PUBLIC VERSION

Before the
Federal Communications Commission
Washington, DC 20554

REDACTED

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Defendant.	Proceeding No. 19-187 Bureau ID No. EB-19-MD-006

AMENDED POLE ATTACHMENT COMPLAINT

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Date: July 12, 2019

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* Certain information in this Amended Pole Attachment Complaint and its supporting Affidavits and Exhibits has been designated confidential pursuant to 47 C.F.R. § 1.731. The designated information is marked with a text box in the confidential version of these pleadings and is redacted in the public version.

I. SUMMARY

This Complaint seeks a reduction of exceptionally high pole attachment rates in a case where the electric utility has not rebutted, or even tried to rebut, the Commission's recently adopted new telecom rate presumption. Since the July 12, 2011 effective date of the Commission's *Pole Attachment Order*, Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T") has been "entitled to pole attachment rates, terms and conditions that are just and reasonable," meaning that AT&T should pay "the same rate as [a] comparable provider" when it attaches to an electric utility's poles pursuant to comparable terms and conditions.[1] Florida Power and Light Company ("FPL") refuses to charge AT&T the lawful just and reasonable new telecom rate, claiming that "there is nothing in the 2011 FCC Order that affirmatively requires" FPL "to modify an existing agreed upon contract rate."[2]

FPL thus demands that AT&T continue to pay excessive and ever-increasing rates on over 425,000 poles. Most of the poles are wood distribution poles, for which FPL has charged a rate that has averaged over [redacted] per pole during the last five years, but nearly 54,000 of the poles are concrete distribution poles, for which FPL has charged a premium that increased the average rate to nearly [redacted] per pole. Over the same five-year period, AT&T's competitors paid about $12.50 per pole on average to attach comparable facilities to the same poles under the Commission's new telecom formula. This rate is estimated using the best data available to AT&T because FPL refused to discuss a new rate for AT&T, let alone provide AT&T access to

[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, 5331, 5336 (¶¶ 209, 217) (2011) ("*Pole Attachment Order*").

[2] Ex. 12 at ATT00197 (Email from D. Bromley, FPL, to D. Miller, AT&T (Dec. 20, 2018)).

its new telecom rates or data supporting them. But it is a conservative estimate because FPL told the Commission that its 2012 new telecom rate was under $10.[3]

FPL's recalcitrance continues despite the 2018 *Third Report and Order*, which found that the new telecom rate is the presumptive "just and reasonable" rate for ILECs under "new and newly renewed" agreements, including those terminated and in evergreen status.[4] The new telecom rate presumption applies here—the parties' Joint Use Agreement ("Agreement" or "JUA") is a newly renewed agreement that FPL terminated, effective August 2019, and placed in evergreen status. AT&T is entitled to the new telecom rate unless FPL can prove that the JUA provides AT&T net material benefits that advantage AT&T over its competitors, justifying a higher rate.

In a year of negotiations, FPL has not identified a single such advantage, yet has continued to charge AT&T about [redacted] million each year in excess of the lawful new telecom rate. It has also increased the operational pressure on AT&T—claiming trespass and demanding that AT&T must remove facilities from FPL's poles—because AT&T deigned to question the legal and contractual justification for FPL's rates.

The Commission should enforce its new telecom rate presumption to stop such gamesmanship and provide the competitively neutral pole attachment rates that the Commission found essential to its competition and broadband deployment goals. Doing so will alert the industry that the Commission stands ready to enforce its presumption—and that it will not countenance tactics like FPL's, which serve only to delay rate relief and thwart deployment.

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[3] *See Verizon Fla. v. FPL*, Memorandum Opinion and Order, 30 FCC Rcd 1140, 1147 (¶ 20 n.64) (EB 2015) ("*FPL Order*") ("Florida Power contends that, properly calculated, the Old and New Telecom Rates for 2012 would be slightly higher ($14.83 and $9.78, respectively).").

[4] *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) ("*Third Report and Order*").

II. PARTIES AND JURISDICTION

1. Complainant AT&T is an ILEC that provides telecommunications and other services in Florida. It is a Georgia limited liability company with a principal place of business at 675 West Peachtree Street NW, Suite 4500, Atlanta, GA 30308. AT&T may be reached through undersigned counsel at (214) 757-3357.

2. Defendant FPL, "the largest energy company in the United States as measured by retail electricity produced and sold,"[5] owns and controls poles in Florida that are used, in whole or in part, for wire communications. FPL is not owned by a railroad, a person who is cooperatively organized, or a person owned by the Federal Government or a State. It is a Florida company with a principal place of business at 700 Universe Boulevard, Juno Beach, FL 33408.

3. AT&T and FPL are parties to a 1975 Agreement that was amended in 2007 and will terminate on August 26, 2019 pursuant to FPL's notice of termination.[6] FPL and AT&T share an estimated 638,914 poles, with FPL owning about 425,704 of the joint use poles (67%) and AT&T owning about 213,210 of the joint use poles (33%).[7]

4. The Commission has jurisdiction over this pole attachment complaint pursuant to 47 U.S.C. § 224(b), which states that it "shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall ... hear and resolve complaints concerning such rates, terms, and conditions."[8]

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[5] *See* Company Profile, *available at* https://www.fpl.com/about/company-profile.html (last visited June 27, 2019).

[6] *See* Ex. 1 at ATT00108-139 (JUA, as amended); Ex. 23 at ATT00248-250 (Notice of Termination (Mar. 25, 2019)).

[7] Ex. 2 at ATT00147-148 (Invoice dated Feb. 1, 2019) ("2018 Invoice"); *see also* Ex. B at ATT00051 (Aff. of D. Miller, June 27, 2019 ("Miller Aff.") ¶ 7).

[8] 47 U.S.C. § 224(b)(1).

5. The State of Florida has not certified to the Commission that it regulates the rates, terms, and conditions for pole attachments and so has not reverse-preempted the Commission's jurisdiction pursuant to 47 U.S.C. § 224(c).

6. A separate action has not been filed with the Commission, any court, or other government agency based on the same claim or same set of facts, in whole or in part, and AT&T does not seek prospective relief that is identical to the relief proposed or at issue in a notice-and-comment rulemaking proceeding that is currently before the Commission.[9]

7. Prior to the filing of this Complaint, AT&T notified FPL in writing of the allegations that form the basis of this Complaint and invited a response within a reasonable time. AT&T also, in good faith, sought to settle this dispute through both a face-to-face executive-level meeting and non-binding mediation.[10]

III. FPL HAS LONG CHARGED AT&T UNJUST AND UNREASONABLE POLE ATTACHMENT RENTAL RATES.

8. As of mid-2011, AT&T was entitled to a "competitively neutral" pole attachment rate—meaning the new telecom rate—because it attaches to FPL's poles on terms and conditions that are materially comparable to those of "a telecommunications carrier or a cable operator."[11] But FPL continues to charge AT&T "pole attachment rates significantly higher than the [new telecom] rates charged to similarly situated telecommunications attachers."[12]

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[9] Electric utilities have sought review of the Commission's new telecom rate presumption in a petition for reconsideration at the FCC and petition for review at the U.S. Court of Appeals for the Ninth Circuit. The pending petitions do not impact the effectiveness of the presumption and cannot impact AT&T's statutory right to just and reasonable pole attachment rates for use of FPL's poles.

[10] *See* Ex. B at ATT00054-57 (Miller Aff. ¶¶ 12-21); *see also* Section III.B, below.

[11] *Pole Attachment Order*, 26 FCC Rcd at 5333-38 (¶¶ 214-220).

[12] *See Third Report and Order*, 33 FCC Rcd at 7767 (¶ 123) (quotation marks omitted).

9. In 2018, the Commission adopted its new telecom rate presumption to rectify reports of such persistent overcharges, finding that, for "new and newly-renewed pole attachment agreements," including agreements that are terminated and "placed in evergreen status," ILECs are presumptively comparable to their competitors and entitled to the new telecom rate.[13] The JUA is a "newly-renewed" agreement entitled to this presumption, and FPL has not alleged that AT&T enjoys any competitive benefit that could rebut the presumption. Accordingly, the Commission should order FPL to reduce the rental rates it charges AT&T to the competitively neutral new telecom rental rate established by law nearly eight years ago.

A. AT&T Is Entitled To The New Telecom Rental Rate Under The Commission's 2018 *Third Report And Order.*

10. The Commission's new telecom rate presumption is the most recent step in the Commission's longstanding effort to ensure that "similarly situated attachers ... pay similar pole attachment rates for comparable access."[14] With or without the presumption, AT&T is entitled to rate relief in this case. But the presumption applies and entitles AT&T to the new telecom rate because FPL has not indicated an intention to rebut the presumption and, if it tried, could not prove that a higher rental rate is justified by any net material advantage provided to AT&T by the JUA.

1. The New Telecom Rate Presumption Applies, But FPL Charges Rates Far Higher.

11. AT&T is presumptively entitled to the new telecom rate because the JUA is a "newly-renewed" agreement as defined by the *Third Report and Order*. In that *Order*, the Commission applied its new telecom rate presumption to all "new and newly-renewed joint use

[13] *Id.* at 7769 (¶ 126).

[14] *Id.* at 7768 (¶ 123).

agreements," and defined "newly-renewed agreements" to include those "that are automatically renewed, extended, or placed in evergreen status."[15] The JUA's initial term expired on January 1, 1980, but it "shall *continue* in force thereafter" until it is terminated upon six months written notice.[16] Continue and extend are synonyms: "Continue" means "[t]o carry further in time, space or development: *extend*"[17] and "extend" means "to lengthen, prolong; to *continue* ..."[18] Consequently, the JUA has automatically extended after the effective date of the *Third Report and Order*, and the Commission's newly adopted rate presumption applies.[19]

12. The presumption also applies because FPL "placed [the JUA] in evergreen status" after the effective date of the *Third Report and Order*.[20] On March 25, 2019, FPL gave AT&T six months written notice of termination of the JUA, effective in August.[21] Notwithstanding such termination, the JUA "shall remain in full force and effect with respect to all poles jointly

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[15] *Id.* at 7770 (¶ 127 n.475).

[16] Ex. 1 at ATT00128 (JUA, Art. XVI) (emphasis added).

[17] "Continue," *Webster's II New College Dictionary* 244 (2001) (emphasis added); *see also* "Continue," *Oxford English Dictionary* (3d ed. online) ("To carry on, keep up, maintain, go on with, persist in (an action, usage, etc.)").

[18] "Extend," *Oxford English Dictionary* (3d ed online); *see also* "Extend," *Webster's II New College Dictionary* 396 (2001) ("To stretch or reach"); "Extend," *Merriam-Webster's Collegiate Dictionary* 411 (1996) ("To stretch out in distance, space, or time").

[19] The JUA automatically extends, and so falls within the Commission's definition of a "newly renewed" agreement. It also automatically "renews" because its terms "repeat so as to reaffirm" or "begin again" absent termination by a party. *See* "Renew," *Webster's II New College Dictionary* 938 (2001); "Renew," *Merriam-Webster's Collegiate Dictionary* 990 (10th ed. 1996); *see also Ocean Bank of Miami v. La Esquina Presidencial, Inc.*, 623 So. 2d 520, 521 (Fla. Dist. Ct. App. 1993) ("To renew a contract means to begin again or continue in force the old contract.") (citing *Black's Law Dictionary* 1296 (6th ed. 1990)).

