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

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In the Matter of	)	
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BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	
	)	

TO: ENFORCEMENT BUREAU
MARKET DISPUTES RESOLUTION DIVISION

TAMPA ELECTRIC COMPANY'S RESPONSE TO THE SUPPLEMENT TO POLE ATTACHMENT COMPLAINT OF BRIGHT HOUSE NETWORKS, LLC

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EXECUTIVE SUMMARY

In support of a three-year-old sham complaint, Bright House Networks, LLC has filed a supplement that attacks Tampa Electric Company's pole attachment rental rate methodology. The Commission should not lose sight of the fact that Bright House has not come to the Commission with clean hands. Since 2001, Bright House has been using some – and Tampa Electric believes, all – of its attached facilities to offer and provide telecommunications services. Yet Bright House did not give the notice to Tampa Electric that is required by Rule 1.1403(e), thereby unlawfully evading payment of the telecom rental rate. Nonetheless, Bright House has sought refuge in the Commission's complaint process.

Tampa Electric shows herein that its determination of the number of poles in its distribution system was based on the results of a field study, which was more accurate than a number derived from accounting records. With respect to the determination of the average number of attaching entities, Bright House tells the Commission that the proper number is 2.8, but it uses 5.0 in calculating what it thinks should be the telecom rental rate. Tampa Electric shows herein that the proper number is 2.62.

Flaws in Tampa Electric's methodology have only a minor effect on the rental rate calculations and will be corrected going forward, but Bright House cannot be granted retroactive relief under the Commission's rules. Bright House has not lived up to a promise to enter into an agreement that would supersede and modernize the rates, terms and conditions of its access to Tampa Electric's poles. Had it done so, Bright House would not now be seeking to use the Commission's complaint process as a substitute for good faith negotiations.

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Tampa Electric Company, ("Tampa Electric") by its counsel and pursuant to Section 1.1407 of the Commission's rules, files this response to the Supplement to Pole Attachment Complaint of Bright House Networks, LLC ("Bright House"), filed July 17, 2009.[1]

[1] In its Consent Motion for Extension of Time, which was filed July 31, 2009, and granted August 3, 2009, Tampa Electric consented to the Bright House Supplement. Tampa Electric intends to file its own supplement once discovery is complete in the state court action pending between the parties. At present, Tampa Electric continues to receive volumes of documents from Bright House, including over 16,000 pages of documents provided in July, which regard Bright House's offer of various telecommunications services, including private line service provided to schools under the Commission's E-Rate program. Tampa Electric believes that this evidence will establish that Bright House has used all of its attachments to Tampa Electric poles to offer telecommunications services since the late 1990s.

BACKGROUND

Three and one-half years ago, Bright House filed a pole attachment complaint that was nothing more than a placeholder. It now seeks to supplement the placeholder complaint in an attempt to legitimatize it. As demonstrated in Tampa Electric's response to the original complaint, Bright House's complaint was fatally defective. Its supplement is no better.

Bright House originally alleged that Tampa Electric *may* have imposed an excessive rental rate for cable attachments and that Tampa Electric has imposed an excessive rental rate for telecommunications attachments. Neither contention was correct. In fact, as shown in Tampa Electric's response to the original complaint, Bright House's own calculations actually *supported* Tampa Electric's rates. In footnote 11 of its original Complaint, Bright House stated that it has calculated what it regards as the proper cable rental rate and found it to be 3 cents *higher* than the rate actually charged by Tampa Electric.

Undaunted by the facts, Bright House speculated three years ago that it may someday be able to show that Tampa Electric's cable rental rate is too high. At footnote 11, Bright House promised to "revise its calculation" when it receives more information. The promised revisions to its placeholder arguments are now at hand but Bright House's arguments remain lacking in support.

RESPONSE

I. Tampa Electric Properly Determined Its Total Number of Poles.

In its original complaint, Bright House asserted that 330,000 is the correct total number of Tampa Electric poles to be used in the rate calculations. As Bright House had been informed,[2] however, the actual number of poles in service was 305,042. In its supplemental complaint (p.6.)

[2] Response to Bright House's information request, dated March 20, 2006.

Bright House contends that this number cannot be used in the formula because it was not taken from Tampa Electric's continuing property records. The truth is that this number was taken from a more accurate source and its use was valid.

a. The Commission Does Not Mandate That The Total Number of Poles Be Taken From A Utility's Continuing Property Records.

Tampa Electric agrees with Bright House that the average cost of a pole is determined by dividing the utility's investment in poles by the total number of poles. The investment in poles is taken from the amount reported in FERC Form 1, Account 364. However, unlike every other term in the rental rate formula, nowhere does the Commission specify the required source of the value for the number of poles.

Bright House contends that the source of this number must be the utility's continuing property records, but this is not the holding of any of the cases cited by Bright House. The fact is that there is no FCC requirement to use the continuing property records as the only valid source of this number.

b. The Commission's New Formula to Determine the Pole Attachment Rental Rate for Telecommunications Attachments Compelled the Use of Field Studies to Ascertain the Total Number of Poles in Service.

A utility's continuing property records certainly are one source for the total number of poles owned by an electric utility for purposes of calculating the rental rate for pole attachments by cable companies. Prior to 1996, when the Commission compelled utilities to ascertain the average number of attaching entities on a pole for purposes of calculating the new telecom rate, there was little need for a utility to develop a different source of this number. It is no surprise, then, that utilities looked to continuing property records for this number prior to 1996.

In 1996, when the new telecom formula required utilities to have much more granular information about their poles and the entities attached to them, it became clear that the continuing property records would not be adequate for the purpose. This led to field studies, where every pole in a utility's system was physically examined to determine whether they were supporting attachments and, if so, how many and by whom.

In 2000, Tampa Electric commissioned such a study. The study found 299,463 distribution poles, only 90% of the 334,743 poles reflected in Tampa Electric's continuing property records. The essence of Bright House's supplemental complaint is that the field study, which entailed 15 months of actual in-the-field counting of the physical poles (Affidavit of Kristina Angiulli, attached hereto as TECO Exhibit 1), must have been flawed, and the continuing property records, which were based merely on annual paper records of the poles, must be used instead as the source of the number of poles.

