

ORIGINAL

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

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

**COMPLAINANTS' MOTION TO COMPEL
GULF POWER COMPANY'S RESPONSES TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, LLC ("Complainants"), by their attorneys and pursuant to 47 C.F.R. §§ 1.323(c) and 1.325(a)(2) and this Court's Orders dated April 25, 2005 and May 20, 2005¹, respectfully submits its Motion to Compel Responses to Interrogatories and Responses to Requests for Production of Documents from Respondent Gulf Power Company ("Gulf Power").

INTRODUCTION

CMP _____
COM _____ On February 1, 2005, Complainants served their First Set of Interrogatories, Exhibit A
CTR _____ hereto, and its First Set of Requests for Production of Documents on Gulf Power, Exhibit B hereto.
ECR _____
GCL _____ Gulf Power's responses to both Complainants' Interrogatories and Document Requests were
OPC _____ originally due on March 3, 2005. On March 1, 2005, Gulf Power filed an unopposed motion for an
MMS _____
RCA _____
SCR _____
SEC _____
OTH _____

¹ See FCC Order 05M-25 (rel. Apr. 25, 2005) and FCC Order No. 05M-27 (rel. May 23, 2005). Counsel for Complainants designated for copying some 1400 pages of documents and maps while at Gulf Power's Pensacola headquarters on May 27 and 28, 2005 and received the documents on June 27. By the terms of the Court's Orders, Complainants were given 14 days from receipt, or until July 11, within which to file this Motion to Compel.

DOCUMENT NUMBER-DATE

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extension of time, seeking two additional weeks, or until March 17, 2005 to respond to Complainants' discovery requests. On March 16, 2005, however, after the close of business, counsel for Gulf Power notified Complainants' counsel that it was not planning to provide responses to Complainants' requests on March 17th. The Presiding Judge conducted a conference call on March 17th and directed Gulf Power to file a second motion for extension of time on March 23rd. On March 23, 2005, Gulf Power filed its second motion for extension of time, seeking approximately one additional month, or until April 15, to answer Complainants' discovery requests. In this motion, Gulf Power represented that it "believe[d] that an April 15, 2005 discovery deadline would allow sufficient time to respond to Complainants' discovery." On April 1 the Presiding Judge granted Gulf Power's motion, directing it to file its discovery responses on April 18, 2005.

On April 18, 2005, two and one half months after Complainants served their discovery requests, Gulf Power served its responses to Complainants' Interrogatories, Exhibit C hereto, and to Complainants' Document Requests, Exhibit D hereto. Gulf power provided approximately 2000 pages of documents and indicated that approximately ten or more "bankers' boxes" of documents would be made available for review in Gulf Power's offices in Pensacola and additional documents in other offices throughout Gulf Power's service area in Northern Florida.

On May 26 and 27 Complainants' counsel reviewed the additional documents in Gulf Power's offices in Pensacola and designated approximately 1400 additional pages for review. These documents were received by Complainants' counsel on June 27, 2005. Notwithstanding this additional production and review, as set forth in detail herein below, Gulf Power's responses are substantially incomplete and require Complainants to file this motion to compel.²

² Indeed, as will become evident below, Gulf Power's inadequate discovery responses and its utter failure to substantiate the claims it made in January 2004 (in its "Description of Evidence Gulf Power Seeks To Present In Satisfaction Of The Eleventh Circuit's Test") make manifest that Gulf Power lacks the evidence to mount even a *prima facie* case and that a briefing schedule for a motion to dismiss should be established immediately.

BACKGROUND FACTS AND PROCEDURAL HISTORY

This case concerns Gulf Power's claim that it is entitled, under the Fifth Amendment of the United States Constitution, to demand a "just compensation" annual pole attachment rate that would be several times higher than the total compensation it already receives from Complainant cable operators in the form of the pole make-ready payments made prior to attaching and the annual pole rental it receives under the Federal Communications Commission's ("FCC" or "Commission") Cable Formula, which is calculated pursuant to the Commission's regulations, 47 C.F.R. §§ 1.1401 *et seq.*

Complainants' filed their complaint in this matter against Gulf Power on July 10, 2000, alleging that Gulf Power violated section 224 of the Communications Act and the Commission's pole attachment rules by unilaterally terminating its existing pole attachment agreements with Complainant cable operators, forcing the cable operators to execute new pole attachment agreements that contained pole attachment rates several times higher than allowed under Commission regulations, and refusing to renegotiate new rates in good faith in accordance with the Cable Formula. On May 13, 2003, the Commission's Enforcement Bureau granted the Complaint, finding, *inter alia*, that the Cable Formula provides Gulf Power with just compensation. The Bureau relied upon the Commission's prior ruling that the Cable Formula, together with the payment of make-ready expenses, provides remuneration that *exceeds* any "just compensation" due to Gulf Power from Complainants' cable attachments. *Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.*, 18 F.C.C.R. 9599 (rel. May 13, 2003) ("Bureau Order"). The Bureau relied on the full Commission's decision in *Alabama Cable Telecommunications Ass'n v. Alabama Power Co.*, 16 F.C.C.R. 12209 (2001). *See Alabama Cable Telecommunications Ass'n v. Alabama Power Co.*, Order, 16 F.C.C.R. 12209, 12223-36, ¶¶ 32-61 (2001) ("APCo Review

Order”). The Commission’s ruling in the *APCo Review Order* was upheld by the United States Court of Appeals for the Eleventh Circuit in *Alabama Cable Telecommunications Ass’n v. Alabama Power Co.*, 311 F.3d 1357 (11th Cir. 2002)(“*Alabama Power*”).

In *Alabama Power*, the Eleventh Circuit, guided by the bedrock principle that “just compensation is determined by the loss to the person whose property is taken, 311 F.3d at 1369, concluded that, because Alabama Power (a subsidiary, along with Gulf Power, of the Southern Company) had not even alleged, much less shown, that it had incurred an actual loss or a quantifiable lost opportunity cost, it “had no claim.” *Id.* at 1370. The Eleventh Circuit concluded that, absent such a showing supported by evidence for specific poles, payment of a pole owner’s “marginal costs provides just compensation,” and, notably, the court observed that the Commission’s Cable Formula provides “*much more* than marginal cost.” *Id.* at 1370 and n.23 (emphasis added). The Eleventh Circuit further held, that, as a constitutional matter:

[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. Without such proof, any implementation of the Cable Rate (which provides for *much more than marginal cost*) necessarily provides just compensation.

Id. at 1370-71 (emphasis added).

Following the Eleventh Circuit’s decision, Gulf Power filed a Petition with the Bureau seeking reconsideration and a “full evidentiary hearing” to allow it “an opportunity to meet the new standard” set forth in *Alabama Power*. See *Hearing Designation Order*, ¶ 4. Before ruling on Gulf Power’s Petition, the Bureau asked Gulf Power to file a description of the evidence that it wished to submit for consideration in response to the Alabama Power standard. On January 8, 2004, Gulf

Power filed its “Description of Evidence Gulf Power Seeks To Present In Satisfaction Of The Eleventh Circuit’s Test” (“Description of Evidence”).

In its Description of Evidence, Gulf Power indicated that it would proffer: (1) evidence of pole change-outs to accommodate new attachments of telecommunications carriers over unspecified years (some for 1998-2002) along with evidence that some of these new telecom attachers pay an “unregulated rate” for pole space on some poles; (2) evidence of make-ready for telecommunications carriers and different cable operators that have paid for change-outs of unspecified poles over an unspecified period of time; (3) load studies and business plans addressing the potential impact of third-party attachments and Gulf Power’s changing-out of poles for its own core service needs; (4) evidence depicting what crowded poles look like; and (5) evidence regarding what Gulf Power terms “an unregulated market for pole space”; and (6) unspecified “other” evidence.

After receiving Gulf Power’s Description of Evidence, the Bureau initiated this proceeding to afford Gulf Power a hearing “to present the evidence delineated in its Description of Evidence.” *Florida Cable Telecommunications Ass’n, Inc., et al. v. Gulf Power Co.*, Hearing Designation Order, EB Docket No. 04-381, DA 04-3048 (rel. Sept. 27, 2004) (hereinafter “*Hearing Designation Order*”). The Bureau’s *Hearing Designation Order* specified that the “issue” for the hearing would be: “Whether Gulf Power is entitled to receive compensation above marginal costs for any attachments to its poles belonging to the Cable Operators, an, if so, the amount of any such compensation.” *Id.* at ¶ 11. The *Hearing Designation Order* clearly stated that Gulf Power “bears the burden of proceeding with the introduction of evidence and the burden of proving it is entitled to compensation *above marginal cost* with respect to *specific poles*.” *Id.* at ¶ 8 (emphasis added).

On October 20, 2004, Complainants filed a Petition for Clarification, seeking, *inter alia*, the definition of important ambiguous terms, an examination of the “evidence” proffered by Gulf Power in its Description of Evidence, and a finding regarding the extent to which the Cable Formula already provides Gulf Power with compensation in excess of the marginal costs of pole attachments. However, the Presiding Judge deferred any ruling and required the submission of Preliminary Statements on Alternative Cost Methodology. On December 3, 2004, in their Preliminary Statement on Alternative Cost Methodology, Complainants pointed out that, in order to meet its burdens of production and persuasion, Gulf Power would have satisfy the standards set forth in *Alabama Power*; that the Cable Formula already provides “just compensation”; and finally, that Gulf Power’s claims do not warrant the use of any “alternative cost methodology.”

Consistent with *Alabama Power*, because Gulf Power already receives “much more than marginal cost” under the Commission’s Cable Formula rate, 311 F.3d at 1370-71, Gulf Power would have to show an actual loss or specific, quantifiable lost opportunity (that it was “out . . . more money” as a consequence of Complainants’ attachments, 311 F.3d at 1369) with respect to each pole for which it seeks a constitutional entitlement to an annual rate higher than its existing compensation under the Cable Formula. In order to discover what evidence, if any, Gulf Power has that would satisfy the strict requirements of *Alabama Power* and the Hearing Designation Order, Complainants served Gulf Power with 48 Interrogatories and 35 Document Requests.

On April 15, 2005, shortly before Gulf Power served its responses, the Presiding Judge issued an Order stating that Complainants’ discovery requests “appear on their face to constitute fair questions to pose to Gulf Power, the party seeking a substantial increase in monetary rent” *FCC Order* 05M-23 at p. 8, and also “appear designed to flush out the proof” that had been described in Gulf Power’s Description of Evidence, *Id.* at p. 9. The Court also noted that Complainants’

discovery requests “should be answered and not avoided or deferred needlessly to the completion of the Pole Attachment Survey in the fall.” *Id.* at p. 8. Indeed, “Gulf Power is expected to have authentic and reliable proof to back up its proffer.” *Id.* Accordingly, the Court directed that “existing evidence related to the Description of Evidence must be produced to the Bureau and the Complainants in discovery” and that the ongoing survey “does not excuse Gulf Power from providing complete interrogatory answers with respect to the proof it had on January 8, 2004, that relate to its Description of Evidence.” *Id.* at pp. 7, 8.

ARGUMENT

The Commission’s rules provide that ‘parties to an administrative adjudication may serve Interrogatories and Documents Requests “for the discovery of relevant facts, for the production and preservation of evidence for use at the hearing, or for both purposes.” Furthermore, “Persons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts.” Parties may not refuse to answer discovery requests on the ground that the information sought “will be inadmissible at the hearing if the [information] sought appears reasonably calculated to lead to the discovery of admissible evidence.” 47 C.F.R. § 1.311(a) and (b).

These principles apply in this case. Gulf Power has provided many evasive and incomplete answers and has stated objections which are not well taken. Complainants move to compel Gulf Power to provide more responsive and complete answers to both Complainants’ Interrogatories and Document Requests. The individual discovery requests and Gulf Power’s answers are discussed below:

I. GULF POWER'S RESPONSES TO MANY INTERROGATORIES ARE EVASIVE AND INCOMPLETE

Interrogatory No. 2:

Identify your definition or understanding of the phrase “full capacity” within the meaning of the *Alabama Power v. FCC* standard, and identify and define any differences between your use or understanding of “full capacity” and the terms “crowded” or “lack of capacity.” In addition, identify with specificity the basis upon which You propose to quantify or measure “full capacity” for an individual pole. Provide any applicable citation to safety codes, specifications, agreements or economic or regulatory literature that supports your response.

Gulf Power Response:

Gulf Power understands the phrase ‘full capacity’ (as used in *APCo v. FCC*) to mean a pole that cannot host further communications attachments, consistent with Gulf Power’s own core use, the NESC, existing contractual obligation, and sound engineering practice, without expansion or addition of facilities (including cross-arms, guy wires, etc.). Gulf Power understands the term ‘crowded’ to mean a pole that is close to being at ‘full capacity’ – in other words, a pole with room for only one additional communications attachment. For the purposes of this proceeding only, Gulf Power proposes to measure the visually identifiable, physical ‘crowding’ or ‘full capacity’ as set forth in the Osmose Statement of Work. * * *

Complainants’ Argument:

Gulf Power’s response is inadequate for several reasons. First, Gulf Power fails to answer Complainants’ question about how Gulf Power proposes to quantify or measure “full capacity” for an individual pole. Instead, Gulf Power wrongly equates “crowding” with “full capacity” and merely refers to the Statement of Work it signed with its consultant, Osmose, which also improperly equates a “crowded” pole with a pole at “full capacity.” See Osmose Statement of Work, p. 4 of 20, attached to Gulf Power’s March 23, 2005 Motion for Extension of Time. In the April 15, 2005 Order, the Presiding Judge specifically noted that “the term ‘pole crowding’ is ambiguous”; that the Eleventh Circuit ruled there is no right to consider more than marginal costs unless a pole is at “full capacity”; and that the relevant foundational issue in this case involved a determination of which specific poles, if any, are at “full capacity.” Because the *Alabama Power* test requires, as its first

prong, a showing of particular poles that are at “full capacity,” 311 F.3d at 1370–71, Complainants are entitled to an explanation from Gulf Power as to how exactly it proposes to quantify or measure “full capacity” on individual poles.

Second, Gulf Power’s response to Complainants’ question about Gulf Power’s definition of the term “full capacity” is itself evasive and incomplete. A responsive and complete answer would provide a complete description of the instances in which, because of various factors, no additional attachment to a particular pole were physically possible. But, instead, Gulf Power’s answer refers to “a pole that cannot host further communications attachments, consistent with Gulf Power’s own core use [and other factors].” Putting aside the propriety of measuring a pole’s “full capacity” only by reference to “communications” attachments, as opposed to *all* attachments, *see Alabama Power*, 311 F.3d at 1370, Gulf Power’s answer is inadequate because it incorporates the unqualified and undefined phrase “consistent with Gulf Power’s own core use.” The phrase is not explained by any reference to physical attributes of a utility pole or even the time of an assessment of a pole’s capacity (present or future). In effect, as is seen in its answer to Complainants’ next Interrogatory, Gulf Power is seeking to use the phrase “consistent with [its] own core use” to ensure that each of its poles, or as many of them as possible, are deemed to be at “full capacity.” This sort of unqualified reservation in answering a foundational issue is clearly improper.

Interrogatory No. 3:

For the pole attachments identified in response to Interrogatory No. 1, identify, for each cable operator Complainant for the period from 2000 through the present: the total number of Gulf Power poles that You contend were, are, or have been at “full capacity” within the meaning of the *Alabama Power v. FCC* standard;” the location and individual pole number of the specific poles You contend were, are, or have been at “full capacity;” the specific period of time You contend the poles You identified were, are, or have been at “full capacity;” and the specific reason or reasons why You contend such poles were, are, or have been at “full capacity.”

Gulf Power's Response:

Gulf Power contends that all poles identified in response to interrogatory number 1, at all times, since 2000, were either "crowded" or at "full capacity." For the purposes of this proceeding, Gulf Power has contracted with Osmose to perform an audit of its poles to ascertain crowding band [sic] on vertical clearances. Following completion of the audit, Gulf Power will supplement this response to identify those poles meeting the definition of "crowded" as used in the Osmose Statement of Work.

Complainants' Argument:

Gulf Power's answer is evasive, incomplete, and inconsistent with both Alabama Power's focus on a showing of "full capacity" for "each pole" and the Presiding Judge's reiteration of that standard in the April 15, 2005 Order. April 15, 2005 Status Order, 4. In particular, Gulf Power fails to identify a single individual pole that is at "full capacity." Instead, Gulf Power simply asserts that "all poles," ranging from 2000 to the present, have been either "crowded" or at "full capacity." This response is contrary to the *Alabama Power* test, which requires evidence "with respect to specific poles," 311 F.3d at 1370-71, and the April 15th Order, which reiterates that Gulf Power has the burden of producing evidence of "full capacity" for "specific poles" and directs the parties not to use the ambiguous term "crowding." It is also inappropriate for Gulf Power to say that it will only identify "poles meeting the definition of 'crowded'" when its pole "audit" is completed. Gulf Power contended, in its January 8, 2004 Description of Evidence, that it had evidence of situations requiring additional work "due to full capacity." See Description of Evidence, 3. Complainants are entitled to a complete response that identifies, as of the time period applicable to the current dispute, which is 2000-2001, not 2005, each of the specific, individual poles that Gulf Power contends are at "full capacity," as reflected in its claims in its Description of Evidence.³ As the Presiding Judge

³ The Complainants initiated the underlying proceeding on July 10, 2000. At issue were pole rents that Gulf Power purported to charge for 2000-2001, and its claim at that time that, in order to avoid Gulf Power's threatened termination of Complainants' pole attachment contracts, Complainants would have to exercise a statutory right of access under 47 U.S.C. § 224(f). By virtue of its Description of Evidence and its effort in this hearing to obtain

stated, "such questions should be answered and not avoided or deferred needlessly to the completion of the Pole Attachment Survey in the fall." April 15, 2005 Order, 8.

In addition, Gulf Power has failed to answer important parts of Interrogatory No. 3. Complainants reasonably asked for the location and individual pole number of poles Gulf Power claims to be at "full capacity," as well as the specific reason or reasons why Gulf Power so contends. Gulf Power has provided no answer whatsoever regarding pole locations, numbers, and reasons for alleged "full capacity."

Interrogatory No. 4:

For the poles identified in response to Interrogatory No. 3 which You contend were, are, or have been at "full capacity," identify, for each year from 2000 through the present and for each cable operator Complainant, the number of such poles for which You contend that Gulf Power had or has "waiting in the wings" "another buyer of the space" occupied by Complainants' attachments or some other space on Gulf Power poles; identify all such "buyers;" identify the period of time when they were, are, or have been "waiting in the wings" and explain Gulf Power's understanding of the term "waiting in the wings;" identify what rate or compensation such other buyer was, is, or has been ready, willing, and able to pay to Gulf Power for access to the space occupied by Complainants' attachments or some other space on Gulf Power poles; identify whether such other buyer has obtained an attachment to Gulf Power poles and, if so, how such attachment was accomplished; and whether the pole you assert was at "full capacity" was or was not replaced or substituted and the reasons therefore.

Gulf Power's Response:

Gulf Power understands the phrase "waiting in the wings" (as used in *APCO v. FCC*) to be figurative, insofar as requiring identification of an actual buyer would completely reject the hypothetical "willing buyer" standard and thus be at odds with more than 100 years of United States Supreme Court jurisprudence. In each instance where Gulf Power has changed-out a pole for capacity reasons to accommodate a new attacher, a "buyer" had been "waiting in the wings" for space on a "crowded" or "full capacity" pole. Sometimes those buyers have been ready, willing and able to pay the Cable Rate; sometimes the Telecom Rate; and sometimes

rentals above marginal costs predicated upon "just compensation" under the takings clause, Gulf Power must produce evidence of its losses *at the time of the taking*, not now. See generally *United States v. Clarke*, 445 U.S. 253 (1980) ("value of property taken by a governmental body is to be ascertained as of the date of taking"); see also *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) ("the amount of the award is measured by the value of the property at the time of taking, not the value at some later date").

a market rate. The most prominent instance of such occurrence is in the context of major build-outs. (See Gulf Power's January 8, 2004 Description of Evidence).

Complainants' Argument:

Gulf Power's response is evasive and incomplete. The Eleventh Circuit in *Alabama Power* required a specific showing, for "each pole" at "full capacity" that the pole owner had "another buyer of the space" "waiting in the wings." This requirement is not "figurative," but literal and actual. As *Alabama Power* makes clear, the pole owner must prove, with respect to this part of the test, that it had a higher valued offer from another entity that resulted in either an actual loss (the pole owner's being "out any more money") or a specific lost opportunity (cable operators' attachments "foreclos[ing] an opportunity to sell space to another bidding firm"). See 311 F.3d at 1370. If Gulf Power cannot provide such evidence, then it must say so and recognize that it cannot satisfy one of only two prongs under which it could meet the *Alabama Power* test (the other being a specific higher valued use to which the power company could put the space occupied by Complainants' cable attachments). Gulf Power's answer to Interrogatory No. 4 refers generally to "buyers" but fails to identify a single such buyer, let alone a party willing to pay more than Complainants' pay for the space occupied by Complainants on specific poles who was not able to be accommodated by Gulf Power. Gulf Power's also uses the phrase "sometimes" in combination with unspecified "buyers," without any specifics as to the identity of a pole lessee, an actual rate, or specific poles.

In its Description of Evidence, Gulf Power alleged that there is "an unregulated market for pole space" and implied that it has evidence that "fits within part (2)(a) of the [*Alabama Power*] test" regarding specific lost opportunity costs. See Description of Evidence, 7-8. As the Presiding Judge has stated, the fact that Gulf Power may one day assemble more purported evidence "does not excuse Gulf Power from providing complete interrogatory answers with respect to the proof it had

on January 8, 2004, that relate[s] to its Description of Evidence.” April 15, 2005 Order, 8. In answering this Interrogatory, Gulf Power has the obligation under *Alabama Power* to identify specific instances, where it claims it either experienced an actual monetary loss or a specific, quantifiable lost opportunity to charge a higher pole rate to a third party, that it alleges was caused by its having to allow Complainants’ cable attachments on its poles.

Interrogatory No. 5:

For the poles identified in response to Interrogatory No. 3 which You contend were, are, or have been at “full capacity” and for which You have not had “another buyer of the space” “waiting in the wings” as specified in response to Interrogatory No. 4, identify, for each year from 2000 through the present, and for each cable operator Complainant, all poles, by total number, and individual pole number and location, for which You contend Gulf Power was, is, or has been willing, during the period from 2000 through the present, to put the space occupied by Complainants to a “higher valued use with its own operations;” identify what that “higher valued use” was, is, or has been; identify how and why such use is of a “higher value” than the make-ready and annual per-pole compensation received by Gulf Power from Complainants; and quantify the difference between the make-ready and annual per-pole compensation paid by Complainants to Gulf Power and the “higher value” that You claim. Provide any applicable citation to economic or regulatory literature that supports your response.

Gulf Power’s Response:

Gulf Power objects to the first half of the question on the grounds that it is vague, ambiguous, and impossible to understand. Subject to and without waiving this objection, Gulf Power believes that any space occupied by a cable company can be put to a “higher valued use.” The space can be reserved for sale to players in the burgeoning Telecom market; the space can be reserved for non-regulated communications attachers; the space can be used for Gulf Power’s own communication use (or that of its affiliates). From Gulf Power’s perspective, merely forcing the cable companies to develop their own infrastructure, rather than freeloading on Gulf Power’s facilities, is itself a “higher valued use.” This is especially true in light of the Enforcement Bureau’s trend towards operational micro-management and evisceration of conventional commercial contract protections (See, e.g., CTAG).

Complainants' Argument:

Gulf Power's partial objection is not well-taken, and its response is evasive and incomplete. First, the question simply and straightforwardly asks Gulf Power what evidence it has that it can meet the *Alabama Power* test (part (2)(b)). It is not vague, ambiguous, or even difficult to understand. Gulf Power claimed in its Description of Evidence that it had evidence of "the 'higher-valued use' element in part (2)(b) of the Eleventh Circuit's test." Description of Evidence, 6. It is obliged to identify all such evidence, and provide the "proof it had" as the Presiding Judge has directed, see April 15, 2005 Order, 8; it may not try to dodge the question with a spurious objection.

Second, Gulf Power's answer is both incomplete and inconsistent with *Alabama Power* and other judicial precedent. Gulf Power, using the same cavalier, general answer it has in answers to other interrogatories, asserts that "any space" used by cable attachers "can be put to a 'higher valued use.'" This fails to comply with *Alabama Power*'s requirement of a specific showing "for each pole" of a "missed opportunity" in the form of "proof" that the power company was denied specific opportunities to put space occupied by Complainants to a higher valued use. *See Alabama Power*, 311 F.3d at 1370-71.

