Wiley Rein LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

April 24, 2014

Christopher S. Huther
202.719.7197
chuther@wileyrein.com

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Verizon Florida LLC v. Florida Power and Light Company*
File No. EB-14-MD-003
Pole Attachment Complaint Reply

REQUEST FOR CONFIDENTIAL TREATMENT

Dear Ms. Dortch:

Enclosed for filing is a confidential and public copy of the Pole Attachment Complaint Reply of Verizon Florida LLC ("Verizon") in the above-referenced Pole Attachment Complaint proceeding. Verizon has marked each page of the confidential version with the legend "CONFIDENTIAL INFORMATION – NOT SUBJECT TO PUBLIC INSPECTION," and has marked each page of the public version with the legend "REDACTED – FOR PUBLIC INSPECTION."

Pursuant to Section 0.459(a) of the Commission's rules, 47 C.F.R. § 0.459(a), Verizon requests confidential treatment of the information that has been marked as confidential in the Pole Attachment Complaint Reply and Exhibit. Verizon has an obligation to maintain the information as confidential under federal law. This information, accordingly, is entitled to confidential, non-public treatment under the Freedom of Information Act ("FOIA") and the related provisions of the Commission's rules. *See* 5 U.S.C. § 522; 47 C.F.R. §§ 0.0457, 0.0459.

Thank you for your attention to this matter.

Sincerely,

Christopher S. Huther
Counsel for Verizon Florida LLC

cc: Service List

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON FLORIDA LLC, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Respondent.	)	File No. EB-14-MD-003

POLE ATTACHMENT COMPLAINT REPLY

VERIZON FLORIDA LLC

By Counsel:

Michael E. Glover
Of Counsel

William H. Johnson
Katharine R. Saunders
Roy E. Litland
VERIZON
1320 N. Courthouse Rd.
9th Floor
Arlington, VA 22201

Christopher S. Huther
Claire J. Evans
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006

Date: April 24, 2014

I. INTRODUCTION

For more than a year, Verizon pursued negotiations to obtain a just and reasonable rate under the *Pole Attachment Order*[1] and in accordance with the parties' contract – only to be met first by foot-dragging from FPL, and then by a surprise lawsuit in state court. FPL's opposition to Verizon's Pole Attachment Complaint now shows why: FPL has not complied and does not intend to comply with the *Order*'s requirement that Verizon is entitled to a reasonable rate for existing attachments, nor did it ever comply with its contractual obligation to negotiate such a rate in good faith. As explained below, FPL's legal interpretation of the *Order*, if accepted, would eviscerate its meaning and impact. The circumstances here show exactly why that would be the case, and why Verizon is entitled to the relief it seeks.

FPL demands a rate from Verizon that is over four times the rate it charges Verizon's competitors, and consistently refuses to engage in any good faith negotiation to revise this rate as the contract requires, even as FPL leases unused space that Verizon pays for to third party attachers for additional rent. *See* Ex. 1 at 4-5. And FPL asserts that despite the *Order*'s requirements, Verizon has no "reasonable commercial expectation" that it will ever be able to renegotiate the existing rate for the approximately 65,000 FPL poles to which Verizon is currently attached. *Id.* at 7. The Commission should not allow its *Pole Attachment Order* to be so easily nullified.

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[1] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff'd, Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir.), *cert denied*, 134 S. Ct. 118 (2013).

II. ARGUMENT

A. Verizon Acted In Good Faith And Complied With The Commission's Rules And Its Contractual Obligations.

FPL claims that Verizon has failed to comply with the Commission's rules and its contractual obligations following the *Pole Attachment Order*. Not so. After the Commission issued its *Pole Attachment Order*, Verizon requested renegotiation of its rental rate in accordance with the parties' contract and the Commission's intention that the parties engage in "better informed pole attachment negotiations" in light of the *Order*.[2] Verizon then requested face-to-face executive level discussions, [redacted] Verizon's representatives at each face-to-face negotiation had "sufficient authority to make binding decisions" regarding attachments to FPL's poles.[4]

But despite the provisions of the *Pole Attachment Order* that contemplated that existing attachments should have the benefit of a just and reasonable rate, and the contractual terms that expressly provide for the opportunity to renegotiate the rate, FPL refused to negotiate in good faith to determine a lawful rate. Indeed, it has flatly refused to consider any proposed

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[2] *See* Compl., Ex. 1 at § 11.1 ("[T]he adjustment rate shall be subject to renegotiation at the request of either party."); *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218).

[3] *See id.* at 5286 (¶ 100) ("[W]e encourage parties to meet face-to-face for these executive-level discussions"); [redacted]

[4] *See* 47 C.F.R. § 1.1404(k). Verizon's representatives at the January 27, 2012 face-to-face meeting included Cissy George, who FPL notes was then "in charge of [Verizon's] nation-wide joint use program." Response, Ex. A ¶ 50. [redacted]

modification to the rate and rate formula for existing attachments. With FPL continuing to invoice at the unjust and unreasonable rate well after the FCC's *Order* took effect, Verizon adjusted FPL's invoice to reflect the undisputed amounts that it estimated were due. This decision was consistent with State law, which permits payment of undisputed amounts pending resolution of a dispute.[5] It was also consistent with the Commission's prior consideration of a Pole Attachment Complaint where a party "stopped paying" pole rent invoices that the Commission ultimately found unjust and unreasonable "as an incentive for [the other party] to negotiate."[6]

Although Verizon has continued to be willing to meet to negotiate a fair rate and rate formula consistent with its contractual obligations and the Commission's *Order*, FPL abruptly cut off discussions when it filed its state court complaint in April 2013. Since then, Verizon has properly sought resolution of the rate dispute – first through a primary jurisdiction referral to the FCC, second through a Counterclaim premised on the *Order*'s recognition that parties could "pursue relief in state fora," 26 FCC Rcd at 5338 (¶ 220), and third through this Pole Attachment Complaint proceeding. [redacted]

[5] *See e.g., Leatherwood v. Sandstrom*, 583 So. 2d 390, 392 (Fla. 4th DCA 1991) ("[W]ith that issue still pending it was error to require payment of the mortgagee in full . . . . The trial court instead could permit payment of undisputed amounts . . . .").

[6] *See Appalachian Power Co. v. Capitol Cablevision Corp.*, 49 Rad. Reg. 2d (P&F) 574, 575 (¶ 4) (1981); *cf. In re Verizon Pa. Inc.*, 16 FCC Rcd 17419, 17443 (¶ 40) (2001) (approving billing system dispute procedure under which "Verizon does not require competitive LECs to pay disputed amounts until the dispute is settled").

B. Verizon Is Entitled To Rate Relief For Existing Attachments To FPL's Poles.

FPL devotes most of its Response to the argument that Verizon is not entitled to rate relief for its existing attachments. *First,* FPL argues that the Commission cannot apply a new rate to existing attachments because it would be impermissibly retroactive. Response at 10-14. But to the contrary, the Commission has long had authority under Section 224 "after hearing a complaint and responsive pleadings, to take whatever action it deems 'appropriate and necessary' if it finds a particular rate, term, or condition to be unjust or unreasonable."[7] This broad authority has been expressly confirmed in the Commission's regulations to include the right to "[t]erminate the unjust and/or unreasonable rate," "[s]ubstitute into the pole attachment agreement the just and reasonable rate . . . established by the Commission," and "[o]rder a refund, . . . if appropriate." 47 C.F.R. § 1.1410(a). Moreover, the Commission has exercised this authority to apply a new rate to existing attachments on numerous occasions[8] – including in the very case on which FPL relies, where the court upheld the Commission's decision to replace an existing rate and substitute a new, just and reasonable one for all attachments under that contract.[9]

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[7] *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 77 FCC.2d 187, 195 (¶ 22) (1980).

[8] *See Teleport Commc'ns Atlanta, Inc. v. Ga. Power Co.*, 16 FCC Rcd 20238, 20239 (¶ 4) (2001) (substituting new rate for "attachments [that] were made under a contract executed by the parties"); *Time Warner Entertainment v. Fla. Power & Light Co.*, 14 FCC Rcd 9149, 9154 (¶ 14) (1999) (substituting new rental rate "for the existing rate in the Agreements"); *Teleprompter of Fairmont, Inc. v. Chesapeake & Potomac Tel. Co.*, 85 FCC.2d 243, 244 (¶ 2) (1981) ("[W]e substituted the maximum just and reasonable rate for the $4.00 rate set in the contract between the parties.").

[9] Response at 13 (quoting *Ga. Power Co. v. Teleport Commc'ns Atlanta, Inc.*, 346 F.3d 1033, 1042 (11th Cir. 2003), which affirmed *Teleport Commc'ns Atlanta, Inc. v. Ga. Power Co.*, 16 FCC Rcd 20238 (2001)).

The *Pole Attachment Order* merely provided new guidance regarding this remedial authority, and it did so prospectively.[10] As the Commission explained, "[w]e decline to apply our new interpretation of section 224 retroactively, and make clear that incumbent LECs only can get refunds of amounts ***paid*** subsequent to the effective date of this Order."[11] Thus, there is no question that Verizon can seek renegotiation of the rate for existing pole attachments going forward, at a rate that is at a minimum not more than the new telecom rate, which is "just, reasonable, and fully compensatory"[12] and here, some 75 percent less than what Verizon is currently paying.

Second, FPL asserts that the age of the parties' terminated Agreement insulates it from challenge. *See* Response at 15. But the Commission was clear that its deference to existing agreements was limited to those "entered into by parties with relatively equivalent bargaining power."[13] That was not the case here. According to FPL, Verizon's predecessor owned just 7.8 percent of the joint use poles in the decade before the Agreement was signed, *id.*, Ex. A ¶ 9, and [redacted] And in any event, the parties' contract

[10] *NCTA v. FCC*, 567 F.3d 659, 670 (D.C. Cir. 2009) ("[W]e think it readily apparent that the Commission's action has only 'future effect'" because it "purports to alter only the present situation, not the past legal consequences of past actions.") (citation omitted).

[11] *Pole Attachment Order*, 26 FCC Rcd at 5334 (¶ 214 n.647) (emphasis added).

[12] *Id.* at 5299 (¶ 137). The FCC also "expressly consider[ed] the relative benefits and burdens of applying its rule to existing contracts and, after extensive analysis, concluded that [regulation] of existing contracts was essential." *NCTA*, 567 F.3d at 671; *see also Pole Attachment Order*, 26 FCC Rcd at 5327-31 (¶ 199-208) (considering need for rule), 5335 (¶ 216) (discussing review of "existing agreements"). These same considerations establish that the *Order* does not violate the Due Process Clause. *See, e.g.*, *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) (affirming economic legislation with retroactive effect because it had a "legitimate legislative purpose furthered by rational means").