Bright House sets forth several theories to account for the discrepancy, except for one: that errors in the continuing property records, accumulated over decades, account for the discrepancy. Continuing property records are accounting records that go back 40 or 50 years. (Angiulli Deposition, p.125, Bright House Exhibit 11.) They are derived from internal work orders and the like. (Ashburn Deposition, p. 81, Bright House Exhibit 9). These records are audited by an outside accounting firm and are generally accurate (Ashburn Deposition, p. 80, Bright House Exhibit 9). However, the continuing property records represent "an accumulated number over many, many years." (Ashburn Deposition, p. 78, Bright House Exhibit 9.)

The field study, on the other hand, did not *derive* or *deduce* the number of poles from company paperwork, it actually *counted* the poles in the field. When asked in his deposition to explain the discrepancy between the continuing property records and the field study, William

Ashburn, Tampa Electric's Director of Pricing and Financial Analysis, stated, "The audit was a recent audit of all the poles in service and we used that, so it was a different number." (Ashburn Deposition, p. 78, Bright House Exhibit 9).

Bright House would like the Commission to believe the preposterous notion that the field study could not have produced an accurate number of poles in service because the field study was not designed to count poles, the contractor's employees did not have circuit maps to guide them, and there was no mechanism in place to assure that the contractor found all the poles.

This is mere idle speculation by Bright House, conjured up to support its argument. When Bright House asked Kristina Angiulli, Tampa Electric's Manager of System Reliability, about the accuracy of the field study and the discrepancy with the continuing property records, she replied as follows:

> In 2002 when the audit results were mined and the data was mined, one of the things that Tampa Electric did was it took the GPS coordinates of its – the pole attachment audit and it overlaid those coordinates on top of its circuit maps. In no instance that I recall was there circuit lines that extended beyond the pole locations.
>
> In many instances there were poles that existed beyond the circuit lines. Now, the circuit lines that we kept track of in our mapping system, which we discussed yesterday, only contain primary circuit miles. When we saw that the poles exceeded the circuit miles in length, in other words, the poles extended beyond the wires, if you will, that was questioned.
>
> And what we determined was that those poles that extended beyond in certain areas the circuit miles were secondary poles. They were poles holding up services secondary cables, which we have never mapped in our history. So that's one indicator to me that the audit results were more accurate than what was in the continuing property records.
>
> In addition, when we planned this audit and sought funding for this audit Tampa Electric took its continuing property records to be what it was. We did not expect to find fewer poles. We certainly didn't incent our contractor to find certain poles, or less poles. Quite frankly, it was the opposite.

> We predicted that we might find more poles; therefore, we budgeted accordingly. When the contractor gave us their cost for the audit they based that cost on the volume and they gave us a unit price that they expected based on the volume we told them they might see.
>
> And I can tell you for sure it is not a contractor's incentive to go find less money for themselves. They were certainly incented to find more poles, but they didn't. They simply didn't find more poles. That's the only explanation I have for the discrepancy. (Angiulli Deposition, pp.126-8, Bright House Exhibit 11.)

This direct testimony addresses all of Bright House's speculations: the contractors actually did better than they might have had they used circuit maps; the contractors found all poles, even secondary, service poles; and there was quality assurance brought to bear on unexpected results.

Clearly the field study was not "flawed," either in design or execution. The field study simply yielded a different number than the number being carried in accounting records. That outcome was not, in itself, surprising: Tampa Electric had anticipated that the number of poles found might differ from the accounting records, although Tampa Electric expected the number to be higher than the number shown in the accounting records and had budgeted for the cost of the study based on a higher number. Taking the results of the field study at face value, Tampa Electric was within its rights to use the number of poles actually counted in the field study, rather than the number derived from accounting records.

Bright House argues that the use of the field study broke the link between FERC Account 364 and the utility's continuing property records. Bright House does not seem to care that the logical extension of its argument is that utilities would never be able to reconcile data relating to the average number of attaching entities, which can only be derived by field studies, with the number of poles contained in the accounting records. It is absurd to suggest that the continuing property records are the only valid records for use in operating the FCC's pole attachment rental

rate formulas. The FCC dictated the shift to more granular data in 1996, and Tampa Electric should not be taken to task for responding accordingly.

Tampa Electric has already argued that it was improper practice for Bright House to file a contingent rate complaint, to be later supplemented – or not – depending solely on Bright House's discretion. Tampa Electric's argument is renewed here with the added observation that Bright House's supplemental information is no better than that contained in its original complaint.

II. Tampa Electric's Use of Only a Portion of FERC Account 369 Had Minimal Effect on the Calculated Pole Rental.

Bright House complains that, beginning in 2002, Tampa Electric erroneously used only a portion of FERC Account 369 in computing the maintenance element of the carrying charges. The maintenance element is the percentage of maintenance expenses in relation to the utility's investment in distribution plant. Tampa Electric maintains sub-accounts for Account 369 to segregate investment in overhead distribution, *i.e.*, poles, from underground distribution, *i.e.*, conduit service investment. In 2002, Tampa Electric felt that it was proper to use only the investment in poles in a pole attachment rental formula and thus began to use only the subaccount for overhead distribution service facilities in the maintenance carrying charges element of the formula.

Tampa Electric acknowledges that the Commission has ruled that the entire Account 369 is to be used in determining the maintenance carrying charge used in the FCC formula (although this ruling is plainly contrary to common sense.) Nonetheless, as shown by Bright House's own calculations, the effect on the pole attachment rental rate of the use of only a portion of Account 369 was *de minimis*. See, for example, Bright House Exhibit 16, the rate comparison for 2002.

The maintenance carrying charge decreases from 5.48% to 4.58% when Bright House adds the balance of Account 369 to the maintenance factor. The total carrying charges, in turn, are reduced less than one percent to 30.45% from 31.35%. Applying this carrying charge to the rent as originally calculated, the rent is reduced to $5.58 per pole, from $5.74 per pole.[3] Going forward, Tampa Electric will use the entire Account 369 in calculating the maintenance element of the carrying charge.

III. The Rate of Return Carrying Charge for Tampa Electric's Cable Rate Was Properly Determined; Bright House Has Never Paid the Telecom Rate about which It Complains.

Bright House next challenges the rate of return component of the carrying charges calculated by Tampa Electric. Bright House cites cases that predate the Commission's 2000 *Fee Order*, 15 FCC Rcd 6453, and the *Consolidated Partial Order on Reconsideration*, 16 FCC Rcd 12103 (2001), where, in the interest of ease of administration, the Commission changed this factor in the formula to the utility's authorized rate of return, on the theory that this would reasonably reflect the utilities' cost of capital.