Under *Alabama Power*, moreover, the issue under part (2)(b) of the test is not whether pole space hypothetically "can be reserved" or "can be used" for some unspecified, purported higher valued use in Gulf Power's subjective opinion but whether pole space occupied by Complainants' attachments actually caused Gulf Power to incur a "missed opportunity" on specific poles to put space to an identifiable, specific, and quantifiable higher valued use of its own. In its answer, Gulf Power loosely refers to the concept of "reserving" pole space and postulates hypothetical reservations, but any such reservations are narrowly limited by applicable

judicial precedent. Specifically, in *Southern Co. v. FCC*, 293 F.3d 1338, 1348-49 (2002), the Eleventh Circuit upheld an FCC guideline limiting utilities' reservation of pole space to reservations done pursuant to a bona fide development plan to use the space in core utility service, and another guideline requiring utilities to permit attachers to use reserved space until the utility demonstrates an actual need for the space. Therefore, whether or not space "can" be reserved is irrelevant. As the Eleventh Circuit made clear in *Alabama Power*, a pole owner must show an actual, quantifiable, higher-valued use for specific space on specific poles. 311 F.3d at 1370-71. If Gulf Power can make such a showing, it is obligated to produce such evidence now in response to Complainants' discovery. If it cannot, it has a duty to concede the issue now.

Finally, Gulf Power's answer is improper as a matter of law to the extent that it contends that "forcing the cable companies to develop their own infrastructure" is a higher-valued use. Of course, this contention is not a specific, actual, quantifiable higher valued use. But more importantly, the contention is one of law that was clearly rejected in *Alabama Power*. The theory underlying Gulf Power's contention is that cable company attachers obtain a gain, or benefit, by their attachments, and that the utility ought to be compensated under the Fifth Amendment by the amount of the benefit obtained by attachers in not having to build their own duplicative set of utility poles. But, as the Eleventh Circuit explained:

[I]n takings law, just compensation is determined by the loss the person whose property is taken. . . . Put different, 'the question is, What has the owner lost? Not, What has the taker gained?'

311 F.3d at 1369 (internal citations omitted). The bottom line is that, Gulf Power has identified no actual lost opportunity or missed opportunity to put space occupied by Complainants' attachments to a higher valued use. Gulf Power may not be permitted to dodge the issue – it must either admit that this is the case or identify each specific instance that it claims it suffered

such a lost opportunity and identify the difference between all the monies paid by Complainants in such instances and the “higher value” that Gulf Power claims.

Interrogatory No. 7:

For all of the poles that You identified in response to Interrogatories 4 and 5, identify the marginal costs to Gulf Power of each of cable operator Complainants’ attachments for which You claim a right to compensation at a rate greater than that under the FCC formula plus make-ready.

Gulf Power’s Response:

Gulf Power contends that its marginal costs for each CATV attachment are equal to what the cable formula (plus a charge for grounds and arrestors) yields.

Complainants’ Argument:

Gulf Power’s answer is evasive and incomplete, and, insofar as it attempts to equate “marginal costs” of cable attachments with the monies it receives through make-ready and annual FCC Cable Formula pole rents, legally incorrect as a matter of law. In *Alabama Power*, the Eleventh Circuit made clear several times that a pole owner receives not just “marginal costs” under the FCC Cable Rate payments but rather “much more than marginal cost.” 311 F.3d at 1369, 1370-71. Further, the Eleventh Circuit explained that “marginal costs” consist of “any make-ready costs” incurred by a pole owner during the attachment process that are caused by Complainants’ attachments and any other incremental costs that can be proven to be specifically related to the cable operators’ attachments. *See* 311 F.3d at 1368-69 (discussing make-ready, maintenance costs, and the opportunity cost of capital devoted to make-ready and maintenance costs). Accordingly, Gulf Power has a duty, under *Alabama Power* not to hide behind a legal argument that has already been rejected but to identify its actual expenses specifically tied to Complainants’ attachments on each pole. In other words, Gulf Power has the burden to identify, for each pole that it claims meets the

Alabama Power requirements, a specific marginal cost amount that is directly caused by Complainant's attachment on that pole.

Interrogatory No. 8:

For all of the poles that You identified in response to Interrogatories 4 and 5, identify every attaching entity other than Complainants attached to each such pole; describe how many attachments on each such pole those other attaching entities have had or have, when such attachments commenced, and where those attachments are located on each pole; and state the make-ready and annual per-pole compensation received by Gulf Power from each attaching entity other than Complainants (including any Gulf Power affiliates). Specifically identify the number of attaching entities paying Gulf Power annual compensation under the FCC's telecommunications rate formula (47 U.S.C. § 224(e) and implementing regulations).

Gulf Power's Response:

Gulf Power will supplement this response upon completion of the Osmose audit.

Complainants' Argument:

Gulf Power's response is unacceptably incomplete. While Gulf Power states that it will "supplement" its response after the completion of its consultant's pole survey, it provides no substantive response whatsoever now. This is improper, because Gulf Power should have a substantial amount of information responsive to this request. First, Gulf Power ought to know the name of the entities attached to the same poles that Complainants are attached to. Surely Gulf Power sends bills to these entities too. It has a duty to identify them, particularly since Gulf Power cannot meet the first "full capacity" prong of the Alabama Power test without identifying the parties on its poles. Gulf Power also should have records, based upon, for example, its 2001 Pole Count (see its Response to Complainants' Interrogatory No. 1), that provide information about how many attachments are on each pole to which Complainants are attached, when those attachments were

made, and where they are located. In its January 8, 2004 Description of Evidence, Gulf Power claimed that it had “evidence concerning make-ready work” for other attachers and “photographic and engineering evidence depicting attachment arrangements on distribution poles.” Description of Evidence, 5-6. Complainants are entitled to such information, and, specifically, to have Gulf Power itself review such information and answer this Interrogatory.

Second, Gulf Power must have information about its make-ready costs that it has charged to other attachers and the annual per-pole compensation that it has charged to such other attachers, including which attachers pay compensation under the FCC’s Telecommunications Rate. Indeed, in its January 8, 2004 Description of Evidence, Gulf Power claimed that it had evidence concerning other attachers’ payment of both the Telecom Rate and of allegedly “unregulated” rates. Description of Evidence, 3, 8.

As the Presiding Judge stated in his Order of April 15th, questions such as Interrogatory No. 8 “should be answered and not avoided or deferred needlessly to the completion of the Pole Attachment Survey in the fall.”

Interrogatory No. 9:

Identify quantify, and explain the basis of any actual loss (income or other revenue) that Gulf Power contends that it has experienced from 2000 to the present, which it alleges was caused by attachments of cable operator Complainants (and explain in your answer how the alleged actual losses are or will be proved, including any reliance upon Gulf Power’s specifications, accounting records, engineering documents, or testimony)

Gulf Power’s Response:

From 2000 to the present, Gulf Power’s actual loss is measured by the difference between the rate paid by complainants and just compensation, plus interest at the maximum allowable legal rate. Gulf Power is not claiming as damages any actual loss other than the difference in rates, plus interest.

Complainants' Argument:

Gulf Power's response is evasive, incomplete, and inconsistent with *Alabama Power*. In *Alabama Power*, the court made clear that a pole owner who claimed a constitutional right to payment greater than that already provided under the FCC's Cable Rate must show that it was "out . . . more money" and/or that it could identify and quantify one or more "missed opportunities" as a result of having to accommodate cable operators' attachments. See 311 F.3d at 1369-71. Under *Alabama Power*, actual loss refers to actual income or other revenue that Gulf Power has lost that was caused by Complainants' attachments – i.e., greater money offered by a third party that could not be accommodated on Gulf Power's poles or a distinct, quantifiable, actual, and current higher valued use of Gulf Power's own for the same space occupied by Complainants. Gulf Power can't just claim that its "actual" loss is the difference between what they receive and what they want, hypothetically, under just compensation. Gulf Power lost that argument in *Alabama Power*. See 311 F.3d at 1369. Moreover, evidence of losses and lost opportunities is not dependent upon the physical pole inspection that is consultant Osmose is conducting. Gulf Power must produce its evidence of any actual losses and lost opportunities and provide specific numerical calculations to support its claimed losses, or admit that they have none and have their claims dismissed immediately.

Interrogatory No. 10:

For all of the poles that You identified in response to Interrogatories 4 and 5, identify the precise rate (*i.e.*, in dollars and cents) that You contend constitutes a "just compensation" annual pole attachment rental rate for Complainants' attachments and specify the poles, by number and location, for which you are seeking that rate and the basis and method of calculating that rate.

Gulf Power's Response:

Gulf Power contends, and has contended since 2000, that \$40.60 is the annual just compensation rate. Gulf Power is considering seeking other alternative rates based

on the calculations of its valuation experts. Gulf Power expects each of these alternative rates to be less than \$40.60. Gulf Power will identify the precise [sic] and methodology upon disclosure of its valuation experts according [to] the December 17, 2004 Order. Gulf Power will identify the specific poles for which it seeks a higher rate after completion of the Osmose audit.

Complainants' Argument:

Gulf Power's response is evasive and incomplete. It is entirely unreasonable for Gulf Power to proffer what it labels as "just compensation" pole rate and then refuse to provide any substantive information about the "basis and method of calculating that rate," as Interrogatory No. 10 asked. Gulf Power must have current information about how it gets to a rate of \$40.60, some 8 to 10 times the current rate paid under FCC regulations, or it would not proffer such an extraordinary figure. It is particularly outrageous for Gulf Power to suggest that it will not identify the basis and method of calculating its rates until the end of this year. Apparently, Gulf Power hopes that, by refusing to substantiate its claims for its purported "just compensation" rate until the close of discovery, Complainants will be foreclosed from conducting fact discovery into the details and bases underlying Gulf Power's claims.

In addition, as Gulf Power notes, it says that it "has contended since 2000" that \$40.60 is its "just compensation" rate. Accepting this at face value, Gulf Power then has the burden to specify, *in this proceeding, by answering this Interrogatory*, all of the facts and details constituting the basis and method for its calculations leading to this figure.

Finally, while Gulf Power claims that it will "identify specific poles for which it seeks" the \$40.60 rate "after the Completion of the Osmose audit," Gulf Power must have some knowledge now, based upon its January 8, 2004 Description of Evidence, of which poles it intends to claim qualify for the rate of \$40.60. For example, Gulf Power stated that it "seeks to introduce documentary evidence (agreements, invoices remittances, etc.) and testimony showing that other

attaching entities are voluntarily paying an annual pole attachment charge of \$40.60. More than 2,200 attachments are invoiced and paid at the \$40.60 charge.” Putting aside for now the question of whether other parties’ payments at rates greater than the FCC Cable Rate are depriving Gulf Power of any “missed opportunity” that may be attributed to Complainants, Gulf Power should be required to identify the “documentary evidence” to Complainants of which it speaks; to identify which poles have attachments paying the purported charge of \$40.60; and to identify the basis and method of calculating the claimed rate.

Interrogatory No. 11:

Identify all persons, whether or not employed by Gulf Power, who have knowledge or information referring to, relating to, or regarding Gulf Power’s factual and legal contentions in FCC Docket Numbers: P.A. No. 00-004 or E.B. No. 04-381, including Gulf Power’s contentions in its January 2004 “Description of Evidence” and its December 2004 “Preliminary Statement on Alternative Cost Methodology.”

Gulf Power’s Response:

Gulf Power objects to this interrogatory on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving these objections, Gulf Power list[s] the following: [chart listing 13 names with employers]. This list excludes counsel for Gulf Power and other parties. This list also excludes Gulf Power’s experts and the personnel of its pole audit contractor.

Complainants’ Argument:

Gulf Power’s partial objection is not well-taken. This interrogatory asks, through Complainants’ use of the defined term “identify,” *see* Complainants’ Interrogatories, Definitions, ¶ 18, for the name, business telephone number, home and business addresses, employer, and title or position of persons having knowledge or information relating to Gulf Power’s claims in this case. The information requested is clearly relevant, and, contrary to Gulf Power’s claim of overbreadth and “burden,” the requested numbers, addresses, and other information are basic and should be readily locatable. In its answer, Gulf Power lists the names of thirteen (13) individuals having

knowledge but, apart from identifying their employer, provides no information about their telephone numbers, addresses, or titles. Since Gulf Power has failed to provide any reason for its claim of “burden,” it should be required to produce the requested information.

Interrogatory No. 12:

Identify all persons who provided assistance or information used in answering these interrogatories and list the corresponding interrogatory numbers for which they provided the assistance or information.

Gulf Power’s Response:

Gulf Power objects to this interrogatory on the grounds that it is unduly burdensome and vague. Subject to and without waiving these objections, Gulf Power lists the following: [chart listing seven names with employer].

Complainants’ Argument:

Gulf Power’s partial objection is not well-taken. There is nothing vague or “unduly burdensome” about identifying, with contact information, the names of the persons answering Complainants’ interrogatories or specifying which persons helped answer which interrogatories. Indeed, under FCC regulations, 47 C.F.R. 1.323(b), the answers to interrogatories are supposed to be “signed by the person making them.” Accordingly, Complainants are entitled to the requested information, including the business telephone number, home and business addresses, and title or position of the persons who assisted in answering Complainants’ interrogatories and a specification of who answered which interrogatories.

Interrogatory No. 14:

If you contend that Complainants, or any officer, director, agent, employee acting on behalf of Complainants, have made any admission, or taken or failed to take any action, that would preclude or tend to preclude Complainants from recovering under the claims they have submitted in this Action, identify and describe the substance of each such admission, action or omission, the person who made that admission or took or failed to take such action, and the person to whom such admission was made.

Gulf Power's Response:

Gulf Power does not understand complainants to be seeking recovery "under [any] claims they have submitted in this Action.

Complainants' Argument:

Gulf Power's response is evasive. Complainants initiated their Complaint in July 2000 seeking relief from Gulf Power's attempt to raise existing pole attachment rates by several fold under the guise of "just compensation." The present adjudicatory proceeding is an extension and continuation of the proceeding as initiated and framed by Complainants' Complaint.

Accordingly, Gulf Power's attempt to be cute and to evade answering this Interrogatory is improper. Gulf Power should be required to state whether it is relying upon any admission by Complainants that would purport to bar Complainants from finally resolving this proceeding in Complainants' favor.

Interrogatory No. 15:

Identify and describe every communication, whether oral, written or otherwise, between You or any of Your agents or employees, and any other person, including, but not limited to, Complainants, other cable operators, other telecommunications carriers, or any other entity attached to poles owned or controlled by You, relating to annual pole rental charges or the performance of or payment for make-ready work from 1998 through to the present on poles owned or controlled by Gulf Power.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Gulf Power further objects on the grounds that this interrogatory is intended for purposes [sic] annoyance or oppression.

Complainants' Argument:

Gulf Power's objections are not well-taken. First, because this Interrogatory focuses specifically on communications involving pole rent and makeready at the heart of the parties'

dispute, it is not overly broad, irrelevant, or improper in scope. This is particularly true, given Gulf Power's claims that it has constitutional grounds, within the standards set by *Alabama Power*, to demand higher compensation than what it already receives from Complainants, in the form of both make-ready payments and annual pole rental charges. In its Description of Evidence, for example, Gulf Power suggested that part of its grounds for demanding higher payments from Complainants would include evidence "of make-ready work" for other attachers and evidence regarding higher annual pole rental charges that it claimed it received from other parties. See Description of evidence, 4-5 and 7-8. Having alleged that it has such evidence, Gulf Power cannot now refuse to identify and produce records of the underlying communications between itself and these other attachers that pertain to such allegedly higher payments. In particular, Gulf Power cannot refuse, as it has done here, to identify *any* communications that it has had, including communications with Complainants and other cable operators and other communications attachers, when it has claims that "agreements, invoices, remittances, etc." support what it claims is "evidence regarding the existence of an unregulated market for pole space." Complainants' interrogatory, by seeking the details of communications relating specifically to Gulf Power's transactions with attaching entities "relating to annual pole rental charges or the performance of or payment for make-ready work" is directly relevant to the issues set for adjudication in this matter. Finally, Complainants' request reasonably seeks such information dating back to 1998 because Gulf Power itself, in its Description of Evidence, suggested that it had evidence dating from "1998" that was relevant to its claims for increased pole compensation. See Description of Evidence, 3.

Interrogatory No. 16:

Identify and describe all entities (including non-communications attachers) that are, or have been, attached to poles owned or controlled by Gulf Power since 1998.

Gulf Power's Response:

Gulf Power's response was to provide a chart listing 67 names of business who have attached to Gulf Power's poles but no other information.

Complainants' Argument:

Gulf Power's response is incomplete. As noted earlier, Complainants' defined the term "identify," when referring to a person other than a natural person, to call for not just the entity's name, but also the address of its principal place of business, its telephone number, and the name of its chief executive officer. *See* Complainants' Definition No. 18(a). Gulf Power has provided no information at all about the addresses, telephone numbers, or chief executives or other contacts for the 67 businesses that it claims have attached to its poles since 1998. Since Gulf Power must have records documenting these 67 companies' attachments in order to identify them, it is fair and reasonable to require Gulf Power to also identify the information it has concerning these businesses' addresses, telephone numbers, and executive contacts.

Interrogatory No. 17:

Identify and describe any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present. Please specify in your answer the dates or time periods of these surveys, audits or pole counts, an explanation of their methodologies and all categories of information collected concerning attaching facilities and their ownership on the poles. In addition, please identify the names, titles and employers of all persons involved in the surveys, audits or pole counts.

Gulf Power's Response:

Gulf Power has conducted two pole counts from 1996 to the present day; they were done in 1996 and 2001. The 1996 count was done from approximately April

1, 1996 to November 2, 1996. The 2001 pole count was conducted from approximately February 5, 2001 to April 27, 2001.

Both pole counts were conducted with the same methodologies and collected the same information. Gulf Power, with the appropriate telephone company, conducted a total joint use pole count over Gulf Power's entire service territory. The pole counts were done with teams of one Gulf Power representative accompanied by one telephone company representative, either BellSouth or Sprint (The one exception to this system was in the 2001 count where BellSouth contracted Gulf Power to count the BellSouth areas). Teams would count by Gulf Power grid maps in each of the telephone company's respective service areas that overlap Gulf Power's service area. Each team is tasked with the (a) location and ownership of all joint use poles on the map, (b) assigning a sequential number to each pole for identification and counting, (c) and lastly, to identify each CATV or telecom attacher, if any, that is on each joint use pole identified on the grid maps. This process was followed until all the grid maps were counted.

Reports would then be produced that would show (1) the number of Gulf Power attachments on telephone poles, (2) the number of telephone attachments on Gulf Power poles and, (3) the number and company name of all CATV and telecommunication attachments made to both Gulf Power poles and each telephone company.

Below is a list of names of persons that worked for Gulf Power on each of the two pole counts: [chart listing 7 names for 1996 pole count and chart listing 24 names for 2001 pole count].

Complainants' Argument:

Gulf Power's response is incomplete. Once again, Gulf Power has not identified the telephone numbers, addresses, or titles/positions of the persons that it has listed. Complainants, by defining the term "identify" to include this information, are entitled to receive this very basic information in order to help determine whom to take depositions of as discovery proceeds in this case.

In addition, Gulf Power has only listed names of persons that worked for Gulf Power. The interrogatory asks for the names, titles, and employers of *all* persons involved in pole surveys, audits, or counts. Gulf Power admits that it worked with at least two other companies, BellSouth and Sprint, in performing these counts. It is likely to have information about who at

those companies it worked with on the 1996 and 2001 pole counts. It should be required to produce that information, since it was requested, and Complainants have the right to pursue discovery against those third parties regarding attachments on Gulf Power poles.

Interrogatory No. 18:

Identify the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements and describe those arrangements, the parties whose attachments use such arrangements, and the reasons for utilizing them.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections of overbreadth and relevance are not well taken. Gulf Power's ability to establish a constitutional claim for greater compensation depends upon its ability to meet the *Alabama Power* requirement of showing that specific poles are at "full capacity" and cannot accommodate additional attachments. However, Gulf Power, like many electric utilities, uses numerous measures in the normal course of its business to provide sufficient capacity and accommodate additional attachments on poles. Those measures may include the use of "cross-arms, extension arms, or boxing arrangements [attachments on both sides of a utility pole]." Complainants have therefore asked, in this interrogatory, whether Gulf Power uses such arrangements to provide capacity for its own or third-party attachments, and, if so, on how many Gulf Power poles they are used, who uses them, and for what purposes. The reason why this interrogatory is relevant is that, if Gulf Power uses these measures to provide capacity for itself or others, and such measures can be used on poles that include Complainants' attachments to accommodate new attaching entities, then Gulf Power cannot in fact claim a constitutional

entitlement to a higher pole rate based upon the “missed opportunity” that the Eleventh Circuit made clear was a *sine qua non* of any such claim. Furthermore, Gulf Power has not provided any reason or explanation to support its claim of overbreadth. In fact, the interrogatory is not overbroad, since it asks only for a total number of poles on which Gulf Power uses the specified measures (something that Gulf Power should be capable of counting, or at least estimating); Gulf Power’s own description of its use of cross-arms, extension arms, and boxing arrangements; a listing of the parties whose attachments on Gulf Power poles make use of such measures (i.e., does Gulf Power use them, does BellSouth, does Sprint, do telecommunications attachers?); and the reasons why Gulf Power utilizes such measures.

Interrogatory No. 19:

Of the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements, identify and describe those individual poles to which Complainants are attached that use such arrangements and the reasons for utilizing these arrangements.

Gulf Power’s Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants’ Argument:

Gulf Power’s objections of overbreadth and relevance are not well-taken, for the same reasons discussed above in reference to Interrogatory No. 18. Once again, if Gulf Power uses one or more of the specified measures – cross-arms, extension arms, or boxing arrangements – to provide capacity on poles to which Complainants are attached, such evidence is relevant to and bears directly upon any claims that Gulf Power might make that such poles, or other poles containing Complainants’ attachments that do not use such measures, are at “full capacity” within the *Alabama Power* standard. Moreover, it is not overbroad for Complainants’ to demand

a response to questions about the measures used to provide capacity on Gulf Power poles to which Complainants are attached.

Interrogatory No. 20:

Identify and describe, for each cable operator Complainant, the number of Gulf Power poles that have been changed out from 1998 to the present in order to accommodate attachments of Complainants, the location of any such change-outs, the reasons for each change-out, and identify any and each instance in which Gulf Power was not reimbursed by Complainants for the costs of such change-outs.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory response and Gulf Power's responses to complainants' request for production.

Complainants' Argument:

Gulf Power's objections of overbreadth and relevance are not well-taken. In its January 8, 2004 Description of Evidence, Gulf Power contended that it has made "pole change-outs due to full capacity" and that "[s]uch change-outs evidence 'crowding' and 'full capacity' (part (1) of the test), as well as 'another buyer waiting in the wings' (part (2)(b) of the test)." See Description of Evidence, 3-4. Thus, Gulf Power itself, in asking for the hearing in this case, has alleged that pole change-outs are relevant to its ability to meet the requirements of *Alabama Power*. In this interrogatory, Complainants have sought to discover the evidence concerning pole change-outs that Gulf Power claims it has.

Moreover, this interrogatory is not overly broad, since it focuses on change-outs to poles involving attachments of Complainants. The interrogatory reasonably asks for information about the location for a change-out, the reason underlying it, and, most importantly, whether Gulf

Power was not reimbursed by a third party for the costs of the change-out and thereby was “out . . . more money” as required by *Alabama Power*. 311 F.3d at 1369-70.

Finally, Gulf Power may not simply claim that it has provided a sufficient answer by referring to its responses to “other interrogator[ies]” or its responses to Complainants’ document requests, because Gulf Power has not provided any indication of the “extent the information sought is discoverable” (using its own words) and has not identified any other such interrogatories or specified any document or set of documents that it claims is responsive to this Interrogatory. Also, to the extent the relevant documents are included within the collection of documents produced for review in May, none were specifically identified as being responsive to this interrogatory.

Interrogatory No. 21:

Identify and describe the number of Gulf Power poles that have been changed-out on account of a communications attacher’s request (other than Complainants) and the circumstances surrounding such replacement or substitution (*i.e.*, specify the reason for the change-out and the party whose action or request necessitated it).

Gulf Power’s Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory response and Gulf Power’s responses to complainants’ request for production.

Complainants’ Argument:

Gulf Power’s objections of overbreadth and relevance are not well-taken. As set forth above as to Interrogatory No. 20, Gulf Power has contended that it has made “pole change-outs due to full capacity” and that “[s]uch change-outs evidence ‘crowding’ and ‘full capacity’ (part (1) of the test), as well as ‘another buyer waiting in the wings’ (part (2)(b) of the test).” See Description of Evidence, 3-4. Thus, Gulf Power itself, in asking for the hearing in this case, has

alleged that pole change-outs are relevant to its ability to meet the requirements of *Alabama Power*. In this interrogatory, Complainants have sought to discover the evidence concerning pole change-outs that Gulf Power claims it has.

Moreover, this interrogatory is not overly broad, since it focuses on change-outs to poles involving attachments of communications company attaching entities. The interrogatory reasonably asks for information about the reason underlying the change-out, and the party whose action or request necessitated it. In its Description of Evidence, Gulf Power claimed that it had evidence about change-outs performed for various telecommunications companies (i.e., Knology, KMC Telecom II, Inc., Adelphia Business Solutions, Southern Light, LLC). See Description of Evidence, 3-4.