[13] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216).

contemplated the renegotiation of the rate and rate formula upon the request of either party, but FPL has refused to meaningfully engage in any such renegotiation in the case of its unlawful rate on the tens of thousands of existing attachments.

Third, FPL argues that Verizon is not entitled to relief because it cannot show that "it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement."[14] But Verizon *has shown* that it cannot obtain "a new arrangement" for *existing attachments*. FPL has only "offered Verizon a pole attachment agreement similar to their competitors for *new attachments*." Response, Ex. A ¶ 46 (emphasis added). In FPL's view, [redacted]

Fourth, FPL argues that rate relief would be unfair because FPL has made "substantial investments in building and maintaining a strong and reliable system designed to accommodate Verizon's request for four feet of space." Response at 17. The claim that Verizon *requested* four feet of space is unsupported by evidence and belied by FPL's acknowledgment that it has long considered Verizon's space available for use by third parties. Ex. 1 at 5. Moreover, Verizon's allocated space is not alone responsible for the height and strength of FPL's pole network because FPL also uses its poles for its own attachments and for third party attachments. FPL says that it entered the Agreement in 1975 with the understanding that it could lease space on its poles to third parties. *Id.* at 4. In 1978, Congress found that "[i]t is the general practice of the cable television (CATV) industry in the construction and maintenance of a cable system to

[14] Response at 15 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216)).

lease space on *existing utility poles* for the attachment of cable distribution facilities."[15] Additionally, FPL has invested significant resources not on behalf of Verizon's attachments, but in order to strengthen its own "*electric infrastructure*" in order to better weather storms and enhance emergency response capabilities.[16]

Fifth, FPL argues that rates can only be set by agreement because of the evergreen provision in the parties' contract. Response at 20. However, the evergreen provision, read in context of the Agreement's renegotiation provision, contemplates that there is a requirement of reasonableness for the duration of this provision.[17] Because FPL has failed to renegotiate the rental rate and rate formula in good faith, it cannot rely upon the evergreen provision. Regardless, an evergreen clause cannot eliminate the Commission's statutory authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable." 47 U.S.C. § 224(b)(1). The Commission has already acknowledged that there may be circumstances when an ILEC "genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement" and it will consider those in the

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[15] S. Rep. 95-580, 95th Cong., 1st Sess. 1977, 1978 U.S.C.C.A.N. 109, 120 (emphasis added). The Commission advised the Legislature that by 1977 there were "over 7,800 CATV pole attachment agreements in effect" and that "[a]pproximately 95 percent of all CATV cables [were] strung above ground on utility poles." *Id.* The Senate Report concluded that "owing to a variety of factors, . . . there is often no practical alternative to a CATV system operator except to *utilize available space on existing poles*." *Id.* at 121 (emphasis added).

[16] FPL's Status Report and Update of its *Storm Preparedness Initiatives*, Executive Summary, Florida PSC Docket No. 060198-EI (Mar. 1, 2007) (emphasis added); *see also* Petition of Florida Power & Light Company for Approval of Storm Hardening Plan at 4-6, Florida PSC Docket No. 070301-EI (filed May 7, 2007).

[17] *See* Compl., Ex. 1 at §§ 11.1 ("[T]he adjustment rate shall be subject to renegotiation at the request of either party.") and 11.2 (evergreen provision applying "[i]n the event the parties cannot, within six (6) months after a request under Section 11.1 is made, agree upon rental payments").

course of a complaint proceeding.[18] FPL's reliance on the evergreen provision establishes that Verizon lacks a genuine ability to terminate the contract as to the existing attachments.

Finally, FPL argues that Verizon must have bargaining power to negotiate just and reasonable rates because its parent is "the second largest telecommunications provider in the world." Response at 23. FPL, however, does not dispute that a significant pole ownership disparity has always existed between the parties to this dispute. According to FPL, Verizon's predecessor owned 7.8% of the joint use poles in 1960 and Verizon Florida owned 9% in 2011. *Id.*, Ex. A ¶ 9. This disparity, combined with the excessive rates that FPL has imposed over the years and a rate formula that charges Verizon for half of FPL's pole costs regardless of how much space Verizon occupies on FPL's poles, confirms that Verizon has (and always had) inferior bargaining power in the sense that the Commission used the term. Verizon is, therefore, entitled to rate relief.[19]

C. Verizon Is Entitled To A Properly Calculated Rental Rate.

FPL alternatively argues that, if Verizon is entitled to a new rate, it should be calculated under the pre-existing telecommunications methodology, multiplied by four, and made effective

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[18] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216). FPL's description of the evergreen clause contradicts its argument that Verizon improperly failed to "sign and sue" a new agreement after the Joint Use Agreement terminated. *See* Response at 32-33. The sign-and-sue rule applies where an ILEC is "compelled to sign a new pole attachment agreement with rates, terms, or conditions that it contends are unjust or unreasonable simply to maintain pole access." *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.655). Here, there was no reason to "sign and sue" because Verizon had access to FPL's poles pursuant to the evergreen clause following termination of the Agreement. *See* Response at 20 (stating that, post-termination, the Joint Use Agreement "continues to govern Verizon's existing attachments on FPL's poles").

[19] *See Pole Attachment Order*, 26 FCC Rcd at 5329 (¶ 206) ("Today, incumbent LECs as a whole appear to own approximately 25-30 percent of poles and electric utilities appear to own approximately 65-70 percent of poles," meaning that "incumbent LECs may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations in some cases.").

on the date of the Commission's order in this proceeding. *See* Response at 21-37. Verizon is instead entitled to a properly calculated rate under the new telecommunications methodology made effective on July 12, 2011, the effective date of the *Pole Attachment Order*.[20]

First, FPL points to the terms of the parties' terminated Agreement as advantageous to Verizon when compared to its CLEC licensees. *See* Response at 27-30. But FPL asserts that Verizon relinquished rights under the Agreement when it was terminated. *See id.*, Ex. A ¶ 43. And, in any event, Verizon seeks to be comparably situated to a CLEC attacher by attaching based on the terms and conditions of FPL's license agreement with Verizon's CLEC affiliate, MCI Communications Services, Inc.[21] Because those terms are, by definition, "comparable to those that apply to a telecommunications carrier . . . , competitive neutrality counsels in favor of affording [Verizon] the same rate."[22]

Second, FPL inflates its calculated rate by misusing the four feet of space *allocated* to Verizon under the agreement. *See id.* at 23, 33-35. The FCC's rate methodology looks to the space *occupied*, not *allocated*.[23] Here, there is no dispute that Verizon generally does not *occupy* four feet of space on FPL's poles,[24] so the space occupied input should be no more than 1.25

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[20] Verizon has alternatively requested a rate calculated under the Commission's pre-existing telecommunications formula which, for 2011, was $12.91 per pole. Compl. ¶¶ 53-54, 61.

[21] [redacted]

[22] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

[23] 47 C.F.R. §§ 1.1409(e),1.1418.

[24] *See, e.g.*, Ex. 1 at 4-5 (noting the availability of Verizon's space for third party attachments).

feet.[25] FPL then compounds its error by multiplying the rate it calculates by four. This turns the Commission's per pole rate methodology into a per foot rate methodology[26] that allows FPL to charge Verizon for four times the proper amount of unusable space on the pole.[27]

Third, FPL increases its calculated rate by $0.79 per pole (from $8.52 to $9.31) through use of the Commission's presumed 37.5 foot pole height, rather than its actual 41 foot pole height.[28] FPL admits that the "rate calculation worksheet provided by FPL to Verizon" establishes a 41-foot pole input, but contends that this worksheet was only a "snapshot" of FPL's data. Response at 35. If FPL had data showing that "the correct average pole height should be the presumptive height of 37.5 feet," *id.*, it should have produced the data. It did not. In the absence of such data, the Commission should not rely on FPL's unsupported pole height assertion.

Finally, the proper effective date for relief in this proceeding is the effective date of the *Pole Attachment Order*, and not the effective date of the Commission's order in this proceeding. The Commission was clear that ILECs "can get refunds of amounts paid subsequent to the effective date" of the *Pole Attachment Order*[29] and revised its rules to eliminate the effective

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[25] Compl., Ex. A ¶ 9.

[26] Consolidated Partial Order on Reconsideration, *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, 16 FCC Rcd 12103, 12122 (¶ 31) (2001) (describing formula "to determine the maximum just and reasonable rate *per pole*") (emphasis added).

[27] Unusable space must be allocated *equally* among attaching entities. 47 U.S.C. § 224(e)(2) (requiring "an equal apportionment of such costs among all attaching entities"); 47 C.F.R. § 1.1417(a) (requiring that "unusable space . . . be allocated to such entity under an equal apportionment of such costs among all attaching entities").

[28] *See* Response at 35; Compl., Ex. B ¶ 11.

[29] *Pole Attachment Order*, 26 FCC Rcd at 5334 (¶ 214 n.647).

date that FPL now seeks.[30] Here, therefore, where Verizon promptly sought renegotiation of its rate in June 2011 in accordance with its contract and the Commission's rules, a new rate should apply as of July 12, 2011.

III. CONCLUSION

For the foregoing reasons, and those detailed in its Pole Attachment Complaint, Verizon respectfully requests that the Commission grant the relief it has requested.

Respectfully submitted,

VERIZON FLORIDA LLC

By: _____

William H. Johnson
Katharine R. Saunders
Roy E. Litland
VERIZON
1320 N. Courthouse Rd.
9th Floor
Arlington, VA 22201

Christopher S. Huther
Claire J. Evans
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006

Attorneys for Verizon Florida LLC

Michael E. Glover
Of Counsel

Dated: April 24, 2014

[30] *See id.* at 5289 (¶ 110) (amending rules to "allow monetary recovery in a pole attachment action to extend back as far as the applicable statute of limitations allows" because "allowing monetary recovery *only* from the date the complaint is filed . . . [would] discourage[] pre-complaint negotiations between the parties to resolve disputes about rates, terms and conditions of attachment"); *see also* 47 C.F.R. § 1.1410(a)(3); *AEP*, 708 F.3d at 190 (finding it "hard to see any legal objection to the Commission's selection of any reasonable period for accrual of compensation for overcharges or other violations of the statute or rules").

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2014, I caused a copy of the foregoing Reply to be served on the following (service method indicated):

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(original and three copies of confidential and public versions by hand delivery)

Maria Jose Moncada
Florida Power and Light Company
700 Universe Boulevard
Juno Beach, FL 33408
maria.moncada@fpl.com
(confidential and public versions by overnight mail and email)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(public version by overnight mail)

Alvin B. Davis
Squire Sanders (US) LLP
200 South Biscayne Boulevard, Suite 4100
Miami, FL 33131
alvin.davis@squiresanders.com
(confidential and public versions by overnight mail and email)

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(public version by overnight mail)

Charles A. Zdebski
Gerit F. Hull
Jeffrey P. Brundage
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW, Suite 1200
Washington, DC 20006
czdebski@eckertsemans.com
ghull@eckertseamans.com
jbrundage@eckertseamans.com
(confidential and public versions by overnight mail and email)

Claire J. Evans

Exhibit 1

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FLORIDA POWER & LIGHT CO.,

Plaintiff,

Complex Business Litigation Section (40)
Case No. 13-14808

v.