The FCC was aware, however, that some states were moving away from regulating utility rates on a rate of return basis, moving instead to incentive-based regulation. In such states, the authorized rate of return would not reflect the utilities' cost of capital. To deal with that circumstance, the Commission decided to adopt a default rate of return percentage. (*Fee Order*, 6490.) It looked to the rate of return that it had adopted for interstate access services of local exchange carriers, namely, 11.25%, and reasoned that this value would serve as a reasonable proxy for cost of capital for utilities in states that no longer regulated on a rate of return basis.

[3] The rental rate equals the net investment per bare pole ($247.13) x total carrying charge (0.3045) x use ratio (0.0741).

The National Cable Television Association protested that if a utility's actual, realized rate of return is lower than 11.25%, it would be inequitable to allow it to use the default percentage. The Commission rejected this argument. (*Fee Order*, 6491.) Thus, since 2001, this factor in a utility's pole attachment formula can only be one of two things: either its authorized rate of return, if the state has established such, or 11.25%, if the state does not regulate on a rate of return basis.

This requirement has been codified in 47 C.F.R. § 1.1404(g) (1)(x), which reads as follows:

> **(x) The rate of return authorized for the utility for intrastate service.** With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court. In the absence of a state authorized rate of return, the rate of return set by the Commission for local exchange carriers shall be used as a default rate of return;

For this reason, all of Bright House's discussion of "return on capital" and "weighted cost of debt and equity" and whether Tampa Electric should be allowed to use the mid-point of its reported rate of return each year, is irrelevant.

Bright House has put in issue the rate of return that has been authorized by the State of Florida. In 1993, the Florida Public Service Commission ("FPSC") discussed Tampa Electric's rate of return in *In re: Application for a rate increase by Tampa Electric Company,* Order No. PSC-93-0165-FOF-EI, 1993 Fla. PUC Lexis 287 (February 2, 1993). In this Order, the FPSC equates rate of return with rate of return on common equity capital: "To establish a fair overall rate of return, it is necessary that we use our judgment to establish an allowable rate of return on common equity capital." (p. 73). The FPSC set the return at 12%. "We believe that a return of

12% would continue to provide the company with comfortable coverage ratios that, along with its strong qualitative factors, maintain the company's present credit rating." (p. 75).

On May 10, 1995, the FPSC issued Order No. PSC-95-0580-FOF-EI, that revised the authorized 12% return to 11.75% for all regulatory purposes. This 11.75% return remained in effect from January 1, 1995 until April 30, 2009, and, accordingly, governs the rate of return for all years in issue here. A copy of that Order is attached hereto as TECO Exhibit 2. (On April 30, 2009, the FPSC issued Order No. PSC-09-0283-FOF-EI, resolving Tampa Electric's most current rate proceeding and resetting that authorized return to 11.25%).

As shown in Bright House's Exhibit 16, Tampa Electric used a rate of return of 8.22% in its calculation of the cable rate for the second half of 2002 and the first half of 2003. Thereafter, it used an input of 11.75% as the rate of return factor in the carrying charges used in calculating the cable rate. In all cases, the rate of return was less than or equal to the rate of return authorized by the FPSC. Accordingly, the carrying charge for rate of return used in the cable rate for the years in issue was at or below the figure that could have been employed.

Bright House complains that the rate of return used by Tampa Electric in calculating the telecom rate for 2002 and following years was 12.25%. It should be noted that Bright House has never actually paid this rate to Tampa Electric. (TECO Exhibit 1 hereto.) Tampa Electric acknowledges that there should be no difference between the rate of return carrying charge used in the cable rate and the rate of return carrying charge used in the telecom rate. Going forward, Tampa Electric will correct this inconsistency, but to date, Bright House certainly has suffered no damage from this rate as calculated.

IV. The Inclusion of Supervisory Expenses in Tampa Electric's Rate Calculation Had Only Minimal Effect on the Rental Rate.

Bright House complains that, beginning in 2005, Tampa Electric included supervisory expenses from FERC Account 590, attributable to the maintenance of overhead lines, in the maintenance component of the carrying charges for the cable rate. Tampa Electric concedes that inclusion of these supervisory expenses, though reasonable, has been disallowed by the Commission.

As Bright House notes, in disallowing these expenses, the Commission said, "any increased accuracy that would be derived from including the minute percentage of pole related expenses that may be included in Account 590, is outweighed by the complexity of arriving at an appropriate and equitable percentage." (Bright House Supplement, p. 13). Indeed, the amount is minute. For example, looking at Bright House's analysis of the pole rental rate for the second half of 2006 and first half of 2007 (Bright House Exhibit 16), Bright House has reduced the input for Maintenance of Overhead Lines from the $10,406,570 used by Tampa Electric, to $10,303,224, a reduction of $103,346. This has the effect of reducing the maintenance carrying charge from 5.57% to 4.58%.[4] Going forward, Tampa Electric will revise its methodology.

V. The Average Number of Attaching Entities, for Purposes of Calculating Tampa Electric's Telecom Rate Will Be Revised to 2.62.

Bright House complains that Tampa Electric has improperly used a number "hovering near 2.0" as the average number of attaching entities for purposes of calculating Tampa Electric's pole attachment rental rate for telecom attachments, when the number should actually be 2.8 (Bright House Supplement, p. 16).

[4] To recalculate the maintenance carrying charge for this period, the corrected maintenance expense (10,303,224) is divided by plant investments (431,409,302) less associated reserves (206,596,690), yielding a maintenance carrying charge of .0458.

It should be noted, first, that any errors by Tampa Electric that may have been made in determining this factor in the telecom formula have never impacted Bright House. Bright House has never paid the invoiced amount for telecom attachments. (TECO Exhibit 1 hereto.)

Bright House's first allegation is bootstrapped from its earlier argument regarding the total number of Tampa Electric poles. However, for this issue, Bright House subtly changes its argument from an argument that the total number of poles is incorrect to an argument that Tampa Electric field study "did not count all of the poles." (Bright House Supplement, p. 14.) As shown above, however, the Tampa Electric field study *did* count all the poles.