[20] *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 n.475).

[21] Ex. 23 at ATT00248-250 (Notice of Termination (Mar. 25, 2019)).

used by the parties at the time of such termination."[22] The new telecom rate presumption thus applies because FPL gave notice that the JUA is being "terminated and the parties [will] continue to operate under an 'evergreen' clause."[23]

13. Under the presumption, AT&T should be charged a properly calculated new telecom "rate determined in accordance with [47 C.F.R.] § 1.1406(e)(2)."[24] Using publicly available data, AT&T estimates that the properly calculated new telecom rate for use of FPL's poles averaged about $12.50 per pole during the applicable five-year statute of limitations period.[25] FPL instead charged, and AT&T paid, base contract rates averaging about [redacted] per pole, with *added* premiums of about [redacted] for each concrete distribution pole and nearly [redacted] for each transmission pole, resulting in the following effective rates:[26]

	2014	2015	2016	2017	2018
Rate per wood distribution pole (base contract rate)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Rate per concrete distribution pole (base contract rate plus premium)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Rate per transmission pole (base contract rate plus premium)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
New telecom rate per pole	$10.46	$11.12	$12.12	$13.32	$15.80

FPL thus charged rates far exceeding the $26.12 per pole rate that, in part, led the Commission to adopt the new telecom rate presumption in order to accelerate rate relief to ILECs.[27] The base

[22] Ex. 1 at ATT00128 (JUA, Art. XVI).

[23] *See Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 n.475).

[24] 47 C.F.R. § 1.1413(b).

[25] *See* 47 C.F.R. § 1.1407(a)(3); Fla. Stat. § 95.11(2)(b); *see also* Section III.C, below.

[26] *See* Ex. A at ATT00008-09 (Aff. of D. Rhinehart, June 27, 2019 ("Rhinehart Aff.") ¶¶ 16-17); Ex. B at ATT00052 (Miller Aff. ¶ 9).

[27] *Third Report and Order*, 33 FCC Rcd at 7768-69 (¶ 125).

contract rates FPL charged for every joint use pole averaged [redacted] *times* more than the new telecom rates that AT&T was entitled to pay, and the rates for concrete distribution poles averaged [redacted] *times* the lawful new telecom rate.[28] FPL's base contract rates are excessively and unreasonably high. With the premium added, they are egregiously so.

2. FPL Did Not And Cannot Rebut The Presumption, So AT&T Is Entitled To The New Telecom Rate.

14. Through a year of negotiations, FPL never rebutted the Commission's new telecom rate presumption, never argued that it can rebut the presumption, and never identified any alleged advantage that AT&T enjoys over its competitors.[29] FPL also failed to provide AT&T a single comparative license agreement despite numerous requests,[30] let alone any relevant data or quantifications.[31]

15. FPL's silence on the point is telling, since FPL tried to make the case before.[32] But it cannot make that case here because AT&T does not have a net material advantage over its

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[28] Ex. A at ATT00008-09 (Rhinehart Aff. ¶ 16-17). The new telecom rate applies to concrete distribution poles because the Commission's rate formula includes costs associated with concrete distribution poles, which are reported in FERC Account 364. *See* 18 C.F.R. Pt. 101 (stating that Account 364 includes "[p]oles, wood, steel, concrete, or other material"); *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12176 (App. E-2) (2001) ("*Consolidated Partial Order*") (including investment in Account 364 in new telecom rate calculation).

[29] Ex. B at ATT00058 (Miller Aff. ¶ 22); Ex. A at ATT00011 (Rhinehart Aff. ¶ 22); Ex. C at ATT00067 (Aff. of M. Peters, June 27, 2019 ("Peters Aff.") ¶ 6).

[30] Ex. 8 at ATT00179 (Email from D. Rhinehart, AT&T, to M. Jarro, FPL (Oct. 4, 2018)); Ex. 10 at ATT00188 (Email from D. Miller, AT&T, to M. Jarro, FPL (Dec. 3, 2018)); *id.* at ATT00186-187 (Email from D. Miller, AT&T, to M. Jarro, FPL (Dec. 6, 2018)); Compl. Ex. 12 at ATT00196-197 (Email from D. Bromley, FPL, to D. Miller, AT&T (Dec. 20, 2018)) (responding to questions from D. Miller, AT&T, to M. Jarro, FPL).

[31] Ex. B at ATT00058 (Miller Aff. ¶ 22); Ex. C at ATT00067 (Peters Aff. ¶ 6).

[32] In a prior rate dispute before the Enforcement Bureau, FPL tried to justify its excessive pole attachment rates by arguing that the ILEC "receive[d] a number of benefits under the Agreement

competitors,[33] and FPL cannot prove otherwise. To do so, FPL would need "clear and convincing evidence that [AT&T] receives net benefits under its pole attachment agreement with [FPL] that materially advantage [AT&T] over other telecommunications attachers."[34]

16. FPL does not have such evidence under the ground rules that the Commission has set for this analysis: when comparing the JUA with a license agreement, FPL must weigh and account for all of the different rights *and responsibilities* (of which there are many) placed on AT&T as compared to its competitors.[35] For example, an ILEC that bears the cost to perform a service itself (*e.g.*, a pole inspection) is not advantaged relative to its competitor that pays the utility pole owner to perform the same service.[36] In addition, reciprocal joint use agreement terms—terms that AT&T must also provide to FPL for its use of AT&T poles—impose unique costs on AT&T because, by definition, license agreements provide only for the CLEC's use of FPL's poles.[37] These unique costs can thus eliminate any "net benefit" that would justify

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that are not provided to other attachers." *FPL Order*, 30 FCC Rcd at 1145 (¶ 16). The ILEC disagreed with FPL's allegation, and the dispute was settled before the Enforcement Bureau issued a final ruling on the issue. *See Verizon Fla. LLC v. FPL*, File No. EB-15-MD-002, Docket No. 15-73 (filed Mar. 13, 2015; dismissed due to settlement Feb. 16, 2017).

[33] *See* Ex. B at ATT00058-63 (Miller Aff. ¶¶ 23-31); Ex. C at ATT00067-69 (Peters Aff. ¶¶ 7-12).

[34] *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123); *see also* 47 C.F.R. § 1.1413(b).

[35] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) ("A failure to weigh, and account for, the different rights and responsibilities in joint use agreement could lead to marketplace distortions."); *see also* Ex. B at ATT00059 (Miller Aff. ¶ 25); Ex. C at ATT00068 (Peters Aff. ¶ 10); Ex. D at ATT00090 (Aff. of C. Dippon, June 28, 2019 ("Dippon Aff.") ¶ 35).

[36] *Verizon Va., LLC and Verizon S., Inc. v. Va. Electric and Power Co.*, 32 FCC Rcd 3750, 3759 (¶ 18) (EB 2017) ("*Dominion Order*") ("Where Verizon performs a particular service itself and incurs costs comparable to its competitors in performing that service, ... Dominion may not 'embed in Verizon's rental rate costs that Dominion does not incur.'"); *see also* Ex. C at ATT00068 (Peters Aff. ¶ 9); Ex. D at ATT00090 (Dippon Aff. ¶ 35).

[37] *See* Ex. C at ATT00068 (Peters Aff. ¶ 10); *see also* Initial Comments of FPL, et al., Decl. of Thomas J. Kennedy, P.E. at ¶ 13, *In the Matter of Implementation of Section 224 of the Act;*

charging the ILEC a rate higher than the new telecom rate.[38] That is particularly so after a JUA terminates and eliminates any possible "prospective value" to an ILEC from many JUA terms.[39]

17. Rather than discuss these issues or negotiate the rate reductions required by law, FPL elected to impose, and then escalate, unwarranted operational pressure on AT&T in an apparent effort to persuade AT&T to drop its justified request for just and reasonable rates.[40] Exercising the leverage provided by its two-to-one pole ownership advantage over AT&T, FPL challenged AT&T's right to attach to FPL poles despite an agreement to maintain the status quo during negotiations,[41] declared AT&T a trespasser on over 425,000 poles,[42] and terminated AT&T's right to deploy on new FPL pole lines going forward.[43] FPL thus provided a textbook example of the reason for the Commission's new telecom rate presumption—FPL has used its pole ownership advantage to try to forever charge AT&T exceptionally high, and annually

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Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245 (Mar. 7, 2008) ("Given the joint nature of [joint use] agreements, there is a level of mutuality that exists between ILECs and electric utilities that cannot exist in relationships between CLECs and electric utilities.").

[38] *Dominion Order*, 32 FCC Rcd at 3760 (¶ 21) ("By identifying as alleged 'benefits' to Verizon services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements, Dominion has failed to show that Verizon receives a disproportionate benefit ...."); *see also* Ex. D at ATT00091 (Dippon Aff. ¶ 36). *See also Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (requiring utility to prove that the ILEC "receives *net benefits* under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers") (emphasis added).

[39] *See FPL Order*, 30 FCC Rcd at 1148 (¶ 22); *see also* Ex. C at ATT00068 (Peters Aff. ¶ 8); Ex. D at ATT00092 (Dippon Aff. ¶ 38).

[40] *See, e.g.*, Ex. B at ATT00055-57 (Miller Aff. ¶¶ 15, 18, 19, 21).

[41] *See* Ex. 1 at ATT00137 (JUA § 13A.4) ("Each Party shall continue to perform its obligations under the JUA pending final resolution of any Dispute, unless to do so would be impossible or impracticable under the circumstances.").

[42] Ex. 28 at ATT00273 (Letter from M. Jarro, FPL, to D. Miller, AT&T (May 23, 2019)).

[43] Ex. 23 at ATT00250 (Notice of Termination (Mar. 25, 2019)).

increasing, rental rates that are anti-competitive and antithetical to the Commission's deployment goals.[44]

18. Faced with this Complaint, FPL must finally discuss the Commission's new telecom rate presumption and may even try to rebut it. But AT&T is not aware of any net material advantage that could rebut the presumption, let alone one that would continue after the JUA terminates.[45] And even if FPL could rebut the presumption, it still is not entitled to the rates it has been charging AT&T. In the 2018 *Third Report and Order*, the Commission set the pre-existing telecom rate as the *maximum* "just and reasonable" rate if a utility can rebut the new telecom rate presumption with clear and convincing evidence.[46] The Commission created this "hard cap" to eliminate uncertainty arising from the 2011 *Pole Attachment Order*, which looked to the pre-existing telecom rate as a "reference point" when an agreement provides an ILEC a net material advantage over its competitors.[47]

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[44] *See Third Report and Order*, 33 FCC Rcd at 7767 (¶ 123). The rent that FPL has charged AT&T has sharply escalated even in the last five years, and the increase has only partially been the result of AT&T's deployment efforts in Florida. Much of the increase has resulted from FPL's storm hardening plan, under which FPL has accelerated the replacement of wood distribution poles (for which it does not charge AT&T a premium) with concrete distribution poles (for which it does charge AT&T a premium). Ex. B at ATT00053 (Miller Aff. ¶ 11). Thus, as FPL continues to implement its storm hardening plan in future years, the competitive disparity between the rates charged AT&T and its competitors will only increase absent Commission intervention. *See id.*; *see also* Ex. A at ATT00008 (Rhinehart Aff. ¶ 15).