VERIZON FLORIDA LLC,

Defendant.

_____/

FPL's MOTION TO DISMISS VERIZON'S AMENDED COUNTERCLAIMS

INTRODUCTION

Every day is a new day for Verizon Florida LLC ("Verizon"). Unimpeded by the express provisions of its long-standing Joint Use Agreement ("JUA") with Florida Power & Light Company ("FPL") and disregarding as if never requested the express relief it seeks in its absurdly belated Complaint to the Federal Communications Commission ("FCC"), it now files its untimely Amended Counterclaims. It asserts that FPL is somehow being unjustly enriched by doing precisely what Verizon agreed FPL could do in the JUA. Verizon agreed that third-parties could attach to Verizon's space on the joint use poles and, more specifically, agreed that the fee paid by Verizon to FPL would in no way be affected by the amounts paid by the third parties. Emboldened by its two-year long refusal to pay the contractually required attachment rate, Verizon apparently feels entitled to ignore these unequivocal provisions along with the balance of the JUA as well. This "claim" flies in the teeth of the express language of the JUA.

The balance of the Amended Counterclaims invite this Court, once again, to invade the exclusive negotiating province of the parties and to require relief that essentially adopts Verizon's one-sided view of the pole attachment world. Relief, it should be noted, that mirrors the relief it is now seeking in its FCC Complaint (the "FCC Complaint"). Having been compelled by this Court to pursue an administrative remedy that it assiduously ignored since this case began, Verizon now suggests that the Court join Verizon in ignoring – for purposes of the Amended Counterclaims – that it ever filed an FCC Complaint seeking a rate adjustment that only the FCC can grant.[1]

FPL bargained with Verizon. That fact jumps out from the Amended Counterclaims themselves. But, FPL did not accede to Verizon's demands. That is equally clear. A failure to reach agreement is not a breach of contract, it is a failure to reach agreement. Having been unable to essentially have FPL endorse through negotiations Verizon's unilateral rate reduction, Verizon has now turned to the FCC for this identical purpose. What possible place then can this same issue have in this litigation, before it has been addressed by the FCC, whenever that might occur.

ARGUMENT

Count I of Verizon's Amended Counterclaim alleges that FPL has been unjustly enriched by collecting pole attachment rent from third party attachers and not somehow crediting Verizon with these amounts. Counts II and III allege that FPL breached the JUA and the implied covenant of good faith and fair dealing by essentially disagreeing with Verizon's aggressive posturing during the parties' attempts to negotiate a new agreement.[2] Although relabeled as "new" claims, Verizon again asks the Court to determine that the parties' long-standing JUA is unjust and

[1] At the same time, Verizon has moved to stay this case because of the pendency of this very issue before the FCC.

[2] Negotiations that occurred with the back drop of Verizon's unilateral reduction of its contract payments by 75%.

unreasonable. As with Verizon's original counterclaim, which this Court dismissed, each of the Amended Counterclaims asks the Court either to ignore the JUA entirely or to simply impose a different arrangement in favor of Verizon. The Court can do neither.

As demonstrated below, Verizon's unjust enrichment claim is barred as a matter of law by the express terms of the JUA.[3] Under the JUA, either pole owner is permitted to collect pole attachment rents from third parties without having to reduce the contractual payment requirements. Verizon's purported "breach of contract" claims, too, must be dismissed because, despite this Court's clear guidance, Verizon once again has failed to exhaust its administrative remedies.

A. Count I: Verizon's Unjust Enrichment Claim Fails as a Matter of Law

1. The JUA permits FPL To Collect Rent From Third Parties With No Impact on Verizon's Payment Obligations

The JUA expressly recognizes that FPL may collect rent from third party attachers while leaving Verizon's payment obligations intact. Verizon, of course, has the same rights. Section 10.10 states:

> Section 10.10 Rental or other charges paid to the Owner by a third party will in no way affect the rental or other charges paid between the parties to this Agreement.

The JUA also recognizes – and the parties always recognized - that third parties might attach to Verizon's or FPL's poles in the future. In some instances, third parties were already attached to the shared poles when the contract was executed in 1975. More pointedly, the JUA's

[3] The JUA is incorporated in Verizon's Amended Counterclaim. *See, e.g.*, Am. Countercl. ¶¶ 6-10, 16, 23 and 30 (incorporating JUA provisions). Accordingly, the terms of the JUA must be considered by the Court in evaluating this Motion To Dismiss. *Bott v. City of Marathon*, 949 So. 2d 295, 296 (2007) ("In considering a motion to dismiss the trial court was required to consider the exhibit . . . attached to and incorporated in the amended complaint" and quoting Florida Rule of Civil Procedure 1.130(b)). A copy of the non-confidential portions of the Joint Use Agreement is attached as Exhibit A, for the Court's reference.

express terms acknowledge that some of those third party attachments might be located in the space allocated to the joint user. The pertinent sections of Article XIV state:

> Section 14.2 If either of the parties hereto has, as Owner, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be constructed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges . . . .
>
> Section 14.3 In the event that attachments to be made by a third party require rearrangements or transfer of the Licensee's[4] attachments to maintain standard space (as defined in Section 1.1.7), and standard clearance (as outlined by the Code), the Licensee shall have the right to collect from said third party all costs to be incurred by the Licensee to make such required rearrangements or transfers prior to doing the work.
>
> . . .
>
> Section 14.5 Third party space requirements must be accommodated without *permanent* encroachment into the standard space allocation of the Licensee; therefore, neither party hereto shall, as Owner, lease to any third party, space on a joint use pole within the allotted standard space of the Licensee *without adequate provision for subsequent use of such standard space* by Licensee without cost to the Licensee. (italics added).

Verizon's unjust enrichment alleges that FPL allowed third parties to attach to its poles "in the 4 feet of space reserved for the exclusive use of Verizon and has collected and retained rent from the third parties." Am. Countercl. ¶ 24. That is true and that prospect was contemplated by the parties in 1975. According to Verizon, but not the JUA, FPL has therefore been unjustly enriched by retaining the third party rent without an offset to Verizon. Am. Countercl. ¶¶ 14-15, 24-27. There could not be a more direct collision with the terms of the JUA.

[4] The JUA defines "Licensee" as "the party to [the JUA], other than the owner, who is making joint use of a pole hereunder." JUA, Art. I, § 1.1.9.

The JUA is express and unambiguous. Verizon agreed to terms that permit FPL to do exactly what it has been doing for decades, without complaint by Verizon, but what Verizon now claims has somehow become "unjust". FPL and Verizon both have always been allowed to collect pole attachment rent from third party attachers. Neither party ever received an offset for pole attachment rent from third party attachers. Additionally, either pole owner – whether Verizon or FPL – may allow third parties to use the same space allocated to the joint user so long as arrangements were made for the joint user's subsequent occupation of that space, if necessary.[5] Based on these express contract provisions, Verizon's unjust enrichment claim is a sham contrivance to further along this record with irrelevancies.

If more were required, an unjust enrichment claim fails under Florida law upon a showing that an express contract exists. *Williams v. Bear Stearns & Co.*, 725 So. 2d 397, 400 (Fla. 5th DCA 1988); *Bowleg v. Bowe*, 502 So. 2d 71, 72 (Fla. 3d DCA 1987). Verizon neglects to advise the Court that the JUA addresses with particularity the issues raised in the unjust enrichment claim. As demonstrated above, the JUA clearly and unambiguously addresses whether third parties can attach to FPL's poles "in the 4 feet of space reserved for the 'exclusive use' of Verizon," whether FPL can "collect[] and retain [] rent from the third parties," and whether Verizon should receive an offset or any compensation for third party rent. Simply put, the JUA terms explicitly govern. Verizon's unjust enrichment claim must therefore be dismissed.

2. The JUA is Consistent With Federal Law

The JUA does nothing more than implement federal law. Federal statutes and regulations require FPL to accept attachment requests from cable and telecommunications entities if the space

[5] The attachments encroaching on the party's allocated space would be rearranged or removed, or the pole in question would be replaced with a taller pole to accommodate all attachments. The joint user that requested the space – whether Verizon or FPL – would not be charged for the rearrangement or for setting the new pole.

is unoccupied at the time of the request, so long as the attachment does not compromise safety, reliability or engineering standards. *See* 47 U.S.C § 224(f)(1) ("Nondiscriminatory access - A utility *shall provide* a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.); 47 C.F.R. § 1.1403 (same);[6] *Local Competition Order*, 11 FCC Rcd 15499 at ¶ 1169 (1996) ("The electric utility must permit use of its reserved space by cable operators and telecommunication carriers until such time as the utility has actual need for that space."); *Reconsideration Order*, 16 FCC Rcd 12103 at ¶ 94 (2001) ("an electric utility is allowed to reserve capacity for future business purposes under a bona fide business plan, but must allow that capacity to be used for attachments until an actual business need arises.").

In other words, FPL must allow third party attachers on to space reserved for Verizon if, as here, Verizon is not actually occupying the space. Verizon does not lose the benefit of the contractual space allocation. The JUA provides that FPL must make the space available for Verizon when the need arises. Setting aside the telling fact that no such need has ever arisen, Verizon's characterization of its entitlement to "exclusive" and "reserved" pole space is knowingly contrary to federal statutes and regulations. Verizon disregards applicable law and necessarily presumes this Court will do the same.

B. Counts II and III: Verizon Asks the Court To Interfere with the Freedom of Contract

In its original counterclaim, Verizon asked this Court to disregard the pole attachment rate set forth in the JUA and to instead deem a rate of $8.52 "full compensation" for use of FPL's poles. In other words, Verizon asked this Court to write a new contract. The Court had no

[6] 47 C.F.R. § 1.1403 states: "Duty to provide access - A utility *shall provide* a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

authority to do so. Verizon's Amended Counterclaims for breach of contract and breach of the implied covenant of good faith and fair dealing seek essentially the same relief. Here, Verizon asks to the Court to invade a commercial negotiation and force FPL to accept contract terms preferred by Verizon but not acceptable to FPL. It is not the Court's role to become a party to the negotiations.