Tampa Electric does not dispute that it included in its determination of the average number of attaching entities poles to which only Tampa Electric is attached. However, it is important to note that Tampa Electric's data regarding attaching entities is not a survey, in the sense of a *sampling* of the pole inventory. It is a field study of all poles and the attachments thereon. Based on this study of all poles in the field, Tampa Electric has determined that, when poles to which only Tampa Electric is attached are excluded from the analysis, the average number of attaching entities increases from 2.08 to 2.62 (TECO Exhibit 1 hereto). While this number is not far off from the suggestion of Bright House that the average number of attaching entities is 2.8, the correct number is 2.62.

Going forward, Tampa Electric will revise its methodology for calculating the average number of attaching entities for purposes of determining the telecom rental rate by excluding from the pole count poles to which only Tampa Electric is attached. Note, however, that Bright House has not done the same. Without saying so in its supplemental complaint, Bright House has not implemented its own suggested revision in its proposed rental rates for telecom attachments. Although Bright House argues in the text of its supplemental complaint that "the

proper number of attaching entities in that case would be 2.8," (Bright House Supplement, p. 16), throughout its calculations of the telecom rate in its Exhibit 16, Bright House uses 5 as the average number of attaching entities, not the 2.8 that it said was proper. This causes a substantial and unwarranted change in Bright House's proposed telecom rental rates and renders unusable all of the telecom rate calculations in Bright House Exhibit 16.

The FCC's presumptive number of attaching entities in an urbanized area – five – is not a default value to be used in the formula. When the utility in good faith has calculated its own presumptive average number of attaching entities in urbanized and non-urbanized areas, the burden shifts to an attaching entity to rebut the utility's presumptive number and *to demonstrate* otherwise. The attacher can rebut the utility's average "only by identifying and calculating the average number of attachments on [the utility's] poles, either by a complete inspection or with a statistically sound survey." *Georgia Power Company v. Teleport*, 346 F.3d 1033, 1041 (11th Cir. 2003). Bright House admits that 2.8 is the proper number, which is a far cry from using 5 in the calculations. This sleight of hand invalidates all of the telecom rate arguments made by Bright House in Section III of its supplemental complaint.

VI. Bright House Has Never Paid 100% of the Invoiced Telecom Rate, Let Alone 80%.

Bright House complains that Tampa Electric failed to phase-in the increased telecom rate. Accordingly, Bright House complains that for 2004, only 80% of the calculated telecom rate could be charged, but Tampa Electric charged the full telecom rate. Once again, Bright House's complaint is purely academic. It makes no difference because Bright House has never paid the invoiced rate. (TECO Exhibit 1 hereto).

VII. Bright House Cannot Complain of Inadequate Notice with Clean Hands.

In February, 2006, Bright House finally admitted that some of its attachments were used to provide telecommunications service. (TECO Exhibit 1, hereto). Thus, any problem that Bright House may have with regard to whether it received adequate notice of Tampa Electric's pole attachment rental rate for telecom attachments prior to 2006 is a problem of its own making.

Bright House complains that Tampa Electric failed to follow Rule 1.1403(c)(2), that requires 60 days written notice prior to any increase in pole attachment rates, yet Bright House failed to give to Tampa Electric the notice required by Rule 1.1403(e) that it was offering telecommunications service.

Bright House acknowledges that it annually receives notice in October that the rates that will go into effect the following January (more than 60 days later) will be revised. (Supplemental Complaint, pp. 17-18.) Bright House contends that this notice is not specific enough, citing paragraph 36 of *Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333 (Enforcement Bureau, 2003) ("*CTAG*").

The *CTAG* case was about a paragraph in a pole attachment agreement that allowed for a year-end "true-up" of the rental rate, not notice pursuant to Rule 1.1403(c). The Bureau found that this blanket contract provision was unreasonable, not that a specific prior written notice failed to meet the requirement of the rule.

Pursuant to Rule 1.1403(d), the purpose of the notice provision in the preceding subsection (c) of the rule is to allow an affected attacher to seek a stay "of the action contained in a notice received pursuant to paragraph (c) of this section..." A stay "of the action" can be sought when any required notice is received and the only issue would be whether "irreparable harm and likely cessation of cable television service or telecommunication service" is likely to

follow from the noticed action. Nowhere does Bright House allege that it would have been able to make such a showing had it known the magnitude of any increase.

On the subject of notice requirements, the very next subsection, Rule 1.1403(e), states that, "Cable operators must *notify pole owners upon offering telecommunications services*." (Emphasis added.) Despite an affirmative assurance that Bright House would not use its pole attachments for telecommunications without entering into a new agreement with Tampa Electric for such use (See the letter agreement[5] of February 18, 2003, attached hereto as TECO Exhibit 3), Bright House had been offering telecommunications services since 2001 *without notice*, general or specific, written or unwritten, to Tampa Electric as required by the rule.

Although caught at this game in 2005, see Bright House Exhibit 14, Bright House now has the nerve to argue to this Commission that Tampa Electric's attempt to be paid the proper rental rate for these attachments constitutes improper retroactive billing without notice. Behaving as though Bright House's undisclosed telecom attachments were entitled to the protection of the Commission's notice requirements, Bright House asserts in its supplemental complaint (p. 18) that it had never been given notice of the telecom rates, nor were these rates public information. In other words, Bright House is complaining that it had not been given notice of rates that applied to the telecom use that Bright House had concealed.[6]

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[5] This letter agreement, states, "BrightHouse, LLC understands that the Agreement does not authorize attachments for telecommunications purposes, and represents and warrants that the attachments shall not and until such time as it has entered into a new agreement with Tampa Electric, consistent with Tampa Electric's standard terms for such attachments, use the attachments for delivery of telecommunications services."

[6] Tampa Electric cannot let pass Bright House's reckless assertion at p. 18 of its Supplemental Complaint that Kristina Angiulli, Tampa Electric's Manager of Manager of System Reliability, "acknowledged at her deposition" of May 12, 2009, that a prior declaration by her was not true with respect to whether Tampa Electric's telecom rate for pole attachments was public and available to Bright House. First, Ms. Angiulli was not asked during her May 12, 2009 deposition about her prior testimony, so she could not have "acknowledged" anything about it. On the question of the availability of the telecom rate, she was asked whether Tampa Electric's telecommunications attachment rate has been "publicly filed anywhere." Miss Angiulli interpreted the question to mean whether the telecommunications rate had been filed either in this FCC proceeding or in the related litigation in Hillsborough County court, and she thought it could have been. She knew of no other proceedings in which the rates would have been filed. (See pages

In short, Tampa Electric gave notice to Bright House that its rental rate would be changing the following year, but Bright House did not give notice to Tampa Electric that it was using its attachments to offer telecommunications services. Now Bright House asserts that it did not have adequate notice of the rates that it had no intention of paying. The party in breach here of its obligations under the Commission's rules is Bright House, not Tampa Electric.