[45] *See* Ex. B at ATT00058-62 (Miller Aff. ¶¶ 23-30); Ex. C at ATT00067-69 (Peters Aff. ¶¶ 7-12).

[46] *Third Report and Order*, 33 FCC Rcd at 7769-71 (¶¶ 126-29).

[47] *Id.* at 7771 (¶ 129); *see also Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

19. It is self-evident from the below table that the per pole rates that FPL has charged, and AT&T has paid, are not close to "just and reasonable" even if FPL could rebut the presumption and charge a rate as high as the pre-existing telecom rate:[48]

	2014	2015	2016	2017	2018
Rate per wood distribution pole (base contract rate)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Rate per concrete distribution pole (base contract rate plus premium)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Rate per transmission pole (base contract rate plus premium)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Pre-existing telecom rate per pole	$15.84	$16.85	$18.37	$20.18	$23.94

There is thus no set of circumstances under which the base contract rates charged by FPL are lawful, as they have consistently averaged [redacted] *times* the pre-existing telecom rate.[49] And with the premiums added, they have been even higher, averaging [redacted] *times* the pre-existing telecom rate on concrete distribution poles and [redacted] *times* on transmission poles.[50] The Commission should apply its new presumption and eliminate these extraordinary overcharges.

B. Even Apart from the 2018 *Third Report and Order,* AT&T Was Entitled To Just And Reasonable Rates Back To 2011.

20. The Commission's *Third Report and Order* simplifies this case by presuming that the new telecom rate is the "just and reasonable" rate absent clear and convincing evidence from FPL to the contrary. But even without that rate presumption, AT&T can demonstrate that it is entitled to a "just and reasonable" new telecom rate and has been since the July 12, 2011

[48] *See* Ex. A at ATT00012 (Rhinehart Aff. ¶¶ 24-25); Ex. B at ATT00052-53 (Miller Aff. ¶¶ 9-10).

[49] Ex. A at ATT00012 (Rhinehart Aff. ¶ 24); *see also* Ex. D at ATT00085 (Dippon Aff. ¶ 25).

[50] Ex. A at ATT00012 (Rhinehart Aff. ¶ 25); *see also* Ex. D at ATT00085 (Dippon Aff. ¶ 25).

effective date of the *Pole Attachment Order*. FPL's exceptionally high rental rates have all the characteristics that the Commission found justify rate relief as of mid-2011. They are: unjust and unreasonable; the direct result of unequal bargaining power; locked in by an evergreen provision in the JUA; and not justified by any net material benefits that advantage AT&T over its competitors.[51]

21. *First*, the contract rates are not just and reasonable. The base contract rates paid by AT&T during the statute-of-limitations period have averaged [redacted] *times* the new telecom rate applicable to AT&T's competitors and [redacted] the pre-existing telecom rate, and FPL has added premiums to tens of thousands of poles each year that further increase the disparity.[52] Most recently, AT&T paid base contract rates that were over [redacted] per pole more than the new telecom rate, and over [redacted] per pole more than the pre-existing telecom rate—along with [redacted] per pole premiums on almost 54,000 concrete distribution poles.[53]

22. The unreasonableness of FPL's rates is also evident when viewed in comparison to the rates FPL pays for use of far more space on AT&T's poles. The Commission expected that ILECs and electric utilities would each pay "roughly the same proportionate rate given the

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[51] *See Pole Attachment Order*, 26 FCC Rcd at 5333-37 (¶¶ 214-18); *see also* Ex. D at ATT00084-93 (Dippon Aff. ¶¶ 22-41).

[52] *See* Ex. A at ATT00008-09, -12 (Rhinehart Aff. ¶¶ 16-17, 24-25).

[53] *Id.*; Ex. B at ATT00052-53 (Miller Aff. ¶¶ 10-11). AT&T, meanwhile, reduced the rates it charges CLECs and cable companies attached to its distribution poles to reflect the Commission's new telecom rate methodology—thereby reducing its rental revenue during the same years that FPL increased AT&T's rates. *See Third Report and Order*, 33 FCC Rcd at 7768-69 (¶ 125) (noting concern that survey data showed ILEC rental revenue from CLECs and cable companies decreased since 2008, but ILEC rental payments to electric utilities increased). The Enforcement Bureau previously asked ILECs to disclose the rates they charge CLECs and cable companies. *See FPL Order*, 30 FCC Rcd at 1150 (¶ 25 n.84). For the 2014 through 2018 rental years, AT&T charged new telecom and cable rates that ranged from [redacted] per pole, assuming 1 foot of space occupied. *See* Ex. A at ATT00003 (Rhinehart Aff. ¶ 2).

parties' relative usage of the pole 'such as the same rate per foot of occupied space.'"[54] Instead, FPL charges AT&T a base contract rate that is only slightly lower than the rate that FPL pays AT&T ([redacted] vs. [redacted] per pole in 2018) while occupying far more space on a pole.[55] AT&T requires space comparable to its competitors, and is presumed to occupy 1 foot of pole space.[56] FPL, in contrast, occupies 10.5 feet of space under the FCC's rate assumptions, which includes 3.33 feet of safety space that is "usable and used by the electric utility" but not expressly assigned to FPL under the JUA.[57] To make matters worse, FPL adds a premium to its base contract rates for use of concrete distribution poles and transmission poles, further skewing the division of pole costs in FPL's favor.[58]

23. *Second*, FPL's substantial pole ownership advantage "continuously impacted [AT&T's] ability to negotiate a just and reasonable rate over time."[59] The FCC has previously

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[54] *See Dominion Order*, 32 FCC Rcd at 3760 (¶ 21 n.78) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662)).

[55] Ex. B at ATT00052 (Miller Aff. ¶ 9).

[56] *See id.* at ATT00062 (Miller Aff. ¶ 30); 47 C.F.R. § 1.1410. The JUA assigns 4 feet of space to AT&T's "exclusive use," Ex. 1 at ATT00112 (JUA § 1.1.7(B)), but AT&T does not want, use, or require 4 feet of space and FPL has not, in fact, reserved that space for AT&T's "exclusive use," Ex. B at ATT00062 (Miller Aff. ¶ 30). FPL instead double- and triple-recovers by collecting rent from third parties attached in the space allocated to and paid for by AT&T. *See id.*

[57] *See* Ex. 1 at ATT00112 (JUA § 1.1.7(B)) (requiring that AT&T's attachments be "at a sufficient distance below the space of [FPL] to provide at all times the minimum clearance required by all the specifications referred to in Article VI," which in turn requires the 40 inches of safety space provided by the National Electrical Safety Code); *Consolidated Partial Order*, 16 FCC Rcd at 12130 (¶ 51) (holding "the 40-inch safety space ... is usable and used by the electric utility"); *see also* Ex. B at ATT00061 (Miller Aff. ¶ 29 n.24); Ex. D at ATT00086 (Dippon Aff. ¶ 27).

[58] Ex. D at ATT00087 (Dippon Aff. ¶ 28).

[59] *Dominion Order*, 32 FCC Rcd at 3757 (¶ 13 n.53); *see also Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216); Ex. D at ATT00088-89 (Dippon Aff. ¶¶ 30-31).

found that an electric utility's relatively high rates coupled with its "nearly two-to-one pole ownership advantage" supported an inference of bargaining leverage, which justified rate relief for the ILEC.[60] In this case, FPL's pole ownership advantage is also two-to-one (67% to 33%), and FPL has used that advantage to try to preserve its unlawful pole attachment rates by refusing to discuss rates while increasing operational threats and pressure.[61]

24. *Third*, AT&T "genuinely lacks the ability to terminate" the unlawful rates and obtain new "just and reasonable" rates through negotiations.[62] The JUA includes an "evergreen" provision that renders the rates effectively inescapable even after the JUA terminates in August 2019.[63] And FPL has refused to negotiate a different rate, claiming, despite the *Pole Attachment Order* and the unambiguous language in the *Third Report and Order*, that it is "not aware of any federal law that requires FPL to take affirmative action to change an agreed upon contract rate."[64]

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[60] *Dominion Order*, 32 FCC Rcd at 3757 (¶ 13); *see also Pole Attachment Order*, 26 FCC Rcd at 5329 (¶ 206) (estimating that electric utilities "own approximately 65-70 percent of poles").

[61] *See* Ex. 2 at ATT00142 (2018 Invoice); *see also* Ex. B at ATT00055-57 (Miller Aff. ¶¶ 15, 18, 19, 21); Ex. D at ATT00079 (Dippon Aff. ¶ 14).

[62] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216).

[63] *See FPL Order*, 30 FCC Rcd at 1150 (¶ 25) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216)) (finding that evergreen clause is evidence that the ILEC "genuinely lacks the ability to terminate an existing agreement"); *see also* Ex. 1 at ATT00128 (JUA, Art. XVI) (stating that, after 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").

[64] Ex. 10 at ATT00188 (Email from M. Jarro, FPL to D. Miller, AT&T (Dec. 4, 2018)); *see also* Ex. 12 at ATT00197 (Email from M. Jarro, FPL to D. Miller, AT&T (Dec. 20, 2018) ("Also, as we have previously communicated, there is nothing in the 2011 FCC Order that affirmatively requires the parties to modify an existing agreed upon contract rate.").

25. To the contrary, the FCC has clarified that FPL cannot cast the contract rates in stone. In 2011, the Commission found that the statutory right to "just and reasonable" rates applies to existing contracts.[65] In 2015, the Enforcement Bureau rejected FPL's argument that the just and reasonable rate requirement of federal law does not apply to agreements that pre-date the 2011 *Pole Attachment Order*.[66] And in 2018, the Commission "disagree[d] with utilities that argue that [the Commission] should not apply the [new telecom rate] presumption to any existing agreements."[67] As the Commission explained, a federal statutory right "may not be defeated by private contractual provisions."[68] Any other standard "would subvert the supremacy of federal law over contracts."[69]

26. FPL's refusal to discuss just and reasonable rates is also directly at odds with the JUA itself, which requires that the joint use of poles "shall at all times be in conformity with all applicable provisions of law."[70] FPL thus has no lawful basis—under federal law or under contract—to continue charging AT&T rates that so far exceed the new telecom rates that are just and reasonable.

27. And FPL has not just refused to discuss just and reasonable rates; it has repeatedly pronounced unwarranted operational restrictions throughout the parties' negotiations that appear designed to coerce AT&T into dropping its request for them. Over the past year, AT&T has

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[65] *Pole Attachment Order*, 26 FCC Rcd at 5328 (¶ 202) ("[W]e now conclude that where incumbent LECs have such access [to utilities' poles], they are entitled to rates, terms and conditions that are 'just and reasonable' in accordance with section 224(b)(1)").