Finally, Gulf Power may not simply claim that it has provided a sufficient answer by referring to its responses to “other interrogator[ies]” or its responses to Complainants’ document requests, because Gulf Power has not provided any indication of the “extent the information sought is discoverable” (using its own words) and has not identified any other such interrogatories or specified any document or set of documents that it claims is responsive to this Interrogatory. More to the point, to the extent the relevant documents are included within the collection of documents produced for review in May, none were specifically identified as being responsive to this interrogatory either.

Interrogatory No. 22:

Identify and describe the number of Gulf Power poles that have been changed-out on account of a non-communications attacher’s request and the circumstances surrounding such change-out (*i.e.*, specify the reason for the change-out and the party whose action or request necessitated it).

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory response and Gulf Power's responses to complainants' request for production.

Complainants' Argument:

Gulf Power's objections of overbreadth and relevance are not well-taken. As set forth above as to Interrogatory No. 20, Gulf Power has contended that it has made "pole change-outs due to full capacity" and that "[s]uch change-outs evidence 'crowding' and 'full capacity' (part (1) of the test), as well as 'another buyer waiting in the wings' (part (2)(b) of the test)." See Description of Evidence, 3-4. Thus, Gulf Power itself, in asking for the hearing in this case, has alleged that pole change-outs are relevant to its ability to meet the requirements of *Alabama Power*. In this interrogatory, Complainants have sought to discover the evidence concerning pole change-outs that Gulf Power claims it has.

Moreover, this interrogatory is not overly broad, since it focuses on change-outs to poles involving attachments by parties other than communications companies. In other words, this interrogatory seeks to discover the circumstances under which Gulf Power has agreed to change out poles to provide capacity either for itself, for its electric company affiliates, for government entities, or other parties. To the extent that Gulf Power is contending that it has made unreimbursed change-outs for such parties on poles containing Complainants' attachments and is seeking to use such circumstances to claim a higher annual pole rate, Complainants are entitled to discover such evidence. The interrogatory reasonably asks for information about the reason underlying the change-out, and the party whose action or request necessitated it.

Finally, Gulf Power may not simply claim that it has provided a sufficient answer by referring to its responses to “other interrogator[ies]” or its responses to Complainants’ document requests, because Gulf Power has not provided any indication of the “extent the information sought is discoverable” (using its own words) and has not identified any other such interrogatories or specified any document or set of documents that it claims is responsive to this Interrogatory.

Interrogatory No. 23:

Identify and describe the number of Gulf Power poles that have been changed-out on account of Gulf Power’s core electricity service requirements and the circumstances surrounding such change-out (*i.e.*, specify the reason for the change-out and the party who paid for the costs associated with the change-out).

Gulf Power’s Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory response and Gulf Power’s responses to complainants’ request for production.

Complainants’ Argument:

Gulf Power’s objections of overbreadth and relevance are not well-taken. As set forth above as to Interrogatory No. 20, Gulf Power has contended that it has made “pole change-outs due to full capacity” and that “[s]uch change-outs evidence ‘crowding’ and ‘full capacity’ (part (1) of the test), as well as ‘another buyer waiting in the wings’ (part (2)(b) of the test).” See Description of Evidence, 3-4. Thus, Gulf Power itself, in asking for the hearing in this case, has alleged that pole change-outs are relevant to its ability to meet the requirements of *Alabama Power*. In this interrogatory, Complainants have sought to discover the evidence concerning pole change-outs that Gulf Power claims it has.

Moreover, this interrogatory is not overly broad, since it focuses on change-outs to poles involving attachments by Gulf Power itself for its core electricity service requirement. In its Description of Evidence, Gulf Power suggested that it had evidence regarding instances where it had to install its own equipment (i.e., a transformer) to accommodate its own electricity needs but could not without having to change-out a pole containing Complainants' attachments at its own expense. See Description of Evidence, 6 and n.13 ("Gulf Power intends to present evidence of the number of occasions in the past few years in which it was required to change-out a pole, for its own core business purposes, due to capacity, where it would not have needed to do so in the absence of CATV or Telecom attachments). To the extent that Gulf Power is contending that it has made un-reimbursed change-outs on poles containing Complainants' attachments and is seeking to use such circumstances to claim a higher annual pole rate, Complainants are entitled to discover such evidence which supposedly existed at the time Gulf power filed its Description. The interrogatory reasonably asks for information about the reason underlying the change-out, and who paid the costs associated with the change-out.

Finally, Gulf Power may not simply claim that it has provided a sufficient answer by referring to its responses to "other interrogator[ies]" or its responses to Complainants' document requests, because Gulf Power has not provided any indication of the "extent the information sought is discoverable" (using its own words) and has not identified any other such interrogatories or specified any document or set of documents that it claims is responsive to this Interrogatory. None of the documents produced for review in May were referenced specifically or even generally as responsive to this interrogatory.

Interrogatory No. 24:

Identify and describe the occasions on which Gulf Power has refused to change-out a pole. Your response should include, but not be limited to, a description of

the circumstances surrounding the refusal, the identification of the entity requesting the pole replacement, and an explanation of the reasons for Gulf Power's refusal and any alternate arrangement employed.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections on the grounds of overbreadth and relevance are not well-taken. Part of Gulf Power's burden in this proceeding is to identify specific poles that, under the first prong of the Alabama Power test, are at "full capacity." In its Description of Evidence, Gulf Power suggested that pole change-outs are related to a lack of capacity. Description of Evidence, 3-4. Complainants' position, however, is that Gulf Power can demonstrate that a particular pole is at "full capacity" only when it cannot be changed out in the normal course of Gulf Power's business practices for reasons relating to safety, engineering, etc. Accordingly, the question of when, and for what reasons, Gulf Power has refused to change-out a pole is relevant to the issue of whether and when a pole is at "full capacity." This interrogatory is not overly broad, since it asks only, for the period since January 1998, for information about when Gulf Power has refused to change out a pole (most likely a limited number of instances); the circumstances surrounding the refusal, the identify of the entity seeking the change-out, and the reasons for the refusal and any alternate arrangements. This information goes to the heart of Gulf Power's contention that "change-outs evidence 'crowding' and 'full capacity'" and Complainants' opposing contention that, instead, under Alabama Power's standard of a "missed opportunity," it is the inability to accommodate an additional attachment through a change-out, or through extension arms or other measures, that would constitute a showing of "full capacity."

Interrogatory No. 25:

Describe and explain the steps and procedures involved in changing-out a pole, from a prospective attacher's request (or Gulf Power's own core electricity need) to completion (i.e., including processing, procurement, placement and transfer or existing facilities and equipment, including estimated time periods).

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections on the grounds of overbreadth and relevance are not well-taken. As set forth above as to Interrogatory No. 20, Gulf Power has contended that it has made "pole change-outs due to full capacity" and that "[s]uch change-outs evidence 'crowding' and 'full capacity' (part (1) of the test), as well as 'another buyer waiting in the wings' (part (2)(b) of the test)." See Description of Evidence, 3-4. Thus, Gulf Power itself, in asking for the hearing in this case, has alleged that pole change-outs are relevant to its ability to meet the requirements of *Alabama Power*.

By contending that it has had to make change-outs without being reimbursed, see Description of Evidence, 6 and n.13, Gulf Power has also made relevant the subject of what steps constitute a change-out and what those steps cost Gulf Power, if anything at all, after the attacher has made payment. Therefore, this interrogatory reasonably seeks evidence about the steps and procedures Gulf Power follows in changing out its poles, including processing, procurement, placement and transfer or existing facilities and equipment, including estimated time periods. Similarly, this interrogatory is not overly broad, since it asks only for a general description of the procedures involved in changing-out a pole.

Interrogatory No. 26:

Identify all persons involved in developing Gulf Power's pole make-ready and change-out procedures, their titles and responsibilities, and a description of their roles in formulating the procedures, and identify the specific persons, whether or not employed by Gulf Power, that You rely upon to determine whether make-ready or a change-out is needed, or whether a Gulf Power pole is at "full capacity," "crowded," or has a "lack of capacity."

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it [is] overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections on the grounds of overbreadth and relevance are not well-taken. As set forth above as to Interrogatory No. 20, Gulf Power has contended that it has made "pole change-outs due to full capacity" and that "[s]uch change-outs evidence 'crowding' and 'full capacity' (part (1) of the test), as well as 'another buyer waiting in the wings' (part (2)(b) of the test)." See Description of Evidence, 3-4. Thus, Gulf Power itself, in asking for the hearing in this case, has alleged that pole change-outs are relevant to its ability to meet the requirements of *Alabama Power*. In this interrogatory, Complainants reasonably ask for Gulf Power to identify the persons involved in developing its pole change-out and make-ready procedures, their titles and responsibilities, and their roles in formulating the procedures. Complainants also ask for the identification of any persons Gulf Power relies upon to determine whether a pole is at "full capacity." These questions go to the heart of the *Alabama Power* requirements of demonstrating full capacity and other valued uses. To the extent that Gulf Power is alleging, as it did in its Description of Evidence, that pole change-outs and other make-ready are evidence of full capacity, Complainants are entitled to discovery who is making such decisions for Gulf Power, what the criteria used by those persons is, and how such persons have applied Gulf Power's criteria as to specific poles containing Complainants' attachments for which Gulf Power is

seeking greater compensation. Moreover, without such information about Gulf Power's personnel who make these decisions, Complainants cannot proceed to take their depositions and pursue further discovery.

Interrogatory No. 28:

Does Gulf Power share, pool, or otherwise utilize an inventory of poles owned or controlled by affiliated corporations, parents, subsidiaries, and other organizations or operating units, and, if so, indicate and explain in detail the manner in which Gulf Power shares, pools, or otherwise utilizes such inventory.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it is vague and ambiguous. Subject to and without waiving this objection, Gulf Power shares some in-service poles with BellSouth, GTC and Sprint pursuant to joint use agreements.

Complainants' Argument:

Gulf Power's partial objection on grounds of vagueness is not well-taken, and its response is incomplete. Gulf Power has not provided any reason to support its claim that the question is "vague" or "ambiguous." This interrogatory clearly seeks to discover whether Gulf Power uses poles owned or controlled by affiliated companies or third parties, and, if so, under what circumstances. The interrogatory relates directly to the pole resources Gulf Power has at its disposal, which affects the issue of whether there is "full capacity" at any particular pole location. If Gulf Power has additional poles available to it, beyond those in its own pole inventory, Complainants are entitled to a description of the procedures followed by Gulf Power in obtaining such poles. To the extent that Gulf Power is claiming that poles it shares with others are at "full capacity" and have a "higher valued use," moreover, Complainants are entitled to a specification of how many such poles, at what locations, Gulf Power in fact uses and what ownership interests Gulf Power and others have in such poles.

Interrogatory No. 29:

Gulf Power represents that it will seek to present evidence of instances in which it has changed-out poles “due to lack of capacity.” Describe and explain the circumstances in which a Gulf Power pole, according to You, had and/or has a “lack of capacity” and state where (by pole number and location) and when, if at all, any such determination of “lack of capacity” was made with respect to Gulf Power poles containing any of Complainants’ attachments.

Gulf Power’s Response:

A pole has a “lack of capacity” when another attachment cannot be made. (See response to interrogatory number 2 above). The determination of which poles lack capacity is made by field employees while riding the line to determine the feasibility of an attachment request. Such decisions are made almost everyday in the field and there is no way of identifying each instance where this has occurred. Complainants had attachments on poles changed-out in the build-outs referenced in Gulf Power’s January 8, 2004 Description of Evidence.

Complainants’ Argument:

Gulf Power’s response is evasive and incomplete. Its statement that lack of capacity exists “when another attachment cannot be made” is circular; it provides no information whatsoever. The question requires Gulf Power to identify the factual circumstances, whether caused by engineering, regulatory, safety, or other issues, under which it contends that no such additional attachments can be made to its poles because of a claimed lack of capacity. Gulf Power has not done so.

But more importantly, Gulf Power’s answer suggests, without actually admitting, that it cannot produce evidence of when, for particular poles, it has determined that they are at “full capacity.” Gulf Power’s answer states that “there is no way of identifying each instance” where an individual pole has lacked capacity. This response is particularly striking and bears careful evaluation. Gulf Power references “build-outs” described in its January 8, 2004 Description of Evidence, but its answer does not mention a single specific pole, let alone identify pole numbers and locations, that it contends has, at some time, had a lack of capacity. Accordingly, Gulf

Power must either identify each specific pole that it has previously identified, either in formulating its Description of Evidence or for other purposes, as having had a “lack of capacity” or fully admit, as it seems to say, that it has no such evidence.

Interrogatory No. 30:

Identify and explain every instance in which Gulf Power has changed-out a pole containing one or more of Complainants’ attachments at Gulf Power’s own expense (*i.e.*, un-reimbursed) as a result of a need to accommodate an electric transformer or other Gulf Power equipment or facility.

Gulf Power’s Response:

It is not possible to identify each such instance, but Gulf Power changes-out poles at its own expense almost everyday in the field. If Gulf Power sees a pole that needs to be changed-out to serve a customer, Gulf Power changes-out the pole and serves its customer as fast as possible.

Complainants’ Argument:

Gulf Power’s response is evasive and incomplete. In its Description of Evidence, Gulf Power stated explicitly that it “intends to present evidence of the number of occasions in the past few years in which it was required to change-out a pole, for its own core business purposes, due to capacity.” Description of Evidence, 6 n.13. It listed the accommodation of an electric transformer as an example. But now, Gulf Power completely fails to answer a question about this very assertion. Gulf Power says it cannot identify “each” instance in which it has performed a change-out at its own expense where other parties’ (let alone Complainants’) attachments were on the same pole, but, more notably, it fails to identify a *single* such instance or any individual pole! Clearly, Gulf Power has a duty to put forth the evidence it claimed it had when it filed its Description of Evidence and asked for this adjudicatory proceeding, or it should admit that it has no such evidence.

Interrogatory No. 31:

From the "Recommendations" proposed in Gulf Power's Distribution Studies and load planning documents furnished to Complainants on January 11, 2005, identify and describe those "Recommendations" that Gulf Power actually implemented, the specific numbers and locations of poles affected, whether additional pole capacity on those was actually utilized by Gulf Power, measurements indicating how much space was required, and if any Recommendation was not implemented, the reasons therefore.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it is vague, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information irrelevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections on vagueness, undue burden, and relevance are not well-taken. In its Description of Evidence, Gulf Power stated that one of the reasons why it sought a hearing was to introduce "evidence concerning Gulf Power's load studies and business plan." It suggested that its load studies and business plans were relevant to its "'reserving' pole space for future use" and even contended that such evidence "relates to the 'higher-valued use' element" in the *Alabama Power* test. See Description of Evidence, 5-6. Accordingly, Gulf Power has claimed that such evidence is relevant to this proceeding. Complainants' interrogatory, which asks Gulf Power identify specific instances where it actually implemented its load studies or planning documents to reserve space for its own, is therefore both relevant and reasonable in its scope. It is not vague either, as it seeks to identify specific instances of where Gulf Power has actually implemented its plans or recommendations to reserve pole space. Once again, Gulf Power has the duty to identify specific instances or admit that it has no such evidence.

Interrogatory No. 34:

Does Gulf Power routinely inform prospective and existing attachers when it reserves pole space for future use for its core electricity operations, and if so,

identify and describe all such reservations and notifications to attachers, including Complainants, since 1998.

Gulf Power's Response:

Yes. Prospective attachers are shown and/or given a copy of Gulf Power's 'spec plate' prior to attaching.

Complainants' Argument:

Gulf Power's response is evasive and incomplete. In its Description of Evidence, Gulf Power suggested that it has evidence of when it has reserved space for its own "higher-valued use" under the Alabama Power test. The interrogatory asks for the identification of all instances. But Gulf Power fails to describe a single such reservation or notice to an attacher of such a reservation. Gulf Power has a duty to identify all such instances or admit that it has no such evidence.

Interrogatory No. 35:

Does Gulf Power contend that it requires the use of reserved pole space currently occupied by Complainants, and if so, identify all such pole space, the specific poles at issue by number and location, and describe Gulf Power's and the electric industry's practice concerning whether attachers, including Complainants, are given the opportunity to pay for the cost of any modifications needed to rearrange or change-out the poles and to continue to maintain their attachments.

Gulf Power's Response:

None. Gulf failed to provide any answer to Interrogatory No. 35.

Complainants' Argument:

Gulf has a duty to respond to this interrogatory.

Interrogatory No. 36:

Does Gulf Power contend that it may charge Complainants that are already attached to its poles the rearrangement or change-out costs of modifications required as a result of an additional attachment or the modification of an existing attachment sought by any other attacher, including Gulf Power? Explain the basis for your answer.

Gulf Power's Response:

Gulf Power Company's contention and position on charges to complainants for "rearrangement or change-out costs of modifications" is the same as, based upon, and as required by 47 U.S.C. § 224(h)-(i), which provides as follows: [quoting statutory language].

Complainants' Argument:

Gulf Power's response is evasive and incomplete. Gulf Power has failed to answer the question posed by this interrogatory. Instead, it merely says, in effect, that it intends to charge Complainants in accordance with applicable law, and then quotes various statutes. This is a non-answer. Moreover, the statutory sections Gulf Power cites, 47 U.S.C. § 224(h) and (i), do not refer to pole change-outs.

Moreover, in its Description of Evidence, Gulf Power suggested that pole change-outs for third parties were both evidence of "full capacity" and evidence of a "higher-valued use," Description of Evidence, 3-4, implying that such instances were provided a sufficient constitutional basis under *Alabama Power* for Gulf Power to charge Complainants' higher pole attachment rates. Gulf Power's Description of Evidence, however, did not describe the conditions under which it claimed that change-outs could be relevant to meeting the *Alabama Power* requirements (i.e., are the costs of the change-outs reimbursed to Gulf Power by a third party?) This interrogatory reasonably seeks to discover the facts and circumstances under which Gulf Power believes it can charge Complainants for change-outs requested by parties other than Complainants. Gulf Power must answer the question.

Interrogatory No. 37:

Does Gulf Power contend that payment of make-ready expenses by an attacher is insufficient to reimburse Gulf Power for its marginal costs, and if so, explain the basis of any such contention.

Gulf Power's Response:

Yes. See response to interrogatory number 7 above. The *APCo v. FCC* decision uses the term "marginal costs" interchangeably with the Cable Rate.

Complainants' Argument:

Gulf Power's response is evasive, incomplete, and inconsistent, as a matter of law, with *Alabama Power*. First, contrary to Gulf Power's claim that "marginal costs" "equal" the annual compensation under the FCC's Cable Formula, the Eleventh Circuit stated repeatedly in *Alabama Power* that "*much more than* marginal cost is paid under the [FCC's] Cable Rate." 311 F.3d at 1369, 1370 (emphasis added). Thus, Gulf Power cannot, under applicable precedent, make the claim that its "marginal costs" are equivalent to what it already receives through the combination of make-ready and annual pole rents under the FCC Cable Rate.

Under *Alabama Power*, the "marginal costs" of Complainants' attachments to Gulf Power's poles means the additional, incremental, actual costs caused by Complainants' attachments. The Eleventh Circuit even explained that marginal costs were made up merely of "make-ready" costs and costs that could be tied directly to the make-ready process of attaching, "such as maintenance costs and the opportunity cost of capital devoted to make-ready." 311 F.3d at 1368-69.

Accordingly, if Gulf Power contends that make-ready costs are insufficient to reimburse all of Gulf Power's "marginal costs" of Complainants' attachments, Gulf Power has the burden to identify specifically any other cost, within the narrow parameters set by *Alabama Power*, that is an incremental, additional cost that Gulf Power actually incurs due to Complainants' attachments; quantify any such cost; and provide any evidentiary support showing that such costs were actually incurred by Gulf Power.

Interrogatory No. 38:

Identify and describe all facts, documents, data and other information that support Gulf Power's claim for a pole attachment rental rate from any cable operator Complainant in excess of marginal cost.

Gulf Power's Response:

Gulf Power objects to this interrogatory on the grounds that it is overly broad and unduly burdensome insofar as it seeks a reiteration of all legal principles, facts and documents addressed since the outset of this proceeding and the proceeding leading to the APCo v. FCC opinion.

Complainants' Argument:

Gulf Power's objections of overbreadth and undue burden are vastly exaggerated and do not provide a basis for Gulf Power's refusal to provide any answer at all to this Interrogatory. Contrary to Gulf Power's objection, this interrogatory does not ask for a recitation of "legal principles." Nor does it call for a "reiteration" of all facts "since the outset of this proceeding" or the proceeding involved *Alabama Power*, which involved Gulf Power's affiliate but did not involve Gulf Power directly.

Instead, this interrogatory, reasonably construed, calls for Gulf Power to identify the central facts, as well as documents, that support Gulf Power's Fifth Amendment-based claim for pole compensation in excess of the marginal costs that Complainants already reimburse to Gulf Power to have their attachments placed on Gulf Power's poles. For example, Gulf Power has claimed a "annual just compensation rate" of \$40.60 (see its response to Interrogatory No. 10) but has refused to explain how it arrived at that figure. This interrogatory properly requires that Gulf Power identify the facts and produce the data that underlie its claim, under the *Constitution*, to this pole attachment rental rate.

Interrogatory No. 39:

Identify and explain the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating the pole attachment rental rate in excess of marginal cost and identify all persons, whether or not employed by Gulf Power, involved in any way in the determination of such methodologies, formulae, cost accounts, data and/or other bases.

Gulf Power's Response:

Gulf Power will disclose this information in accordance with the Presiding Judge's March 30, 2005 Order.

Complainants' Argument:

Gulf Power's answer is evasive and incomplete. Gulf Power has refused to answer the question, alleging that it will answer it in accordance with the March 30, 2005 Order. But that Order does not provide a deadline for identifying factual data, cost accounts, formulae, or methodologies that Gulf Power claims underlie its constitutional claim of entitlement to a "just compensation" pole rate of, apparently, \$40.60. The March 30, 2005 Order sets a November 18, 2005 deadline for exchanging summaries of testifying experts and their *opinions*, but it in no way justifies Gulf Power to wait until nearly the end of the year until it produces its factual data. Once again, Gulf Power seems to hope that it can delay producing facts to support its claims until practically the close of discovery, thereby trying to preclude Complainants from taking depositions and serving additional written discovery requests to explore the bases of Gulf power's claims.

The Presiding Judge has already made clear that this sort of evasive response is improper. In Gulf Power's January 8, 2004 Description of Evidence, for example, it proffered the rate of \$40.60 as evidence of the rate it is seeking to charge Complainants. This interrogatory seeks to discover the evidence, if any, supporting this rate and any underlying assumptions. In his Order of April 15, 2005, the Presiding Judge made clear that the fact that Gulf Power may continue to

produce additional evidence “does not excuse Gulf Power from providing complete interrogatory answers with respect to the proof it had on January 8, 2004, that relate to its Description of Evidence.” The Judge further noted: “Gulf Power made its Description of evidence proffer and therefore Gulf Power is expected to have authentic and reliable proof to back up its proffer. The interrogatories appear designed to flush out the proof.”

The Presiding Judge was correct. The interrogatories, such as this one, are designed to “flush out” any evidence Gulf Power has, but they will only do so if Gulf Power is required to answer. It may not stonewall and seek to delay until the close of discovery.

Interrogatory No. 40:

Identify all documents that reflect or refer to negotiations between communications attachers (including Complainants) and Gulf Power involving pole attachment rental rates exceeding the FCC’s Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

Gulf Power’s Response:

See documents within Bates range Gulf Power 00826-2309.

Complainants’ Argument:

Gulf Power’s listing of documents is insufficiently specific and lacks a representation as to whether the listed documents contain all the documents in Gulf Power’s possession, custody, or control that are responsive to the Interrogatory. For example, Gulf Power’s answer to this question about negotiations with “communications attachers (including Complainants)” references nearly 1,483 pages of documents, but the identical 1,483 pages are referenced in response to Interrogatory No. 42, which asks a different question about Gulf Power’s negotiations with “non-Section [47 U.S.C.] 224, non-joint user attachers.” In addition, while this interrogatory specifically asks for documents that reflect negotiations with Complainants, the 1,483 pages referenced contain almost no documents pertaining to the Complainants in this

adjudication. Accordingly, Complainants are entitled to a more careful and more specific response from Gulf Power, and a response that includes documents pertaining to Complainants.

Interrogatory No. 41:

Identify all documents that reflect or refer to negotiations between joint users of a pole (*i.e.*, an incumbent local exchange carrier) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

Gulf Power's Response:

See documents Bates labeled as Gulf Power 2089-2148.