VIII. The Rates Calculated by Bright House Cannot be Credited.

Section III of Bright House's supplemental complaint contains Bright House's recalculation of Tampa Electric's pole attachment rental rates for cable and telecom attachments for the years 2003 through 2009, as Bright House contends they should have been calculated by Tampa Electric. These recalculations are based on the alleged errors in Tampa Electric's methodology, as discussed in the sections above.

Because these recalculations rely on the arguments advanced by Bright House, especially the total number of poles, the rate of return carrying charge, and the average number of attaching entities, all of which Tampa Electric has shown above to be erroneous, these recalculations cannot be credited and can form no basis for the relief requested. Where Bright House has identified a mistaken methodology employed by Tampa Electric, such as inclusion of maintenance supervision expenses, or exclusion of conduit plant investment, the effect on the rental rate is relatively insignificant and will be corrected going forward by Tampa Electric.

Bright House repeatedly says that it is "entitled to a refund or credit of any amount it paid for pole attachment rates" as computed by Tampa Electric for the years in question. *Bright House fails to inform the Commission that it has never paid the invoiced amounts for telecom*

36 and 37 of Kristina Angiulli's May 12, 2009, deposition, attached hereto as TECO Exhibit 4.) Ms. Angiulli's answers to imprecise questions cannot now be the basis for an assertion that she "acknowledged" giving untrue prior testimony.

attachments based on these rates. Instead, it has taken it upon itself to decide the telecom rate it shall pay and the attachments for which it will pay that rate (TECO Exhibit 1 hereto). Bright House comes close to admitting this in footnote 5 of its supplemental complaint, where it states that it is willing to pay the telecom rate for attachments used to provide telecommunications services, but it is not obligated to do so under its agreements with Tampa Electric.

Actually, Bright House *is* obligated to pay the invoiced amounts. As shown in Bright House Exhibit 14, Bright House is the successor in interest to ten agreements dating back to 1965. Five of the agreements were executed prior to the passage of the original Pole Attachment Act which created the cable rate and all of the agreements were executed prior to the creation in 1996 of the telecom rate. Obviously, the parties could not have anticipated these new rates when the parties executed the agreements.

Nonetheless, once Congress and the FCC acted to create the new rates, the agreements were modified as a matter of both federal and Florida law to include, initially, the cable rate, and later, the telecom rate. *See e.g., City of Plantation* v. *Utilities Operating Co., Inc.*, 156 So. 2d 842 (Fla. 1963); *Miami Bridge Co.* v. *Railroad Com.*, 20 So. 2d 356 (Fla. 1944); *see also Nationwide Mutual Fire Ins. Co.* v. *Bryar*, 349 So. 2d 1221 (Fla. 5DCA 1977); and *Fla. Power Corp.* v. *City of Casselberry,* 793 So. 2d 1174, 1178 (2001). .

Of course the original agreements do not explicitly state that Bright House must pay a rental rate that did not come into existence until over 30 years later. The thrust of the November 21, 2005 letter that is contained in Bright House Exhibit 14, is that Bright House has failed to live up to a commitment that it made the year before that it would enter into an agreement to replace the old, outdated agreements and conform the parties' written agreement to the

modifications that had been effected by operation of law. Thus, the footnote 5 display of magnanimity is not what it seems.

This entire section of Bright House's supplemental complaint is, at best, an academic exercise and an exercise that is based on erroneous arguments. The relief requested should be denied out-of-hand by the Commission.

IX. Bright House Is Not Entitled to Refunds or Credits.

In Section IV of its supplemental complaint, Bright House argues for refunds of overpayments, not only for the years covered by its sham placeholder complaint – which even when supplemented here has been shown to be largely unsubstantiated – but also for the period between 2003 and 2005, prior to its complaint.

Bright House argues that the Commission's prohibition against recovery of overpayments for years prior to the complaint does not apply because "'this is not the normal situation anticipated' by the rules." (Supplemental complaint, p.32). Indeed, it is not. Normally the parties before the Commission are expected to have abided by the Commission's rules when they come to the Commission for relief. That being the case, Bright House would have disclosed to Tampa Electric, pursuant to Rule 1.1403(e) its use of its pole attachments to offer telecommunications services as early as 2001. Bright House and Tampa Electric would have negotiated a pole attachment agreement covering both cable attachments and telecom attachments, to replace the ten 30-year-old cable agreements to which Bright House had succeeded. If there were any disputes about the reasonableness of the rates, terms, and conditions contained in the agreement, Bright House would have come to the Commission for resolution.

Now, with the noose of inconvenient truths drawing tighter, Bright House is reduced to arguing that it did not have proper notice of the rate that it was evading and that the rate had not been properly calculated. A timely complaint to properly challenge the rate and obtain any warranted relief *could* have been filed, had Bright House followed the normal expectation of behavior that complied with the Commission's rule.

Bright House instead wants the Commission to deviate from Rule 1.1410(c) that says that relief may be ordered from the date that the complaint was filed. Bright House would have the Commission read in "or such other date as the ends of justice may require." The rule is what it is and no such flexibility is expressed or implied. The requested relief is not within the Bureau's delegated authority to grant. It is certainly not warranted in a case where the requesting party has consciously created the circumstance that precludes its relief.

CONCLUSION

The complaint against Tampa Electric filed by Bright House with the Commission more than three years ago was a mere placeholder. Tampa Electric has challenged the validity of this procedure from the start. Now Bright House would have the Commission believe that it has obtained information that bears out what had earlier been only speculation and surmise. Bright House has found a minor irregularity here and there – honest mistakes honestly executed, such as including in the rental rate calculations the cost of supervising pole maintenance and not including the cost of underground plant that is not associated with poles. Tampa Electric has acknowledged these mistakes and committed to revise its methodology going forward. Overall, these mistakes have only a small impact on the calculated rate.