1. Verizon's purportedly "reasonable commercial expectation" reflects a substantial modification to the JUA

Verizon alleges that it had a "reasonable commercial expectation" that renegotiation of the adjustment rate would account for the fact that Verizon uses less than 50 percent of the pole's usable space. Am. Countercl. ¶¶ 33, 41. This would more correctly be termed an inexplicable exception since Verizon has not had such a right since 1975 when the JUA gave Verizon 4 feet to FPL's 6. Am. Countercl. ¶ 7 (citing JUA, Art I, § 1.1.7). Accordingly, that expectation represents a major departure from the existing contract terms which addressed both parties commercial expectations. The JUA is express about both cost sharing and the use of space. Verizon and FPL will split equally the cost calculated pursuant to the JUA formula.[7] JUA, 1978 Supplemental Agreement, ¶ 1. From the JUA's inception, both parties acknowledged that FPL might occupy more space than Verizon. JUA § 1.1.7. Neither party was slated to occupy 50 percent of the pole. See JUA, Art. I, § 1.1.5(A-B) (noting the pole height for joint use pole would be at least 35 or 40 feet). Nor was the annual rent intended to reflect space *actually* used by either party. To the contrary, the JUA states explicitly that the allocated space might not be actually occupied:

> 1.1.4. JOINT USE POLE is a pole upon which space is provided under this Agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefor upon specific request.

[7] FPL disputes that the JUA's formula reflects the full cost of pole ownership.

JUA, Art. I, § 1.1.4. Whether or not the allocated space was actually occupied, the parties expressly agreed to apply the contract rate to every jointly used pole. JUA, Art. X, Section 10.8 ("At the end of each calendar year each party, acting in cooperation with the other, shall have ascertained and tabulated the total number of poles in use, or specifically reserved for use, by each party as Licensee. . . . The jointly used poles owned by each party shall be multiplied by the appropriate adjustment rate.").

2. Verizon asks the Court to strip away FPL's contractual freedom

According to Verizon, FPL, in negotiating a new agreement, was somehow obligated to offer a term that accounts for the fact that Verizon uses less than 50 percent of space on a pole, which has always been the case. Am. Countercl. ¶ 33 (Count II) and ¶ 41 (Count III).[8] In other words, Verizon wants this Court to redefine the term "joint use pole." No legal authority supports Verizon's request. Nothing in Florida law authorizes a court to step into the middle of a commercial negotiation and give precedence to one party's views.

To the contrary, it is firmly established that Florida courts will not interfere with parties' freedom of contract. *Larson v. Lesser*, 106 So. 2d 188, 191 (Fla. 1958). From time immemorial, Florida courts have emphasized that the freedom of contract is "a matter of great public concern" which shall not be "lightly interfered with." *Bituminous Cas. Corp. v. Williams*, 17 So. 2d 98, 101 (Fla. 1944). This freedom empowers parties to join together in pursuit of ***mutually beneficial ends***. *Florida Dept. of Financial Services v. Freeman*, 921 So. 2d 598, 607 (Fla. 2006) (emphasis added). Courts may not "rewrite contracts or interfere with freedom of contracts or substitute

[8] According to Verizon, "FPL has taken the position that Verizon is 'bound by the rate set forth in the Joint Use Agreement' and that FPL can 'not be forced to accept a lower rate than that for which it bargained.'" Am. Countercl. ¶ 20. Verizon also claims that FPL maintains that "absent an order from the FCC, it cannot be forced to 'accept a payment lower than the contract amount.'" Am. Countercl. ¶ 21. FPL made those statements in support of the well-established and uncontroversial legal principle that the Court must enforce the JUA as written and cannot carve out new terms. FPL never expressed an unwillingness to negotiate privately.

[their] judgment for that of the parties to the contract." *Id.* (quoting *Quinerly v. Dundee Corp.*, 31 So. 2d 533, 534 (Fla. 1947)). Florida courts have long held that parties are masters of their own contract. *Id.* This principle is paramount because those parties will be then "servants to [the contract's] ultimate terms." *Id.*

The implied covenant of good faith and fair dealing is wholly consistent with this fundamental commercial freedom. Although the obligation of good faith exists in every contractual relation, the implied covenant does not invite the court to choose one party's commercial preference over another. *See Speedway Superamerica, LLC v. Tropic Enterps., Inc.*, 966 So. 2d 1, 3 n. 2 (Fla. 2d DCA 2007). It is not the court's role "to decide whether one party ought to have exercised privileges expressly reserved in the document." *Id.*

That is Verizon's legally unsupportable objective here. Verizon wants a new rate based only on the actual space it occupies on a pole. Over the past four decades, however, FPL has, as required by the JUA, set approximately 67,000 poles that provide Verizon with four feet of space even if Verizon chose not to occupy all that space. *See* FPL's Compl., Exh. A (showing Verizon attached to about 67,000 FPL poles in 2012). Verizon cannot unring that bell. Radically changing course for poles already set would leave FPL and its customers obligated for millions of incremental dollars expended on a system of taller and stronger poles set for Verizon's benefit in reliance on the JUA.[9] FPL does not believe that result is "mutually beneficial." It had no choice but to reject that proposal. The Court cannot interfere with that freedom and force FPL to subsidize Verizon's business. That is not the Court's role. Verizon's "reasonable business expectation" was a hallucination.

[9] Verizon acknowledges in its FCC Complaint that FPL does not object to formulating new terms for poles to which Verizon would attach in the future.

Because the Court cannot provide the relief Verizon requests for Counts II and III of Verizon's Amended Counterclaim, these claims necessary fail as a matter of law. They must be dismissed.

C. Counts II and III: Verizon Failed To Exhaust Its Administrative Remedies.

Verizon prefers to exhaust this Court rather than its administrative remedies. Before resorting to the courts, as this Court has admonished Verizon, parties must pursue and exhaust any administrative remedy that may provide the relief sought. *Miami Ass'n of Firefighters Local 587 v. City of Miami*, 87 So. 3d 93, 96 (Fla. 3d DCA 2012) (internal citations omitted); *Odham v. Foremost Dairies, Inc.*, 128 So. 2d 586, 593 (Fla. 1961) (when an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act). The doctrine of exhaustion of administrative remedies is based on the need to avoid prematurely interrupting the administrative process. *Florida High School Athletic Ass'n v. Melbourne Central Catholic High School*, 867 So. 2d 1281, 1286 (Fla. 5th DCA 2004). Thus, "where a claim is cognizable in the first instance by an administrative agency alone, judicial interference is withheld until the administrative process runs its course." *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1037 n.5 (Fla. 2001). Courts recognize that it is "appropriate to dismiss a suit when a party fails to exhaust [its] administrative remedies." *Cole v. City of Deltona*, 890 So. 2d 480, 483 (Fla. 5th DCA 2004) (citing *Central Fla. Invs., Inc. v. Orange County Code Enforcement Bd.*, 790 So. 2d 593 (Fla. 5th DCA 2001)).

In Counts II and III, Verizon asserts that a new agreement between the parties should account for the fact that Verizon occupies less than 50 percent of the space on FPL's poles. The FCC Complaint filed by Verizon proposes to have the FCC consider that precise issue.[10] Having

[10] The FCC must first determine whether it should disturb long standing joint use agreements such as the one between FPL and Verizon. The FCC stated in the Pole Attachment Order that it "is

at long last arrived at the FCC, Verizon must now exhaust the administrative remedies that may be provided by the FCC. Verizon's Amended Counterclaims serve only to confound that process.

1. The FCC has established a procedure to address Verizon's claims

Verizon alleges in Counts II and III that it had a "reasonable commercial expectation" that negotiation of a new agreement would account for the fact that Verizon uses less than 50 percent of the space on a pole. Am. Countercl. ¶ ¶ 33, 41. FPL had other expectations. The Court cannot determine whose negotiations should be included in a new joint use agreement, the FCC has the authority and established procedures to do just that.

While steadfastly declining to give the FCC the opportunity to do so, Verizon has repeatedly recognized that the FCC has established a process to determine whether pole attachment rates, terms and conditions are just and reasonable. *E.g.*, Verizon's Am. Mot. To Dismiss FPL's Compl. at pp. 1-2 and 4-6. The FCC can prescribe different rates, terms and conditions that it deems to be just and reasonable. *See* 47 U.S.C. § 224(b)(1) ("the [Federal Communications] Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."). The applicable FCC regulations state:

> The[se] rules and regulations . . . provide complaint and enforcement procedures for incumbent local exchange carriers[11] (as defined in 47 U.S.C. 251(h)) to ensure that the rates, terms, and conditions of their access to pole attachments are just and reasonable. 47 C.F.R. § 1.1401
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> * * *

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unlikely to find the rates, terms and conditions in existing joint use agreements unjust and unreasonable." Pole Attachment Order ¶ 216.

[11] Verizon is an incumbent local exchange carrier. *See* Verizon's Amended Motion To Dismiss FPL's Complaint at pp. 1 and 2.

> The Commission shall determine whether the rate, term or condition complained of is just and reasonable. 47 C.F.R. § 1.1409(c)
>
> * * *
>
> If the Commission determines that the rate, term, or condition complained of is not just and reasonable, **it may prescribe a just and reasonable rate, term, or condition** . . . . 47 C.F.R. § 1.1410(a)

The FCC, and only the FCC, can provide the relief that Verizon improperly requests from this Court. Thus, "an administrative remedy is provided by statute" and Verizon must first seek relief by exhausting that remedy. *Odham*, 128 So. 2d at 593. A plain reading of these statutes and rules dictates that Verizon's claims must be dismissed for failure to exhaust its administrative remedies. *Cole*, 890 So. 2d at 483 (affirming dismissal of claim for failure to exhaust administrative remedies).

Although not necessary to this Court's determination, the FCC Complaint filed by Verizon[12] demonstrates conclusively that Verizon raised at the FCC the same claims it now strangely presents to this Court as well. Specifically, Verizon asserted in its FCC Complaint that:

> FPL's invoiced rates also allow FPL to collect from Verizon one-half of FPL's average annual cost of joint use poles, when Verizon is allocated less than half of the useable space on the pole – and in fact occupies significantly less space than it is allocated. Moreover, FPL collects and retains rent from third parties that attach in the space allocated to, but not used by, Verizon on the joint use poles, thereby increasing its overcompensation and covering costs that it should pay for its own use of the poles. FPL provides Verizon with no credit or reduction in rate, but instead double-dips in a manner that allows it to recover a disproportionate share of its pole costs from Verizon.

Verizon's FCC Compl. ¶ 14 (internal citations omitted). Verizon's FCC Complaint asks the agency to consider whether it is just and reasonable that under the JUA: (1) Verizon pays 50

[12] Verizon's FCC Complaint is filed in the record of this case. It is attached as Exhibit "A" to Verizon's Motion To File Amended Answer and Counterclaim (dated February 5, 2014).

percent of the average cost of joint use when it occupies less than half the useable space; and (2) FPL collects rents from third party attachers with no offset to Verizon. These are the very same questions that Verizon raised in this Court a week after filing the FCC Complaint. Pursuant to Florida law, Verizon should exhaust its FCC remedies and the Court must refrain from interfering until the FCC's process has run its course. *Flo-Sun*, 783 So. 2d at 1037 n.5.