[66] *FPL Order*, 30 FCC Rcd at 1145-47 (¶¶ 17-19).

[67] *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127).

[68] *Id.* at 7731 (¶ 50) (citation omitted).

[69] *Id.* (internal quotation and alternation omitted).

[70] Ex. 1 at ATT00119 (JUA, Art. VI).

sought just and reasonable rates through executive-level negotiations and the JUA's pre-complaint dispute resolution provision, which requires that the parties maintain the status quo "pending final resolution" of the dispute.[71] FPL has instead sent an unrelenting stream of notices claiming to suspend or terminate rights increasingly critical to AT&T's ability to deploy in Florida—first, AT&T's right to attach to new FPL poles, then its right to attach to replacement FPL poles, and ultimately its right to attach to *any* FPL poles.[72] All the while, FPL has insisted that it need not even discuss the "just and reasonable" rate requirement of federal law with AT&T.[73] FPL's conduct thus cries out for the Commission to quickly set AT&T's rate at the new telecom level and unambiguously cut off further gamesmanship by FPL.

28. *Finally*, AT&T has been entitled to a new telecom rate since the 2011 effective date of the *Pole Attachment Order* for the same reason that it is entitled to a new telecom rate under the Commission's newly enacted presumption: FPL has not identified anything in the JUA that gives AT&T a net material benefit over its competitors, let alone anything that justifies the [redacted] base contract rate or even higher added premiums that FPL charges AT&T.[74]

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[71] Ex. 1 at ATT00137 (JUA § 13A.4) ("Each Party shall continue to perform its obligations under the JUA pending final resolution of any Dispute, unless to do so would be impossible or impracticable under the circumstances."); *see also* Ex. B at ATT00055 (Miller Aff. ¶ 14).

[72] Ex. 9 at ATT00183 (Notice of Suspension (Nov. 9, 2018); Ex. 14 at ATT00202 (Notice of Enforcement of Suspension of AT&T's Attachments to FPL Poles (Jan. 11, 2019)); Ex. 23 at ATT00250 (Notice of Termination (Mar. 25, 2019)); Ex. 25 at ATT00255 (Notice of Termination (Apr. 8, 2019)); Ex. 27 at ATT00271 (Letter from E. Silagy, FPL, to D. Miller, AT&T (May 21, 2019)); Ex. 28 at ATT00273 (Letter from M. Jarro, FPL, to D. Miller, AT&T (May 23, 2019)).

[73] *See, e.g.*, Ex. 12 at ATT00196-197 (Email from D. Bromley, FPL, to D. Miller, AT&T (Dec. 20, 2018)); Ex. 18 at ATT00215-216 (Letter from M. Jarro, FPL, to AT&T (Jan. 28, 2019)).

[74] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); *FPL Order*, 30 FCC Rcd at 1142 (¶ 7); *see also* Section III.A.2, above.

29. The 2011 *Pole Attachment Order* adopted the standard that an ILEC should pay "*the same rate*" as its CLEC and cable competitors if its joint use agreement "does not provide a material advantage to [the ILEC] relative to cable operators or telecommunications carriers."[75] Therefore, AT&T should have been paying "the same rate as the comparable provider, *i.e.*, the New Telecom Rate"[76] as of July 12, 2011 because AT&T is not aware of anything in the JUA that advantages it over its competitors and FPL has not shown otherwise.[77]

30. FPL has also not challenged AT&T's conclusion that certain aspects of the JUA *disadvantage* AT&T as compared to its competitors.[78] Any analysis of "competitive neutrality" must "account for ... the different rights *and responsibilities*."[79] It therefore must account for the fact that AT&T must provide FPL each and every alleged "benefit" that FPL claims to provide to AT&T.[80] License agreements with CLECs do not contain a similar mandate.[81] It is also relevant that the JUA, "in contrast to cable or telecommunications carrier pole lease agreements—reflect[s] a decades-old contractual responsibility [for AT&T] to share in infrastructure costs" and requires AT&T to "still own many poles today."[82] This is a costly distinction between AT&T and its competitors, as they need not incur these same pole ownership, maintenance, and

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

[76] *See FPL Order*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)) (internal quotation mark omitted).

[77] *See* Section III.A.2, above; *see also* Ex. B at ATT00058-63 (Miller Aff. ¶¶ 22-31); Ex. C at ATT00067-69 (Peters Aff. ¶¶ 6-12); Ex. D at ATT00089-93 (Dippon Aff. ¶ 33-40).

[78] Ex. C at ATT00069 (Peters Aff. ¶ 11); Ex. D at ATT00090 (Dippon Aff. ¶ 35).

[79] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) (emphasis added).

[80] Ex. C at ATT00068 (Peters Aff. ¶ 10); Ex. D at ATT00091 (Dippon Aff. ¶ 36).

[81] Ex. C at ATT00068 (Peters Aff. ¶ 10); Ex. D at ATT00091 (Dippon Aff. ¶ 36).

[82] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654).

disposal costs for the right to attach to FPL's poles.[83] These disadvantages—with no associated advantages alleged now or after the JUA terminates—establish that the just and reasonable rate is the new telecom rate even if the presumption does not attach.[84]

C. AT&T Should Pay A Properly Calculated New Telecom Rate And Be Refunded Its Overpayments.

31. Because FPL has not alleged any net material advantages that the JUA provides AT&T as compared to its competitors, AT&T should be charged a properly calculated new telecom "rate determined in accordance with [47 C.F.R.] § 1.1406(e)(2)."[85] The best data available to AT&T shows that the applicable new telecom rates for AT&T's use of FPL's poles during the applicable five-year statute of limitations period are $10.46, $11.12, $12.12, $13.32, and $15.80 per pole for the 2014 through 2018 rental years, respectively.[86] These rates were calculated using FPL's FERC Form 1 data, FPL's most recently filed rate of return data, and the Commission's presumptive inputs for pole height (37.5 feet), unusable space (24 feet), space occupied by AT&T (1 foot), average number of attaching entities in an urbanized area (5), and electric company appurtenance factor (15%).[87]

32. The Commission should also order FPL to refund the [redacted] millions of dollars that AT&T has paid in excess of the just and reasonable rate, "plus interest, consistent with the

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[83] Ex. B at ATT00059-60 (Miller Aff. ¶ 26); Ex. D at ATT00090 (Dippon Aff. ¶ 35).

[84] *See FPL Order*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)) (internal quotation mark omitted).

[85] 47 C.F.R. § 1.1413(b); *see also Dominion Order*, 32 FCC Rcd at 3759-61 (¶¶ 20-22) (requiring electric utility to justify its rates).

[86] Ex. A at ATT00008 (Rhinehart Aff. ¶ 14).

[87] *Id.* at ATT00005-07 (Rhinehart Aff. ¶¶ 6-13).

applicable statute of limitations."[88] The applicable statute of limitations is five years because this action involves a Florida contract, and the Commission decided to treat disputes involving the rates, terms, and conditions of pole attachment agreements consistently "with the way that claims for monetary recovery are generally treated under the law."[89] This follows from a long line of precedent that "[w]hen there is no statute of limitations expressly applicable to a federal statute, ... 'the general rule is that a state limitations period for an analogous cause of action is borrowed and applied to the federal claim.'"[90] And where, as here, the federal claim involves a contract, "contract law provides the best analogy" and the court should "adopt the general contract law statute of limitations."[91] Thus, in the *Dominion Order*, the Enforcement Bureau cited the parties' agreement to the applicability of a five-year statute of limitations for actions involving a Virginia contract.[92] The comparable statute of limitations in Florida is also five years.[93]

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[88] 47 C.F.R. § 1.1407(a)(3).

[89] *See Pole Attachment Order*, 26 FCC Rcd at 5289-90 (¶¶ 110-12); *see also In the Matter of Implementation of Section 224 of the Act; A Nat'l Broadband Plan for Our Future*, 25 FCC Rcd 11864, 11902 (¶ 88) (2010) ("Generally speaking, a plaintiff is entitled to recompense going back as far as the applicable statute of limitations allows. There does not appear to be a justification for treating pole attachment disputes differently.").

[90] *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018) (quoting *Cty. of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985)). *See also Spiegler v. District of Columbia*, 866 F.2d 461, 463-64 (D.C. Cir. 1989) ("When Congress has not established a statute of limitations for a federal cause of action, it is well-settled that federal courts may 'borrow' one from an analogous state cause of action, provided that the state limitations period is not inconsistent with underlying federal policies.").

[91] *Hoang*, 910 F.3d at 1101. Moreover, the Commission could have, but did not, specify a one-size-fits-all federal statute of limitations, further reinforcing that the "applicable statute of limitations" is drawn from state law.

[92] *See Dominion Order*, 32 FCC Rcd at 3764 (¶ 28 n.104) (citing Va. Code § 8.01-246(2)).

[93] *See* Fla. Stat. § 95.11(2)(b).

33. To date, AT&T has overpaid FPL by more than [redacted] million during the applicable five-year statute of limitations.[94] The Commission should require FPL to refund these amounts, which were collected in violation of federal law. The refund will be consistent with the Commission's intention that "monetary recovery in a pole attachment action extend as far back in time as the applicable statute of limitations allows."[95] Any other result "discourages pre-complaint negotiations between the parties," "fails to make injured attachers whole, and is inconsistent with the way that claims for monetary recovery are generally treated under the law."[96] And here, AT&T should be made as whole as possible. It has been paying FPL unjust and unreasonable rates for years longer than the applicable statute of limitations period—and its effort to obtain new rates was delayed and frustrated by FPL's insistence that it is under no legal obligation to change the contract rates.[97] By awarding refunds, the Commission can discourage similar conduct, encourage prompt negotiations, and confirm for the industry that it will enforce the ILEC rate reforms that were "designed to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."[98]

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[94] Ex. A at ATT00010 (Rhinehart Aff. ¶ 20) (calculating a net rental overpayment of [redacted] for the 2014 – 2018 rental years); Ex. B at ATT00051-52 (Miller Aff. ¶¶ 8-9).

[95] *Pole Attachment Order*, 26 FCC Rcd at 5290 (¶ 112).

[96] *Id.* at 5289 (¶ 110).

[97] *See* Ex. B at ATT00054-57 (Miller Aff. ¶¶ 12-21).

[98] *Id.* at 5241 (¶ 1).

IV. COUNT I – UNJUST AND UNREASONABLE RATES

34. AT&T incorporates paragraphs 1 through 33 as if fully set forth herein.

35. The Commission is statutorily required to ensure that the pole attachment rates that FPL charges AT&T are just and reasonable.[99]

36. The rates that FPL charges AT&T under the JUA are, and have long been, unjust and unreasonable in violation of 47 U.S.C. § 224.

