachments</u>	<u>Period</u>	<u>No. Days</u>	<u>Annual Rate</u>	<u>Pole Attachment Rental Calculation</u>	<u>Pole Attachment Rental for Period</u>
2	01/01/01 - 12/31/01	365	\$40.00	365/365 X 200 =	\$200.00
<b>Total Invoice Amount</b>					<u>\$200.00</u>

Any questions or communications disputing these charges should be directed to:

Name: Michael Dunn

Telephone: (904) 444-6422

For Internal Use Only:

Distribution:

1. Original - Customer
2. Corporate Accounting
3. Originating Department
4. Treasury
5. File

DUE UPON RECEIPT

Credit: 143-99515

Amount: \$200.00





P. O. BOX 2448  
Panama City, FL 32402

Please return this portion with payment.

CURRENT AMOUNT  
DELINQUENT AFTER  
01/31/2000

**FINAL BILL**

034923929019000000020000000000000002000000000000



THE CREST CORP OF PC BCH  
TROPICAL GETAWAY BCH RENTAL  
SEMI ANNUAL - PANAMA CITY  
6126 THOMAS DR  
PANAMA CITY BCH FL 32408

Remit To:	200.00	MiscChg67408822
One Energy Place		
Pensacola FL		
32520-0714		

ACCOUNT NUMBER 49239-29019 06

**TOTAL DUE 200.00**

5000024  
ACCOUNT NUMBER 49239-29019  
CUSTOMER NAME THE CREST CORP OF PC BCH  
SERVICE ADDRESS 6126 THOMAS DR  
SEMI ANNUAL - PANAMA CITY

GULF POWER COMPANY  
1230 E. 15th. St.  
Panama City, FL 32405  
For Customer Service, Please Call:  
1-800-225-5797

BATE NAME	SERVICE FROM	PERIOD TO	METER NUMBER	READING TYPE	METER READING PREVIOUS	METER READING PRESENT	METER CONSTANT	USAGE

**EXPLANATION OF CHARGES**

**PAYMENTS SINCE LAST BILLING**

Joint Use Agreement 200.00  
JOINT-USE AGREE INV NESB 512383  
Final Bill

CURRENT AMOUNT  
DELINQUENT AFTER  
01/31/2000

**TOTAL DUE 200.00**

Please return this portion with payment.

P. O. BOX 2448  
Panama City, FL 32402

CURRENT AMOUNT  
DELINQUENT AFTER  
01/27/1999

**FINAL BILL**

4975012000000020000000000000000000200000000000000



**CREST CORP OF PAN CITY BCH  
TROPICAL GETAWAY BCH RENTAL  
ANNUAL CATV BILLING  
8128 THOMAS DR  
PANAMA CITY BCH FL 32408**

Remit To: 200.00 MiscChg16686665  
One Energy Place  
Pensacola FL  
32520-0714

ACCOUNT NUMBER 49309-75012 05

**TOTAL DUE 200.00**

9000005  
ACCOUNT NUMBER 49309-75012  
CUSTOMER NAME CREST CORP OF PAN CITY BCH  
SERVICE ADDRESS ANNUAL CATV BILLING  
8128 THOMAS DR

**GULF POWER COMPANY**  
1230 E. 15th. St.  
Panama City, FL 32405  
For Customer Service, Please Call:  
1-800-225-5797

RATE NAME	SERVICE FROM	PERIOD TO	METER NUMBER	READING TYPE	METER READING		METER CONSTANT	USAGE
					PREVIOUS	PRESENT		

EXPLANATION OF CHARGES

PAYMENTS SINCE LAST BILLING

Joint Use Agreement 200.00  
JOINT-USE AGREE INV NESB 511358  
Final Bill

CURRENT AMOUNT  
DELINQUENT AFTER  
01/27/1999

**TOTAL DUE  
200.00**

**TAB C**

**Beach Haven Substation**  
**2001 Recommendations**

OCB 6022 and OCB 6082

Item 1a - Reconductor the 3 – 1/0 AAAC from the end of the 3 - #477 AAC on Dog Track Road to the intersection of Dog Track Road and US Highway 98 approximately 8347' with 3 - #477 AAC.