2. The FCC has no jurisdiction over FPL's breach of contract claims

While the FCC may properly consider Verizon's request for assistance in its transaction with FPL, it can have no role in the contract issues before this Court.

The FCC has uniformly held that allegations of nonpayment are pole attachment matters uniquely and specifically outside of its jurisdiction. *See Cablecom-General, Inc. v. Central Power and Light Co.*, 50 R.R. 2d 473, 3 (1981). FPL's breach of contract claims involve only specific, express contract terms and seek relief only for failure to pay appropriate attachment fees pursuant to those terms, the rate for which is undisputed. Unlike Verizon, FPL does not attempt to disguise a straight-forward contract dispute as a debate over regulatory issues and rate making.

FCC precedent is clear that it will defer to local courts for resolution of disputes involving breach of contract and non-payment of pole attachment fees:

> Although the Commission's jurisdiction encompasses certain practices growing out of a contractual relationship between a utility and a cable operator, **it does not extend to adjudication of the legal impact of the failure of a party to fulfill its contractual obligations,** nor to the determination of what contact rights exist once a party has unilaterally moved to terminate an agreement. In other words, as we read both the legislative history and the statute itself, **Congress has nowhere expressed its intent that this Commission be accorded the authority to preempt local jurisdiction in such matters. Rather, such matters are left to the existing state law governing breach of contract,** whether express or implied, and questions of unjust enrichment. For these reasons, Appalachian must pursue in state courts any complaint that Capitol has continued to use its poles without paying for these services.

Appalachian Power Co. v. Capitol Cablevision Corp., 49 RR 2d 574, 578 (1981). Courts, too, have held that breach of contract and collection actions regarding pole attachment agreements are matters for state courts. *See, e.g., Public Serv. Co. of Colorado v. FCC*, 328 F.3d 675, 679 (D.C. Cir. 2003) (citing *Appalachian Power* ("the collection of unpaid fees is a matter for state courts")). Accordingly, FPL's breach of contract claims, which seek recovery of unpaid fees pursuant to express contract terms, should proceed in this Court. Verizon's claims, by contrast, seek new terms. That separate matter can be considered only by the FCC, and Verizon must allow the FCC to complete its evaluation of the FCC Complaint.

D. Count III: Verizon's Claim Based on the Implied Covenant of Good Faith and Fair Dealing Fails Under Florida Law

Florida courts recognize an implied covenant of good faith and fair dealing in every contract. *County of Brevard v. Miorelli Eng'g, Inc.*, 703 So.2d 1049, 1050 (Fla.1997). The covenant is a gap-filling rule that applies only when the propriety of the conduct is not resolved by the terms of the contract. Under Florida law, the implied covenant of good faith and fair dealing confers only limited rights. No action for breach of the implied covenant will lie where: (1) application of the covenant would contravene the express terms of the agreement or (2) there is no accompanying action for breach of an express term of the agreement. *Ins. Concepts & Design, Inc. v. Healthplan Servs., Inc.*, 785 So. 2d 1232, 1234–35 (Fla. 4th DCA 2001); *City of Riviera Beach v. John's Towing*, 691 So. 2d 519, 521 (Fla. 4th DCA 1997) (the implied covenant "cannot be used to vary the terms of an express contract").

Verizon is attempting to override express terms of the JUA. As demonstrated above, Verizon's claim for breach of the implied covenant of good faith and fair dealing rests solely on the purportedly "reasonable commercial expectation" that Verizon's use of less than 50 percent of the space on a pole, but that fact alone, requires renegotiation. Verizon's commercial expectation

is contrary to the express terms of the JUA. The parties agreed that a "joint use pole" is "a pole upon which space is provided under [the JUA] for the attachments of both parties whether such space is actually occupied by attachments or reserved therefor upon specific request." JUA, Art. I, § 1.1.4. The alleged obligation would thus vary fundamental terms of the express contract. Accordingly, the claim must be dismissed. *Riviera Beach*, 691 So. 2d at 521 (the implied covenant of good faith and fair dealing cannot be used to override express contract terms).

FPL has breached no term of the JUA. As explained in Sections C and D above, Verizon's claims of breach of contract and breach of the implied covenant of good faith and fair dealing must be dismissed because the Court cannot provide the relief requested and Verizon failed to exhaust its administrative remedies. If the Court dismisses the breach of contract claim, no claim can lie for breach of the implied covenant. *Ins. Concepts & Design*, 785 So. 2d at 1234–35.

CONCLUSION

Verizon continues unabated its efforts to obscure the proper issues before this Court and to multiply and confuse the proceedings with no legitimate purpose. These latest "counterclaims" are flimsy, legally insubstantial parlor games. They are asserted in bad faith in the very teeth of a long-standing agreement that on its face rebuts Verizon's every underlying premise. Each of Verizon's Amended Counterclaims ignores the express terms of the JUA or asks the Court to rewrite it: the unjust enrichment claim is barred by the terms of the JUA; the claims for breach of contract and breach of the implied covenant of good faith and fair dealing must be dismissed because the Court cannot grant the requested relief and Verizon failed to exhaust administrative remedies.

Wherefore, for the forgoing reasons, FPL requests the Court dismiss Counts I, III and III of the Amended Counterclaim.

Dated: March 27, 2014

Respectfully submitted,

SQUIRE SANDERS (US) LLP
Suite 4100
200 South Biscayne Boulevard
Miami, Florida 33131-2398
Telephone: 305-577-2835
Fax: 305-577-7001

Florida Power & Light Company
Maria J. Moncada
700 Universe Boulevard
Juno Beach, Florida 33408
Florida Bar No. 0773301
Telephone: (561) 304-5795
maria.moncada@fpl.com

By: *s/ Alvin B. Davis*
Alvin B. Davis
Florida Bar No. 218073
alvin.davis@squiresanders.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via e-mail to Lewis F. Collins, Jr., (lcollins@butlerpappas.com), Butler Pappas Weihmuller Katz Craig, LLP, Suite 500, 777 S. Harbour Island Boulevard, Tampa, Florida 33602 and Christopher Huther (chuther@wileyrein.com), Wiley Rein LLP, 1776 K. Street NW, Washington, D.C. 20006, on this 27th day of March 2014.

s/ Alvin B. Davis
Alvin B. Davis

EXHIBIT A

JOINT USE AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND
GENERAL TELEPHONE COMPANY OF FLORIDA

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Section 0.1 THIS AGREEMENT, made and entered into this 1 day of January, 1975, by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "Electric Company," and General Telephone Company of Florida, a corporation organized and existing under the laws of the State of Florida herein referred to as the "Telephone Company."

WITNESSETH

Section 0.2 WHEREAS, the parties hereto desire to cooperate in accordance with terms and provisions set forth in the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded; and

Section 0.3 WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including consideration of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles;

Section 0.4 NOW, THEREFORE, in consideration of the foregoing premises and of mutual benefits to be obtained from the covenants herein set forth, the parties hereto, for themselves and for their successors and assigns, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 For the purpose of this Agreement the following terms, when used herein, shall have the following meanings:

1.1.1. CODE means the "National Electrical Safety Code" in its present form or as subsequently revised, amended or superseded.

1.1.2. ATTACHMENTS mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.

1.1.3. JOINT USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

1.1.4. JOINT USE POLE is a pole upon which space is provided under this Agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefor upon specific request.

1.1.5. NORMAL JOINT USE POLE under this Agreement shall be a pole which meets the requirements set forth in the Code for support and clearance of supply and communication conductors under conditions existing at the time joint use is established or is to be created under known plans of either party. It is not intended to preclude the use of joint poles shorter or of less strength in locations where such structures will meet the requirements of both parties and the specifications in Article VI. A normal joint pole for billing purposes shall be:

(A) In and along public streets, alleys, or roads, a 40 foot class 5 wood pole, complete with pole ground of #6 copper or equivalent copperweld conductor.

(B) In all other areas, a 35 foot class 5 wood pole, complete with pole ground of #6 copper or equivalent copperweld conductor.

(C) Strength requirements of Code Grade B construction will be used as minimum design criteria for overhead lines. As a consequence, a minimum pole strength shall be calculated using a 9 pound per square foot wind load on the projected area of cylindrical surfaces, with a 1.6 multiplier used for the wind load on the area of flat surfaces. For new construction, pole strength shall have a safety factor of four based on their ultimate strength.

1.1.6. SPECIAL POLES are poles of special materials, such as steel, laminated wood or prestressed concrete. At locations where Electric Company, at its option, sets special poles, Telephone Company may attach its facilities after having obtained specific written permission. This will be in the form of a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS," (Exhibit "A" attached hereto and made a part hereof).

For the purposes of this Agreement, Telephone Company will not be required to, but may at its option, set special poles.

A "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS" will be required for Telephone Company attachments to special poles installed subsequent to the date of this Agreement.

1.1.7. STANDARD SPACE on a joint use pole for the use of each party shall be not less than that required by the Code and shall be for the exclusive use of the parties except as set forth in the Code whereby certain attachments of one party may be made in the space reserved for the other party. This standard space is specifically described as follows:

(A) For Electric Company, the uppermost 6 feet.

(B) For Telephone Company a space of 4 feet at sufficient distance below the space of Electric Company to provide at all times the minimum clearance required by the specifications referred to in Article VI, and at sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run wires or cables attached in such space.

(C) It is the intention of the parties that any pole space in excess of the aforementioned reservations and clearance requirements shall be between the standard space allocations of the parties. This excess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachments of the other party.

1.1.8. OWNER means the party hereto owning the pole to which attachments are made.

1.1.9. LICENSEE means the party hereto, other than the Owner, who is making joint use of a pole hereunder.

1.1.10. INSTALLED COST is the cost incurred in setting a new pole (either as a new installation or replacement) and includes the cost of material, direct labor, construction and equipment charges, engineering and supervision, and standard overhead charges of the Owner as commonly and reasonably incurred in the joint usage of poles. The installed cost does not include the cost of attaching or transfer costs but does include the cost of ground wires.

1.1.11. THEN VALUE IN PLACE is the current in-plant pole cost less observed depreciation.

1.1.12. COST OF ATTACHING is the cost of making attachments to a new pole and includes the charges listed in Paragraph 1.1.10.

1.1.13. TRANSFER COST is the cost of transferring attachments from the replaced pole to the replacement pole. It does not include the material cost of replacing hardware but otherwise includes the charges listed in Paragraph 1.1.10.