But Bright House contends that it has found errors in formula factors, such as the number of poles in the system, that would have a significant impact on the rental rates. Tampa Electric

has shown, however, that this factor was not erroneous. Bright House points to Tampa Electric's determination of the average number of attaching entities that included poles to which only Tampa Electric was attached. Correcting this honest mistake results in an increase of only .54 attaching entities, not in invalidation of Tampa Electric's presumptive average.

Bright House has provided the Commission with suggested rate revisions for every year going back to 2003, but its methodology relies on the erroneous arguments made regarding significant factors in the formula and, with regard to the telecom rate, fails to disclose that the number of attaching entities used in these calculations is not the number suggested in its argument. No relief can be granted based on these erroneous calculations.

Based on filing nothing more than a placeholder complaint, Bright House seeks refunds or credits (for amounts that mostly it did not pay) for years prior to the years covered by the complaint. Thus, the reach of an invalid complaint would be expanded, even in the face of a clear Commission rule that limits the scope of relief that can be granted in a proper case, which plainly is not the case here.

The controversy here stems not from overcharging for pole attachment rental by Tampa Electric, but from the evasion by Bright House of its duty under the Commission's rules to disclose its telecommunications operations to Tampa Electric. Had Bright House disclosed its telecommunications operations and entered into an agreement to cover them as it had committed to do, this case would not be before the Commission. Bright House is not entitled to relief.

TROUTMAN SANDERS LLP

Robert P. Williams
Raymond A. Kowalski
Eric J. Schwalb

Attorneys for Respondent Tampa Electric Company

Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 885-3438

September 4, 2009

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

In the Matter of	)	
	)	
BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	
	)	

TECO Exhibit

1

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

In the Matter of	)	
	)	
BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	
	)	

Affidavit of Kristina Angiulli

There personally appeared before the undersigned officer, duly authorized to administer oaths, Kristina Angiulli who, after being duly sworn, deposes and states that the facts set forth herein are known to her to be true and correct and based on her own personal knowledge:

1. My name is Kristina Angiulli and I am presently employed by Tampa Electric Company as Manager of System Reliability. From September, 2000, until February, 2006, I held the position of Joint Use Administrator with Tampa Electric Company. From February, 2006 until the end of 2008, I held the position of Manager of Construction Services. As part of my duties in both of my previous positions with Tampa Electric Company, I oversaw and managed Tampa Electric Company's pole attachment agreements with telecommunications and cable television companies, including Bright House Networks, LLC ("Bright House") and its predecessors.

2. In 2000, Tampa Electric Company commissioned a field study to gather information about all of our electric service distribution poles in the field, including extensive

factual data relating to the poles themselves and the facilities attached to the poles The field study began in September, 2000, and was completed in November, 2001.

3. In the fall of 2005, Tampa Electric Company reinvoiced Bright House for the unpaid difference between the cable rental rate and the telecommunications rental rate for its attachments between 2001 and 2005. In February, 2006, our assertions were confirmed that Bright House had been using its facilities attached to Tampa Electric Company's distribution poles to provide telecommunications services in the years 2001 - 2005. Bright House has never paid the invoiced amount for its telecom attachments. Instead, Bright House has decided for itself the telecom rental rate that it will pay and the number of poles for which it will pay its version of the telecom rate. This is the only telecom rent that Bright House has paid to Tampa Electric Company.

4. When Tampa Electric Company initially determined the average number of attaching entities on its poles for purposes of calculating the telecommunications rental rate for pole attachments to be reinvoiced to Bright House, Tampa Electric Company included in its

[Remainder of this page intentionally left blank]

calculations poles to which only Tampa Electric Company is attached. This resulted in 2.08 as the average number of attaching entities. When poles to which only Tampa Electric Company is attached are excluded from the calculation, the average number of attaching entities increases to 2.62.

Kristina Angiulli

Kristina Angiulli

9/1/09

Date

Sworn to and subscribed
before me this 1st day of
September, 2009.

Diana King

Notary Public State of Florida
Diana King
My Commission DD606864
Expires 10/30/2010

Notary Public
My Commission Expires:

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

In the Matter of	)	
	)	
BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	
	)	

TECO Exhibit

2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into earnings for 1995 and 1996 of Tampa Electric Company.	)	DOCKET NO. 950379-EI ORDER NO. PSC-95-0580-FOF-EI ISSUED: May 10, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING RETURN ON EQUITY AND DEFERRING REVENUES FOR TAMPA ELECTRIC COMPANY

BY THE COMMISSION:

On March 1, 1995, Tampa Electric Company (TECO) submitted its 1995 Forecasted Earnings Surveillance Report in compliance with Rule 25-6.1353, Florida Administrative Code. Per the report, TECO forecasted an achieved return on equity (ROE) of 14.28% for 1995. This exceeds the top of TECO's currently authorized ROE range (10.35% to 12.35%, with an 11.35% midpoint) and if achieved would result in approximately $25.8 million of excess revenues for 1995. Data for 1996 indicated a projected ROE of 13.81%, representing excess revenues of approximately $21.9 million. For 1994, TECO reported an actual achieved ROE of 11.26%, which included a one-time restructuring charge of $21.3 million. If the restructuring charge is excluded, TECO's 1994 achieved ROE would be 12.87%.

Due to the high level of TECO's forecasted earnings, a meeting was scheduled on March 22, 1995, to explore the possible disposition of excess earnings. TECO, the Office of the Public Counsel, The Florida Industrial Power Users Group (FIPUG) and Staff participated in the meeting. At this and subsequent meetings, various proposals were proffered concerning the disposition of the excess revenues.

The final proposal proffered by TECO contains nine separate provisions (See Attachment). Among other things, TECO proposes to: (1) establish a new return on equity of 11.75% with a range of 10.75% to 12.75%, effective January 1, 1995; (2) irrevocably defer a revenue amount of $15 million for 1995; (3) defer 50% of any

revenues in excess of an 11.75% ROE up to a net 12.75% ROE and to defer all revenues in excess of a net 12.75% ROE; (4) defer any deferred revenues until 1997 and accrue interest at the commercial paper rate; and (5) end the oil backout clause, effective January 1, 1996. We have considered TECO's entire proposal and find it reasonable. The following provisions are significant in our approval of the proposal:

Return on Equity - A return on equity (ROE) of 11.75% is within the range of reasonableness for TECO. We approve 11.75%, with a range of 10.75% to 12.75%, as the Company's authorized ROE for any and all regulatory purposes effective January 1, 1995.