Complainants' Argument:

Gulf Power's listing of documents lacks a representation as to whether the listed documents contain all the documents in Gulf Power's possession, custody, or control that are responsive to the Interrogatory. The 59 pages of documents referenced contain only three signed versions of Joint Use Agreements between Gulf Power and BellSouth, Sprint, and GTC, Inc. The pages do not include any drafts, correspondence, memoranda, e-mail, notes, or other documents that might actually "reflect or refer to *negotiations*" between Gulf Power and its joint pole use partners. It is reasonable to believe that some such documents exist. Accordingly, Gulf Power, since it has partial control of joint use poles with such joint users, and such users may therefore have a role in determining and affecting any decisions about such poles' "capacity" for attachments, has a duty to produce documents reflecting the underlying negotiations leading to the referenced joint use agreements.

Interrogatory No. 42:

Identify all documents that reflect or refer to negotiations between non-Section 224, non-joint user attachers (*e.g.*, R. L. Singletary, Inc. and Crest Corporation) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

Gulf Power's Response:

See documents within Bates range Gulf Power 00826-2309.

Complainants' Argument:

Gulf Power's listing of documents is insufficiently specific and lacks a representation as to whether the listed documents contain all the documents in Gulf Power's possession, custody, or control that are responsive to the Interrogatory. For example, Gulf Power's answer to this question about negotiations with "non-Section [47 U.S.C.] 224, non-joint user attachers" references nearly 1,483 pages of documents, but the identical 1,483 pages are referenced in response to Interrogatory No. 40, which asks a different question about Gulf Power's negotiations with "communications attachers (including Complainants)." Accordingly, Complainants are entitled to a more careful and more specific response from Gulf Power.

Interrogatory No. 44:

Describe and explain Gulf Power's understanding of the Sales Comparison Approach as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

Gulf Power's Response:

The Sales Comparison Approach looks to other sales of identical property (free of government regulation). Gulf Power will explain its application of the Sales Comparison Approach when it discloses its experts in accordance with the Presiding Judge's December 17, 2004 Order.

Complainants' Argument:

Gulf Power's response is evasive and incomplete. Apart from stating the obvious – that the Sales Comparisons Approach looks "to other sales" of property – Gulf Power utterly refuses to answer this interrogatory at this time. Apparently, once again, Gulf Power is attempting to avoid answering an important question until a time at or near the close of discovery. See March

30, 2005 Order (re-setting the date for disclosure of expert summaries as November 18, 2005).

In its December 3, 2004 “Preliminary Statement on Alternative Cost Methodology,” Gulf Power mentioned that it was considering basing its demand for a higher pole attachment on what it called the “Sales Comparison Approach.” Complainants are entitled to have this interrogatory, which asks for Gulf Power’s explanation and application of this valuation method to pole attachment rates, answered now – not at or near the end of discovery.

Interrogatory No. 45:

Identify the pole attachment rental rates paid to Gulf Power by joint users, the specific amount of pole space leased by such joint users, and explain the methodologies, if any, used to calculate these rates.

Gulf Power’s Response:

Gulf Power’s Response consists of two charts, listing pole attachment rental rates paid to Gulf Power by joint pole users and the amount of pole space used by such joint users.

Complainants’ Argument:

Gulf Power’s response is incomplete. Although Gulf Power provided data about pole rates and pole space, it provided no response at all to Complainants’ request that Gulf Power explain the methodologies used to calculate the rates it receives from joint pole users. Accordingly, Gulf Power has a duty to answer the question as it pertains to the methodologies used to calculate the rates it receives from joint pole users. Particularly in this proceeding, where Gulf Power is claiming that it has a constitutional right to charge more for pole space, Complainants are reasonably entitled to discover all bases upon which Gulf Power calculates rates for the use of any portion of its poles.

Interrogatory No. 46:

Identify the pole attachment rental rates paid by Gulf Power to other joint user pole owners, the specific amount of pole space leased by Gulf Power from such joint users, and explain the methodologies, if any, used to calculate these rates.

Gulf Power's Response:

Gulf Power's response consists of one chart listing pole space leased from joint users.

Complainants' Argument:

Gulf Power's response is incomplete. Although Gulf Power provided data about pole space, it provided no response at all to Complainants' request that Gulf Power explain the pole rates paid by Gulf Power to other joint users or its request that Gulf Power explain the methodologies used to calculate the rates it pays joint pole users. Accordingly, Gulf Power has a duty to answer the question as it pertains to both the pole rates it pays joint users and the methodologies used to calculate the rates it pays joint pole users.

Interrogatory No. 47:

Describe and explain Gulf Power's understanding of the Current Replacement Cost Approach as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

Gulf Power's Response:

The Current Replacement Cost Approach, which is a recognized fair market value proxy, looks to the current cost of reproducing the property. It relies on current costs, unlike the Cable Rate and Telecom Rate which rely on disfavored historic costs. Gulf Power will explain its application of the Current Replacement Cost Approach when it discloses its experts in accordance with the Presiding Judge's March 30, 2005 Order.

Complainants' Argument:

Gulf Power's response is evasive and incomplete. Apart from stating the obvious – that the Current Replacement Cost approach “looks to the current cost of reproducing the property” –

Gulf Power utterly refuses to answer this interrogatory at this time. Apparently, once again, Gulf Power is attempting to avoid answering an important question until a time at or near the close of discovery. *See* March 30, 2005 Order (re-setting the date for disclosure of expert summaries as November 18, 2005). In its December 3, 2004 “Preliminary Statement on Alternative Cost Methodology,” Gulf Power mentioned that it was considering basing its demand for a higher pole attachment on what it called the “Current Replacement Cost Approach.” Complainants are entitled to have this interrogatory, which asks for Gulf Power’s explanation and application of this valuation method to pole attachment rates, answered now – not at or near the end of discovery.

Interrogatory No. 48:

Describe and explain Gulf Power’s understanding of the Federal Concessions Leasing Model as highlighted in Gulf Power’s December 3, 2004 “Preliminary Statement on Alternative Cost Methodology,” and explain Gulf Power’s application of this model to calculating pole attachment rental rates.

Gulf Power’s Response:

The Federal Concessions Leasing Model is a valuation method proposed by Gulf Power’s valuation experts. It uses the Federal government’s own methodology for valuing property for which there is no market, or which does not have an easily ascertainable market value. Gulf Power will explain its application of the Federal Concessions Leasing Model when it discloses its experts in accordance with the Presiding Judge’s March 30, 2005 Order.

Complainants’ Argument:

Gulf Power’s response is evasive and incomplete. Apart from stating the obvious – that the Federal Concessions Leasing Model “uses the Federal government’s own methodology for valuing property” that cannot easily be valued – Gulf Power utterly refuses to answer this interrogatory at this time. Apparently, once again, Gulf Power is attempting to avoid answering an important question until a time at or near the close of discovery. *See* March 30, 2005 Order

(re-setting the date for disclosure of expert summaries as November 18, 2005). In its December 3, 2004 “Preliminary Statement on Alternative Cost Methodology,” Gulf Power mentioned that it was considering basing its demand for a higher pole attachment on what it called the “Federal Concessions Leasing Model.” Complainants are entitled to have this interrogatory, which asks for Gulf Power’s explanation and application of this valuation method to pole attachment rates, answered now – not at or near the end of discovery.

II. GULF POWER’S RESPONSES TO NUMEROUS DOCUMENT REQUESTS ARE INCOMPLETE

Document Request No. 1:

Produce all documents referring to, relating to, or regarding any of the facts or allegations described in Gulf Power’s or the Complainants’ pleadings in File No. PA 00-004 and this Action.

Gulf Power’s Response:

Gulf Power objects to this request for production on the grounds that it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Gulf Power is either producing herewith, or making available for inspection and copying upon reasonable notice, a substantial number of documents responsive to this request.

Complainants’ Argument:

Gulf Power’s partial objections of relevance and overbreadth are not well-taken. First, the interrogatory clearly calls for relevant documents, since it is specifically directed at facts and allegations in Gulf Power’s and Complainants’ pleadings in this action. Second, while the scope of the interrogatory is broad, it is not *overly* broad since it focuses directly on getting at the documents underlying the allegations in the parties’ pleadings. Moreover, Gulf Power has not provided any reason to support its objection of overbreadth, and Complainants have no way of

knowing what documents Gulf Power is withholding Accordingly, Gulf Power's objection should be overruled and it should be required to produce all responsive documents.

Document Request No. 3:

Produce all documents reviewed by, or produced or written by, any consultant, expert witness, or other entity that Gulf Power has used or is using to study or report upon Gulf Power poles containing attachments by Complainants.

Gulf Power's Response:

Gulf Power will work with complainants to reach on agreed-upon a reasonable scope of expert discovery, and produce such agreed-upon documents at the appropriate time. Gulf Power already has produced, and filed of record, the Statement of Work between Osmose Utilities Services, Inc. ("Osmose") and Gulf Power. Gulf Power also has consulted with a valuation expert, who has been given materials and has prepared certain written materials for review by Gulf Power's counsel.

Complainants' Argument:

Gulf Power's answer is evasive and incomplete. It has essentially refused to answer this document request, and appears to be seeking, as it has with many of its responses to Complainants' interrogatories, to defer responding to this request until a time at or near the close of discovery. Gulf Power should be required to produce now all materials reviewed by any consultant or expert witness who it currently anticipates will testify in this case, and, at a time approved by the Presiding Judge, any materials produced or written by such consultant or expert witness relating to Gulf Power poles containing Complainants' attachments.

Document Request No. 4:

Produce all documents referring to, relating to, or regarding any communication, whether oral, written or otherwise, concerning annual pole rental charges or the performance of make-ready work, from January 1, 1998 to the present, on poles owned or controlled by Gulf Power between Gulf Power and any other person, including but not limited to, Complainants, other cable operators, telecommunications carriers, or any other entity attached to poles owned or controlled by Gulf Power. Your response should include documents that identify all such make-ready work performed, including installed equipment, subcontracts,

service requests, work orders, time sheets, material costs and site diagrams or maps.

Gulf Power's Response:

Gulf Power object to this request for production on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Gulf Power will, upon reasonable notice, make available for inspection and copying, all requested make-ready work orders. See also the documents produced in response to interrogatory numbers 40 and 42.

Complainants' Argument:

Gulf Power's partial objections of relevance, burden, and overbreadth are not well-taken. First, the interrogatory clearly calls for relevant documents, since it is specifically directed at production of documents pertaining to annual pole rental charges and make-ready work on Gulf Power poles. Second, while the scope of the interrogatory is broad, it is not *overly* broad since it focuses on getting at the documents underlying Gulf Power's claims that it is not sufficiently compensated for Complainants' attachments by the annual pole rent and make-ready fees paid by Complainants. In its Description of Evidence, Gulf Power stated that it had un-reimbursed costs, and further implied that, because third parties were willing to pay higher annual pole rental charges than Complainants' pay, that Gulf Power was constitutionally entitled to charge Complainants higher annual pole rents. Description of Evidence, 6-7. Accordingly, Complainants are entitled to production of Gulf Power's documents pertaining to its annual pole rent charges to all parties. While Gulf Power incorporates its answers to Interrogatories 40 and 42, which in turn reference certain documents produced, it does not appear that such documents include all communications between Gulf and third persons regarding annual pole rents, and Complainants have no way of knowing what documents Gulf Power is withholding. Further, Complainants believe, from their inspection of Gulf Power documents produced so far, that,

contrary to its representations, Gulf Power has not produced all “make ready orders,” let alone make-ready service requests, time sheets, material costs, and labor costs. Gulf Power has not provided any reason to support its objection of overbreadth and undue burden. Accordingly, Gulf Power’s objection should be overruled and it should be required to produce all responsive documents.

Document Request No. 6:

Produce all documents referring to, relating to, or regarding formal or informal Gulf Power policies or field practices concerning utilization of cross-arms, extension arms, or boxing arrangements.

Gulf Power’s Response:

Gulf Power objects to this request for production on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants’ Argument:

Gulf Power’s objections on grounds of overbreadth and relevance are not well taken. Gulf Power’s objections of overbreadth and relevance are not well taken. Gulf Power’s ability to establish a constitutional claim for greater compensation depends upon its ability to meet the *Alabama Power* requirement of showing that specific poles are at “full capacity” and cannot accommodate additional attachments. However, Gulf Power, like many electric utilities, uses numerous measures in the normal course of its business to provide sufficient capacity and accommodate additional attachments on poles. Those measures may include the use of “cross-arms, extension arms, or boxing arrangements [attachments on both sides of a utility pole].” Complainants have therefore asked, in this document request for Gulf Power to produce documents that relate to whether it uses such arrangements to provide capacity for its own or third-party attachments. This document request is relevant because, if Gulf Power uses these

measures to provide capacity for itself or others, and such measures can be used on poles that include Complainants' attachments to accommodate new attaching entities, then Gulf Power cannot in fact claim a constitutional entitlement to a higher pole rate based upon the "missed opportunity" that the Eleventh Circuit made clear was a *sine qua non* of any such claim.

Furthermore, Gulf Power has not provided any reason or explanation to support its claim of overbreadth. Further, the document request is not overbroad, since it asks only for documents relating to "policies or field practices" concerning Gulf Power's use of cross-arms, extension arms, and boxing arrangements.

Document Request No. 7:

Produce all documents referring to, relating to, or regarding approvals or denials of requests to employ cross-arms, extension arms, or boxing arrangements by Gulf Power or any other entity attaching to Gulf Power-owned or -controlled poles.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants' Argument:

Complainants incorporate the same argument as set forth above in connection with Gulf Power's objections to Document Request No. 6.

Document Request No. 8:

Produce all documents referring to, relating to, or regarding pole change-outs performed for Complainant cable operators since 1998, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

Gulf Power's Response:

See responses to requests for production number 2 and 4 above.

Complainants' Argument:

Complainants will not move to compel a further response, *provided that* Gulf Power confirms that its response, by incorporating its response, *inter alia*, to Complainants' request number 2, means that Gulf Power has agreed, as it did in response to request number 2 after stating various partial objections, to "make all such documents available."

Document Request No. 9:

Produce all documents referring to, relating to, or regarding pole change-outs necessitated by Gulf Power's core electricity service requirements, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is overly broad. Subject to and without waiving this objection, see previously produced documents Bates labeled Gulf Power 00005 – 00809. Gulf Power does not maintain records of each and every pole change-out necessitated by its core business, but such change-outs occur daily in the field.

Complainants' Argument:

Gulf Power's objection of overbreadth is not well taken. In its Description of Evidence, Gulf Power stated that it had evidence regarding instances where it had to change-out a pole for its own core business purposes, "due to capacity, where it would not have needed to do so in the absence of CATV or Telecom attachments." See Description of Evidence, 6 n.13. While the documents Gulf Power references in its answer to Document Request No. 9 refer in part to change-outs for Telecom providers, they do not appear to include any evidence that Gulf Power performed change-outs for its own core business purposes, let alone that Gulf Power was forced to perform un-reimbursed change-outs for its own business purposes on poles containing Complainants' attachments. Gulf Power has a duty to produce the documents containing the

evidence it claimed to have in its Description of Evidence, or, alternatively, admit that it has no such evidence. But it cannot refuse to produce evidence due to an unsubstantiated objection.

Document Request No. 10:

Produce all documents referring to, relating to, or regarding pole change-outs requested by third parties, including but not limited to communications attachers, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

Gulf Power's Response:

See responses to requests for production number 2 and 4 above.

Complainants' Argument:

Complainants will not move to compel a further response, *provided that* Gulf Power confirms that its response, by incorporating its response, *inter alia*, to Complainants' request number 2, means that Gulf Power has agreed, as it did in response to request number 2 after stating various partial objections, to "make all such documents available."

Document Request No. 11:

Produce all documents identifying all engineers, technicians, and/or workmen who performed any type of work, labor or service relating to change-outs of Gulf Power-owned or -controlled poles, and identifying the material costs, work, labor, or service that was performed and when it was performed.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections on grounds of overbreadth, undue burden, and relevance are not well taken. First, as to relevance, Gulf Power itself alleged that the issue of pole change-outs is

relevant to its demand for greater pole compensation when it filed its Description of Evidence. See Description of Evidence, 3-6. If Gulf Power relies upon pole change-outs as a basis for its claims, Complainants are entitled to discover the identity of Gulf Power's personnel who performed pole change-outs, when they were performed, and how much they cost. Second, while the document request is broad, so are Gulf Power's allegations as to the number and scope of the change-outs it claimed, in its Description of Evidence, that it had to perform. Id., 3-6. Indeed, Gulf Power itself stated that "[t]he exact number of change-outs required is not known at this time, as it will require a manual review of hundreds of work orders." Id., 3. Gulf Power should have performed this review, and Complainants are entitled to discover the documents that Gulf Power has relied upon in making such allegations.

Document Request No. 13:

Produce all documents referring to, relating to, or regarding Gulf Power's procedures for changing-out a pole and identify all persons who participated in the development of such procedures.

Gulf Power's Response:

See documents produced herewith as Bates labels Gulf Power 00810 – 00814. These procedures were written by Ben Bowen with input from others at Gulf Power, Power Delivery.

Complainants' Argument:

Gulf Power's response appears to be incomplete. The five pages that it references pertain to an internal Gulf Power "CATV Permitting Procedure," but do not describe "procedures for changing out a pole" For example, the "CATV Permitting Procedure" documents refer to something called a "DSO" that has to be completed when pole make-ready is necessary, but there are no documents concerning what a "DSO" is, how it works, or how the make-ready process actually works.

Document Request No. 14:

Produce all documents referring to, relating to, or regarding Gulf Power's pole inventory records, including but not limited to documents relating to Gulf Power policies and procedures for maintaining its pole inventory.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is vague and ambiguous. Subject to and without waiving these objections, see response to interrogatory number 27.

Complainants' Argument:

Gulf Power's partial objection is not well-taken, and its responsive is evasive and incomplete. Gulf Power must establish a lack of capacity on specific poles in this case as one element of its claim for higher annual pole rent. However, if Gulf Power routinely changes-out bigger poles from its pole inventory for smaller poles; if such change-outs are possible on the poles claimed to be at issue; and if Gulf Power is reimbursed for the costs of such change-outs, then it cannot establish the requisite lack of capacity. This document request is not vague; it clearly and reasonably requests asks for Gulf Power's documents relating to its pole inventory records since 1998 and for the procedures relied upon by Gulf Power in processing poles from its inventory. Gulf Power references its response to interrogatory number 27, and that response lists poles in Gulf Power's "in-service pole inventory" from 1998 through 2003, but Gulf Power has refused to produce any documents relating to its pole inventory or its procedures. Since pole capacity and Gulf Power's procedures for obtaining capacity are issues in this case, as explained above, Gulf Power has a duty to produce its documents relating to its pole inventory records (including those relating to the numbers it listed in response to interrogatory number 27), as well as to produce documents describing its procedures for obtaining poles from its inventory.

Document Request No. 15:

Produce all documents referring to, relating to, or regarding Gulf Power's purchasing, sharing, pooling, or other arrangements for utilizing inventories of poles with affiliated corporations, parents, subsidiaries, and other organizations or operating units.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is vague and ambiguous. Subject to and without waiving these objections, Gulf Power states that it does not utilize pole inventories of other entities, with the exception of the ILECs with whom Gulf Power has joint use agreements. Those joint use agreements, are produced herewith as Bates labels Gulf Power 2089 – 2148.

Complainants' Argument:

Gulf Power's partial objection is not well-taken. Complainants incorporate the same argument regarding the importance of pole capacity determinations set forth above in reply to Gulf Power's objection to Document Request No. 14. In particular, Complainants note that the pages referenced by Gulf Power only comprise joint use agreements, and do not appear to describe Gulf Power's "purchasing, sharing, pooling, or other arrangements for utilizing" pole inventories of Gulf Power's joint use partners. Moreover, Gulf Power is refusing to produce documents showing the actual extent to which it has utilized pole inventories of the entities with which it has joint use agreements.

Document Request No. 16:

Produce all documents referring to, relating to, or regarding the Safety Space and Gulf Power specifications, regulations and/or policies implementing the Safety Space on poles owned or controlled by Gulf Power.

Gulf Power's Response:

See documents produced as Bates labeled Gulf Power 00815 – 00826. Complainants should also have in their possession a current copy of the National Electric Safety Code (“NESC”), since this is a necessary reference for complainants’ field employees. If complainants do have the current (2002) NESC, it can be produced at <http://standards.ieee.org/nesc/>.

Complainants' Argument:

Complainants seek clarification of Gulf Power’s response. In particular, because the dozen or so pages referenced by Gulf Power only contain diagrams, Complainants wish to confirm that Gulf Power has no documents relating to “specifications, regulations and/or policies implementing the Safety Space” other than what it has referenced.

Document Request No. 19:

Produce any and all documents referring to, relating to, regarding or comprising a bona fide development plan or plans, including but not limited to all drafts thereof, that reasonably and specifically projects a need for pole space in the provision of Gulf Power’s core utility service, including all documents that refer or relate to those documents that comprise the bona fide development plan or plans.

Gulf Power's Response:

See documents previously produced by Gulf Power as Bates labels Gulf Power 00005 – 00809.

Complainants' Argument:

Complainants seek clarification that the documents referenced in Gulf Power’s answer, which constitute various “distribution studies,” constitute all of the documents responsive to this request.

Document Request No. 23:

Produce all documents referring to, relating to, or regarding Gulf Power’s upgrades, modernization, or replacement of its poles from 1998 through the present.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is overly broad, unduly burdensome, vague, and seeks information which is irrelevant to the hearing issues.

Complainants' Argument:

Gulf Power's objections are not well-taken. This question asks for documents relating to Gulf Power's upgrading or replacement of its poles. If Gulf Power has upgraded or replaced its poles during recent years, such upgrades or replacements could alter the capacity of such poles to accommodate pole attachments. For example, if an older pole is upgraded to a new, stronger pole, the new pole may be able to accommodate additional attachments. Similarly, if an existing pole is replaced with a larger one, the pole's capacity for accommodating attachments is likely to have increased. Any documents regarding policies or procedures that Gulf Power on the upgrading or replacement of its poles would be particularly relevant to pole capacity determinations, as would documents pertaining to the upgrading or replacement of poles containing Complainants' attachments. This is particularly true for poles containing Complainants' attachments. Gulf Power has not provided any explanation or good reason for its objections. Accordingly, the requested documents should be produced.

Document Request No. 24:

Produce all documents referring to, relating to, or regarding the facts, data, calculations and other information that support Gulf Power's claim for a pole attachment rental rate in excess of marginal cost.

Gulf Power's Response:

Gulf Power objects to this request for production on the grounds that it is overly broad and unduly burdensome. Gulf Power will disclose its valuation expert's cost methodologies in accordance with the Presiding Judge's March 30, 2005 Order

Complainants' Argument:

Gulf Power's partial objection is not well-taken, and its answer is evasive and incomplete. As explained in Complainants' reply to Gulf Power's response to Interrogatory Nos. 10 and 38, Complainants are entitled to discover the documents underlying Gulf Power's proffered "just compensation" rate of \$40.60 per pole, a rate that was referenced more than 18 months ago in Gulf Power's "Description of Evidence." Gulf Power's documents pertaining to this claimed rate, or any other rate (above the marginal costs of attachments) to which it claims to be entitled, " should be produced now, not at or near the close of discovery at the end of this year.

Document Request No. 25:

Produce all documents referring to, relating to, or regarding any maps, diagrams, schematics, or depictions of the specific Gulf Power poles that You claim are at "full capacity," "crowded," or have "insufficient capacity" or a "lack of capacity."

Gulf Power's Response:

Gulf Power will produce such documents upon completion of the pole audit being performed by Osmose.

Complainants' Argument:

Gulf Power's answer is evasive and incomplete. In its January 8, 2004 Description of Evidence, Gulf Power claimed to have documents that would be responsive to this request. Indeed, Gulf Power stated that it would "seek to introduce documentary (charts, work orders, etc.) . . . evidence" concerning cable attachments as well as "photographic and engineering evidence depicting attachment arrangements on distribution poles." Complainants submit that, as the Presiding Judge noted in his April 15th Order, they have a right to the production of such documentary evidence now.

Document Request No. 26:

Produce all documents referring to, relating to, or regarding any actual losses experienced by Gulf Power that it claims are associated with Complainants' pole attachments on Gulf Power poles, including any documents pertaining to any "higher valued use" or "another buyer of the space waiting in the wings" as described in *Alabama Power v. FCC*.

Gulf Power's Response:

Gulf Power objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving these objections, Gulf Power states that its actual loss is the difference between Just Compensation and the rate paid by complainants, plus interest.

Complainants' Argument:

Gulf Power's partial objection is not well-taken, and its answer is evasive, incomplete, and strikingly inconsistent with *Alabama Power*. First, as noted above in Complainants' reply to Gulf Power's response to Interrogatory No. 9, inconsistent with *Alabama Power*. In *Alabama Power*, the court made clear that a pole owner who claimed a constitutional right to payment greater than that already provided under the FCC's Cable Rate must show that it was "out . . . more money" and/or that it could identify and quantify one or more "missed opportunities" as a result of having to accommodate cable operators' attachments. See 311 F.3d at 1369-71. Under *Alabama Power*, actual loss refers to actual income or other revenue that Gulf Power has lost that was caused by Complainants' attachments – i.e., greater money offered by a third party that could not be accommodated on Gulf Power's poles or a distinct, quantifiable, actual, and current higher valued use of Gulf Power's own for the same space occupied by Complainants. Gulf Power can't just claim that its "actual" loss is the difference between what they receive and what they want, hypothetically, under just compensation. Gulf Power lost that argument in *Alabama Power*. See 311 F.3d at 1369. Moreover, evidence of losses and lost opportunities is not dependent upon the physical pole inspection that consultant Osmose is conducting. Gulf Power must produce its

evidence of any actual losses and lost opportunities, or admit that they have none and have their claims dismissed immediately.