37. The just and reasonable rate for AT&T's attachments to FPL's poles is the new telecom rate under the presumption adopted in the 2018 *Third Report and Order* and the principle of competitive neutrality adopted in the 2011 *Pole Attachment Order*.[100] The following table includes the new telecom rates, calculated using the best data available to AT&T for its use of FPL's poles and the proportional new telecom rates that would apply to FPL's use of AT&T's poles:[101]

	2014	2015	2016	2017	2018
New telecom rate for AT&T's use of FPL's poles (per pole)	$10.46	$11.12	$12.12	$13.32	$15.80
Proportional new telecom rate for FPL's use of AT&T's poles (per pole)	$15.62	$12.58	$11.66	$9.44	$12.60

Because FPL denied AT&T these just and reasonable rates, AT&T has already overpaid FPL by more than [redacted] million in net pole attachment rentals during the relevant refund period.[102]

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[99] 47 U.S.C. § 224(b)(1).

[100] *See Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

[101] Ex. A at ATT00010 (Rhinehart Aff. ¶ 19).

[102] *Id.* at ATT00010 (Rhinehart Aff. ¶ 20) (calculating overpayment for 2014 – 2018 rental years of [redacted] using new telecom rental rates for AT&T and FPL); Ex. B at ATT00051-52 (Miller Aff. ¶¶ 8-9).

38. Alternatively, even if FPL could show that the JUA provides AT&T a net material advantage over its competitors, the just and reasonable rate for AT&T's use of FPL's poles is not higher than the rate calculated using the FCC's pre-existing telecom formula.[103] The following table includes the pre-existing telecom rates, calculated using the best data available to AT&T for its use of FPL's poles and the proportional pre-existing telecom rates that would apply to FPL's use of AT&T's poles:[104]

	2014	2015	2016	2017	2018
Pre-existing telecom rate for AT&T's use of FPL's poles (per pole)	$15.84	$16.85	$18.37	$20.18	$23.94
Proportional pre-existing telecom rate for FPL's use of AT&T's poles (per pole)	$23.66	$19.06	$17.66	$14.30	$19.08

Under these alternative circumstances, AT&T has already overpaid FPL by more than [redacted] million in net pole attachment rentals during the relevant refund period.[105]

V. REQUEST FOR RELIEF

39. AT&T respectfully requests that the Commission find that FPL charged and continues to charge AT&T unjust and unreasonable rates in violation of federal law.

40. AT&T respectfully requests that the Commission set the just and reasonable rate, effective as of the 2014 rental year, as the rate that is properly calculated in accordance with the new telecom rate formula.

41. Alternatively, if FPL attempts to rebut the presumption, and the Commission concludes that FPL has met its burden to prove by clear and convincing evidence that the JUA

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[103] *See Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

[104] Ex. A at ATT00013 (Rhinehart Aff. ¶ 26).

[105] *Id.* at ATT00013 (Rhinehart Aff. ¶ 27) (calculating overpayment for 2014 – 2018 rental years of [redacted] using pre-existing telecom rental rates for AT&T and FPL); Ex. B at ATT00051-52 (Miller Aff. ¶¶ 8-9).

provides AT&T a net material advantage over its competitors, AT&T respectfully requests that the Commission set the just and reasonable rate, effective as of the 2014 rental year, at a rate that is no higher than the rate that is properly calculated in accordance with the pre-existing telecom rate formula.

42. AT&T respectfully requests that the Commission order FPL to refund all amounts paid in excess of a just and reasonable rate beginning with the 2014 rental year and grant AT&T such other relief as the Commission deems just, reasonable, and proper.

Respectfully submitted,

By: _____

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Dated: July 12, 2019

Attorneys for BellSouth Telecommunications, LLC d/b/a AT&T Florida

INFORMATION DESIGNATION

1. The AT&T employees and former employees with relevant information about this rental rate dispute are identified in this Amended Pole Attachment Complaint and its supporting Affidavits and Exhibits.

2. The Joint Use Agreement and correspondence exchanged by the parties during the rental rate negotiations are attached as Exhibits to this Amended Pole Attachment Complaint. Additional correspondence exchanged by the parties is already in FPL's possession. Also attached are Affidavits from AT&T employees involved in the rate negotiations, as well as from outside expert Christian M. Dippon, Ph.D., calculations of the rental rates that result from the Commission's new and pre-existing telecom rate formulas, and calculations of the amounts that FPL has collected in violation of 47 U.S.C. § 224(b).

3. Should FPL seek to rebut the new telecom rate presumption, additional information will become relevant. AT&T previously sought to obtain some of this information from FPL, such as the rates that FPL charges CLECs and cable companies, the supporting calculations, a complete set of unredacted license agreements, and the support and quantification of the value associated with any competitive "benefit" that FPL believes would justify its extraordinarily high rental rates. AT&T again seeks such information in interrogatories served on FPL on July 1, 2019. AT&T reserves the right to rely on information that is not appended to this Amended Pole Attachment Complaint if it is provided by FPL or becomes relevant.

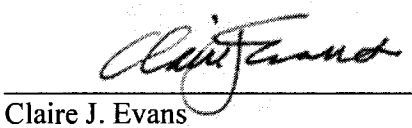
RULE 1.721(M) VERIFICATION

I, Robert Vitanza, as signatory to this submission, hereby verify that I have read this Amended Pole Attachment Complaint and, to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.

Robert Vitanza

DECLARATION OF PAYMENT

I, Claire J. Evans, counsel for Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"), hereby declare, under penalty of perjury, that AT&T paid the $295 filing fee electronically using the Commission's electronic filing and payment system "Fee Filer" (www.fcc.gov/feefiler) on June 30, 2019, as required by Section 1.1106 of the Commission's Rules, 47 C.F.R. § 1.1106. AT&T's 10-digit FCC Registration Number is 0020882668.



Claire J. Evans

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2019, I caused a copy of the foregoing Complaint, Affidavits, and Exhibits in support thereof, 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
(confidential version of Complaint, Affidavits, and Exhibits by hand delivery; public version of Complaint, Affidavits, and Exhibits by ECFS)

Charles A. Zdebski
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW
12th Floor
Washington, DC 20006
Counsel for Defendant
(confidential and public versions of Complaint, Affidavits, and Exhibits by email)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(public version of Complaint, Affidavits, and Exhibits by overnight delivery)

Lisa B. Griffin
Lia Royle
Federal Communications Commission
Enforcement Bureau
Market Disputes Resolution Division
445 12th Street, SW
Washington, DC 20554
(confidential and public versions of Complaint, Affidavits, and Exhibits by email)

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(public version of Complaint, Affidavits, and Exhibits by overnight delivery)

Claire J. Evans

PUBLIC VERSION

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Defendant.	Proceeding No. 19-187 Bureau ID No. EB-19-MD-006

Affidavits

A. Affidavit of Daniel P. Rhinehart (June 27, 2019).

B. Affidavit of Dianne W. Miller (June 27, 2019).

C. Affidavit of Mark Peters (June 27, 2019).

D. Affidavit of Christian M. Dippon, Ph.D. (June 28, 2019).

Exhibits

1. Joint Use Agreement Between Florida Power and Light Company ("FPL") and Southern Bell Telephone and Telegraph Company ("AT&T"), dated January 1, 1975, as amended.

2. Invoices from FPL for the 2014 – 2018 Rental Years.

3. Email from T. Kennedy, FPL, to P. Simmons, AT&T (March 6, 2018) (without Excel attachment).

4. Email from T. Kennedy, FPL, to P. Simmons, AT&T (May 8, 2018).

5. Email from K. Hitchcock, AT&T, to T. Kennedy, FPL (August 21, 2018).

6. FPL's Notice of Default (August 31, 2018).

7. Letter from K. Hitchcock, AT&T, to M. Jarro, FPL (September 13, 2018).

8. Email from D. Rhinehart, AT&T, to M. Jarro, FPL (October 4, 2018).

9. Letter from M. Jarro, FPL, to K. Hitchcock, AT&T (November 9, 2018).

10. Email from M. Jarro, FPL to D. Miller, AT&T (December 6, 2018).

11. Email from D. Bromley, FPL, to D. Rhinehart, AT&T (December 10, 2018).

12. Email from D. Bromley, FPL, to D. Miller, AT&T (December 20, 2018).

13. FPL's Notice to Initiate Mediation with AT&T (January 8, 2019).

14. FPL's Notice of Enforcement of Suspension of AT&T's Attachments to FPL Poles (January 11, 2019).

15. Email from D. Miller, AT&T, to M. Jarro, FPL (January 16, 2019).

16. FPL's Notice to Initiate Mediation with FPL / Notice of Enforcement of Suspension (January 18, 2019).

17. Email from D. Miller, AT&T, to M. Jarro, FPL (January 24, 2019) (without attachments).

18. Letter from M. Jarro, FPL, to D. Miller, AT&T (January 28, 2019).

19. Email from D. Miller, AT&T, to M. Jarro, FPL (January 30, 2019).

20. Letter from M. Jarro, FPL, to D. Miller, AT&T (January 31, 2019).

21. Email from D. Miller, AT&T, to M. Jarro, FPL (February 4, 2019).

22. Email from D. Bromley, FPL, to D. Miller, AT&T (March 20, 2019).

23. FPL's Notice of Termination (March 25, 2019).

24. Letter from D. Miller, AT&T, to M. Jarro, FPL (April 3, 2019).

25. Letter from M. Jarro, FPL, to AT&T Florida (April 8, 2019) (without enclosure).

26. Email from D. Bromley, FPL, to D. Miller, FPL (Apr. 19, 2019).

27. Letter from E. Silagy, FPL, to D. Miller, AT&T (May 21, 2019).

28. Letter from M. Jarro, FPL, to D. Miller, AT&T (May 23, 2019).

29. Letter from D. Miller, AT&T, to M. Jarro, FPL (May 30, 2019).

Exhibit A

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Defendant.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF DANIEL P. RHINEHART
IN SUPPORT OF POLE ATTACHMENT COMPLAINT

STATE OF TEXAS)
) ss.
COUNTY OF WILLIAMSON)

I, Daniel P. Rhinehart, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"). I am executing this Affidavit in support of AT&T's Pole Attachment Complaint against Florida Power and Light Company ("FPL"). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. My job title is Director – Regulatory. My current responsibilities include supporting various AT&T entities in the areas of cost analysis, rate development, and universal services. In this role, I direct the development of the pole attachment and conduit occupancy rates charged by AT&T's operating companies pursuant to Federal Communications

Commission ("FCC") and state formulas, including the calculation of the rental rates that AT&T charges cable and CLEC attachers in Florida. AT&T's new telecom and cable rates in Florida ranged from [redacted] per pole during the 2014 through 2018 rental years, assuming 1 foot of space occupied. In my role, I also review and evaluate the propriety of pole attachment rates paid by AT&T. I have also testified in a number of federal and state cases regarding the reasonableness of a variety of rates and charges during the 40 years that I have worked in the telecommunications industry. I received a BS – Education with high distinction from the University of Nevada – Reno, where I majored in math, and an MBA with honors from St. Mary's College in Moraga, California.

3. As a result of my experience, I am familiar with the manner in which rates are calculated under the new and pre-existing telecom pole attachment rate formulas adopted by the FCC. I have relied on the best data available to AT&T when making the rate calculations described in this Affidavit. I reserve the right to supplement or revise this Affidavit as additional data becomes available.