1.1.14. VERTICAL GROUND WIRE means a #6 copper or equivalent copperweld conductor, conforming to the requirements of the Code, attached vertically to the pole and extending through Telephone Company space to the base of the pole where at least 7 feet will be spirally wound and stapled to the flat butt face.

1.1.15. MULTI-GROUNDED NEUTRAL means an Electric Company conductor, located in Electric Company space, which is bonded to all Electric Company vertical ground wires.

1.1.16. BONDING WIRE shall mean a suitable conductor, conforming to the requirements of the Code, connecting equipment of Telephone Company and Electric Company to the vertical ground wire or to the multi-grounded neutral.

1.1.17. SALVAGE VALUE is the Onwer's price on used equipment. Under this Agreement, a wood pole that has been set will have no salvage value.

1.1.18. PERMIT shall mean a "REPORT OF FP&L CO. ATTACHMENTS TO TELEPHONE CO. POLES" (Exhibit "B" attached hereto and made a part hereof), or similar report of Telephone Company attachments to Electric Company poles, or a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS." All attachments to, or removal of attachments from, joint use poles by a Licensee shall be recorded by use of an appropriate permit.

[redacted]

ARTICLE II

SCOPE OF AGREEMENT

Section 2.1 This Agreement shall be in effect in those parts of the State of Florida now or hereafter served by both Telephone Company and Electric Company, and shall cover all poles of each of the parties now existing in such service areas, or hereafter erected or acquired therein, when said poles are brought hereunder as joint use poles in accordance with the procedure hereinafter provided.

Section 2.2 Each party reserves the right to exclude from joint use those poles which have been installed for purposes other than, or in addition to, normal distribution of electric or telephone service. Among those included in this category are poles which, in the judgement of Owner, (a) are required for the sole use of the Owner, (b) would not readily lend themselves to joint use because of interference, hazards or similar impediments, present or future, or (c) have been installed primarily for the use of a third party. In the event one of the parties deems it desirable to attach to any such excluded poles, the party wishing to attach will proceed in the manner provided in Article III. Where a third party use is involved, approval must be obtained from such third party as a prerequisite to processing under Article III.

Section 2.3 With the exception of Telephone Company service drops, Telephone Company may not make initial or additional attachments to Electric Company transmission line poles (above 35,000 volts phase to phase nominal rating) without the written approval of Electric Company as provided in Article III of this Agreement.

ARTICLE III

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS AND BONDING ATTACHMENTS

Section 3.1 Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon not then specifically reserved by application hereunder for its use, it shall make written application to the other party specifying in such application the location of the pole in question. Within ten (10) days after the receipt of such application, the Owner shall notify the applicant in writing, advising whether or not said pole is one of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not one of those excluded, and after the Owner completes any transferring or rearranging which may be required in respect to attachments on said poles, including any necessary pole replacements as provided in Article IV Section 4.4, the applicant shall have the right as Licensee hereunder to use said space in accordance with the terms of this Agreement.

Section 3.2 The provisions of Section 3.1 do not apply to the poles of either party being used jointly by the other party as of the effective date of this Agreement; therefore, the Licensee shall have the right to use space on these poles for attachments in accordance with the terms of this Agreement.

Section 3.3 Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense, and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

Section 3.4 Each party, regardless of pole ownership, shall be responsible for determining the proper pole strength and arranging for any necessary guying of a joint pole where a requirement therefore is created by the addition or alteration of attachments thereon by such party. See Section 1.1.5 (C) for design criteria.

Strength of special poles will be determined considering wind loading to be 50 pound per square foot on projected areas of Telephone and Electric Company facilities. A safety factor of 1.0 will be used in this determination.

Section 3.5 Electric Company shall give sixty (60) days written notice to Telephone Company, advising Telephone Company of any initial attachments or conversion of any existing attachments that will result in joint use with any of the following conditions:

(A) The absence of a multiple grounded Electric Company neutral line conductor.

(B) Voltage in excess of 15,000 volts phase to ground.

If Telephone Company agrees to joint use with any such change then the joint use of such poles shall be continued with such changes in construction as may be required to meet the requirements of the Code. If, however, Telephone Company fails within thirty (30) days from receipt of such written notice to agree in writing to such change then both parties shall cooperate and determine the most practical and economical method of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

Section 3.6 The Ownership of any new line constructed in a new location under the foregoing provision shall be vested in the party for whose use it is constructed, unless otherwise agreed by the parties.

Section 3.7 On joint use poles Telephone Company may, at its own expense, bond its attachments in Telephone Company space together and to the vertical ground wire where the same exists.

Section 3.8 Under no condition will Electric Company's vertical ground wire be broken, cut, severed or otherwise damaged by Telephone Company.

Section 3.9 On joint use poles Electric Company shall, at its own expense, bond its street light brackets, conduit and other attachments in Telephone Company space together and to the vertical ground wire where the same exists.

Section 3.10 Telephone Company shall not install steps of any type on new joint use poles with the exception of poles with high activity terminals attached. Telephone Company will endeavor to remove pole steps that are not necessary when doing other work on existing joint use poles.

ARTICLE IV

ERECTING, REPLACING OR RELOCATING POLES

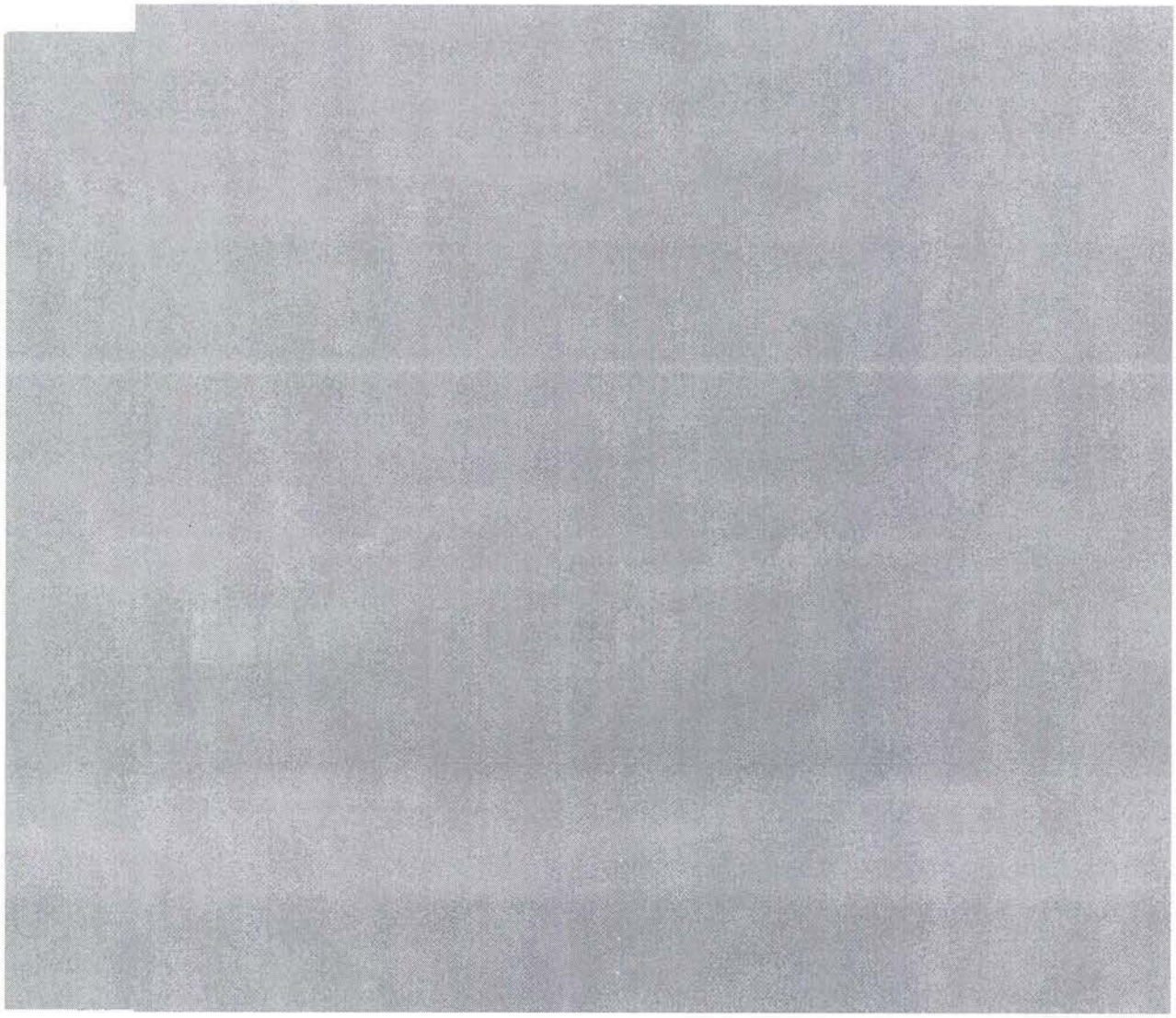
Section 4.1 Whenever, for whatever reason, the Owner shall deem it necessary to change the location of a jointly used pole, the Owner shall, before making such change in location, give timely notice thereof to the Licensee in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing), specifying in such notice the time of such proposed relocation, and the Licensee shall, at a time mutually agreed upon, transfer its attachments to the pole at the new location.

Section 4.2 Whenever either party hereto is about to erect new poles within the territory covered by this Agreement, either as a new pole line, an extension of an existing pole line, or as the reconstruction of an existing pole line being jointly used hereunder, such party shall immediately notify the other party hereto prior to completion of engineering plans for such erection in order that any necessary joint planning may be coordinated and so that compliance may be had with the provisions of Sections 4.3 and 4.4 of this Article IV.

[redacted]

Section 4.4 Whenever any jointly used pole, or any pole about to be so used under the terms and provisions of this Agreement, is insufficient in height and/or strength for proposed immediate additional attachments thereon or does not meet the requirements of public authority or property owners, the Owner shall promptly add or replace said pole with a new pole of such height and/or strength and make such other changes in the existing pole line as the new conditions may require. The costs associated with such new poles and changes are to be as outlined in Section 4.5.

[redacted]



Section 4.7 When replacing a joint use pole carrying terminals of aerial cable, underground connections or transformer equipment, the replacement pole shall be set in such a location that existing facilities may be transferred at a minimum of cost and inconvenience.

Section 4.8 Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all reasonable costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

Section 4.9 Telephone Company will be permitted to drill its own holes in special poles if this is done in a manner acceptable to Electric Company's local Division Transmission & Distribution Manager. Holes for Telephone Company's attachments on special poles will be provided by Electric Company for the following costs:

1. $.50 when the location is specified to Electric Company before Electric Company orders the pole.