Item 1b - Transfer the 3 - #1/0 AAAC circuit pulling north on Lillian Highway on to the new 3 - #477 AAC Dog Track Road circuit.

In Summer 2001, the #336 ACSR conductors (Feeder 6022) were at 579 Amps or 123% of its thermal ampacity limit. The reconductor allowed for the transfer of approximately 3.9 MW from Feeder 6022 to Feeder 6082. The new loading on the 3 - #336 ACSR( Feeder 6022) after the load transfer was 420 amps or 88% of its thermal ampacity and on the 3 - #795 AAC (Feeder 6082) the loading was 675 amps or 76% of its thermal ampacity. (This work was already done; therefore, the OD-35 is not included in the study.)

OCB 6052

Install 1 – 1200 KVAR switched bank on Gulf Beach Hwy at Tifton Rd at TLN# 12603-51735. (This work was not done; therefore, there is an OD-35 included in the study.)

**COMPLETED**

Date: 15-Dec-2000 11:37 AM

Job Estimating & Tracking System - JETS  
GULF Power Company  
Distribution Working Estimate  
Type Construction: OVERHEAD

HQ: WRIGHT STREET OFFICE  
Customer: DOGTRACK RECONDUCTOR  
Address: DOGTRACK AND LILLIAN HWY  
Town: PENSACOLA

W.O.: 0055000 32427  
P.E.: 3681  
Job Reference: 1230200  
Job Type: C-12. OTHER GENERAL

Home Phone:  
Map Number: 331  
Type Customer: SYSTEM  
Estimate Name: DOGTRACK RECONDUCTOR  
Engineer: STEELE, ALAN H.  
Committed Service Date:

Substation:  
Circuit:

Date Last Est: 14-DEC-2000  
Job Order: ----

Job Description: PE 3681-Notify DOT 48 HOURS BEFORE WORKING

JL# 164862

Release to Wispen  
Steel 4-25-01

Driving Instructions:

4-25

4-25

Permits/Notification(s): COX CABLE GROUNDS STAKING ENGINEER DIST CONTR DOT  
BELLSOUTH-4-25

Total Estimated External Charges Included Below:

\$ 8,500

Billing: \$ Fixed 0 \$ Joint Use 0 \$ Out of Ratio 0 \$ Cust Contrib 0

MANHOURS	Onsite	Travel	Headquarters	Total
Company	2,518.39	0.00	0.00	2,518.39
Contractor	179.81	0.00	0.00	179.81
			Total Estimated	2,698.20

Labor Multiplier: 1.20 Comment: OVERTIME, ADDITIONAL TRAVEL

Cost Summary	Plant	Transformer	Meters	Maint	Removal	Total
Company Labor	61,148	489	0	37,854	21,379	120,870
Contract Labor	4,745	0	0	0	0	4,745
Company Matl.	80,398	23,705	0	0	0	104,103
Contract Matl.	0	0	0	0	0	0
Company Equip	0	0	0	0	0	0
Contract Equip	0	0	0	0	0	0
Engr Supv OH	43,888				6,414	50,302
Subtotal	190,179	24,194	0	37,854	27,793	280,020
Blanket						9
Salvage	29,394	17,113	0	0	0	46,507
Total	160,785	7,081	0	37,854	27,793	233,522

Bill to Others 0  
CIAC Tax Amt 0  
Total Net Cost: 233,522

Rate Revenue Loc Cost Total Ratio 0 Local Ratio 0.00 ROE 0.00 Net Present Val .00

Approval & Signoffs:  
Alan H. Steele 2/12/01  
Paul Hanky 3/12/01  
Luis Francisco 2/12/01 M.P. Dunn 3/5  
3004 67-01