4. I also have personal knowledge of AT&T's negotiations with FPL for a just and reasonable pole attachment rate. I attended a December 7, 2018 face-to-face meeting at FPL's headquarters in Juno Beach, Florida with executives from FPL, including Michael Jarro, Vice President – Transmission and Substation, David Bromley, Manager – Regulatory Services, and Thomas Allain, General Manager – Central Maintenance Programs, and AT&T representatives Dianne Miller, Director – Construction & Engineering, and Mark Peters, Area Manager – Regulatory Relations. I also attended a May 1, 2019 mediation in Miami, Florida with FPL executives that included Mr. Jarro, Mr. Bromley, and Mr. Allain, FPL in-house counsel Charles Bennett and Maria Moncada, and FPL outside counsel Alvin Davis. I was joined by Ms. Miller,

Mr. Peters, Dorian Denburg, AT&T Assistant Vice President – Senior Legal Counsel, and Christopher Huther, AT&T's outside counsel. The mediation was subject to a confidentiality agreement, so I will not disclose any specific statements made during the half-day mediation in this Affidavit.

5. On numerous occasions throughout the negotiations, AT&T asked FPL to provide the new telecom rates it charges AT&T's competitors, the calculations and inputs FPL used to calculate the new telecom rates, and copies of FPL's executed license agreements with other attachers. FPL denied AT&T's repeated requests. FPL claimed that the information was not relevant to the calculation of the rental rates under the JUA and that FPL did not have an obligation to agree to charge AT&T a different rate under federal law. FPL did not otherwise discuss its interpretation of federal law, except to say that it disagreed with AT&T. FPL neither claimed that it could rebut the FCC's new telecom rate presumption, nor did it attempt to justify the rental rates it invoiced by identifying any alleged competitive advantages that AT&T receives under the JUA and quantifying their alleged value. FPL charges AT&T a base rental rate for use of all FPL-owned poles, plus per-pole premiums that apply to FPL-owned concrete distribution poles (sometimes referred to as "special poles") and transmission poles. FPL calculates the base rate as 47.4% of the "adjustment rate," which is defined in the JUA as "the average annual cost of joint use poles for the next preceding year."[1] FPL then adds a per-pole premium equal to 50% of the adjustment rate for use of concrete distribution poles, and [redacted] of the adjustment rate for use of transmission poles.

[1] *See* Ex. 1 at ATT00122-123 (JUA § 10.6).

A. New Telecom Rates for AT&T's Use of FPL's Poles

6. I calculated the per-pole rental rates that result from the FCC's new telecom rate formula for AT&T's use of FPL's poles during the 2014 through 2018 rental years. My calculations are attached as Exhibit R-1. My calculations are limited to these five rental years because I understand that a five-year statute of limitations applies. I am willing to provide calculations for additional rental years should they become relevant.

7. The attached calculations use the FCC's new telecom rate formula, which has two basic components: (1) a space factor that reflects the percentage of usable and unusable pole space assigned to the attacher and (2) an annual pole cost, as shown in the following graphic:[2]

Rate = Space Factor x Annual Pole Cost

$$\text{Rate} = \left[\frac{\left(\frac{\text{Space}}{\text{Occupied}}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right] \times \text{Net Cost of Bare Pole} \times \text{Carrying Charge Rate} \times \text{No. of Attachers Cost Allocator}$$

8. The space factor is calculated using presumptive inputs of 1 foot for space occupied by a communications attacher, 24 feet for unusable space, 37.5 feet for pole height, and 5 for the average number of attaching entities in an urbanized area (or 3 for non-urbanized areas) unless a pole owner rebuts these presumptive values with actual data.[3] The use of these presumptive values is appropriate to calculate the new telecom rate for joint use poles owned by FPL because I am not aware of actual data that could rebut the presumptions.

[2] *See* 47 C.F.R. § 1.1406(d)(2)(i).

[3] *See* 47 C.F.R. §§ 1.1409(c), 1.1410.

9. I calculated a space factor of 11.20% for AT&T's use of FPL's poles using the presumptive inputs. The use of the urbanized area presumption of 5 attaching entities is appropriate because the parties' overlapping service areas includes Miami, Fort Lauderdale, Port St. Lucie, West Palm Beach, and Daytona Beach, Florida.[4] Each of these is an urbanized area with a population greater than 50,000, and under FCC rules, "[i]f any part of the utility's service area within the state has a designation of urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities."[5]

10. My calculation of the 11.20% space factor follows:

$$\text{Space Factor} = \frac{1 \text{ foot} + \left(\frac{2}{3} \times \frac{24 \text{ feet}}{5 \text{ Attaching Entities}} \right)}{37.5 \text{ feet}} = 11.20\%$$

11. The second component of the new telecom formula—the annual pole cost—has three subparts: (1) net cost of a bare pole, (2) carrying charge rate, and (3) a cost allocator that reflects the average number of attachers used in the space factor calculation.[6] The first subpart—the net cost of a bare pole—is calculated as follows:

$$\text{Net Cost of Bare Pole} = \frac{\text{Net Pole Investment}}{\text{Number of Poles}} \times \text{Appurtenance Factor}$$

[4] 47 C.F.R. § 1.1409(c); *see also* Compl. Ex. B at ATT00051 (Aff. of D. Miller, June 27, 2019 ("Miller Aff.") ¶ 5); QuickFacts, U.S. Census Bureau, *available at* https://www.census.gov/quickfacts.

[5] 47 C.F.R. § 1.1409(c).

[6] 47 C.F.R. § 1.1406(d)(2)(i).

Net pole investment is calculated by reducing the gross investment shown in FERC Form 1 for Account 364 (Poles, Towers & Fixtures), by the depreciation and deferred tax reserves assigned or allocated to this account.[7] The appurtenance factor eliminates investment in non-pole appurtenances from the pole costs used to calculate rates and is presumptively 15% for poles owned by investor-owned utilities.[8]

12. The second subpart—the carrying charge rate—is the sum of 5 components: an administrative element, maintenance element, depreciation element, taxes element, and rate of return.[9] The first four components (administrative, maintenance, depreciation, and taxes) are calculated using data in FPL's FERC Form 1. The fifth component (rate of return) is FPL's "weighted average cost of capital, both debt and equity."[10] My calculation of FPL's rate of return for the 2014 through 2018 rental years is attached as Exhibit R-2 and is based entirely on information provided in FPL's filings at the Florida Public Service Commission, relevant excerpts of which are included in Exhibit R-2.

13. The third subpart—the cost allocator—is 0.66 in this case under FCC rules because the presumptive input of 5 attaching entities applies.[11]

14. The following table shows the per-pole new telecom rates that apply to AT&T's use of FPL's poles during the 2014 through 2018 rental years using these inputs:

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[7] *Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Order on Reconsideration, 16 FCC Rcd 12103, 12122-123 (¶ 32), 12161 (¶ 121), 12176 (App'x E-2) (2001) ("*2001 Consolidated Order*").

[8] *Amendment of Rules & Policies Governing the Attachment of Cable Television Hardware to Util. Poles*, Report and Order, 2 FCC Rcd 4387 ¶ 19 (1987).

[9] *2001 Consolidated Order*, 16 FCC Rcd at 12156 (¶ 110) & 12176 (App'x E-2).

[10] *See Matter of Multimedia Cablevision, Inc.*, 11 FCC Rcd 11202, 11215 (¶ 36) (1996).

[11] 47 C.F.R. § 1.1406(d)(2)(i).

	Rate	=	Space Factor	x	Annual Pole Cost				
Rental Year	New Telecom Rate (per pole)	=	Space Factor	x	Net Cost of Bare Pole	x	Carrying Charge Rate	x	Cost Allocator
2014	**$10.46**		11.20%		$384.17		36.82%		0.66
2015	**$11.12**		11.20%		$429.69		35.01%		0.66
2016	**$12.12**		11.20%		$483.03		33.96%		0.66
2017	**$13.32**		11.20%		$549.47		32.79%		0.66
2018	**$15.80**		11.20%		$780.95		27.37%		0.66

15. These per-pole new telecom rates increased each of the last five years in large part because FPL reported increasing pole investment values in its FERC Form 1 for Account 364. The higher values are consistent with FPL's accelerated replacement of wood distribution poles with higher-cost concrete distribution poles pursuant to its storm hardening plan.[12] By regulation, Account 364 includes FPL's investment in each of these types of poles—it "shall include … [p]oles, wood, steel, concrete, or other material."[13] The FCC's new telecom rate formula thus ensures that FPL is appropriately compensated regardless of whether its pole is wood, concrete, or some other material.

16. As noted above, FPL charges AT&T a per-pole base rate on every jointly used pole, plus per-pole premiums on concrete distribution poles and transmission poles. For the 2014 through 2018 rental years, FPL charged AT&T base rates that were, on average, about [redacted] times the applicable new telecom rate:

[12] *See, e.g.*, Petition of FPL for Approval of Storm Hardening Plan (Mar. 15, 2016), *available at* https://www.floridapsc.com/library/filings/2016/01382-2016/01382-2016.pdf (last visited June 26, 2019).

[13] 18 C.F.R. § Pt. 101.

Rental Year	New Telecom Rate (per pole)	Base Rate Charged AT&T (per pole)	Base Rate compared to New Telecom Rate
2014	$10.46	[redacted]	[redacted] times
2015	$11.12		[redacted] times
2016	$12.12		[redacted] times
2017	$13.32		[redacted] times
2018	$15.80		[redacted] times
Simple Average	$12.56	[redacted]	[redacted] times

17. FPL added a per-pole premium for each concrete distribution pole to more than double the amount it charged AT&T for use of these poles. Thus, even though the cost of concrete poles is captured by a proper application of the FCC's new telecom rate formula, FPL charged AT&T per-pole rental amounts for concrete poles for the 2014 through 2018 rental years that averaged more than [redacted] times the applicable new telecom rate:

Rental Year	New Telecom Rate (per pole)	Base Rate Plus Premium Charged AT&T (per pole)	Base Rate Plus Premium compared to New Telecom Rate
2014	$10.46	[redacted]	[redacted] times
2015	$11.12		[redacted] times
2016	$12.12		[redacted] times
2017	$13.32		[redacted] times
2018	$15.80		[redacted] times
Simple Average	$12.56	[redacted]	[redacted] times

B. AT&T's Overpayments as Compared to New Telecom Rates

18. I calculated AT&T's overpayments for the 2014 through 2018 rental years by comparing the net rental amount that FPL invoiced AT&T for annual pole attachment rent to the net rental amount that AT&T would have paid if both companies paid proportional new telecom rates. I calculate the overpayments using "proportional" rates because the Commission

"anticipat[ed] that incumbent LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole."[14]

19. My calculation of the proportional new telecom rates for FPL's use of AT&T's poles are attached as Exhibit R-3. I used the same new telecom rate formula described above, *see* Section A, but calculated (1) a space factor that accounts for FPL's greater use of space on the pole, and (2) annual pole costs based on AT&T-specific data, such as the publicly reported AT&T cost data that AT&T used to calculate rates for other attachers during the rental year and the 5% appurtenance factor that presumptively applies when calculating rates for ILEC-owned poles.[15] The following table includes the proportional new telecom rates that I calculated:

	2014	**2015**	**2016**	**2017**	**2018**
New telecom rate for AT&T's use of FPL's poles (per pole)	$10.46	$11.12	$12.12	$13.32	$15.80
Proportional new telecom rate for FPL's use of AT&T's poles (per pole)	$15.62	$12.58	$11.66	$9.44	$12.60

20. My overpayment calculation for the 2014 through 2018 rental years is attached as Exhibit R-4 and shows that AT&T overpaid FPL by more than [redacted] million in net pole rent for the 2014 through 2018 rental years using proportional new telecom rates:

Rental Year	**AT&T's Net Rent Payment to FPL** (excluding true-ups)	-	**Net Rent at Proportional New Telecom Rates**	=	**AT&T's Overpayment**
2014	[redacted]		$568,811		[redacted]
2015			$1,617,458		
2016			$2,457,816		
2017			$3,528,690		
2018			$4,040,382		
Total 5-Year Overpayment (2014-2018)					[redacted]

[14] *Verizon Va., LLC and Verizon S., Inc. v. Va. Electric and Power Co.*, 32 FCC Rcd 3750, 3760 (¶ 21 n.78) (EB 2017) (citing *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662).