Initial Revenue Deferral - TECO will record a revenue deferral of $15 million. This means that TECO will reduce its operating revenues and establish a liability in the amount of $15 million FOR 1995. This revenue deferral is irrevocable and will be treated as "excess" earnings regardless of the actual level of TECO's earnings for 1995.

Additional Revenue Deferral - After giving consideration to the $15 million deferred revenue reduction, TECO will defer 50% of any actual revenues in excess of an 11.75% ROE up to a net earned ROE of 12.75%. Any actual revenues in excess of the net 12.75% ROE will also be deferred without limitation. In essence, TECO has an earnings cap of 12.75% for 1995.

Treatment of Deferred Revenues - For regulatory purposes such as determining earnings and calculating interest, any revenue deferred until 1997 will be treated as if it was earned evenly throughout 1995, or one-twelfth per month.

Oil Backout Clause - Any oil-backout project costs incurred beginning January 1, 1996, will no longer be recovered through the oil-backout cost recovery clause. For earnings surveillance purposes, the oil-backout investment and expenses should be included as a part of regular operations in the rate base and the income statement.

Projected oil-backout costs for the period October 1, 1995 through December 31, 1995 will be recovered during that period. Any remaining true-up dollars related to oil-backout costs for 1995 will be recovered as a line item adjustment to fuel costs through the fuel and purchased power cost recovery clause during the period April 1, 1996 through September 30, 1996.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the proposal submitted by Tampa Electric Company to establish a new return on equity, and defer revenues, attached hereto, and made a part hereof, is hereby approved. It is further

ORDERED that this docket shall remain open until after Tampa Electric Company's historical earnings data has been received, and final action has been taken by this Commission to determine the amount of excess earnings for 1995. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

By ORDER of the Florida Public Service Commission, this 10th day of May, 1995.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MAP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 31, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

TAMPA ELECTRIC COMPANY
DEFERRED REVENUE PROPOSAL
4/18/95

ATTACHMENT

The following is Tampa Electric Company's proposal:

1. Tampa Electric Company's ("Tampa Electric") return on equity ("ROE") will be established at a midpoint of 11.75% with a range of 10.75% to 12.75% for all regulatory purposes effective January 1, 1995.

2. For 1995, Tampa Electric will defer a revenue amount of $15.0 million. After the recording of the initial revenue deferral for calendar year 1995, no further revenue deferral will be required for 1995 unless Tampa Electric has earnings above 11.75% as discussed in item 3 below.

3. 50% of any actual revenues contributing to earnings in excess of 11.75% ROE will be deferred up to a net earned ROE of 12.75% on an FPSC adjusted basis per December earnings surveillance reports for calendar year 1995. The company also agrees that any actual revenues in excess of the net 12.75% ROE will be deferred.

4. The 1995 revenues will be deferred until 1997 and will accrue interest at the thirty day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code.

5. The calculations of the actual ROE for 1995 will be on an "FPSC Adjusted Basis" using the appropriate adjustments approved in Tampa Electric's last full price change proceeding. All reasonable and prudent expenses and investment will be allowed in the calculation and no annualized or proforma adjustments will be made.

6. The company's intent for the timing of the return of deferred revenues to customers is that the return will initiate coincident with the effective date of new rates resulting from a full rate case filing that Tampa Electric expects to file by May 1, 1996. In the event that no rate case is required or filed, Tampa Electric agrees to petition the Commission by December 1, 1996 to determine the specific method for return of the deferred revenues and interest to Customers.

7. The calendar year 1995 surveillance report on which the deferred revenues cap will be based, is subject to audit and true-up by the FPSC Staff.

8. Tampa Electric agrees that the oil backout clause will be collapsed effective January 1, 1996.

9. The Commission will retain jurisdiction over all deferred revenues.

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

In the Matter of	)	
	)	
BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	
	)	

TECO Exhibit

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[redacted]
TAMPA ELECTRIC

Post-it® Fax Note 7671	Date 8-9	# of pages 2
To Bob Williams	From Kris Bright	
Co./Dept.	Co.	
Phone #	Phone # 813-275-3022	
Fax # 404-962-6771	Fax #	

February 18, 2003

Bright House, LLC.
Attn: Gene White VP Engineering
2600 McCormick Dr., Suite 255
Clearwater, Florida 33579

RE: MOFFAT COMMUNICATIONS/SHAW ASSIGNMENT

Dear Mr. White

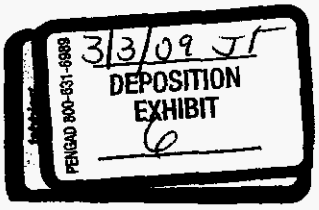
Tampa Electric agrees to transfer the attachment rights of Moffat Communications/Shaw for CATV attachments to BrightHouse, LLC under its Hillsborough County agreement, previously Paragon Cable, provided that Bright House makes the following representations and covenants in favor of Tampa Electric:

1. Within 30 days of signing this letter, BrightHouse, LLC will supply a copy of the transfer of franchise for the above attachments from the governing body able to grant such authority, such as Pasco County and the City of Dade City. This document will verify that BrightHouse, LLC has met all County and City requirements to maintain and operate a CATV system in the territories covered by the Moffat Communications/Shaw agreement.

2. BrightHouse, LLC represents and warrants that it has and shall maintain all necessary and appropriate power, authorization, skill and financial wherewithal to meet all of Moffat Communication's/Shaw's obligations under the Agreement.

3. BrightHouse, LLC understands that the Agreement does not authorize attachments for telecommunications purposes, and represents and warrants that the attachments shall not and until such time as it has entered into a new agreement with Tampa Electric, consistent with Tampa Electric's standard terms for such attachments, use the attachments for delivery of telecommunications services.

4. BrightHouse, LLC agrees to immediately begin negotiations in good faith with Tampa Electric to establish a new agreement governing all BrightHouse attachments within Tampa Electric Company's service territory by June 1, 2004.



5. BrightHouse, LLC represents that it is presently a member of the National Joint Use Notification System, and shall maintain membership in good standing during the life of the Agreement and shall use this system for all notices under the Agreement.