<u>BUDGET COMPARISON:</u>	Budget Amount:	\$ 237,000	
	Plant Additions Total:	<del>\$ 233,522</del>	190,179
	Difference:	\$ <del>3,478</del>	(46,821)

### JUSTIFICATION

Item 1 - In Summer 2000, the 336 ACSR conductors (Feeder 6022) were at 600 Amps or 127% of its thermal limit. The proposed reconductor will allow for the transfer of approximately 3.9 MW from Feeder 6022 to Feeder 6082. The new loading on the 3 - #336 ACSR (Feeder 6022) after the load transfer will be 398 amps or 85% of its ampacity and on the 3 - #795 AAC (Feeder 6082) the new loading, after balancing will be 633 amps or 70% thermal ampacity. Additionally, this new Dog Track Rd feeder will increase the overall reliability, by providing a tie between Beach Haven Feeders 6022 and 6082.

This work will allow for the transfer of 3.9 MW from 6022 to 6082. The new loading on the 336 (6022) will be 633 amps or 70% of its thermal ampacity. This work will also increase the overall reliability and a tie between 6022 and 6082.

Item 2 - The existing 219 amp regulators will be loaded at 347 amps or 158% of its nameplate rating. The 437 amp regulators are needed to correct the voltage profile along Blue Angel from 97.3% to 103.2%.

Item 3 - Upon completion of Items 1 & 2, additional protection requirements and load balancing are required. The 225 A recloser at Beach Haven 6082 can be removed. Transfer of 1 Mva to Innerarity 7372 will reduce Beach Haven 6082 exposure to 13.2 Mva with a high phase of 582 amps. The replacement of the 140 A "D" reclosers with 100 A "D" reclosers accommodates the feeder load transfer to Innerarity 7372 and increases the reliability of service to this area.

PROPOSED ADDITION TO CONSTRUCTION BUDGET

LOCATION: North Pensacola

PREPARED BY: \_\_\_\_\_

EST'D DATE NEEDED: 2000

DATE SUBMITTED: \_\_\_\_\_

DESCRIPTION AND NECESSITY FOR WORK :

Cantonment - OCB 6932

RECOMMENDATION:

Item 1- String an additional phase of 1/0 AAAC on Wiggins Ln. from New Chemstrand Rd. to Crystal Lane approximately 1223'. Split up existing load between phase 1 and the new phase 2. Place the Clearfield Dr and Crystal Lane taps on the new phase 2.

Item 2 - Transfer the Rodney St. single-phase tap extending west off of New Chemstrand Rd. at TLN# 13107-57987 from phase 2 to phase 1.

Item 3 - Transfer the New Haven Dr. single-phase tap extending north off of Old Chemstrand Rd. at TLN# 12862-58680 from phase 2 to phase 1.

JUSTIFICATION:

Item 1-3: In 2000, the current load on the Wiggins Ln tap is approximately 95 amps. With the addition of the new phase, the load will be split to approximately 48 amps per phase. This will create a better balance on the 2/0 ACSR on New Chemstrand Rd which is currently at 234 amps or 96% of its thermal ampacity rating and correct the voltage profile along New Chemstrand Rd from 97.4% to 99.4%.

<b>Cost of Material</b>	_____	<b>Line Transformers</b>	_____
<b>Cost of Installation</b>	_____	<b>Customers' Meters</b>	_____
<b>Subtotal</b>	_____	<b>Maintenance Charges</b>	_____
<b>Eng. &amp; Overheads</b>	_____	<b>Original Cost Retired</b>	_____
<b>Total Plant Add's</b>	_____	=====	
<b><u>DO NOT WRITE IN THIS SPACE</u></b>			
<b>Plant Transfers (CR)</b>	_____	<b>P.E. No.</b>	_____ <b>Year(s)</b> _____
<b>Plant Removal Cost</b>	_____	<b>Include in Budget</b>	_____
<b>Plant Salvage (CR)</b>	_____	<b>Approval</b>	_____
<b>Total Cash Required</b>	_____	<b>Date</b>	_____