Document Request No. 27:

Produce all documents referring to, relating to, or regarding the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating pole attachment rental rates in excess of marginal cost.

Gulf Power's Response:

Gulf Power will work with complainants to reach an agreed-upon a reasonable scope of expert discovery, and produce such agreed-upon documents in accordance with the Presiding Judge's March 30, 2005 Order.

Complainants' Argument:

As noted above in Complainants' reply to Gulf Power's response to Interrogatory No. 39, Gulf Power has refused to answer the question, alleging that it will answer it in accordance with the March 30, 2005 Order. But that Order does not provide a deadline for identifying factual data, cost accounts, formulae, or methodologies that Gulf Power claims underlie its constitutional claim of entitlement to a "just compensation" pole rate of, apparently, \$40.60. The March 30, 2005 Order sets a November 18, 2005 deadline for exchanging summaries of testifying experts, but it in no way justifies Gulf Power to wait until nearly the end of the year until it produces this evidence. Once again, Gulf Power seems to hope that it can delay producing facts to support its claims until practically the close of discovery, thereby trying to preclude Complainants from taking depositions and serving additional written discovery requests to explore the bases of Gulf power's claims.

The Presiding Judge has already made clear that this sort of evasive response is improper. In Gulf Power's January 8, 2004 Description of Evidence, for example, it proffered the rate of \$40.60 as evidence of the rate it is seeking to charge Complainants. This interrogatory seeks to

discover the evidence, if any, supporting this rate and any underlying assumptions. In his Order of April 15, 2005, the Presiding Judge made clear that the fact that Gulf Power may continue to produce additional evidence “does not excuse Gulf Power from providing complete [discovery] answers with respect to the proof it had on January 8, 2004, that relate to its Description of Evidence.”

Document Request No. 28:

Produce all documents referring to, relating to, or regarding negotiations between communications attachers and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC’s Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power’s Response:

See documents produced in response to interrogatory number 40.

Complainants’ Argument:

Gulf Power’s answer is insufficiently specific and lacks a representation as to whether the documents referenced contain all the documents in Gulf Power’s possession, custody, or control that are responsive to the document request. For example, For example, Gulf Power’s answer to this question about negotiations with “communications attachers” references nearly 1,483 pages of documents listed in response to Interrogatory No. 40, but the identical 1,483 pages are referenced in response to Document Request No. 30 and Interrogatory No. 42, which ask different questions about Gulf Power’s negotiations with “non-Section [47 U.S.C.] 224, non-joint user attachers.” Accordingly, Complainants are entitled to a more careful and more specific response from Gulf Power.

Document Request No. 29:

Produce all documents referring to, relating to, or regarding negotiations between joint users (*e.g.*, an incumbent local exchange carrier) and Gulf Power which

discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power's Response:

See documents produced in response to interrogatory number 41.

Complainants' Argument:

As Complainants discuss in reply to Gulf Power's response to Interrogatory No. 41, Gulf Power's listing of documents in response to this request lacks a representation as to whether the listed documents contain all the documents in Gulf Power's possession, custody, or control that are responsive to the question. The 59 pages of documents referenced contain only three signed versions of Joint Use Agreements between Gulf Power and BellSouth, Sprint, and GTC, Inc. The pages do not include any drafts, correspondence, memoranda, e-mail, notes, or other documents that might actually "reflect or refer to *negotiations*" between Gulf Power and its joint pole use partners. It is reasonable to believe that some such documents exist. Accordingly, Gulf Power, since it has partial control of joint use poles with such joint users, and such users may therefore have a role in determining and affecting any decisions about such poles' "capacity" for attachments, has a duty to produce documents reflecting the underlying negotiations leading to the referenced joint use agreements.

Document Request No. 30:

Produce all documents referring to, relating to, or regarding negotiations between non-Section 224, non-joint user attachers (*e.g.*, R. L. Singletary, Inc. and Crest Corporation) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power's Response:

See documents produced in response to interrogatory number 42.

Complainants' Argument:

As Complainants discuss in reply to Gulf Power's response to Interrogatory No. 42, Gulf Power's listing of documents in response to this request is insufficiently specific and lacks a representation as to whether the listed documents contain all the documents in Gulf Power's possession, custody, or control that are responsive to the Interrogatory. For example, Gulf Power's answer to this question about negotiations with "non-Section [47 U.S.C.] 224, non-joint user attachers" references nearly 1,483 pages of documents, but the identical 1,483 pages are referenced in response to Document Request No. 28 and Interrogatory No. 40, which ask different questions about Gulf Power's negotiations with "communications attachers (including Complainants)." Accordingly, Complainants are entitled to a more careful and more specific response from Gulf Power

Document Request No. 31:

Produce all documents referring to, relating to, or regarding cost methodologies, or concepts from or portions of cost methodologies, other than the Sales Comparison Approach, Current Replacement Cost Approach and the Federal Concessions Leasing Model, that Gulf Power may seek to use to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power's Response:

To the extent Gulf Power advances other cost methodologies, Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

Complainants' Argument:

Complainants understand, based upon Gulf Power's response to Interrogatory No. 43, that it does not currently intend to rely upon any valuation method other than those listed in this document request. However, to the extent that Gulf Power seeks to do so, it has a duty to produce documents in response to this document request.

Document Request No. 32:

Produce all documents referring to, relating to, or regarding Gulf Power's application of the Sales Comparison Approach to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power's Response:

Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

Complainants' Argument:

As Complainants discuss in reply to Gulf Power's response to Interrogatory No. 44, Gulf Power's response is evasive and incomplete. Gulf Power utterly refuses to answer this document request at this time. Apparently, once again, Gulf Power is attempting to avoid producing relevant documents until a time at or near the close of discovery. *See* March 30, 2005 Order (re-setting the date for disclosure of expert summaries as November 18, 2005). In its December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," Gulf Power mentioned that it was considering basing its demand for a higher pole attachment on what it called the "Sales Comparison Approach." Complainants are entitled to have this document request, which asks for documents relating to Gulf Power's application of this valuation method to pole attachment rates, answered now – not at or near the end of discovery.

Document Request No. 33:

Produce all documents referring to, relating to, or regarding Gulf Power's application of the Current Replacement Cost Approach to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power's Response:

Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

Complainants' Argument:

As Complainants discuss in reply to Gulf Power's response to Interrogatory No. 47, Gulf Power's response is evasive and incomplete. Gulf Power utterly refuses to answer this document request at this time. Apparently, once again, Gulf Power is attempting to avoid producing relevant documents until a time at or near the close of discovery. *See* March 30, 2005 Order (re-setting the date for disclosure of expert summaries as November 18, 2005). In its December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," Gulf Power mentioned that it was considering basing its demand for a higher pole attachment on what it called the "Current Replacement Cost Approach." Complainants are entitled to have this document request, which asks for documents relating to Gulf Power's application of this valuation method to pole attachment rates, answered now – not at or near the end of discovery.

Document Request No. 34:

Produce all documents referring to, relating to, or regarding Gulf Power's application of the Federal Concessions Leasing Model to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

Gulf Power's Response:

Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

Complainants' Argument:

As Complainants discuss in reply to Gulf Power's response to Interrogatory No. 48, Gulf Power's response is evasive and incomplete. Gulf Power utterly refuses to answer this document request at this time. Apparently, once again, Gulf Power is attempting to avoid producing relevant documents until a time at or near the close of discovery. *See* March 30, 2005 Order (re-setting the date for disclosure of expert summaries as November 18, 2005). In its December 3,

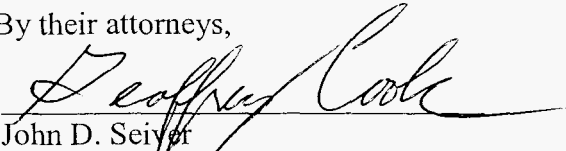
2004 "Preliminary Statement on Alternative Cost Methodology," Gulf Power mentioned that it was considering basing its demand for a higher pole attachment on what it called the "Federal Concessions Leasing Model." Complainants are entitled to have this document request, which asks for documents relating to Gulf Power's application of this valuation method to pole attachment rates, answered now – not at or near the end of discovery.

CONCLUSION

WHEREFORE, on account of the foregoing, Complainants respectfully request that the Court enter an Order compelling Respondent to respond fully to Complainants discovery requests as set forth herein, and award such other relief as is just.

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L.L.C., and BRIGHT HOUSE NETWORKS, L.L.C.**

July 11, 2005

EXHIBIT A

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

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

**COMPLAINANTS' FIRST SET OF INTERROGATORIES TO
RESPONDENT GULF POWER COMPANY**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. ("Complainants"), submit this First Set of Interrogatories to Respondent Gulf Power Company ("Gulf Power" or "Plaintiff"). Respondent must respond in writing within 30 days of the date of service of these Interrogatories.¹ The instructions and definitions that follow are integral to the Interrogatories and should be reviewed carefully.

¹ *In re Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.*, Order, EB Docket No. 04-381, FCC 05M-03 (issued Feb. 1, 2005).

DEFINITIONS

1. "Action" refers to the above-captioned matter.
2. "*Alabama Power v. FCC* standard" or "*Alabama Power v. FCC* test" means the determination by the United States Court of Appeals for the Eleventh Circuit in *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002), *cert. denied*, 124 S. Ct. 50 (2003), that:

... before 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. Without such proof, any implementation of the Cable Rate (which provides for much more than marginal cost) necessarily provides just compensation.
3. "And" and "or" as used herein are inclusive, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request matters that might otherwise be construed to be outside its scope.
4. "Any" means one or more.
5. "Attaching entity" includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities (including Gulf Power Company), governmental entities and other entities with a physical attachment to pole(s).
6. "Attachment" or "Pole Attachment" means any attachment by an attaching entity, as defined above, to a pole, duct, conduit, or right-of-way owned or controlled by a utility.
7. "Cable operator" means a person who provides cable service or owns, operates or controls, in whole or in part, one or more cable systems.

8. "Change-out" means the replacement or substitution of a pole, or the act of replacing or substituting a pole, whether as part of the make-ready process pursuant to an attacher's request, as required by any governmental entity, or as necessitated by Gulf Power for the provision of electricity services.

9. "Complainants" means The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. and their predecessors, successors, subsidiaries, parents, divisions or affiliates.

10. "Complaint" means the complaint filed by the Complainants in this action, and any amendments or supplements thereto that have been filed.

11. The terms "communicated" or "communication" include every manner or means of disclosure, transfer or exchange of information, and every disclosure, transfer or exchange, whether face-to-face, by telephone, in writing, whether in hard copy or electronically, by email, by mail, personal delivery or otherwise.

12. "Communications attacher" means a person providing all lawful communications services, including but not limited to, cable services, telecommunications services and/or information services, who attaches to poles owned or controlled by Gulf Power.

13. "Description of Evidence" means *Gulf Power's Description of Evidence Gulf Power Seeks to Present In Satisfaction of The Eleventh Circuit's Test*, filed January 8, 2004 with the Enforcement Bureau of the Federal Communications Commission.

14. "Document" means written, recorded or graphic materials of any kind, whether prepared by You or by any other person, and that is in Your possession, custody

or control. The term includes agreements, contracts, letters, emails, telegrams, inter-office communications, memoranda, reports, records, instructions, specifications, notes, notebooks, scrapbooks, diaries, diagrams, photographs, photocopies, charts, graphs, descriptions, drafts, minutes of meetings, conferences, telephone calls or other conversations or communications, recordings, published or unpublished speeches or articles, publications, transcripts of telephone conversations, ledgers, financial statements, microfilm, microfiche, tape, video, disk or diskette recordings and computer printouts. The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes the original document (or a copy thereof if the original is not available) and all copies that differ in any respect from the original, including but not limited to any notation, underlining, marking or information not on the original.

15. "FCC" or "Commission" means the Federal Communications Commission.

16. "FCC Formula" refers to the methodology prescribed by the Federal Communications Commission, which appears at 47 C.F.R. § 1.1409.

17. "Gulf Power" means and refers to Gulf Power Company, and each of its affiliated corporations, parents, subsidiaries, divisions and other organizations or operating units, its predecessors and successors-in-interest, and each of its present and former directors, officers, agents, employees, voting trustees, auditors, accountants, attorneys, servants or representatives, including but not limited to employees, consultants, attorneys or other agents having possession, custody or control of documents or

information called for by these requests, and all other persons acting or purporting to act on its behalf.

18. "Identify" or "identity" means to state or a statement of:

- a. In the case of a person other than a natural person, its legal name, the address of its principal place of business, its telephone number, and the name of its chief executive officer;
- b. In the case of a natural person, his or her name, business telephone number, home and business addresses, employer, and title or position;
- c. In the case of a service, the identity of its producer or distributor and its trade name;
- d. In the case of a document,
 - (i) the title of the document,
 - (ii) the author(s),
 - (iii) the title or position of the author(s),
 - (iv) the addressee(s),
 - (v) the title or position of the addressee(s),
 - (vi) the type of document,
 - (vii) the date it was prepared,
 - (viii) the number of pages it comprises,
 - (ix) the identity of all persons indicated as receiving copies of the documents,
 - (x) the identity of all persons who have received copies of, or been shown the document or any part thereof,
 - (xi) its subject matter,
 - (xii) its present location or custodian, and
 - (xiii) a reference to the document, if it has been produced;
- e. In the case of geographic boundaries, location or coverage, a narrative description identifying the states and the areas of such states and all political subdivisions thereof included, in whole or in part, within the geographic boundaries, location or coverage.
- f. In the case of a verbal communication, discussion or meeting,
 - (i) the type of communication, discussion or meeting,
 - (ii) its date or approximate date,
 - (iii) the identity of its participants or attendees,
 - (iv) its general subject matter, and

- (v) a description of any documents or tangible objects used or referred to in the course of the discussion, summarizing, recounting, or referring to the verbal communication, discussion or meeting.

19. "Identify and describe" means to provide a comprehensive, complete, accurate, and detailed description, explanation, or listing of the matter inquired of. When used with reference to a request for documents, "identify and describe" means any document that, in whole or in part, characterizes, evaluates, appraises, assesses, or provides a general explanation of the specified subject.

20. "Including" means including but not limited to.

21. "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications, and includes electronic publishing.

22. "Make-ready" means all work, costs and expenses associated with affixing Complainants' attachments to poles owned or controlled by Gulf Power, including but not limited to pole change-outs, placement, rearrangement or transfer of facilities or other changes necessary to accommodate Complainants' attachments or other attachers' facilities in a network of poles.

23. "Or" means and/or.

24. "Person" means any natural person, corporation, partnership, company, sole proprietorship, unincorporated association or society, incorporated association, institute, joint venture, firm, governmental body or other legal entity, whether privately or publicly owned or controlled, for profit or not-for-profit or partially or fully government owned or controlled.

25. "Pole" means any utility pole owned or controlled by Gulf Power to which attachments are or may be affixed.

26. "Relate to" and "relating to" mean, without limitation, to make a statement about, refer to, discuss, describe, reflect, contain, identify or in any way pertain to, in whole or in part, or being logically, legally or factually related.

27. "Respondents" refers to Gulf Power Company, as defined above, and its agents, representatives, officers, directors and employees.

28. "Safety Space" means the vertical clearance between communications lines and electric lines on poles as set forth in the National Electrical Safety Code (NESC Table 235-5).

29. "Telecommunications" means the transmission, between or among points specified by the users, of information of the user's choosing, without change in the form or content of the information as sent or received.

30. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or such classes of users as to be effectively available to the public, regardless of the facilities used, and includes without limitation dark fiber.

31. "You," "you," "Your" and "your" mean and refer to Gulf Power Company, as defined above.

32. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun, and vice versa.

33. Regardless of the tense employed, all verbs shall be read as applying to the past, present and future as is necessary to make any paragraph more, rather than less, inclusive.

INSTRUCTIONS

1. In accordance with Rule 1.323 of the Federal Communications Commission, answer each interrogatory separately and fully in writing under oath, unless it is objected to, in which event, state reasons for objection in lieu of an answer, and answer each other portion of the interrogatory to which no objection is asserted. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

2. If you are unable to answer an interrogatory fully, submit as much information as is available and explain why Your answer is incomplete. If precise information cannot be supplied, submit (a) Your best estimate or judgment, so identified, and set out the source or basis of the estimate or judgment, and (b) provide such information available to you as best approximates the information requested. Where incomplete answers, estimates or judgments are submitted, and you know of or have reason to believe there are other sources of more complete or accurate information, identify or describe those other sources of information.

3. In responding to interrogatories, preface each answer by restating the request to which the answer is addressed. Where a request for information includes subparagraphs (*e.g.*, (a), (b), (c)), or subdivisions (*e.g.*, (i), (ii), (iii)), answer each subparagraph or subdivision separately.

4. These interrogatories are continuing in nature and include all documents and information prepared or received by you between the date of receipt of this request and the date of final determination in the hearing designated in this Action. Unless otherwise expressly provided, each interrogatory covers any document or information prepared, received, distributed, or in effect during the period from January 1, 1998 unless otherwise stated to the date of final determination in the hearing. Your responses to these interrogatories should be supplemented not later than thirty (30) days prior to any hearing addressing the merits of any party's claim or defenses.

5. For any objection that is based on an asserted claim of privilege, state:

- (a) a brief description of the subject matter of the asserted privileged information;
- (b) the nature of the privileged claimed;
- (c) the paragraph(s) of the interrogatory to which the information is otherwise responsive;
- (d) the nature and basis of the privilege claimed;
- (e) the source(s) of the information; and

the identities of all persons to whom such information has been communicated or with whom it has been shared, in whole or in part.

INTERROGATORIES

1. Identify the total annual number of Gulf Power poles, for each year from 2000 through the present, on which You contend that cable operator Complainants have been attached, and identify the specific annual number of pole attachments for each cable operator Complainant for each year during this period of time.

2. Identify your definition or understanding of the phrase “full capacity” within the meaning of the Alabama Power v. FCC standard, and identify and define any differences between your use or understanding of “full capacity” and the terms “crowded” or “lack of capacity.” In addition, identify with specificity the basis upon which You propose to quantify or measure “full capacity” for an individual pole. Provide any applicable citation to safety codes, specifications, agreements or economic or regulatory literature that supports your response.

3. For the pole attachments identified in response to Interrogatory No. 1, identify, for each cable operator Complainant for the period from 2000 through the present: the total number of Gulf Power poles that You contend were, are, or have been at “full capacity” within the meaning of the Alabama Power v. FCC standard;” the location and individual pole number of the specific poles You contend were, are, or have been at “full capacity;” the specific period of time You contend the poles You identified were, are, or have been at “full capacity;” and the specific reason or reasons why You contend such poles were, are, or have been at “full capacity.”

4. For the poles identified in response to Interrogatory No. 3 which You contend were, are, or have been at “full capacity,” identify, for each year from 2000 through the present and for each cable operator Complainant, the number of such poles for which You contend that Gulf Power had or has “waiting in the wings” “another buyer of the space” occupied by Complainants’ attachments or some other space on Gulf Power poles; identify all such “buyers;” identify the period of time when they were, are, or have been “waiting in the wings” and explain Gulf Power’s understanding of the term “waiting in the wings;” identify what rate or compensation such other buyer was, is, or has been

ready, willing, and able to pay to Gulf Power for access to the space occupied by Complainants' attachments or some other space on Gulf Power poles; identify whether such other buyer has obtained an attachment to Gulf Power poles and, if so, how such attachment was accomplished; and whether the pole you assert was at "full capacity" was or was not replaced or substituted and the reasons therefore.

5. For the poles identified in response to Interrogatory No. 3 which You contend were, are, or have been at "full capacity" and for which You have not had "another buyer of the space" "waiting in the wings" as specified in response to Interrogatory No. 4, identify, for each year from 2000 through the present, and for each cable operator Complainant, all poles, by total number, and individual pole number and location, for which You contend Gulf Power was, is, or has been willing, during the period from 2000 through the present, to put the space occupied by Complainants to a "higher valued use with its own operations;" identify what that "higher valued use" was, is, or has been; identify how and why such use is of a "higher value" than the make-ready and annual per-pole compensation received by Gulf Power from Complainants; and quantify the difference between the make-ready and annual per-pole compensation paid by Complainants to Gulf Power and the "higher value" that You claim. Provide any applicable citation to economic or regulatory literature that supports your response.

6. For all of the poles that You identified in response to Interrogatories 4 and 5, identify, for each year from 2000 through the present, the annual per-pole compensation received by Gulf Power from each cable operator Complainant.

7. For all of the poles that You identified in response to Interrogatories 4 and 5, identify the marginal costs to Gulf Power of each of cable operator Complainants'

attachments for which You claim a right to compensation at a rate greater than that under the FCC formula plus make-ready.

8. For all of the poles that You identified in response to Interrogatories 4 and 5, identify every attaching entity other than Complainants attached to each such pole; describe how many attachments on each such pole those other attaching entities have had or have, when such attachments commenced, and where those attachments are located on each pole; and state the make-ready and annual per-pole compensation received by Gulf Power from each attaching entity other than Complainants (including any Gulf Power affiliates). Specifically identify the number of attaching entities paying Gulf Power annual compensation under the FCC's telecommunications rate formula (47 U.S.C. § 224(e) and implementing regulations).

9. Identify, quantify, and explain the basis of any actual loss (income or other revenue) that Gulf Power contends that it has experienced from 2000 to the present, which it alleges was caused by attachments of cable operator Complainants (and explain in your answer how the alleged actual losses are or will be proved, including any reliance upon Gulf Power's specifications, accounting records, engineering documents, or testimony).

10. For all of the poles that You identified in response to Interrogatories 4 and 5, identify the precise rate (*i.e.*, in dollars and cents) that You contend constitutes a "just compensation" annual pole attachment rental rate for Complainants' attachments and specify the poles, by number and location, for which you are seeking that rate and the basis and method of calculating that rate.

11. Identify all persons, whether or not employed by Gulf Power, who have knowledge or information referring to, relating to, or regarding Gulf Power's factual and legal contentions in FCC Docket Numbers: P.A. No. 00-004 or E.B. No. 04-381, including Gulf Power's contentions in its January 2004 "Description of Evidence" and its December 2004 "Preliminary Statement on Alternative Cost Methodology."

12. Identify all persons who provided assistance or information used in answering these interrogatories and list the corresponding interrogatory numbers for which they provided the assistance or information.

13. Identify each individual whom you may call as a witness at any hearing in this Action, or who may provide written testimony, and state the subject matter on which each witness is expected to testify. If the witness is an expert witness, state the substance of the findings and the opinion(s) to which the witness is expected to testify, and the grounds and basis for each finding and opinion.

14. If you contend that Complainants, or any officer, director, agent, employee acting on behalf of Complainants, have made any admission, or taken or failed to take any action, that would preclude or tend to preclude Complainants from recovering under the claims they have submitted in this Action, identify and describe the substance of each such admission, action or omission, the person who made that admission or took or failed to take such action, and the person to whom such admission was made.

15. Identify and describe every communication, whether oral, written or otherwise, between You or any of Your agents or employees, and any other person, including, but not limited to, Complainants, other cable operators, other telecommunications carriers, or any other entity attached to poles owned or controlled by

You, relating to annual pole rental charges or the performance of or payment for make-ready work from 1998 through to the present on poles owned or controlled by Gulf Power.

16. Identify and describe all entities (including non-communications attachers) that are, or have been, attached to poles owned or controlled by Gulf Power since 1998.

17. Identify and describe any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present. Please specify in your answer the dates or time periods of these surveys, audits or pole counts, an explanation of their methodologies and all categories of information collected concerning attaching facilities and their ownership on the poles. In addition, please identify the names, titles and employers of all persons involved in the surveys, audits or pole counts.

18. Identify the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements and describe those arrangements, the parties whose attachments use such arrangements, and the reasons for utilizing them.

19. Of the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements, identify and describe those individual poles to which Complainants are attached that use such arrangements and the reasons for utilizing these arrangements.

20. Identify and describe, for each cable operator Complainant, the number of Gulf Power poles that have been changed out from 1998 to the present in order to accommodate attachments of Complainants, the location of any such change-outs, the

reasons for each change-out, and identify any and each instance in which Gulf Power was not reimbursed by Complainants for the costs of such change-outs.

21. Identify and describe the number of Gulf Power poles that have been changed-out on account of a communications attacher's request (other than Complainants) and the circumstances surrounding such replacement or substitution (*i.e.*, specify the reason for the change-out and the party whose action or request necessitated it).