2. Electric Company's cost for drilling when the pole is drilled after delivery.

ARTICLE V

PERMISSION OF JOINT USE

Each party hereto hereby permits joint use by the other party of any of its poles when brought under this Agreement, as herein provided, subject to the terms and conditions herein set forth.

ARTICLE VI

SPECIFICATIONS

Joint use of poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law and the terms and provisions of the Code in its present form or as subsequently revised, amended or superseded. Said Code, by this reference, is hereby incorporated herein and made a part of this Agreement.

ARTICLE VII

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

Section 7.1 From and after the date of this Agreement, the Owner will, insofar as practicable, obtain suitable right of way easements or permits for both parties on joint use poles brought hereunder.

Section 7.2 While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties of joint use poles, no guarantee is given by the Owner of permission from property owners, municipalities or others for use of poles and right of way easement by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may, at any time upon thirty (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved and its appurtenances from the right of way easement involved and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from said poles and its appurtenances from said right of way easement at its sole expense. Should the Licensee fail to remove its attachments and appurtenances, as herein provided, the Owner may remove them and the Licensee shall reimburse the Owner for the expense incurred.

Section 7.3 Each party shall be responsible for its own circuits where tree trimming or cutting (e.g., shade trees, side clearances, etc.) is required. Where benefits are mutual and the need for the work is agreed upon beforehand, costs shall be apportioned on an equitable basis.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

Section 8.1 The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with Article VI of this Agreement, and shall replace, subject to the provisions of Article IV, such of said poles as become defective. Each party shall, at its own expense and at all times, maintain all of its attachments in accordance with the specifications contained in the Code and keep said attachments in safe condition and in thorough repair.

Section 8.2 Both parties shall, in writing, report to each other all hazardous conditions found to exist in any joint use construction hereunder, immediately upon discovery, and the responsible party shall proceed forthwith to alter such construction so as to remove the hazard. Any existing joint use construction hereunder which does not conform to the specitications set forth in Article VI shall be brought into conformity with said specifications at the earliest possible date.

Section 8.3 The cost of removing hazards and of bringing existing joint use construction into conformity with said specifications, as provided in Section 8.2, shall be borne by the parties hereto in the manner provided in Section 3.3 and Article IV.

ARTICLE IX

ABANDONMENT OF JOINTLY USED POLES

Section 9.1 If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to that date on which it intends to abandon such pole. This notice of abandonment will be in the form of a "NOTICE OF ABANDONMENT," (Exhibit "C" attached hereto and made a part hereof). If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole thereupon becomes the property of the Licensee, and the Licensee (a) shall indemnify and save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter and arising out of the presence or condition of such pole or any attachments thereon, whether or not such liability is due to or caused by, in whole or in part, the negligence of the former Owner; and (b) shall pay said former Owner a sum equal to the then value in place of such abandoned pole, less credit on a depreciated basis for any payments which the Licensee furnishes proof he

has made under the provisions of Article IV when the pole was originally set, or shall pay such other equitable sum as may be agreed upon between the parties.

Section 9.2 The Licensee may at any time abandon the joint use of a pole by giving due notice thereof in writing to the Owner and by removing from said pole any and all attachments the Licensee may have thereon.

ARTICLE X

RENTAL AND PROCEDURE FOR PAYMENTS

Section 10.1 The parties contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this Agreement, shall be based on the equitable sharing and the costs and economics of joint use.

Section 10.2 On or about January 1 of each year, each party, acting in cooperation with the other and subject to the provisions of Section 10.3 of this Article, shall ascertain and tabulate the total number of poles in use by each party as Licensee, which tabulation shall indicate the number of poles in use by each party as Licensee for which an adjustment payment by one of the parties to the other is to be determined as hereinafter provided.

Section 10.3 Special poles will be inventoried and listed separately from normal joint use poles. The list of special poles will be separated into those poles with the adjustment rate specified in Section 10.4 and those with the rates specified in Section 10.5.

Section 10.4 Special poles to be billed at the adjustment rate specified in Section 10.6 are in the categories listed below:

1. Intermediate poles set in an existing joint use wood pole line.

2. Junction poles where Telephone Company aerial facilities cross an Electric Company line of special poles.

3. Poles supporting any of the following:

   a. Telephone Company terminal with riser cable of 100 pairs or less in size.

   b. Telephone Company aerial drops only on field side.

   c. Only one Telephone Company cable of 100 pairs or less from pole to pole. A 2-wire service drop between two poles will be considered a cable.

   d. An emergency telephone.

4. Poles set to replace Telephone Company poles in a Telephone Company route.

5. Poles set before the date of this Agreement. A special pole with a manufacturer's brand date of 1974 or earlier will be considered set before the date of this Agreement unless a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS" has been made for this pole subsequent to the date of this Agreement.

Section 10.5 Special poles to be billed at 1.5 times the adjustment rate specified in Section 10.6 are all those not conforming to Section 10.4.

Section 10.6 Adjustment rate to be utilized for normal joint use poles [redacted]

Section 10.7 The parties hereto agree that an attachment count also includes any pole on which it is mutually agreed that space was reserved for the Licensee at the Licensee's request and on which the Licensee has not attached. The Licensee is only liable for billing under this Section until the Licensee makes an initial attachment or an interval of five (5) unattached years elapses from the date of the space reservation, whichever condition occurs first.

Section 10.8 At the end of each calendar year each party, acting in cooperation with the other, shall have ascertained and tabulated the total number of poles in use, or specifically reserved for use, by each party as Licensee. The equity settlement for that calendar year will be made as follows:

The jointly used poles owned by each party shall be multiplied by the appropriate adjustment rate. [redacted]

Section 10.9 Upon the execution of this Agreement and every five (5) years thereafter, or as may be mutually agreed upon, the parties hereto shall make a joint field check to verify the accuracy of the joint use records hereunder. If the parties mutually agree to postpone the first joint field check hereunder, the parties shall use their existing records as changed from time-to-time to determine the number of jointly used poles owned by each party until the first joint field check is made hereunder. The said joint inventory shall be a one hundred (100) percent field inventory unless the parties voluntarily and mutually agree to some other method. Upon completion of such inventories the office records will be adjusted accordingly and subsequent billing will be based on the

adjusted number of attachments. The adjustment and the number of attachments shall be deemed to have been made equally over the years elapsed since the preceeding inventory. Unless otherwise agreed upon, retroactive billing for the pro-rated adjustment will be added to the normal billing for the year following completion of the field inventory.

Section 10.10 Rental or other charges paid to the Owner by a third party will in no way affect the rental or charges paid between the parties of this Agreement.

Section 10.11 Payment of all other amounts, provision for which is made in this Agreement, shall be made currently or as mutually agreed thereto.

ARTICLE XI

PERIODIC REVISION OF ADJUSTMENT PAYMENT RATE

Section 11.1 Article X of this Agreement covering Rental and Procedures for Payment shall remain in effect for a minimum term on one (1) year. At any time thereafter, the adjustment rate shall be subject to renegotiation at the request of either party.

Section 11.2 In the event the parties cannot, within six (6) months after a request under Section 11.1 is made, agree upon rental payments, this Agreement shall terminate and be of no further force and effect insofar as the making of attachments to additional poles. All other terms and provisions of this Agreement shall remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties herein with respect to existing joint use poles.

ARTICLE XII

Section 12.1 If either party shall default in any of its obligations (other than to meet money payment obligations) under this Agreement, and such default shall continue for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default hereunder, insofar as such rights may relate to the further granting of joint use of poles hereunder shall be suspended; and such suspension shall continue until the cause of such default is rectified by the party in default or until the other party shall waive such default in writing.

Section 12.2 If either party shall default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the total cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days after presentation of bills therefore shall constitute a default under Section 12.3.

Section 12.3 If the default giving rise to a suspension of rights involves the failure to meet a money payment obligation hereunder, and such suspension shall continue for a period of sixty (60) days, then the party not in default may forthwith terminate the rights of the other party to attach to the poles involved in the default.

ARTICLE XIII

LIABILITY AND DAMAGES

Section 13.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this Agreement, including the erection, maintenance, presence, use or removal of attachments, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this Agreement, the liability for such damages, as between the parties hereto, shall be as follows:

13.1.1 Each party shall be liable for all damages for such injuries, to all persons (including employees of either party) or property, caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided for in Article VIII hereof.

13.1.2 Each party shall be liable for all damages for such injuries, to its own employees or its own property, that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.3 Each party shall be liable for one half (1/2) of all damages for such injuries to persons other than employees of either party, and for one half (1/2) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.4 Where, on account of injuries of the character heretofore described in this Article, either party hereto shall make payments to injured employees or to their relatives or representatives in conformity with (a) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceeding Subsections 13.1.1 and 13.1.2 and shall be paid by the parties hereto accordingly.

13.1.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim, whether or not such liability and expense is due to or caused by, in whole or in part, the negligence of the party to be protected.

13.1.6 In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses, including court costs, attorneys' fees, valid disbursements and other proper charges and expenditures, incurred by the parties in connection therewith.

ARTICLE XIV

ASSIGNMENT OF RIGHTS AND EXISTING RIGHTS OF OTHER PARTIES

Section 14.1 Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights of way covered by this Agreement, to any firm, corporation, or individual, without written notification to the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in the case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the leasee, transferree, merging or consolidating company, as the case may be.

Section 14.2 If either of the parties hereto has, as Owner, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be constructed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that for the purposes of this Agreement all attachments of any such third party shall be treated as attachments belonging to the Owner, and except as

modified by Section 14.3, the rights, obligations and liabilities hereunder of said Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

Section 14.3 In the event that attachments to be made by a third party require rearrangements or transfer of the Licensee's attachments to maintain standard space (as defined in Section 1.1.7), and standard clearance (as outlined by the Code), the Licensee shall have the right to collect from said third party all costs to be incurred by the Licensee to make such required rearrangements or transfers prior to doing the work.

Section 14.4 Each Owner reserves the right to use, or permit to be used by other third parties, such attachments on poles owned by it which would not interfere with the rights of the Licensee with respect to use of such poles.

Section 14.5 Third party space requirements must be accommodated without permanent encroachment into the standard space allocation of the Licensee; therefore, neither party hereto shall, as Owner, lease to any third party, space on a joint use pole within the allotted standard space of the Licensee without adequate provision for subsequent use of such standard space by Licensee without cost to the Licensee.

Section 14.6 Where either party allows the use of its poles for fire alarm, police or other like signal system, or where such systems are presently or hereafter permitted by the Owner to occupy its poles, such use shall be permitted under and in accordance with the terms of this Article.