6. BrightHouse, LLC shall provide Tampa Electric with the certificate described in Article X of the old Paragon agreement within thirty days of the signing of this letter.

By signing and returning this letter, and in consideration of the foregoing representations, warranties and covenants, Tampa Electric Company hereby consents to the transfer of attachment rights by Moffat Communications/Shaw to Bright House, LLC under the Bright House, LLC agreement governing Hillsborough County and BrightHouse hereby consents to the representations and covenants herein.

Kristina Angiulli — Date 2/18/04
Kristina Angiulli, Joint Use Administrator
Tampa Electric Company

Eugene M White — Date 2/19/04
Gene White, VP Engineering
BrightHouse, LLC

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

In the Matter of	)	
	)	
BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	
	)	

TECO Exhibit

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BHN of a telecomm rate?
A I can't recall specifically. It may have been when a letter was sent to Bright House from Tampa Electric asserting our belief that they were providing telecommunications service. And along with that letter there could have been an invoice.
Q This was a demand letter that was sent by TECO to Bright House alleging that Bright House was providing a telecommunications service and submitting three years of bills going back for three prior years; is that right?
MR. HOOKER: Object to the form.
Q Does that sound right?
A I'm not certain, sir.
MR. GILLESPIE: I'm going to hand the witness a document that has previously been marked as Deposition Exhibit 9 by TECO in earlier depositions. It's a letter dated November 21, 2005 to Dick Rose at Bright House from Mr. Hernandez at TECO.
Q Just ask you whether that's the letter that you were referring to.
A I'm not certain that this is exactly the letter that I am referring to because I just can't recall specifically the timing.

Q Are you aware of --
A But it could have been.
Q Are you aware of any prior notice to BHN of what TECO's telecommunications rates had been calculated to be before this letter?
A I couldn't be certain.
Q So you're not aware of any prior one?
A I'm not certain whether there was or there wasn't a prior one.
Q I understand, but you can't tell me that there was a prior one, correct?
A I can't tell you that, no.
MR. GILLESPIE: I'd like to go ahead and mark this as Exhibit 19 here and then we'll have copies made of it. Hopefully we can get Mr. Hooker to help us.
(Whereupon, Exhibit No. 19 was marked for identification.)
Q Ms. Angiulli, when was the first time, to your knowledge, that TECO provided any backup for the rate calculations that are -- or for the rates that are contained in the invoice that is attached to this letter from Mr. Hernandez?
MR. HOOKER: Object to the form.
A Unless I did further research into the

records I can't tell you that.
Q So you can't tell me whether there was any backup that was provided to Bright House for the rates prior to the calculations that were supplied to the FCC in connection with the dispute between Bright House and Tampa Electric; is that right?
A I cannot because I don't recall.
Q Are the telecommunications attachment rates of TECO publicly filed anywhere?
A I'm not an attorney so I'm not real sure what's public or not in every case, but I believe that when they were provided as support in either this case in Hillsborough County or in the FCC proceeding that they then became public. Other than that I'm not aware of what we've done or not done.
Q Okay. So just so I understand you, to the extent that the rates and the calculations -- well, to the extent that the rates were subject to affidavits and so on in the FCC proceeding or in this proceeding, they've been publicly filed, correct? Is that what you meant?
A I didn't understand that was a question. Could you repeat it?
(Whereupon, the last question was read back by the court reporter.)
A That's what I'm aware of.

Q You're not aware of any other public filing of the rates other than in these two proceedings?
A I'm not personally aware of any, no.
Q Do you know whether TECO has charged Bright House Networks any different pole attachment rates other than the ones that were the subject of the calculations that were discussed with Mr. Ashford in his deposition this morning, starting from 1999?
A I'm not aware of any that we've charged.
MR. GILLESPIE: I'd like marked as Exhibit No. 20 a letter from Rhoda FitzPatrick at TECO dated June 28, 2002 to Time Warner Communications, with an invoice attached.
(Whereupon, Exhibit No. 20 was marked for identification.)
MR. GILLESPIE: And I'd like marked as Exhibit No. 21 a letter of that same date sent again by Rhoda FitzPatrick to Time Warner Communications. Let me see that other one for a minute.
Exhibit No. 20 -- Exhibit No. 20 has to do with Time Warner Communications called formerly Tampa Cable Television-Jones Intercable.
Now I'd like marked as Exhibit No. 21 a letter of the same date from Rhoda FitzPatrick to

PHONE: 813-251-4538 TOLL FREE 1-866-240-9500 238 E. Davis Boulevard. Suite 202, Tampa, Florida 33606 Fax: 813-254-3624- E-MAIL: bayarearptg@aol.com

VERIFICATION OF RAYMOND A. KOWALSKI

As counsel to Tampa Electric Company, I prepared the exhibits that accompany this response of Tampa Electric Company to the Supplement to Pole Attachment Complaint of Bright House Networks, LLC. In accordance with Section 1.1407 of the Commission's rules, I verify that the exhibits are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing verification is true and correct.

Raymond A. Kowalski

Sept. 4, 2009

CERTIFICATE OF SERVICE

I, Raymond A. Kowalski, hereby certify that copies of the foregoing Tampa Electric Company's Response to Supplement to Pole Attachment Complaint of Bright House Networks, LLC have been served upon the persons listed below by first class mail, this 4th day of September, 2009, postage prepaid or by hand delivery (*) and/or by email (**) .

Alexander P. Starr, Esq.* Chief Market Disputes Resolutions Division Enforcement Bureau Federal Communications Commission 445 12th Street, S.W., Room 5C828 Washington, D.C. 20554	Michael S. Hooker, Esq. Glenn Rasmussen Fogarty & Hooker, P.A. 100 S. Ashley Drive, Suite 1300 Tampa, FL 33602
Rosemary McEnery, Esq.* ** Lisa Griffin* ** Lisa Saks* ** Market Disputes Resolutions Division Enforcement Bureau Federal Communications Commission 445 12th Street, S.W., Room 5C828 Washington, D.C. 20554	Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399
Gardner F. Gillespie** J.D. Thomas, Esq.** Paul A. Werner ** Hogan & Hartson LLP Columbia Square 555 Thirteenth Street, NW Washington, DC 20004	Office of the General Counsel Federal Energy Regulatory Commission 888 First Street, N.E. Washington, DC 20426

Raymond A. Kowalski