[15] *See Amendment of Rules & Policies Governing the Attachment of Cable Television Hardware to Util. Poles*, CC Docket No. 86-212, Report and Order, 2 FCC Rcd 4387, 4390 (¶ 19) (1987).

21. This calculation is conservative because it does not include any of the additional [redacted] million in "true-up" amounts that FPL also charged AT&T on its 2014 through 2018 invoices,[16] some of which are attributable to the use of FPL's poles during the 2014 through 2018 rental years.

C. AT&T Has Also Paid Far More than the Pre-Existing Telecom Rate

22. I also calculated rental rates using the FCC's pre-existing telecom rate formula, meaning the telecom rate formula in effect prior to the 2011 *Pole Attachment Order*.[17] I calculated these rates because the FCC set pre-existing telecom rates as a "hard cap" under the 2018 *Third Report and Order*, and as a "reference point" under the 2011 *Pole Attachment Order*, on the rental rate that may be charged an ILEC that has net benefits under a joint use agreement that materially advantage the ILEC over its competitors.[18] Although FPL has not indicated any intention to try to rebut the new telecom rate presumption adopted in the 2018 *Third Report and Order* or provided any basis for doing so, my analysis shows that, even if FPL were able to rebut the presumption, the rates it has charged AT&T still exceed the maximum pre-existing telecom rates set by the Commission. My pre-existing telecom rate calculations are included in Exhibit R-1.

23. The pre-existing telecom rate formula differs from the new telecom rate formula in that it does not include a cost allocator in the annual pole cost calculation to account for the number of attaching entities on the pole. The formula is in all other respects the same. The

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[16] *See* Compl. Ex. B at ATT00052 (Miller Aff. ¶ 9).

[17] *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) ("*Pole Attachment Order*").

[18] *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7771 (¶ 129) (2018); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

following table shows my calculation of the per-pole pre-existing telecom rates that apply to AT&T's use of FPL's poles during the 2014 through 2018 rental years:

Rental Year	Pre-Existing Telecom Rate (per pole)	=	Space Factor	x	Net Cost of Bare Pole	x	Carrying Charge Rate
2014	**$15.84**		11.20%		$384.17		36.82%
2015	**$16.85**		11.20%		$429.69		35.01%
2016	**$18.37**		11.20%		$483.03		33.96%
2017	**$20.18**		11.20%		$549.47		32.79%
2018	**$23.94**		11.20%		$780.95		27.37%

24. For the 2014 through 2018 rental years, FPL charged AT&T base rates that were, on average, about [redacted] times these pre-existing telecom rates:

Rental Year	Pre-Existing Telecom Rate (per pole)	Base Rate Charged AT&T (per pole)	Base Rate compared to Pre-Existing Telecom Rate
2014	$15.84	[redacted]	[redacted] times
2015	$16.85		[redacted] times
2016	$18.37		[redacted] times
2017	$20.18		[redacted] times
2018	$23.94		[redacted] times
Simple Average	$19.04	[redacted]	[redacted] times

25. With the per-pole premium for each concrete pole, FPL charged AT&T per-pole rental amounts for concrete poles for the 2014 through 2018 rental years that averaged more than [redacted] times the pre-existing telecom rates:

Rental Year	Pre-Existing Telecom Rate (per pole)	Base Rate Plus Premium Charged AT&T (per pole)	Base Rate Plus Premium compared to Pre-Existing Telecom Rate
2014	$15.84	[redacted]	[redacted] times
2015	$16.85		[redacted] times
2016	$18.37		[redacted] times
2017	$20.18		[redacted] times
2018	$23.94		[redacted] times
Simple Average	$19.04	[redacted]	[redacted] times

26. AT&T's annual net rental payments to FPL have also far exceeded the net rent that AT&T would have paid if both companies paid proportional pre-existing telecom rates, as shown in Exhibit R-4. My calculations use proportional pre-existing telecom rates for FPL's use of AT&T's poles, which are included in Exhibit R-3. The following table includes the proportional pre-existing telecom rates that I calculated:

	2014	2015	2016	2017	2018
Pre-existing telecom rate for AT&T's use of FPL's poles (per pole)	$15.84	$16.85	$18.37	$20.18	$23.94
Proportional pre-existing telecom rate for FPL's use of AT&T's poles (per pole)	$23.66	$19.06	$17.66	$14.30	$19.08

27. My calculations show that AT&T overpaid FPL by more than [redacted] million in net pole rent for the 2014 through 2018 rental years using proportional pre-existing telecom rates:

Rental Year	AT&T's Net Rent Payment to FPL (excluding true-ups)	-	Net Rent at Proportional Pre-Existing Telecom Rates	=	AT&T's Overpayment
2014	[redacted]		$861,835		[redacted]
2015			$2,450,694		
2016			$3,723,964		
2017			$5,346,501		
2018			$6,121,791		
Total 5-Year Overpayment (2014-2018)					[redacted]

28. This calculation is conservative because it also does not include any of the additional [redacted] million in "true-up" amounts that FPL charged AT&T on its 2014 through 2018 invoices,[19] some of which are attributable to the use of FPL's poles during the 2014 through 2018 rental years.

[19] *See* Compl. Ex. B at ATT00052 (Miller Aff. ¶ 9).

Daniel P. Rhinehart

Sworn to before me on
this 27th day of June, 2019

Notary Public

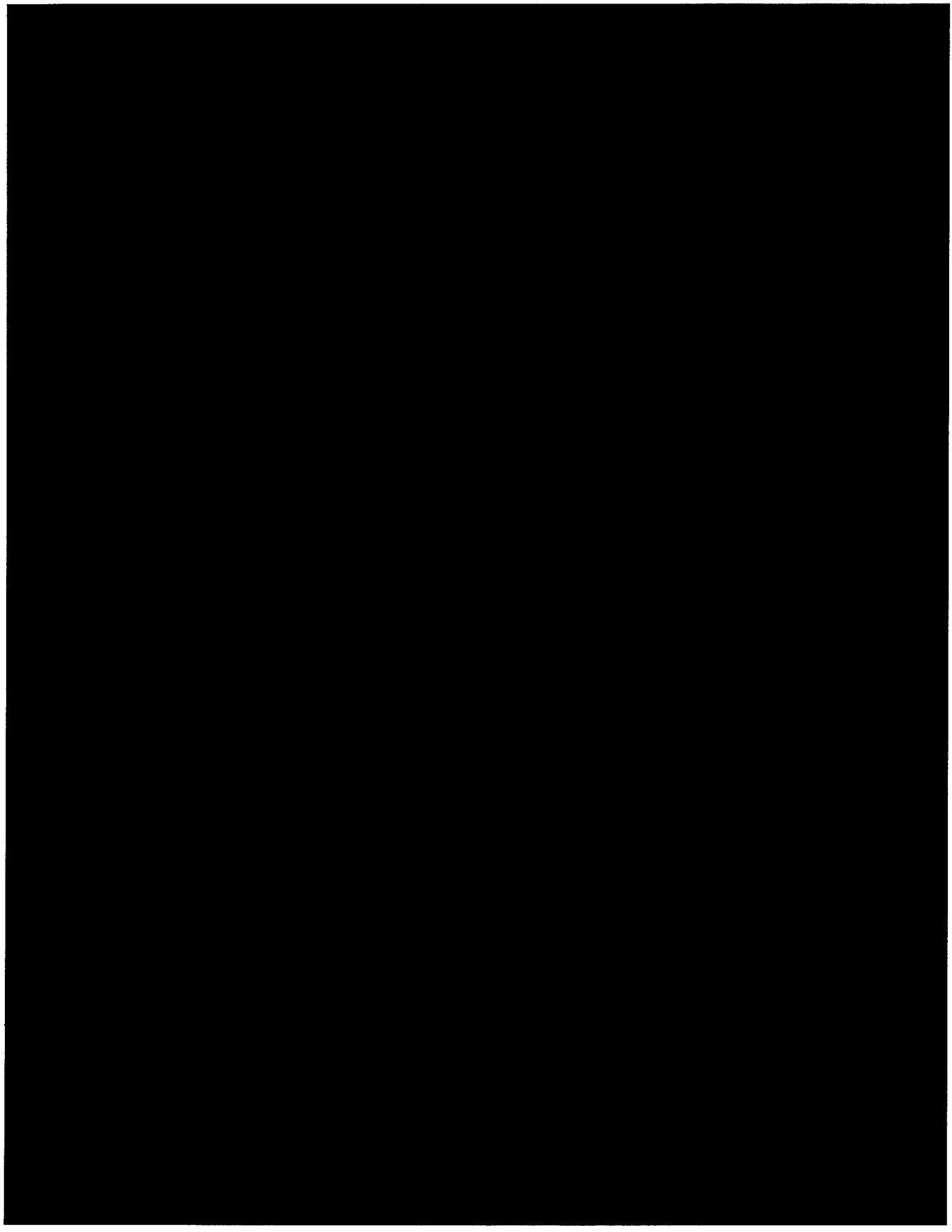
ASHLEY GONZALEZ
My Notary ID # 125754879
Expires July 7, 2022