ARTICLE XV

SERVICE OF NOTICES

Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its principal office in Miami, Florida, or to the Telephone Company at its principal office in Tampa, Florida , as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE XVI

TERM OF AGREEMENT

Subject to the provisions of Articles XI and XII herein, the provisions of this Agreement, insofar as the same may relate to the further granting of joint use of poles hereunder, may be terminated by either party, after the first day of January, 1976, upon six (6) months notice in writing to the other party; provided, however, that, if such provisions shall not be so terminated, said Agreement in its entirety shall continue in force thereafter until partially terminated as above provided in this Article by either

party at any time upon six (6) months notice in writing to the other party as aforesaid; and provided, further, that notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce, or insist upon compliance with, any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

EXISTING CONTRACTS

All existing Agreements between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement are, by mutual consent, hereby abrogated and annulled.

ARTICLE XIX

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties of this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed by their respective officers thereunto duly authorized, on the day and year first above written.

WITNESSES:

FLORIDA POWER & LIGHT COMPANY

D. K. Eyman

By _____
Senior Vice President

Jane Dauer

Attest: _____
Secretary Seal

WITNESSES:

GENERAL TELEPHONE COMPANY OF FLORIDA

Helen Simmons

By _____
Vice President

Doris Brazil

Attest: _____
Secretary Seal

"EXHIBIT "A"

PERMIT FOR ATTACHMENT TO
F.P.&L. CO. POLES OF SPECIAL MATERIALS

Date_____

_____ Company desires to attach its facilities to certain Florida Power & Light Company special poles in accordance with the terms of their Agreement dated _____. Location of the poles and initial billing are given below:

F.P.&L. Co. agrees to the proposed attachments. Attachment locations and extra costs are given below:

Current wood pole rental rate for ____ poles located at:

1.5 times current wood pole rental rate for ____ poles located at:

Total costs for extra height and/or strength for locations: $_____

Total cost for holes in poles at locations: $_____

Total Billing $_____

_____ Company

BY_____

TITLE_____

FLORIDA POWER & LIGHT COMPANY

BY_____

TITLE_____

"Exhibit "A"

1. Special Poles Billed at Current Wood Pole Rental Cost

   a. Intermediate poles set in an existing joint use wood pole line.
   b. Junction poles where aerial facilities cross an F.P.&L. Co. pole line of special materials.
   c. Poles supporting any or all of the following: Licensee's terminal with riser cable 100 pairs or less in size; aerial drops only to buildings on field side of pole; only one cable of 100 pairs or less from pole to pole. (Between poles a service drop will be considered one cable), an emergency telephone.
   d. Special poles set to replace Licensee's poles in Licensee's pole route.
   e. Poles set before 1975, and specifically excluded by Agreement Section 10.4

2. Special Poles Billed at 1.5 Times Current Wood Pole Rental Cost

   All those not conforming to 1. above.

3. Costs for Extra Height and Strength

   a. Strength of poles will be determined considering wind loading to be 50 pounds per square foot on projected areas of all facilities. A safety factor of 1.0 will be used in this determination.
   b. The Licensee will pay F.P.&L. Co. the difference between the installed costs of the taller or stronger poles and the poles originally proposed by F.P.&L. Co.
   c. Should Licensee wish an existing special pole to be replaced, whether or not Licensee's attachments exist on the pole, or the setting of a special pole not required by F.P.&L. Co., Licensee will pay the entire cost required including attachments and transfer costs for F.P.&L. Co. facilities.

4. Costs for Holes in Concrete Poles

   Holes for Licensee's attachments may be provided by F.P.&L. Co. at the height specified by Licensee for the following compensation:

   a. Where the Location is specified to F.P.&L. Co. before F.P.&L. Co. orders the poles - - - - $.50 per hole.
   b. Where the hole must be drilled after delivery of the pole - - - F.P.&L. Co. current cost per hole.

   Licensee will be permitted to drill its own holes if this is done in a manner acceptable to the F.P.&L. Co. local Division Transmission & Distribution Manager.

EXHIBIT "B"

FP&L Co.
Permit No._____

Florida Power & Light Company
REPORT OF FP&L Co. ATTACHMENTS TO TELEPHONE Co. POLES

FP&L Co. Auth. No._____ Billing Area_____

Location of poles: _____

_____

_____

_____

	ATTACHMENTS			
	Estimated		Actual	
	Install	Remove	Install	Remove
Rental Attachments	_____	_____	_____	_____

Estimated by _____ Date_____

Actual attachments made or removed in addition to those estimated were:

_____

_____

_____

Completed by _____ Date_____

SUMMARY
(To be completed by Engr. Dept)

	Rental Attachments
Previous Total	_____
Added this report	_____
Removed this report	_____
New Total	_____

Approved for FP&L Co.

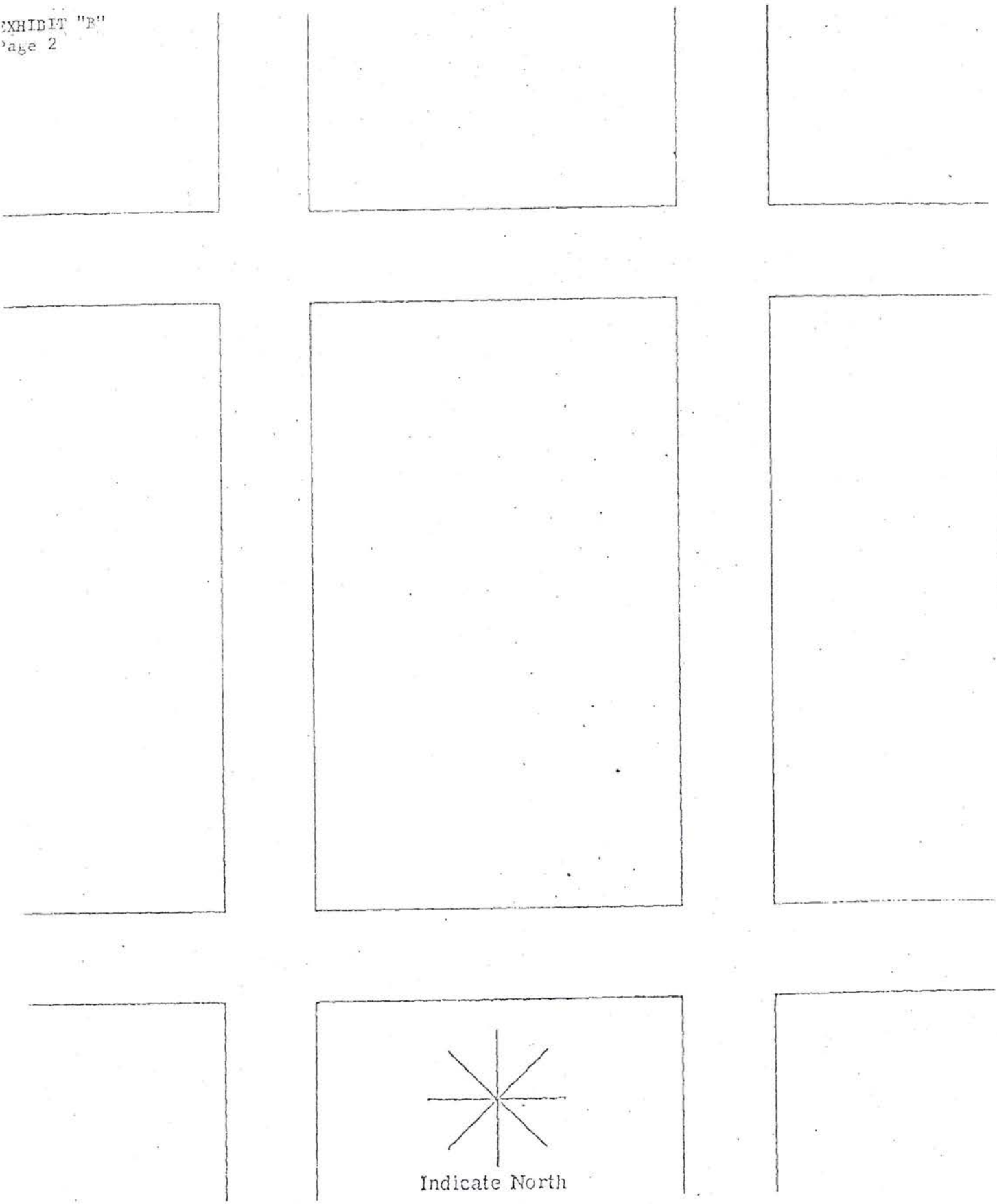
_____
Name Title

Date_____

Approved for Telephone Co.

_____
Name Title

Date_____



Indicate North

(Over)

EXHIBIT "C"

NOTICE OF ABANDONMENT

, 19___

TO:

Attention: Title_____

The poles listed below are being abandoned by us but they are still used to support your attachments. Please examine the poles involved and advise if you wish to remove, transfer or inherit under terms of Article IX of the Agreement.

TELEPHONE COMPANY SERVICE AREA_____

POWER COMPANY DISTRICT_____

MAP REF.	POLE NO.	LOCATION	TYPE ATTACH.

INVOLVES DEPRECIATED VALUE Yes_____ No_____

SIGNED_____ TITLE_____

This SUPPLEMENTAL AGREEMENT, made this 29th day of March, 1978, by and between Florida Power & Light Company, a corporation of the State of Florida, hereinafter called the "Electric Company", and the General Telephone Company of Florida, a corporation of the State of Florida, hereinafter called the "Telephone Company";

WITNESSETH, that,

WHEREAS, the parties hereto made a Joint Use Agreement, dated the 1st day of January, 1975, covering the joint use of certain of their poles located in the State of Florida; and

WHEREAS, the parties hereto now desire to amend said Agreement above referred to, and in the particulars hereinafter set forth:

NOW, THEREFORE, the parties hereto, for and in consideration of the premises and mutual covenants herein contained, do hereby, for themselves, their successors and assigns, covenant and agree as follows:

1. That Section 10.6 which reads as follows: "Adjustment rate to be utilized for normal joint use poles [redacted]

   is hereby changed to read:

   [redacted]

   For subsequent calendar years, the adjustment rate for normal joint use poles will be one half of the average annual cost of joint use poles for the next preceding year as determined by the party owning the majority of the jointly used poles.

2. [redacted]

3. That, except as herein amended by this Supplemental Agreement, said Agreement dated the 1st day of January, 1975, shall remain in full force according to its terms, and this Supplemental Agreement shall not be deemed to make any change in said Agreement except such changes as are specifically set forth herein.

FLORIDA POWER & LIGHT COMPANY

Witnesses:

D.K. Eyman

Debra J. Dembsey

By: R-E. Sallen
~~Group~~ Vice President

Attest: Arlene Pfeiffer
Secretary

seal

GENERAL TELEPHONE COMPANY OF FLORIDA

Witnesses:

By: E. E. Gibson
Vice President Network E&C

Attest: Victor Leavengood
Secretary

seal

3-21-79
HKR