22. Identify and describe the number of Gulf Power poles that have been changed-out on account of a non-communications attacher's request and the circumstances surrounding such change-out (*i.e.*, specify the reason for the change-out and the party whose action or request necessitated it).

23. Identify and describe the number of Gulf Power poles that have been changed-out on account of Gulf Power's core electricity service requirements and the circumstances surrounding such change-out (*i.e.*, specify the reason for the change-out and the party who paid for the costs associated with the change-out).

24. Identify and describe the occasions on which Gulf Power has refused to change-out a pole. Your response should include, but not be limited to, a description of the circumstances surrounding the refusal, the identification of the entity requesting the pole replacement, and an explanation of the reasons for Gulf Power's refusal and any alternate arrangement employed.

25. Describe and explain the steps and procedures involved in changing-out a pole, from a prospective attacher's request (or Gulf Power's own core electricity need) to

completion (*i.e.*, including processing, procurement, placement and transfer of existing facilities and equipment, including estimated time periods).

26. Identify all persons involved in developing Gulf Power's pole make-ready and change-out procedures, their titles and responsibilities, and a description of their roles in formulating the procedures, and identify the specific persons, whether or not employed by Gulf Power, that You rely upon to determine whether make-ready or a change-out is needed, or whether a Gulf Power pole is at "full capacity," "crowded," or has a "lack of capacity."

27. Identify and describe the number, type, and size (in feet and diameter) of poles in Gulf Power's inventory annually between 1998 and the present.

28. Does Gulf Power share, pool, or otherwise utilize an inventory of poles owned or controlled by affiliated corporations, parents, subsidiaries, and other organizations or operating units, and, if so, indicate and explain in detail the manner in which Gulf Power shares, pools, or otherwise utilizes such inventory.

29. Gulf Power represents that it will seek to present evidence of instances in which it has changed-out poles "due to lack of capacity." Describe and explain the circumstances in which a Gulf Power pole, according to You, had and/or has a "lack of capacity" and state where (by pole number and location) and when, if at all, any such determination of "lack of capacity" was made with respect to Gulf Power poles containing any of Complainants' attachments.

30. Identify and explain every instance in which Gulf Power has changed-out a pole containing one or more of Complainants' attachments at Gulf Power's own

expense (*i.e.*, unreimbursed) as a result of a need to accommodate an electric transformer or other Gulf Power equipment or facility.

31. From the “Recommendations” proposed in Gulf Power’s Distribution Studies and load planning documents furnished to Complainants on January 11, 2005, identify and describe those “Recommendations” that Gulf Power actually implemented, the specific numbers and locations of poles affected, whether additional pole capacity on those was actually utilized by Gulf Power, measurements indicating how much space was required, and if any Recommendation was not implemented, the reasons therefore.

32. In its January 8, 2004 Description of Evidence, Gulf Power represents that it will seek to present evidence of the 40-inch safety zone requirement and its impact on Gulf Power’s provision of core electricity operations. Describe and explain with specificity Gulf Power’s implementation of the safety zone requirement and how it relates to Gulf Power’s determination of “full capacity,” “crowding,” “lack of capacity” or “insufficient capacity” on a pole; Gulf Power’s reservation of pole space for future use; or any higher-valued use under the *Alabama Power v. FCC* standard.

33. Does Gulf Power develop and maintain a bona fide development plan that reasonably and specifically projects a need for pole space in the provision of its core utility service, and if so, identify and describe such plans (including the dates and authors of those plans) that applied or apply since 1998.

34. Does Gulf Power routinely inform prospective and existing attachers when it reserves pole space for future use for its core electricity operations, and if so, identify and describe all such reservations and notifications to attachers, including Complainants, since 1998.

35. Does Gulf Power contend that it requires the use of reserved pole space currently occupied by Complainants, and if so, identify all such pole space, the specific poles at issue by number and location, and describe Gulf Power's and the electric industry's practice concerning whether attachers, including Complainants, are given the opportunity to pay for the cost of any modifications needed to rearrange or change-out the poles and to continue to maintain their attachments.

36. Does Gulf Power contend that it may charge Complainants that are already attached to its poles the rearrangement or change-out costs of modifications required as a result of an additional attachment or the modification of an existing attachment sought by any other attacher, including Gulf Power? Explain the basis for your answer.

37. Does Gulf Power contend that payment of make-ready expenses by an attacher is insufficient to reimburse Gulf Power for its marginal costs, and if so, explain the basis of any such contention.

38. Identify and describe all facts, documents, data and other information that support Gulf Power's claim for a pole attachment rental rate from any cable operator Complainant in excess of marginal cost.

39. Identify and explain the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating the pole attachment rental rate in excess of marginal cost and identify all persons, whether or not employed by Gulf Power, involved in any way in the determination of such methodologies, formulae, cost accounts, data and/or other bases.

40. Identify all documents that reflect or refer to negotiations between communications attachers (including Complainants) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

41. Identify all documents that reflect or refer to negotiations between joint users of a pole (*i.e.*, an incumbent local exchange carrier) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

42. Identify all documents that reflect or refer to negotiations between non-Section 224, non-joint user attachers (*e.g.*, R. L. Singletary, Inc. and Crest Corporation) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

43. Does Gulf rely on, or intend to rely on, any cost methodologies, or concepts from or portions of cost methodologies, other than the Sales Comparison Approach, Current Replacement Cost Approach and the Federal Concessions Leasing Model? If so, please identify and describe with specificity these additional cost methodologies and/or concepts, and explain why Gulf Power contends they are applicable to Gulf Power's claims for additional compensation from Complainants.

44. Describe and explain Gulf Power's understanding of the Sales Comparison Approach as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

45. Identify the pole attachment rental rates paid to Gulf Power by joint users, the specific amount of pole space leased by such joint users, and explain the methodologies, if any, used to calculate these rates.

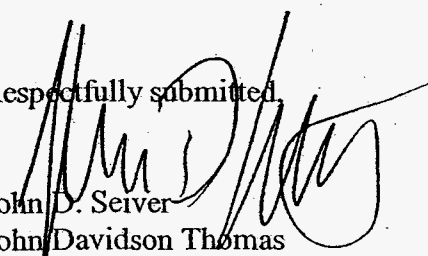
46. Identify the pole attachment rental rates paid by Gulf Power to other joint user pole owners, the specific amount of pole space leased by Gulf Power from such joint users, and explain the methodologies, if any, used to calculate these rates.

47. Describe and explain Gulf Power's understanding of the Current Replacement Cost Approach as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

48. Describe and explain Gulf Power's understanding of the Federal Concessions Leasing Model as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this model to calculating pole attachment rental rates.

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Vice President,
Regulatory Affairs and
Regulatory Counsel
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SOUTHEAST, L.L.C., and BRIGHT HOUSE
NETWORKS, L.L.C.**

February 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complainants' First Set Of Interrogatories To Respondent Gulf Power Company* has been served upon the following by electronic mail, telecopier and U.S. Mail on this the 1st day of February, 2005:

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Rhonda Lien
Federal Communications Commission
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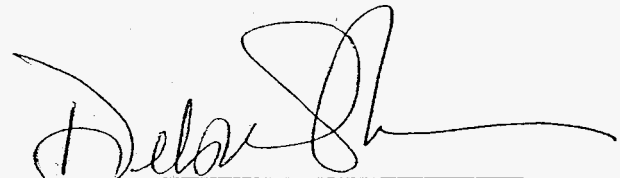
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Office of the Secretary
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David H. Solomon
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Debra Sloan

EXHIBIT B

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

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

**COMPLAINANTS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO GULF POWER COMPANY**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. ("Complainants"), submit this First Set of Requests for Production of Documents to Respondent Gulf Power Company ("Gulf Power" or "Plaintiff"). Respondent must respond in writing within 30 days of the date of service of these Requests.¹ The instructions and definitions that follow are integral to the Requests and should be reviewed carefully.

¹ *In re Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.*, Order, EB Docket No. 04-381, FCC 05M-03 (issued Feb. 1, 2005).

DEFINITIONS

1. "Action" refers to the above-captioned matter.
2. "*Alabama Power v. FCC* standard" or "*Alabama Power v. FCC* test" means the determination by the United States Court of Appeals for the Eleventh Circuit in *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002), *cert. denied*, 124 S. Ct. 50 (2003), that:

... before 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. Without such proof, any implementation of the Cable Rate (which provides for much more than marginal cost) necessarily provides just compensation.
3. "And" and "or" as used herein are inclusive, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request matters that might otherwise be construed to be outside its scope.
4. "Any" means one or more.
5. "Attaching entity" includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities (including Gulf Power Company), governmental entities and other entities with a physical attachment to pole(s).
6. "Attachment" or "Pole Attachment" means any attachment by an attaching entity, as defined above, to a pole, duct, conduit, or right-of-way owned or controlled by a utility.
7. "Cable operator" means a person who provides cable service or owns, operates or controls, in whole or in part, one or more cable systems.

8. "Change-out" means the replacement or substitution of a pole, or the act of replacing or substituting a pole, whether as part of the make-ready process pursuant to an attacher's request, as required by any governmental entity, or as necessitated by Gulf Power for the provision of electricity services.

9. "Complainants" means The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. and their predecessors, successors, subsidiaries, parents, divisions or affiliates.

10. "Complaint" means the complaint filed by the Complainants in this action, and any amendments or supplements thereto that have been filed.

11. The terms "communicated" or "communication" include every manner or means of disclosure, transfer or exchange of information, and every disclosure, transfer or exchange, whether face-to-face, by telephone, in writing, whether in hard copy or electronically, by email, by mail, personal delivery or otherwise.

12. "Communications attacher" means a person providing all lawful communications services, including but not limited to, cable services, telecommunications services and/or information services, who attaches to poles owned or controlled by Gulf Power.

13. "Description of Evidence" means *Gulf Power's Description of Evidence Gulf Power Seeks to Present In Satisfaction of The Eleventh Circuit's Test*, filed January 8, 2004 with the Enforcement Bureau of the Federal Communications Commission.

14. "Document" means written, recorded or graphic materials of any kind, whether prepared by You or by any other person, and that is in Your possession, custody

or control. The term includes agreements, contracts, letters, emails, telegrams, inter-office communications, memoranda, reports, records, instructions, specifications, notes, notebooks, scrapbooks, diaries, diagrams, photographs, photocopies, charts, graphs, descriptions, drafts, minutes of meetings, conferences, telephone calls or other conversations or communications, recordings, published or unpublished speeches or articles, publications, transcripts of telephone conversations, ledgers, financial statements, microfilm, microfiche, tape, video, disk or diskette recordings and computer printouts. The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes the original document (or a copy thereof if the original is not available) and all copies that differ in any respect from the original, including but not limited to any notation, underlining, marking or information not on the original.

15. "FCC" or "Commission" means the Federal Communications Commission.

16. "FCC Formula" refers to the methodology prescribed by the Federal Communications Commission, which appears at 47 C.F.R. § 1.1409.

17. "Gulf Power" means and refers to Gulf Power Company, and each of its affiliated corporations, parents, subsidiaries, divisions and other organizations or operating units, its predecessors and successors-in-interest, and each of its present and former directors, officers, agents, employees, voting trustees, auditors, accountants, attorneys, servants or representatives, including but not limited to employees, consultants, attorneys or other agents having possession, custody or control of documents or

information called for by these requests, and all other persons acting or purporting to act on its behalf.

18. "Identify" or "identity" means to state or a statement of:

- a. In the case of a person other than a natural person, its legal name, the address of its principal place of business, its telephone number, and the name of its chief executive officer;
- b. In the case of a natural person, his or her name, business telephone number, home and business addresses, employer, and title or position;
- c. In the case of a service, the identity of its producer or distributor and its trade name;
- d. In the case of a document,
 - (i) the title of the document,
 - (ii) the author(s),
 - (iii) the title or position of the author(s),
 - (iv) the addressee(s),
 - (v) the title or position of the addressee(s),
 - (vi) the type of document,
 - (vii) the date it was prepared,
 - (viii) the number of pages it comprises,
 - (ix) the identity of all persons indicated as receiving copies of the documents,
 - (x) the identity of all persons who have received copies of, or been shown the document or any part thereof,
 - (xi) its subject matter,
 - (xii) its present location or custodian, and
 - (xiii) a reference to the document, if it has been produced;
- e. In the case of geographic boundaries, location or coverage, a narrative description identifying the states and the areas of such states and all political subdivisions thereof included, in whole or in part, within the geographic boundaries, location or coverage.
- f. In the case of a verbal communication, discussion or meeting,
 - (i) the type of communication, discussion or meeting,
 - (ii) its date or approximate date,
 - (iii) the identity of its participants or attendees,
 - (iv) its general subject matter, and

- (v) a description of any documents or tangible objects used or referred to in the course of the discussion, summarizing, recounting, or referring to the verbal communication, discussion or meeting.

19. "Including" means including but not limited to.

20. "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications, and includes electronic publishing.

21. "Make-ready" means all work, costs and expenses associated with affixing Complainants' attachments to poles owned or controlled by Gulf Power, including but not limited to pole change-outs, placement, rearrangement or transfer of facilities or other changes necessary to accommodate Complainants' attachments or other attachers' facilities in a network of poles.

22. "Or" means and/or.

23. "Person" means any natural person, corporation, partnership, company, sole proprietorship, unincorporated association or society, incorporated association, institute, joint venture, firm, governmental body or other legal entity, whether privately or publicly owned or controlled, for profit or not-for-profit or partially or fully government owned or controlled.

24. "Pole" means any utility pole owned or controlled by Gulf Power to which attachments are or may be affixed.

25. "Relate to" and "relating to" mean, without limitation, to make a statement about, refer to, discuss, describe, reflect, contain, identify or in any way pertain to, in whole or in part, or being logically, legally or factually related.

26. "Respondents" refers to Gulf Power Company, as defined above, and its agents, representatives, officers, directors and employees.

27. "Safety Space" means the vertical clearance between communications lines and electric lines on poles as set forth in the National Electrical Safety Code (NESC Table 235-5).

28. "Telecommunications" means the transmission, between or among points specified by the users, of information of the user's choosing, without change in the form or content of the information as sent or received.

29. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or such classes of users as to be effectively available to the public, regardless of the facilities used, and includes without limitation dark fiber.

30. "You," "you," "Your" and "your" mean and refer to Gulf Power Company, as defined above.

31. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun, and vice versa.

32. Regardless of the tense employed, all verbs shall be read as applying to the past, present and future as is necessary to make any paragraph more, rather than less, inclusive.

INSTRUCTIONS

1. In accordance with Rule 1.325 of the Federal Communications Commission, answer each document request separately, unless it is objected to, in which

event, state reasons for objection in lieu of an answer, and answer each other portion of the document request to which no objection is asserted.

2. If you are unable to answer a document request fully, submit as much information as is available and explain why Your answer is incomplete. If precise information cannot be supplied, submit (a) Your best estimate or judgment, so identified, and set out the source or basis of the estimate or judgment, and (b) provide such information available to you as best approximates the information requested. Where incomplete answers, estimates or judgments are submitted, and you know of or have reason to believe there are other sources of more complete or accurate information, identify or describe those other sources of information.

3. In responding to document requests, preface each answer by restating the request to which the answer is addressed. Where a request for information includes subparagraphs (*e.g.*, (a), (b), (c)), or subdivisions (*e.g.*, (i), (ii), (iii)), answer each subparagraph or subdivision separately.

4. These document requests are continuing in nature and include all documents and information prepared or received by you between the date of receipt of this request and the date of final determination in the hearing designated in this Action. Unless otherwise expressly provided, each document request covers any document or information prepared, received, distributed, or in effect during the period from January 1, 1998 unless otherwise stated to the date of final determination in the hearing. Your responses to these document requests should be supplemented as soon as you receive and/or become aware of supplemental information but in any case not later than thirty (30) days prior to any hearing addressing the merits of any party's claim or defenses.

5. For any objection that is based on an asserted claim of privilege, state:

(a) a brief description of the subject matter of the asserted privileged information;

(b) the nature of the privileged claimed;

(c) the paragraph(s) of the interrogatory to which the information is otherwise responsive;

(d) the nature and basis of the privilege claimed;

(e) the source(s) of the information; and

the identities of all persons to whom such information has been communicated or with whom it has been shared, in whole or in part.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents referring to, relating to, or regarding any of the facts or allegations described in Gulf Power's or the Complainants' pleadings in File No. PA 00-004 and this Action.

2. Produce all documents referring to, relating to, or regarding occupation of Gulf Power-owned or -controlled poles by Complainants since January 1, 1998. Such documents should include, but not be limited to:

a. Facilities maps, diagrams, and other schematic documents;

b. Pole counts, surveys or audits;

c. Pole Attachment Permit Applications;

d. Pole Attachment Permits;

- e. Make-ready documents (including surveys, studies, photographs, etc. relating to any and all work performed on Gulf Power-owned or -controlled poles, including pole change-outs, transfers and relocations);
- f. Make-ready payment records, bills, and any other information about Gulf Power attachment procedures);
- g. Work orders, service orders or maintenance requests;
- h. Accounting documents referring to, relating to, or regarding Complainants' pole attachments;
- i. Invoices;
- j. All written correspondence to and from Gulf Power (including email communications) and other documentation concerning telephone or in-person communications relating to any of the above matters.

3. Produce all documents reviewed by, or produced or written by, any consultant, expert witness, or other entity that Gulf Power has used or is using to study or report upon Gulf Power poles containing attachments by Complainants.

4. Produce all documents referring to, relating to, or regarding any communication, whether oral, written or otherwise, concerning annual pole rental charges or the performance of make-ready work, from January 1, 1998 to the present, on poles owned or controlled by Gulf Power between Gulf Power and any other person, including but not limited to, Complainants, other cable operators, telecommunications carriers, or any other entity attached to poles owned or controlled by Gulf Power. Your response should include documents that identify all such make-ready work performed, including

installed equipment, subcontracts, service requests, work orders, time sheets, material costs and site diagrams or maps.

5. Produce all documents referring to, relating to, or regarding any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present, including Gulf Power requests for proposals.

6. Produce all documents referring to, relating to, or regarding formal or informal Gulf Power policies or field practices concerning utilization of cross-arms, extension arms, or boxing arrangements.

7. Produce all documents referring to, relating to, or regarding approvals or denials of requests to employ cross-arms, extension arms, or boxing arrangements by Gulf Power or any other entity attaching to Gulf Power-owned or -controlled poles.

8. Produce all documents referring to, relating to, or regarding pole change-outs performed for Complainant cable operators since 1998, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

9. Produce all documents referring to, relating to, or regarding pole change-outs necessitated by Gulf Power's core electricity service requirements, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

10. Produce all documents referring to, relating to, or regarding pole change-outs requested by third parties, including but not limited to communications attachers, including documents that identify all such work performed, including installed

equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

11. Produce all documents identifying all engineers, technicians, and/or workmen who performed any type of work, labor or service relating to change-outs of Gulf Power-owned or -controlled poles, and identifying the material costs, work, labor, or service that was performed and when it was performed.

12. Produce all documents referring to, relating to, or regarding refusals by Gulf Power to change-out a pole and identify all persons who participated in the decision, including but not limited to Gulf Power managers, engineers, technicians and/or workmen.

13. Produce all documents referring to, relating to, or regarding Gulf Power's procedures for changing-out a pole and identify all persons who participated in the development of such procedures.

14. Produce all documents referring to, relating to, or regarding Gulf Power's pole inventory records, including but not limited to documents relating to Gulf Power policies and procedures for maintaining its pole inventory.

15. Produce all documents referring to, relating to, or regarding Gulf Power's purchasing, sharing, pooling, or other arrangements for utilizing inventories of poles with affiliated corporations, parents, subsidiaries, and other organizations or operating units.

16. Produce all documents referring to, relating to, or regarding the Safety Space and Gulf Power specifications, regulations and/or policies implementing the Safety Space on poles owned or controlled by Gulf Power.

17. Produce any and all joint use pole agreements, including but not limited to all drafts thereof, between Gulf Power and other entities.

18. Produce any and all pole attachment agreements, including but not limited to all drafts thereof, between Gulf Power and any other entities, including Complainants, other attachers, and Gulf Power's affiliated corporations, parents, subsidiaries, divisions and other organizations or operating units, and their predecessors and successors-in-interest.

19. Produce any and all documents referring to, relating to, regarding or comprising a bona fide development plan or plans, including but not limited to all drafts thereof, that reasonably and specifically projects a need for pole space in the provision of Gulf Power's core utility service, including all documents that refer or relate to those documents that comprise the bona fide development plan or plans.

20. Produce all documents referring to, relating to, or regarding correspondence from Gulf Power to Complainants reserving pole space for future use for its core electricity operations.

21. Produce all documents that constitute Gulf Power's pole specifications book (whether it is called "standard distribution specifications," "overhead construction specifications," or another title), including but not limited to all drafts thereof, in effect between January 1, 1998 and the present. In the event Gulf Power revised the specifications book between January 1, 1998 and the present, produce all versions of the specifications book in effect during this period.

22. Produce all documents referring to, relating to, or regarding any pole loading data maintained by Gulf Power, including but not limited to weight and wind

loading, or pole loading program (including electronic computer programs) used by Gulf Power.

23. Produce all documents referring to, relating to, or regarding Gulf Power's upgrades, modernization, or replacement of its poles from 1998 through the present.

24. Produce all documents referring to, relating to, or regarding the facts, data, calculations and other information that support Gulf Power's claim for a pole attachment rental rate in excess of marginal cost.

25. Produce all documents referring to, relating to, or regarding any maps, diagrams, schematics, or depictions of the specific Gulf Power poles that You claim are at "full capacity," "crowded," or have "insufficient capacity" or a "lack of capacity."

26. Produce all documents referring to, relating to, or regarding any actual losses experienced by Gulf Power that it claims are associated with Complainants' pole attachments on Gulf Power poles, including any documents pertaining to any "higher valued use" or "another buyer of the space waiting in the wings" as described in *Alabama Power v. FCC*.

27. Produce all documents referring to, relating to, or regarding the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating pole attachment rental rates in excess of marginal cost.

28. Produce all documents referring to, relating to, or regarding negotiations between communications attachers and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

29. Produce all documents referring to, relating to, or regarding negotiations between joint users (*e.g.*, an incumbent local exchange carrier) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

30. Produce all documents referring to, relating to, or regarding negotiations between non-Section 224, non-joint user attachers (*e.g.*, R. L. Singletary, Inc. and Crest Corporation) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

31. Produce all documents referring to, relating to, or regarding cost methodologies, or concepts from or portions of cost methodologies, other than the Sales Comparison Approach, Current Replacement Cost Approach and the Federal Concessions Leasing Model, that Gulf Power may seek to use to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

32. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Sales Comparison Approach to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

33. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Current Replacement Cost Approach to determine a pole attachment

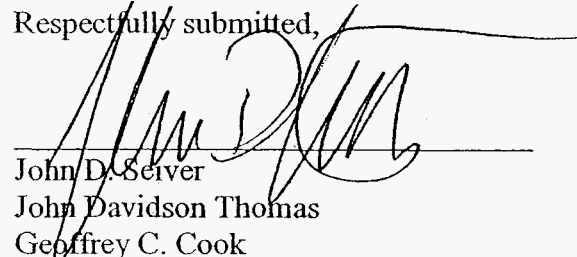
rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

34. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Federal Concessions Leasing Model to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

35. Produce all documents and other materials that relate to or were referenced in your answers to Complainants' First Set of Interrogatories.

Michael A. Gross
Vice President,
Regulatory Affairs and
Regulatory Counsel
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Respectfully submitted,



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COX COMMUNICATIONS GULF COAST,
L.L.C., COMCAST CABLEVISION OF
PANAMA CITY, INC., MEDIACOM
SOUTHEAST, L.L.C., and BRIGHT HOUSE
NETWORKS, L.L.C.**

February 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complainants' First Set Of Requests For Production Of Documents To Gulf Power Company* has been served upon the following by electronic mail, telecopier and U.S. Mail on this the 1st day of February, 2005:

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Debra Sloan

EXHIBIT C

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

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., et. al.

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel
Chief Administrative Law Judge

**GULF POWER'S RESPONSES TO COMPLAINANTS'
FIRST SET OF INTERROGATORIES TO RESPONDENT**

Gulf Power Company ("Gulf Power") responds to Complainants' First Set of Interrogatories as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Gulf Power object to each and every interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine.
2. Gulf Power objects to the interrogatories, generally, in that they far exceed the discovery limitations imposed by the Presiding Judge's December 17, 2004 Order ("not to exceed 50 without subparts").
3. Gulf Power objects to each and every interrogatory to the extent complainants' purpose in propounding such interrogatory is to subject Gulf Power to annoyance, expense, embarrassment, or oppression.
4. By responding to any particular interrogatory, Gulf Power does not waive its objections.

5. Gulf Power reserves the right to supplement and/or amend these responses and objections. In particular, a number of Gulf Power's responses will require supplementation after completion of the audit being performed by Osmoste Utilities Services, Inc. ("Osmoste").

SPECIFIC RESPONSES AND OBJECTIONS

1. Identify the total annual number of Gulf Power poles, for each year from 2000 through the present, on which you contend that cable operator Complainants have been attached, and identify the specific annual number of pole attachments for each cable operator Complainants for each year during this period of time.

RESPONSE:

	2000	**2001 July	2002	2003	2004	2005
1 Cox Communications Gulf Coast, L.L.C.	61,655	64,862	65,107	65,715	66,169	66,727
2 Comcast Cablevision of Panama City, Inc.	13,392	14,597	14,597	14,659	14,728	14,824
3 Comcast JOIN Holding, Inc.	7,060	7,679	7,679	7,679	7,679	7,679
4 Mediacom Southeast, L.L.C.	11,622	14,054	14,054	14,266	14,519	17,059
5 *Bright House Networks, L.L.C.						
Time Warner Entertainment Company L.P. (Chipley)	4,905	5,241	5,356	5,356	5,404	5,404
Time Warner Entertainment-Advance/Newhouse (Cantonment)	8,435	8,807	8,807	8,948	8,959	8,991

* Time Warner became Bright House Networks, L.L.C. January 2003.

** Numbers are from the 2001 Joint (Bellsouth and CATV companies) Pole Count.

2. Identify your definition or understanding of the phrase "full capacity" within the meaning of the Alabama Power v. FCC standard, and identify and define any differences between your use or understanding of "full capacity" and the terms "crowded" or "lack of capacity." In addition, identify with specificity the basis upon which you propose to quantify or measure "full capacity" for an individual pole. Provide any applicable citation to safety codes, specifications, agreements or economic or regulatory literature that supports your response.

RESPONSE: Gulf Power understands the phrase "full capacity" (as used in APCo v. FCC) to mean a pole that cannot host further communications attachments, consistent with Gulf Power's own core use, the NESC, existing contractual obligation, and sound engineering practice, without expansion or addition of facilities (including cross-arms, guy wires, etc.). Gulf Power understands the term "crowded" to mean a pole that is close to being at "full capacity" – in other words, a pole with room for only one additional communications attachment. For the purposes of this

proceeding only, Gulf Power proposes to measure the visually identifiable, physical "crowding" or "full capacity" as set forth in the Osmose Statement of Work.

The safety code provisions and specifications which support this definition of "crowding" or "full capacity" include the following:

- a. Vertical clearance between the bottom of electric utility transformers (30") and telecommunication/CATV cable attachment.
[NESC, Rule 238 Table 238-1 page 148 in the code].
- b. Vertical clearance between electric utility transformer bus conductors (40") and telecommunication/CATV cable attachment.
[NESC, Rule 235C1 Table 235-5 page 126, 131].
- c. Vertical clearance between electric utility neutral conductor (40") and telecommunication/CATV cable attachment.
[NESC, Rule 235C1 Table 235-5 page 126, 131].
- d. Vertical clearance between electric utility riser (40") and telecommunication/CATV cable attachment.
[NESC, Rule 235C1 Table 235-5 page 126, 131].
- e. Vertical clearance between electric utility outdoor lighting (12") and telecommunication/CATV cable attachment.
[NESC, Rule 238D page 147].
- f. Vertical clearance between electric utility mid-span spacing (30") and telecommunication/CATV cable attachments.
[NESC Rule 235C1 or 235C2 (depending on which supply conductor) for neutral TPX use 235C1 exception 3 for svc drops. For midspan neutrals use 235C2b1a this implies 12" is OK midspan as long as 30" is maintained at the structures].
- g. Vertical clearance between telecommunication/CATV mid-span spacing (4") and other telecommunication/CATV cable attachments.
[NESC Rule 235H].
- h. Telecommunication/CATV cable attachments clearances over roads (15.5' and over DOT roads 18') and pedestrian accessible areas (9.5").
[NESC Rule 232B1 Table 232-1 page 72, 78].
- i. Attachers with vertical ground on poles must bond to electric utility ground.
[NESC Rule 097G page 26].

- j. Attachers down guys on Gulf Powers poles must have less than (4') separation between their down guys and ours.
[Gulf Power requirement via spec plates].

The "agreements" which support this definition of "crowding" or "full capacity" include Gulf Power's joint use agreements with BellSouth, Sprint and GTC. (See Bates labeled documents Gulf Power 2098 through 2148).

3. For the pole attachments identified in response to Interrogatory No. 1, identify, for each cable operator Complainant for the period from 2000 through the present: the total number of Gulf Power poles that you contend were, are, or have been at "full capacity" within the meaning of the Alabama Power v. FCC standard;" the location and individual pole number of the specific poles you contend were, are, or have been at "full capacity;" the specific period of time you contend the poles you identified were, are, or have been at "full capacity;" and the specific reason or reasons why you contend such poles were, are, or have been at "full capacity."

RESPONSE: Gulf Power contends that all poles identified in response to interrogatory number 1, at all times since 2000, were either "crowded" or at "full capacity." For the purposes of this proceeding, Gulf Power has contracted with Osmose to perform an audit of its poles to ascertain crowding band on vertical clearances. Following completion of the audit, Gulf Power will supplement this response to identify those poles meeting the definition of "crowded" as used in the Osmose Statement of Work.

4. For the poles identified in response to Interrogatory No. 3 which you contend were, are, or have been at "full capacity," identify, for each year from 2000 through the present and for each cable operator Complainant, the number of such poles for which you contend that Gulf Power had or has "waiting in the wings" "another buyer of the space" occupied by Complainants' attachments or some other space on Gulf Power poles; identify all such "buyers;" identify the period of time when they were, are, or have been "waiting in the wings" and explain Gulf Power's understanding of the term "waiting in the wings;" identify what rate or compensation such other buyer was, is, or has been ready, willing, and able to pay to Gulf Power for access to the space occupied by Complainants' attachments or some other space on Gulf Power poles; identify whether such other buys has obtained an attachment to Gulf Power poles and, if so, how such attachment was accomplished; and whether the pole you assert was at "full capacity" was or was not replaced or substituted and the reasons therefore.

RESPONSE: Gulf Power understands the phrase "waiting in the wings" (as used in APCo v. FCC) to be figurative, insofar as requiring identification of an actual buyer would completely reject the hypothetical "willing buyer" standard and thus be at odds

with more than 100 years of United States Supreme Court jurisprudence. In each instance where Gulf Power has changed-out a pole for capacity reasons to accommodate a new attachers, a "buyer" had been "waiting in the wings" for space on a "crowded" or "full capacity" pole. Sometimes those buyers have been ready, willing and able to pay the Cable Rate; sometimes the Telecom Rate; and sometimes a market rate. The most prominent instance of such occurrence is in the context of major build-outs. (See Gulf Power's January 8, 2004 Description of Evidence).

5. For the poles identified in response to Interrogatory No. 3 which you contend were, are, or have been at "full capacity" and for which you have not had "another buyer of the space" "waiting in the wings" as specified in response to Interrogatory No. 4, identify, for each year from 2000 through the present, and for each cable operator Complainant, all poles, by total number, and individual pole number and location, for which you contend Gulf Power was, is, or has been willing, during the period from 2000 through the present, to put the space occupied by Complainants to a "higher valued use with its own operations;" identify what that "higher value used" was, is, or has been; identify how and why such use is of a "higher value" than the make-ready and annual per-pole compensation received by Gulf Power from Complainants; and quantify the difference between the make-ready and annual per-pole compensation paid by Complainants to Gulf Power and the "higher value" that you claim. Provide any applicable citation to economic or regulatory literature that supports your response.

RESPONSE: Gulf Power objects to the first half of the question on the grounds that it is vague, ambiguous, and impossible to understand. Subject to and without waiving this objection, Gulf Power believes that any space occupied by a cable company can be put to a "higher valued use." The space can be reserved for sale to players in the burgeoning Telecom market; the space can be reserved for non-regulated communications attachers; the space can be used for Gulf Power's own communications use (or that of its affiliates). From Gulf Power's perspective, merely forcing the cable companies to develop their own infrastructure, rather than freeloading on Gulf Power's facilities, is itself a "higher valued use." This is especially true in light of the Enforcement Bureau's trend towards operational micro-management and evisceration of conventional commercial contract protections (See, e.g., CTAG).

6. For all of the poles that you identified in response to Interrogatories 4 and 5, identify, for each year from 2000 through the present, the annual per-pole compensation received by Gulf Power from each cable operator Complainant.

RESPONSE:

	2000	2001	2002	2003	2004	2005
Cox Communications Gulf Coast, L.L.C.	\$6.20	\$6.20	\$6.20	\$6.20	\$6.20	\$6.20
Comcast Cablevision of Panama City, Inc.	\$5.65	\$5.65	\$5.65	\$5.65	\$5.65	\$5.65
Comcast JOIN Holding, Inc.	\$6.25	\$6.25	\$6.25	\$6.25	\$6.25	\$6.25
Mediacom Southeast, L.L.C.	\$5.98	\$5.98	\$5.98	\$5.98	\$5.98	\$5.98
Bright House Networks, L.L.C.						
Time Warner Entertainment Company L.P. (Chipley)	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30
Time Warner Entertainment-Advance/Newhouse (Cantonment)	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30

7. For all of the poles that you identified in response to Interrogatories 4 and 5, identify the marginal costs to Gulf Power of each of cable operator Complainants' attachments for which you claim a right to compensation at a rate greater than that under the FCC formula plus make-ready.

RESPONSE: Gulf Power contends that its marginal costs for each CATV attachment are equal to what the cable formula (plus a charge for grounds and arrestors) yields.

8. For all of the poles that you identified in response to Interrogatories 4 and 5, identify every attaching entity other than Complainants attached to each such pole; describe how many attachments on each such pole those other attaching entities have had or have, when such attachments commenced, and where those attachments are located on each pole; and state the make-ready and annual per-pole compensation received by Gulf Power from each attaching entity other than Complainants (including any Gulf Power affiliates). Specifically identify the number of attaching entities paying Gulf Power annual compensation under the FCC's telecommunications rate formula (47 U.S.C. § 224(e) and implementing regulations).

RESPONSE: Gulf Power will supplement this response upon completion of the Osmose audit.

9. Identify, quantify, and explain the basis of any actual loss (income or other revenue) that Gulf Power contends that it has experienced from 2000 to the present, which it alleges was caused by attachments of cable operator Complainants (and explain in your answer how the alleged actual losses are or will be proved, including any reliance upon Gulf Power's specifications, accounting records, engineering documents, or testimony).

RESPONSE: From 2000 to the present, Gulf Power's actual loss is measured by the difference between the rate paid by complainants and just compensation, plus interest at the

maximum allowable legal rate. Gulf Power is not claiming as damages any actual loss other than the difference in rates, plus interest.

10. For all of the poles that you identified in response to Interrogatories 4 and 5, identify the precise rate (i.e., in dollars and cents) that you contend constitutes a "just compensation" annual pole attachment rental rate for Complainants' attachments and specify the poles, by number and location, for which you are seeking that rate and the basis and method of calculating that rate.

RESPONSE: Gulf Power contends, and has contended since 2000, that \$40.60 is the annual just compensation rate. Gulf Power is considering seeking other alternative rates based on the calculations of its valuation experts. Gulf Power expects each of these alternative rates to be less than \$40.60. Gulf Power will identify the precise and methodology upon disclosure of its valuation experts according the December 17, 2004 Order. Gulf Power will identify the specific poles for which it seeks a higher rate after completion of the Osmose audit.

11. Identify all persons, whether or not employed by Gulf Power, who have knowledge or information referring to, relating to, or regarding Gulf Power's factual and legal contentions in FCC Docket Numbers: P.A. No. 00-004 or E.B. No. 04-381, including Gulf Power's contentions in its January 2004 "Description of Evidence" and its December 2004 "Preliminary Statement on Alternative Cost Methodology."

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving these objections, Gulf Power list the following:

	Name	Employment
1.	Ben Bowen	Gulf Power Co.
2.	Andy McQuagge	Gulf Power Co.
3.	Doug Stuckey	Gulf Power Co.
4.	Terry Davis	Gulf Power Co.
5.	Tom Park	Southern Company
6.	Tommy Forbes	Gulf Power Co.
7.	Representative of Opposing Parties	
8.	Mike Dunn	GPC, Retired
9.	Robert Calhoun	Knology
10.	Bret McCants	Knology
11.	Wayne Singleton	Knology
12.	Rex Brooks	Gulf Power Co., Retired
13.	Mike Dunn	Gulf Power Co., retired

This list excludes counsel for Gulf Power and other parties. This list also excludes Gulf Power's experts and the personnel of its pole audit contractor.

12. Identify all persons who provided assistance or information used in answering these interrogatories and list the corresponding interrogatory numbers for which they provided the assistance or information.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is unduly burdensome and vague. Subject to and without waiving these objections, Gulf Power lists the following:

	Name	Employment	Misc.
1.	Ben Bowen	Gulf Power Co.	
2.	Andy McQuagge	Gulf Power Co.	
3.	Doug Stuckey	Gulf Power Co.	
4.	Rex Brooks	Gulf Power Co., Retired	
5.	Keith L. Reese, PE	Georgia Power Co.	NESC expert
6.	Terry Davis	Gulf Power Co.	
7.	Tom Park	Southern Company	

13. Identify each individual whom you may call as a witness at any hearing in this Action, or who may provide written testimony, and state the subject matter on which each witness is expected to testify. If the witness is an expert witness, state the substance of the findings and the opinion(s) to which the witness is expected to testify, and the grounds and basis for each finding and opinion.

RESPONSE: Gulf Power will provide this information in accordance with the Presiding Judge's March 30, 2005 Order.

14. If you contend that Complainants, or any officer, director, agent, employee acting on behalf of Complainants, have made any admission, or taken or failed to take any action, that would preclude or tend to preclude Complainants from recovering under the claims they have submitted in this Action, identify and describe the substance of each such admission, action or omission, the person who made that admission or took or failed to take such action, and the person to whom such admission was made.

RESPONSE: Gulf Power does not understand complainants to be seeking recovery "under [any] claims they have submitted in this Action."

15. Identify and describe every communication, whether oral, written or otherwise, between you and any of your agents or employees, and any other person,

including, but not limited to, Complainants, other cable operators, other telecommunications carriers, or any other entity attached to poles owned or controlled by you, relating to annual pole rental charges or the performance of or payment for make-ready work from 1998 through to the present on poles owned or controlled by Gulf Power.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Gulf Power further objects on the grounds that this interrogatory is intended for purposes annoyance or oppression.

16. Identify and describe all entities (including non-communications attachers) that are, or have been, attached to poles owned or controlled by Gulf Power since 1998.

RESPONSE:

	Name:	
1.	Americable International, Inc.	
2.	B&I Cable Communications, Inc.	
3.	Knology Inc.	
4.	CableSouth, Inc.	
5.	Cablevision Systems, Inc.	
6.	Comcast Cablevision Corp.	
7.	Comcast Cablevision of Panama City, Inc.	
8.	Comcast JOIN Holding, Inc.	
9.	Community Cable Corp.	
10.	Cox Communications Pensacola, Inc.	
11.	Cox Communications Gulf Coast LLC	
12.	Torrence Cablevision USA	
13.	Jones Intercable, Ltd.	
14.	Springfield Cable Vision	
15.	TCI Cablevision of Florida, Inc.	
16.	TCI TKR of the Gulf Plains, Inc.	
17.	Time Warner Entertainment-Advance/Newhouse Partnership	
18.	Time Warner Entertainment Company, L.P.	
19.	Bright House Networks, LLC	
20.	Emerald Coast Cablevision of Florida, Inc.	
21.	Mediacom Southeast LLC	
22.	Washington Cable TV, Inc.	
23.	City of Valparaiso	
24.	Campbellton Cable TV	
25.	Peoples First Financial S & L	
26.	Fringista Beach Inn	

27.	The Crest Corporation	
28.	R. L. Singletary, Inc.	
29.	Mallard Cablevision, LLC	
30.	DCA Services Division NAF Contracting	
31.	Walton County	
32.	Adelphia Business Solutions	
33.	KMC Telecom II, Inc.	
34.	Madison River Communications, LLC	
35.	Southern Light, LLC	
36.	BellSouth Telecommunications, Inc.	
37.	Sprint-Florida, Inc.	
38.	GTC, Inc.	
39.	Town of Cinco Bayou	
40.	City of Crestview	
41.	City of DeFuniak Springs	
42.	City of Ponce De Leon	
43.	City of Destin	
44.	City of Fort Walton Beach	
45.	City of Mary Esther	
46.	Town of Shalimar	
47.	City of Valparaiso	
48.	City of Bonifay	
49.	Town of Caryville	
50.	City of Chipley	
51.	City of Graceville	
52.	City of Lynn Haven	
53.	City of Panama City	
54.	City of Panama City Beach	
55.	City of Vernon	
56.	Town of Century	
57.	City of Gulf Breeze	
58.	City of Milton	
59.	Santa Rosa County	
60.	DOT	
61.	MCI Telecommunications	
62.	Bay County Traffic	
63.	Perdue Farms	
64.	Walton County	
65.	City of Pensacola	
66.	School District of Escambia County	
67.	Gulf Coast Building Products, Inc.	

17. Identify and describe any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present. Please specify in

your answer the dates or time periods of these surveys, audits or pole counts, an explanation of their methodologies and all categories of information collected concerning attaching facilities and their ownership on the poles. In addition, please identify the names, titles and employers of all persons involved in the surveys, audits or pole counts.

RESPONSE: Gulf Power has conducted two pole counts from 1996 to the present day; they were done in 1996 and 2001. The 1996 count was done from approximately April 1, 1996 to November 2, 1996. The 2001 pole count was conducted from approximately February 5, 2001 to April 27, 2001.

Both pole counts were conducted with the same methodologies and collected the same information. Gulf Power, with the appropriate telephone company, conducted a total joint use pole count over Gulf Power's entire service territory. The pole counts were done with teams of one Gulf Power representative accompanied by one telephone company representative, either BellSouth or Sprint (The one exception to this system was in the 2001 count where BellSouth contracted Gulf Power to count the Bellsouth areas). Teams would count by Gulf Power grid maps in each of the telephone company's respective service areas that overlap Gulf Power's service area. Each team is tasked with the (a) location and ownership of all joint use poles on the map, (b) assigning a sequential number to each pole for identification and counting, (c) and lastly, to identify each CATV or telecom attacher, if any, that is on each joint use pole identified on the grid maps. This process was followed until all the grid maps were counted.

Reports would then be produced that would show (1) the number of Gulf Power attachments on telephone poles, (2) the number of telephone attachments on Gulf Power poles and, (3) the number and company name of all CATV and telecommunication attachments made to both Gulf Power poles and each telephone company.

Below is a list of names of persons that worked for Gulf Power on each of the two pole counts.

1996 Pole Count		
	Name	
1	Alan Barton	
2	Ben Bowen	
3	Mark Serafin	
4	R. Payne	
5	Robert T. Sanders Sr.	
6	David Lee	
7	Rex Brooks	

2001 Pole Count		
	Name	
1	Ben Bowen	
2	Rex Brooks	
3	Carolyn Sirmon	
4	Keith Johnson	
5	Dave Hill	
6	Pat Bolster	
7	Jason Poe	
8	Larry Arant	
9	Larry Little	
10	Steve Rhodes	
11	Curtis Brown	
12	Joe Marshall	
13	Stephanie Cobb	
14	Donnie Bell	
15	Brian Evans	
16	Raquel Morgan	
17	Kenny Barron	
18	Bill Weintritt	
19	Ernest Robinson	
20	Glenn Crutchfield	
21	Bruce Guernsey	
22	Bill Stinson	
23	Bill Cassenti	
24	Louis Dodd	

18. Identify the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements and describe those arrangements, the parties who attachments use such arrangements, and the reasons for utilizing them.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

19. Of the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements, identify and describe those individual poles to which Complainants are attached that use such arrangements and the reasons for utilizing these arrangements.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

20. Identify and describe, for each cable operator Complainants, the number of Gulf Power poles that have been changed out from 1998 to the present in order to accommodate attachments of Complainants, the location of any such change-outs, the reasons for each change-out, and identify any and each instance in which Gulf Power was not reimbursed by Complainants for the costs of such change-outs.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

21. Identify and describe the number of Gulf Power poles that have been changed-out on account of a communications attacher's request (other than Complainants) and the circumstances surrounding such replacement or substitution (i.e., specify the reason for the change-out and the party whose action or request necessitated it).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

22. Identify and describe the number of Gulf Power poles that have been changed-out on account of a non-communications attacher's request and the circumstances surrounding such change-out (i.e., specify the reason for the change-out and the party whose action or request necessitated it).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

23. Identify and describe the number of Gulf Power poles that have been changed-out on account of Gulf Power's core electricity service requirements and the circumstances surrounding such change-out (i.e., specify the reason for the change-out and the party whose action or request necessitated it).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

24. Identify and describe the occasions on which Gulf Power has refused to change-out a pole. Your response should include, but not be limited to, a description of the circumstances surrounding the refusal, the identification of the entity requesting the pole replacement, and an explanation of the reasons for Gulf Power's refusal and any alternate arrangement employed.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

25. Describe and explain the steps and procedures involved in changing-out a pole, from a prospective attacher's request (or Gulf Power's own core electricity need) to completion (i.e., including processing, procurement, placement and transfer of existing facilities and equipment, including estimated time periods).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

26. Identify all persons involved in developing Gulf Power's pole make-ready and change-out procedures, their titles and responsibilities, and a description of their roles in formulating the procedures, and identify the specific persons, whether or not employed by Gulf Power, that You rely upon to determine whether make-ready or a change-out is needed, or whether a Gulf Power pole is at "full capacity," "crowded," or has a "lack of capacity."

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

27. Identify and describe the number, type, and size (in feet and diameter) of poles in Gulf Power's inventory annually between 1998 and the present.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is vague and ambiguous. To the extent this interrogatory seeks information regarding Gulf

Power's in-service pole inventory, Gulf Power responds as follows (Pole data for 2004 will not be available until mid-summer 2005. 2005 pole data will not be available until mid-summer 2006):

Number and height of Poles as of December 31, 1998		Number and height of Poles as of December 31, 1999	
Wood Poles	Number	Wood Poles	Number
30 ft.	51,166	30 ft.	50,971
35 ft.	73,268	35 ft.	75,225
40 ft.	65,445	40 ft.	67,005
45 ft.	22,142	45 ft.	23,038
50 ft.	5,646	50 ft.	6,039
55 ft.	1,375	55 ft.	1,449
60 ft.	390	60 ft.	403
65 ft.	115	65 ft.	126
70 ft.	37	70 ft.	37
75 ft.	17	75 ft.	17
80 ft.	25	80 ft.	25
85 ft.	8	85 ft.	8
95 ft.	4	95 ft.	4
100 ft.	6	100 ft.	6
Concrete poles	Number	Concrete poles	Number
35 ft.	3	35 ft.	3
40 ft.	15	40 ft.	15
45 ft.	43	45 ft.	44
50 ft.	8	50 ft.	14
55 ft.	1	55 ft.	1
60 ft.	0	60 ft.	0
65 ft.	98	65 ft.	100
70 ft.	20	70 ft.	20
75 ft.	5	75 ft.	5

Number and height of Poles as of December 31, 2000		Number and height of Poles as of December 31, 2001	
Wood Poles	Number	Wood Poles	Number
30 ft.	50,845	30 ft.	50,604
35 ft.	76,350	35 ft.	76,729
40 ft.	68,101	40 ft.	68,101
45 ft.	23,797	45 ft.	24,126
50 ft.	6,390	50 ft.	6,687
55 ft.	1,511	55 ft.	1,620
60 ft.	408	60 ft.	418
65 ft.	124	65 ft.	115
70 ft.	40	70 ft.	40
75 ft.	17	75 ft.	20
80 ft.	25	80 ft.	25
85 ft.	8	85 ft.	8
95 ft.	4	95 ft.	4
100 ft.	6	100 ft.	6

Concrete poles	Number	Concrete poles	Number
35 ft.	3	35 ft.	9
40 ft.	15	40 ft.	15
45 ft.	44	45 ft.	57
50 ft.	15	50 ft.	26
55 ft.	1	55 ft.	15
60 ft.	0	60 ft.	0
65 ft.	100	65 ft.	101
70 ft.	20	70 ft.	20
75 ft.	5	75 ft.	5
		125 ft.	4

Number and height of Poles as of December 31, 2002		Number and height of Poles as of December 31, 2003	
Wood Poles	Number	Wood Poles	Number
30 ft.	50,317	30 ft.	50,089
35 ft.	78,988	35 ft.	79,968
40 ft.	69,856	40 ft.	70,493
45 ft.	25,148	45 ft.	25,627
50 ft.	7,235	50 ft.	7,357
55 ft.	1,794	55 ft.	1,822
60 ft.	446	60 ft.	447
65 ft.	124	65 ft.	117
70 ft.	40	70 ft.	43
75 ft.	20	75 ft.	20
80 ft.	25	80 ft.	25
85 ft.	8	85 ft.	8
95 ft.	4	95 ft.	4
100 ft.	6	100 ft.	6
Concrete poles	Number	Concrete poles	Number
35 ft.	10	35 ft.	9
40 ft.	15	40 ft.	15
45 ft.	60	45 ft.	61
50 ft.	39	50 ft.	45
55 ft.	72	55 ft.	73
60 ft.	12	60 ft.	12
65 ft.	101	65 ft.	101
70 ft.	20	70 ft.	20
75 ft.	5	75 ft.	5
125 ft.	4	125 ft.	4

28. Does Gulf Power share, pool, or otherwise utilize an inventory of poles owned or controlled by affiliated corporations, parents, subsidiaries, and other organizations or operating units, and, if so, indicate and explain in detail the manner in which Gulf Power shares, pools, or otherwise utilizes such inventory.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is vague and ambiguous. Subject to and without waiving this objection, Gulf Power shares some in-service poles with Bellsouth, GTC and Sprint pursuant to joint use agreements.

29. Gulf Power represents that it will seek to present evidence of instances in which it has changed-out poles "due to lack of capacity." Describe and explain the circumstances in which a Gulf Power pole, according to You, had and/or has a "lack of capacity" and state where (by pole number and location) and when, if at all, any such determination of "lack of capacity" was made with respect to Gulf Power poles containing any of Complainants' attachments.

RESPONSE: A pole has a "lack of capacity" when another attachment cannot be made. (See response to interrogatory number 2 above). The determination of which poles lack capacity is made by field employees while riding the line to determine the feasibility of an attachment request. Such decisions are made almost everyday in the field and there is no way of identifying each instance where this has occurred. Complainants had attachments on poles changed-out in the build-outs referenced in Gulf Power's January 8, 2004 Description of Evidence

30. Identify and explain every instance in which Gulf Power has changed-out a pole containing one or more of Complainants' attachments at Gulf Power's own expense (i.e., unreimbursed) as a result of a need to accommodate an electric transformer or other Gulf Power equipment or facility.

RESPONSE: It is not possible to identify each such instance, but Gulf Power changes-out poles at its own expense almost everyday in the field. If Gulf Power sees a pole that needs to be changed-out to serve a customer, Gulf Power changes-out the pole and serves its customer as fast as possible.

31. From the "Recommendations" proposed in Gulf Power's Distribution Studies and load planning documents furnished to Complainants on January 11, 2005, identify and describe those "Recommendations" that Gulf Power actually implemented, the specific numbers and locations of poles affected, whether additional pole capacity on those was actually utilized by Gulf Power, measurements indicating how much space was required, and if any Recommendation was not implemented, the reasons therefore.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is vague, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information irrelevant to the hearing issues.

32. In its January 8, 2004 Description of Evidence, Gulf Power represents that it will seek to present evidence of the 40-inch safety zone requirement and its impact on Gulf Power's provision of core electricity operations. Describe and explain with specificity Gulf Power's implementation of the safety zone requirement and how it relates to Gulf Power's determination of "full capacity," "crowding," "lack of capacity" or "insufficient capacity" on a pole; Gulf Power's reservation of pole

space for future use; or any higher-valued use under the *Alabama Power v. FCC* standard.

RESPONSE: There must be 40" of vertical separation between the lowest electrical equipment and the highest communications equipment. The presence of communications attachers requires 40" of "dead" space on a pole and thus severely limits already-limited usable space on a pole.

33. Does Gulf Power develop and maintain a bona fide development plan that reasonably and specifically projects a need for pole space in the provision of its core utility service, and if so, identify and describe such plans (including the dates and authors of those plans) that applied or apply since 1998.

RESPONSE: Yes. See Gulf Power 00005 -- 00809.

34. Does Gulf Power routinely inform prospective and existing attachers when it reserves pole space for future use for its core electricity operations, and if so, identify and describe all such reservations and notifications to attachers, including Complainants, since 1998.

RESPONSE: Yes. Prospective attachers are shown and/or given a copy of Gulf Power's "spec plate" prior to attaching.

35. Does Gulf Power contend that it requires the use of reserved pole space currently occupied by Complainants, and if so, identify all such pole space, the specific poles at issue by number and location, and describe Gulf Power's and the electric industry's practice concerning whether attachers, including Complainants, are given the opportunity to pay for the cost of any modifications needed to rearrange or change-out the poles and to continue to maintain their attachments.

RESPONSE:

36. Does Gulf Power contend that it may charge Complainants that are already attached to its poles the rearrangement or change-out costs of modifications required as a result of an additional attachment or the modification of an existing attachment sought by any other attachers, including Gulf Power? Explain the basis for your answer.

RESPONSE: Gulf Power Company's contention and position on charges to complainants for "rearrangement or change-out costs of modifications" is the same as, based upon, and as required by 47 U.S.C. § 224(h)-(i), which provides as follows:

(h) Modification or alteration of pole, duct, conduit, or right-of-way

Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) Costs of rearranging or replacing attachment

An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).

37. Does Gulf Power contend that payment of make-ready expenses by an attacher is insufficient to reimburse Gulf Power for its marginal costs, and if so, explain the basis of any such contention.

RESPONSE: Yes. See response to interrogatory number 7 above. The APCo v. FCC decision uses the term "marginal costs" interchangeably with the Cable Rate.

38. Identify and describe all facts, documents, data and other information that support Gulf Power's claim for a pole attachment rental rate from any cable operator Complainants in excess of marginal cost.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is overly broad and unduly burdensome insofar as it seeks a reiteration of all legal principles, facts and documents addressed since the outset of this proceeding and the proceeding leading to the APCo v. FCC opinion.

39. Identify and explain the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating the pole attachment rental rate in excess of marginal cost and identify all persons, whether or not employed by Gulf Power, involved in any way in the determination of such methodologies, formulae, cost accounts, data and/or other bases.

RESPONSE: Gulf Power will disclose this information in accordance with the Presiding Judge's March 30, 2005 Order.

40. Identify all documents that reflect or refer to negotiations between communications attachers (including Complainants) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

RESPONSE: See documents within Bates range Gulf Power 00826 -- 2309.

41. Identify all documents that reflect or refer to negotiations between joint users of a pole (i.e., an incumbent local exchange carrier) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

RESPONSE: See documents Bates labeled as Gulf Power 2089 -- 2148.

42. Identify all documents that reflect or refer to negotiations between non-Section 224, non-joint user attachers (e.g., R. L. Singletary, Inc. and Crest Corporation) and Gulf Power involving pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e), and implementing regulations.

RESPONSE: See documents within Bates range Gulf Power 00826 -- 2309.

43. Does Gulf rely on, or intend to rely on, any cost methodologies, or concepts from or portions of cost methodologies, other than the Sales Comparison Approach, Current Replacement Cost Approach and the Federal Concessions Leasing Model? If so, please identify and describe with specificity these additional cost methodologies and/or concepts, and explain why Gulf Power contends they are applicable to Gulf Power's claims for additional compensation from Complainants.

RESPONSE: Not presently. Gulf Power reserves the right to employ different methodologies. If it does so, those methodologies will be disclosed in accordance with the Presiding Judge's March 30, 2005 Order.

Gulf Power does not currently pay rental rates to any other joint user pole owners due to being the majority pole owner in all joint use pole relationships.

44. Describe and explain Gulf Power's understanding of the Sales Comparison Approach as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

RESPONSE: The Sales Comparison Approach looks to other sales of identical property (free of government regulation). Gulf Power will explain its application of the Sales Comparison Approach when it discloses its experts in accordance with the Presiding Judge's December 17, 2004 Order.

45. Identify the pole attachment rental rates paid to Gulf Power by joint users, the specific amount of pole space leased by such joint users, and explain the methodologies, if any, used to calculate these rates.

RESPONSE:

ILEC Rate Information						
Company:	2000	2001	2002	2003	2004	2005
BellSouth Telecommunications Inc.	\$58.84	\$60.72	\$66.00	\$67.51	\$69.08	\$70.82
Sprint-Florida, Inc.	\$23.96	\$23.96	\$26.50	\$26.50	\$26.50	\$26.50
GTC, Inc.	\$21.97	\$22.68	\$27.04	\$27.04	\$27.04	\$27.04

ILEC Space Leased from Gulf Power Company			
Company:	30' Poles	35' Poles	40' poles
BellSouth Telecommunications Inc.	2'-0"	2'-6"	3'-0"
Sprint-Florida, Inc.	Not specified	2'-6"	3'-0"
GTC, Inc.	Not specified	2'-6"	3'-0"

BellSouth, Sprint-Florida, Inc. and GTC, Inc.: Rate Calculation

$$\text{Rate} = \text{Investment} \times \text{Annual Charge} \times \text{Space Allocation}$$

46. Identify the pole attachment rental rates paid by Gulf Power to other joint users pole owners, the specific amount of pole space leased by Gulf Power from such joint users, and explain the methodologies, if any, used to calculate these rates.

RESPONSE:

Gulf Power Company Pole Space Leased from ILEC			
Company:	30' Poles	35' Poles	40' poles
BellSouth Telecommunications Inc.	2'-0"	6'-0"	8'-6"
Sprint-Florida, Inc.	Not specified	6'-0"	8'-6"
GTC, Inc.	Not specified	6'-0"	8'-6"

47. Describe and explain Gulf Power's understanding of the Current Replacement Cost Approach as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

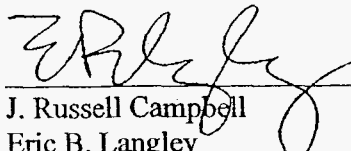
RESPONSE: The Current Replacement Cost Approach, which is a recognized fair market value proxy, looks to the current cost of reproducing the property. It relies on current costs, unlike the Cable Rate and Telecom Rate which rely on disfavored historic costs. Gulf Power will explain its application of the Current Replacement Cost Approach when it discloses its experts in accordance with the Presiding Judge's March 30, 2005 Order.

48. Describe and explain Gulf Power's understanding of the Federal Concessions Leasing Model as highlighted in Gulf Power's December 3, 2004 "Preliminary Statement on Alternative Cost Methodology," and explain Gulf Power's application of this approach to calculating pole attachment rental rates.

RESPONSE: The Federal Concessions Leasing Model is a valuation method proposed by Gulf Power's valuation experts. It uses the Federal government's own methodology for valuing property for which there is no market, or which does not have an easily ascertainable market value. Gulf Power will explain its application of the Federal Concessions Leasing Model when it discloses its experts in accordance with the Presiding Judge's March 30, 2005 Order.

Respectfully submitted,

Ben A. Bowen, Gulf Power Co.



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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Responses To Complainants' First Set Of Requests For Production Of Documents has been served upon the following by Electronic Mail and by Federal Express on this the 18th day of April, 2005:

Lisa Griffin Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 Via E-mail	Shiela Parker Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 Via E-mail
James Shook Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 Via E-mail	Rhonda Lien Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 Via E-mail
John D. Seiver Brian D. Josef COLE, RAYWID & BRAVERMAN 1919 Pennsylvania Avenue, N.W. Suite 200 Washington, D.C. 20006 Via E-mail	John W. Berresford Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554 Via E-mail



OF COUNSEL

EXHIBIT D

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

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., et. al.

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel
Chief Administrative Law Judge

**GULF POWER'S RESPONSES TO COMPLAINANTS'
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Gulf Power Company ("Gulf Power") responds to Complainants' First Set of Requests
For Production Of Documents as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Gulf Power object to each and every request for production to the extent it seeks information protected by the attorney-client privilege or work-product doctrine.
2. By responding to any particular request for production, Gulf Power does not waive its objections.
3. Gulf Power objects to each and every interrogatory to the extent complainants' purpose in propounding such interrogatory is to subject Gulf Power to annoyance, expense, embarrassment, or oppression.
4. Gulf Power reserves the right to supplement and/or amend these responses and objections.

SPECIFIC RESPONSES AND OBJECTIONS

1. Produce all documents referring to, relating to, or regarding any of the facts or allegations described in Gulf Power's or the Complainants' pleadings in File No. PA 00-004 and this Action.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Gulf Power is either producing herewith, or making available for inspection and copying upon reasonable notice, a substantial number of documents responsive to this request.

Document Request

2. Produce all documents referring to, relating to, or regarding occupation of Gulf Power-owned or -controlled poles by Complainants since January 1, 1998. Such documents should include, but not be limited to:
 - a. Facilities maps, diagrams, and other schematic documents;
 - b. Pole counts, surveys or audits;
 - c. Pole Attachment Permit Applications;
 - d. Pole Attachment Permits;
 - e. Make-ready documents (including surveys, studies, photographs, etc. relating to any and all work performed on Gulf Power-owned or -controlled poles, including pole change-outs, transfers and relocations);
 - f. Make-ready payment records, bills, and any other information about Gulf Power attachment procedures);
 - g. Work orders, service orders or maintenance requests;
 - h. Accounting documents referring to, relating to, or regarding Complainants' pole attachments;
 - i. Invoices;
 - j. All written correspondence to and from Gulf Power (including email communications) and other documentation concerning telephone or in-person communications relating to any of the above matters.

RESPONSE: Gulf Power objects to this request on the grounds that it is unduly burdensome, insofar as it seeks boxes upon boxes of documents which are kept at multiple Gulf Power offices, and are not necessarily maintained according to the categorization set forth in the request. Gulf Power further objects to this request for production on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence, and in many instances, seeks documents either created by complainants themselves or seeks documents which complainants already have in their possession. Subject to and without waiving these objections, Gulf Power, upon reasonable notice, will make all such documents available for inspection and/or copying at the locations where they are kept.

3. Produce all documents reviewed by, or produced or written by, any consultant, expert witness, or other entity that Gulf Power has used or is using to study or report upon Gulf Power poles containing attachments by Complainants.

RESPONSE: Gulf Power will work with complainants to reach an agreed-upon a reasonable scope of expert discovery, and produce such agreed-upon documents at the appropriate time. Gulf Power already has produced, and filed of record, the Statement of Work between Osmose Utilities Services, Inc. ("Osmose") and Gulf Power. Gulf Power also has consulted with a valuation expert, who has been given materials and has prepared certain written materials for review by Gulf Power's counsel.

4. Produce all documents referring to, relating or, or regarding any communication, whether oral, written or otherwise, concerning annual pole rental charges or the performance of make-ready work, from January 1, 1998 to the present, on poles owned or controlled by Gulf Power between Gulf Power and any other person, including but not limited to, Complainants, other cable operators, telecommunications carriers, or any other entity attached to poles owned or controlled by Gulf Power. Your response should include documents that identify all such make-ready work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, material costs and site diagrams or maps.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Gulf Power will, upon reasonable notice, make available for inspection and copying, all requested make-ready work orders. See also the documents produced in response to interrogatory numbers 40 and 42.

5. Produce all documents referring to, relating to, or regarding any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present, including Gulf Power requests for proposals.

RESPONSE: Gulf Power will make available, upon reasonable notice, for inspection and copying the 1996 and 2001 pole counts – the only such counts performed since 1996. This information occupies more than seven banker's boxes, and contains hundreds of large, odd-sized maps.

6. Produce all documents referring to, relating to, or regarding formal or informal Gulf Power policies or field practices concerning utilization of cross-arms, extension arms, or boxing arrangements.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

7. Produce all documents referring to, relating to, or regarding approvals or denials of requests to employ cross-arms, extension arms, or boxing arrangements by Gulf Power or any other entity attaching to Gulf Power-owned or -controlled poles.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

8. Produce all documents referring to, relating to, or regarding pole change-outs performed for Complainant cable operators since 1998, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

RESPONSE: See responses to requests for production number 2 and 4 above.

9. Produce all documents referring to, relating to, or regarding pole change-outs necessitated by Gulf Power's core electricity service requirements, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad. Subject to and without waiving this objection, see previously produced documents Bates labeled Gulf Power 00005 – 00809. Gulf Power does not maintain records of each and every pole change-out necessitated by its core business, but such change-outs occur daily in the field.

10. Produce all documents referring to, relating to, or regarding pole change-outs requested by third parties, including but not limited to communications attachers, including documents that identify all such work performed, including installed equipment, subcontracts, service requests, work orders, time sheets, and site diagrams or maps.

RESPONSE: See responses to requests for production numbers 2 and 4 above.

11. Produce all documents identifying all engineers, technicians, and/or workmen who performed any type of work, labor or service relating to change-outs of Gulf Power-owned or -controlled poles, and identifying the material costs, work, labor, or service that was performed and when it was performed.

RESPONSE: Gulf Power objects to this request for production on the grounds that it overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is irrelevant to the hearing issues.

12. Produce all documents referring to, relating to, or regarding refusals by Gulf Power to change-out a pole and identify all persons who participated in the decision, including but not limited to Gulf Power managers, engineers, technicians and/or workmen.

RESPONSE: Gulf Power does not believe it has any such documents in its possession.

13. Produce all documents referring to, relating to, or regarding Gulf Power's procedures for changing-out a pole and identify all persons who participated in the development of such procedures.

RESPONSE: See documents produced herewith as Bates labels Gulf Power 00810 -- 00814. These procedures were written by Ben Bowen with input from others at Gulf Power, Power Delivery.

14. Produce all documents referring to, relating to, or regarding Gulf Power's pole inventory records, including but not limited to documents relating to Gulf Power policies and procedures for maintaining its pole inventory.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is vague and ambiguous. Subject to and without waiving these objections, see response to interrogatory number 27.

15. Produce all documents referring to, relating to, or regarding Gulf Power's purchasing, sharing, pooling, or other arrangements for utilizing inventories of poles with affiliated corporations, parents, subsidiaries, and other organizations or operating units.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is vague and ambiguous. Subject to and without waiving these objections, Gulf Power states that it does not utilize pole inventories of other entities, with the exception

of the ILECs with whom Gulf Power has joint use agreements. Those joint use agreements, are produced herewith as Bates labels Gulf Power 2089 -- 2148.

16. Produce all documents referring to, relating to, or regarding the Safety Space and Gulf Power specifications, regulations and/or policies implementing the Safety Space on poles owned or controlled by Gulf Power.

RESPONSE: See documents produced as Bates labeled Gulf Power 00815 -- 00826. Complainants should also have in their possession a current copy of the National Electric Safety Code ("NESC"), since this is a necessary reference for complainants' field employees. If complainants do not have the current (2002) NESC, it can be purchased at <http://standards.ieee.org/nesc/>.

17. Produce any and all joint use poles agreements, including but not limited to all drafts thereof, between Gulf Power and other entities.

RESPONSE: Gulf Power will produce all such documents in its possession. See documents produced herewith as Bates labels Gulf Power 2089 -- 2148.

18. Produce any and all pole attachment agreements, including but not limited to all drafts thereof, between Gulf Power and any other entities, including Complainants, other attachers, and Gulf Power's affiliated corporations, parents, subsidiaries, and other organizations or operating units, and their predecessors and successors-in-interest.

RESPONSE: Gulf Power will produce all such documents in its possession. See documents produced herewith within Bates range Gulf Power 00826 -- 2309.

19. Produce all documents referring to, relating to, or regarding or comprising a bona fide development plan or plans, including but not limited to all drafts thereof, that reasonably and specifically projects a need for pole space in the provision of Gulf Power's core utility service, including all documents that refer or relate to those documents that comprise the bona fide development plan or plans.

RESPONSE: See documents previously produced by Gulf Power as Bates labels Gulf Power 00005 -- 00809.

20. Produce all documents referring to, relating to, or regarding correspondence from Gulf Power to Complainants reserving pole space for future use for its core electricity operations.

RESPONSE: Other than the Gulf Power spec plates, which should be a part of complainants' pole attachment contracts, Gulf Power is not aware of any such documents in its possession.

21. Produce all documents that constitute Gulf Power's pole specifications book (whether it is called "standard distribution specifications," "overhead construction specifications," or another title), including but not limited to all drafts thereof, in effect between January 1, 1998 and the present. In the event Gulf Power revised the specifications book between January 1, 1998 and the present, produce all versions of the specifications book in effect during this period.

RESPONSE: Gulf Power does not have a pole specifications book other than its spec plates and the NESC. Gulf Power's spec plate is produced as Bates labeled documents Gulf Power 00815 -- 00826. The NESC was last revised in 2002, and is roughly 400 pages in length. If complainants do not have a copy (which would be a troubling revelation), it can be purchased at <http://standards.ieee.org/nesc/>.

22. Produce all documents referring to, relating to, or regarding any pole loading data maintained by Gulf Power, including but not limited to weight and wind loading, or pole loading program (including electronic computer programs) used by Gulf Power.

RESPONSE: Gulf Power objects to this request for production on the grounds that it seeks information which is irrelevant to the hearing issues. For the purposes of this proceeding, Gulf Power is not contending that any specific pole is "crowded" or at "full capacity" because of weight or wind loading. When third parties attach, they are supposed to ensure that NESC weight and wind loading requirements are met. Without waiving this objection, see the NESC. Gulf Power also uses an internal on-line platform for wind/weight loading evaluation.

23. Produce all documents referring to, relating to, or regarding Gulf Power's upgrades, modernization, or replacement of its poles from 1998 through the present.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad, unduly burdensome, vague, and seeks information which is irrelevant to the hearing issues.

24. Produce all documents referring to, relating to, or regarding the facts, data, calculations and other information that support Gulf Power's claim for a pole attachment rental rate in excess of marginal cost.

RESPONSE: Gulf Power objects to this request for production on the grounds that it is overly broad and unduly burdensome. Gulf Power will disclose its valuation expert's cost methodologies in accordance with the Presiding Judge's March 30, 2005 Order.

25. Produce all documents referring to, relating to, or regarding any maps, diagrams, schematics, or depictions of the specific Gulf Power poles that you claim are at "full capacity," "crowded," or have "insufficient capacity" or a "lack of capacity."

RESPONSE: Gulf Power will produce such documents upon completion of the pole audit being performed by Osmose.

26. Produce all documents referring to, relating to, or regarding any actual losses experienced by Gulf Power that it claims are associated with Complainants' pole attachments on Gulf Power poles, including any documents pertaining to any "higher valued use" or "another buyer of the space waiting in the wings" as described in *Alabama Power v. FCC*.

RESPONSE: Gulf Power objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving these objections, Gulf Power states that its actual loss is the difference between Just Compensation and the rate paid by complainants, plus interest.

27. Produce all documents referring to, relating to, or regarding the methodologies, formulae, cost accounts, data and/or other bases, if any, used by Gulf Power in calculating or formulating pole attachment rental rates in excess of marginal cost.

RESPONSE: Gulf Power will work with complainants to reach an agreed-upon a reasonable scope of expert discovery, and produce such agreed-upon documents in accordance with the Presiding Judge's March 30, 2004 Order.

28. Produce all documents referring to, relating to, or regarding negotiations between communications attachers and Gulf Power which discussed, or lead to the payment of, pole attachment rental rates exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: See documents produced in response to interrogatory number 40.

29. Produce all documents referring to, relating to, or regarding negotiations between joint users (e.g., an incumbent local exchange carrier) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding in the

FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: See documents produced in response to interrogatory number 41.

30. Produce all documents referring to, relating to, or regarding negotiations between non-Section 224, non-joint user attachers (e.g., R. L. Singletary, Inc. and Crest Corporation) and Gulf Power which discussed, or led to the payment of, pole attachment rental rates exceeding in the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: See documents produced in response to interrogatory number 42.

31. Produce all documents referring to, relating to, or regarding cost methodologies, or concepts from or portions of cost methodologies, other than the Sales Comparison Approach, Current Replacement Cost Approach and the Federal Concessions Leasing Model, that Gulf Power may seek to use to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: To the extent Gulf Power advances other cost methodologies, Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

32. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Sales Comparison Approach to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

33. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Current Replacement Cost Approach to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

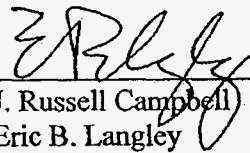
34. Produce all documents referring to, relating to, or regarding Gulf Power's application of the Federal Concessions Leasing Model to determine a pole attachment rental rate exceeding the FCC's Cable or Telecommunications Formula, 47 U.S.C. § 224(d) and (e) and implementing regulations.

RESPONSE: Gulf Power will produce such documents within the scope of expert discovery agreed-upon by the parties.

35. Produce all documents and other materials that relate to or were referenced in your answers to Complainants' First Set of Interrogatories.

RESPONSE: See documents produced.

Respectfully submitted,



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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Responses To Complainants' First Set Of Requests For Production Of Documents has been served upon the following by Electronic Mail and by Federal Express on this the 18th day of April, 2005:

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OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complainants' Motion to Compel* has been served upon the following by electronic mail and U.S. Mail on this the 11th day of July, 2005:

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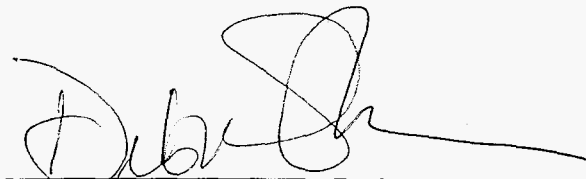
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