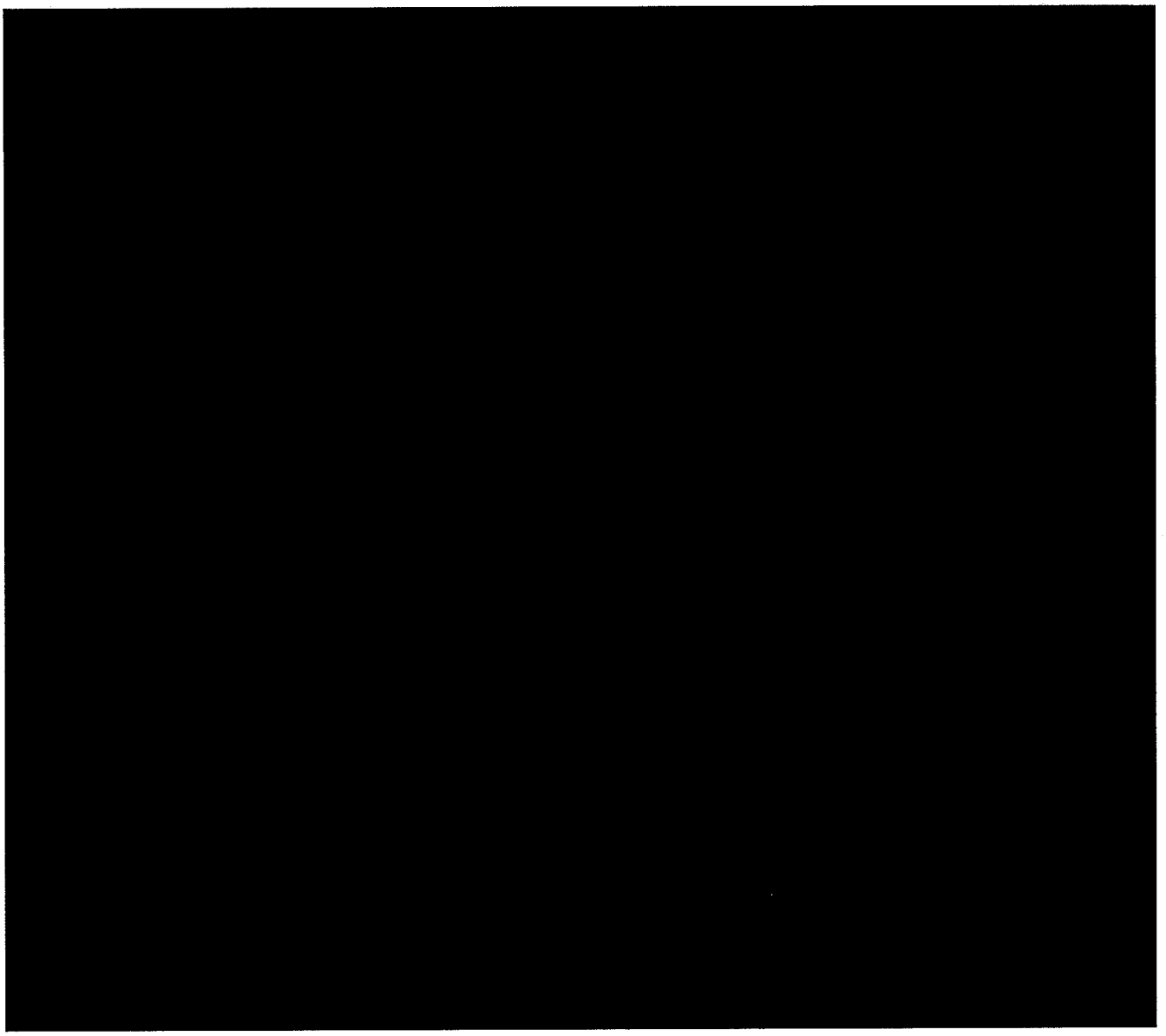
State of Texas
County of Williamson (SS)

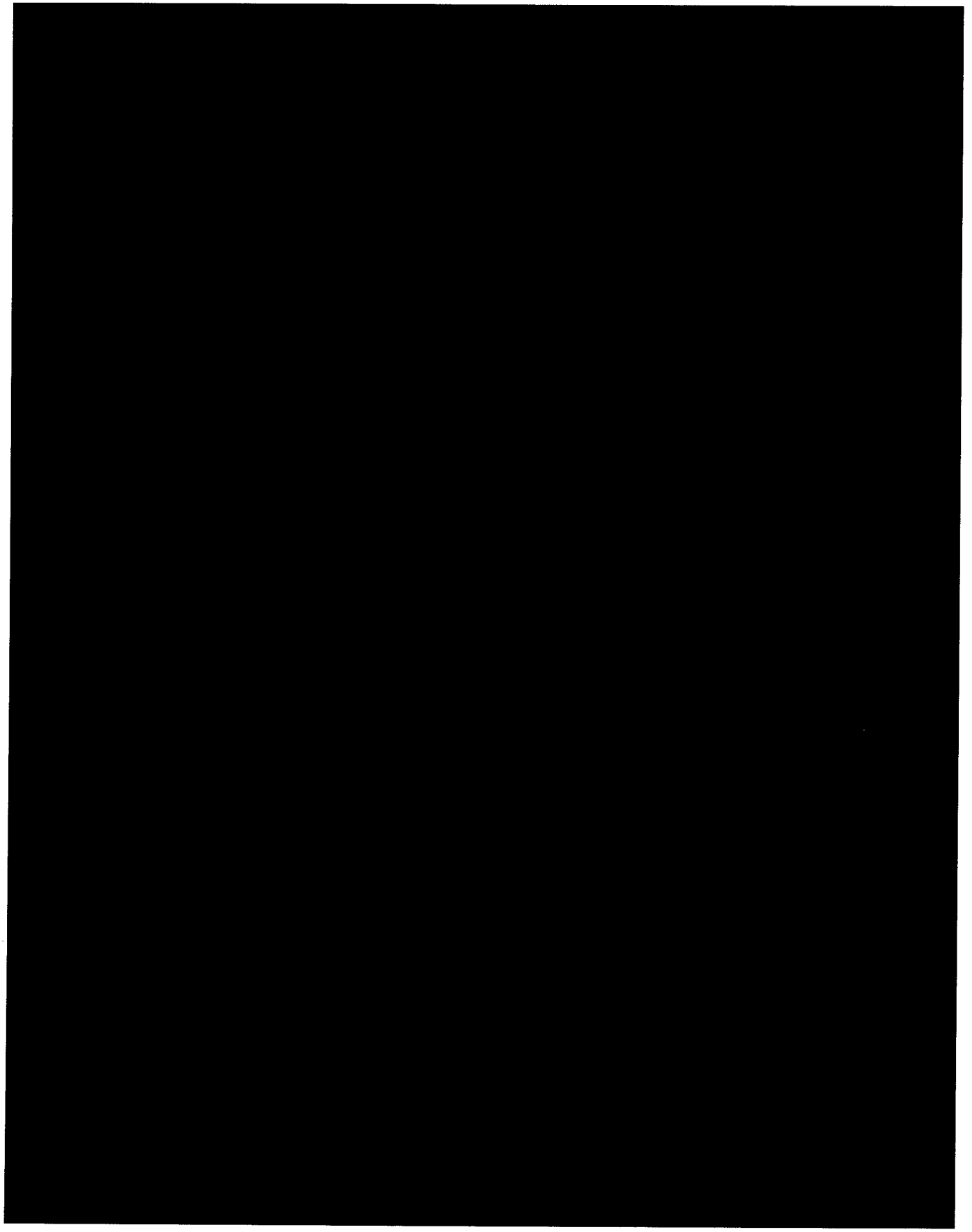
On this 27 day of June, 2019
before me, the undersigned notary public,
personally appeared Daniel Rhinehart
known to me to be the person(s) whose name(s)
is/are subscribed to the within instrument and
acknowledged that he/she/they executed the same
for the purposes therein contained.

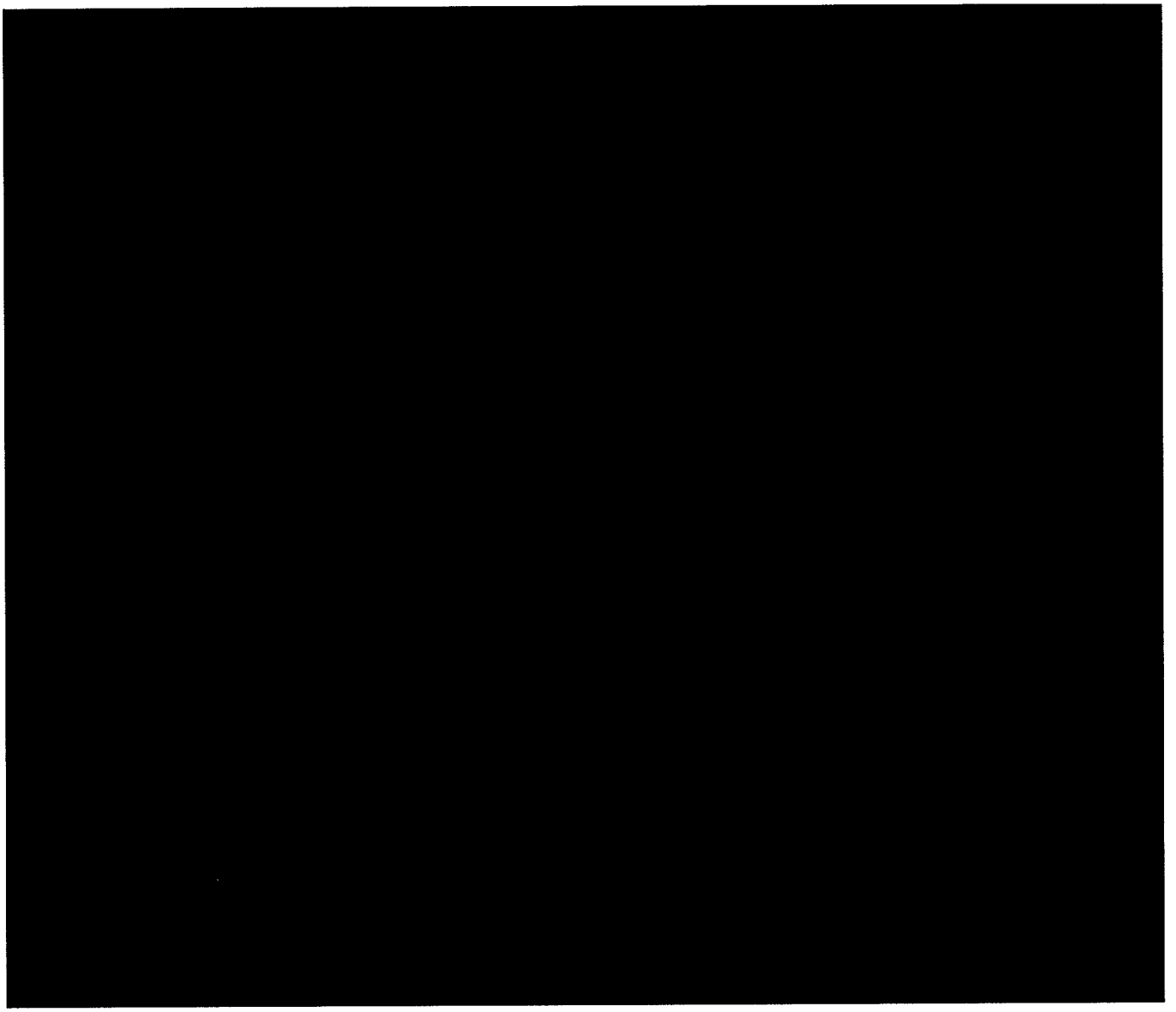
Notary Public

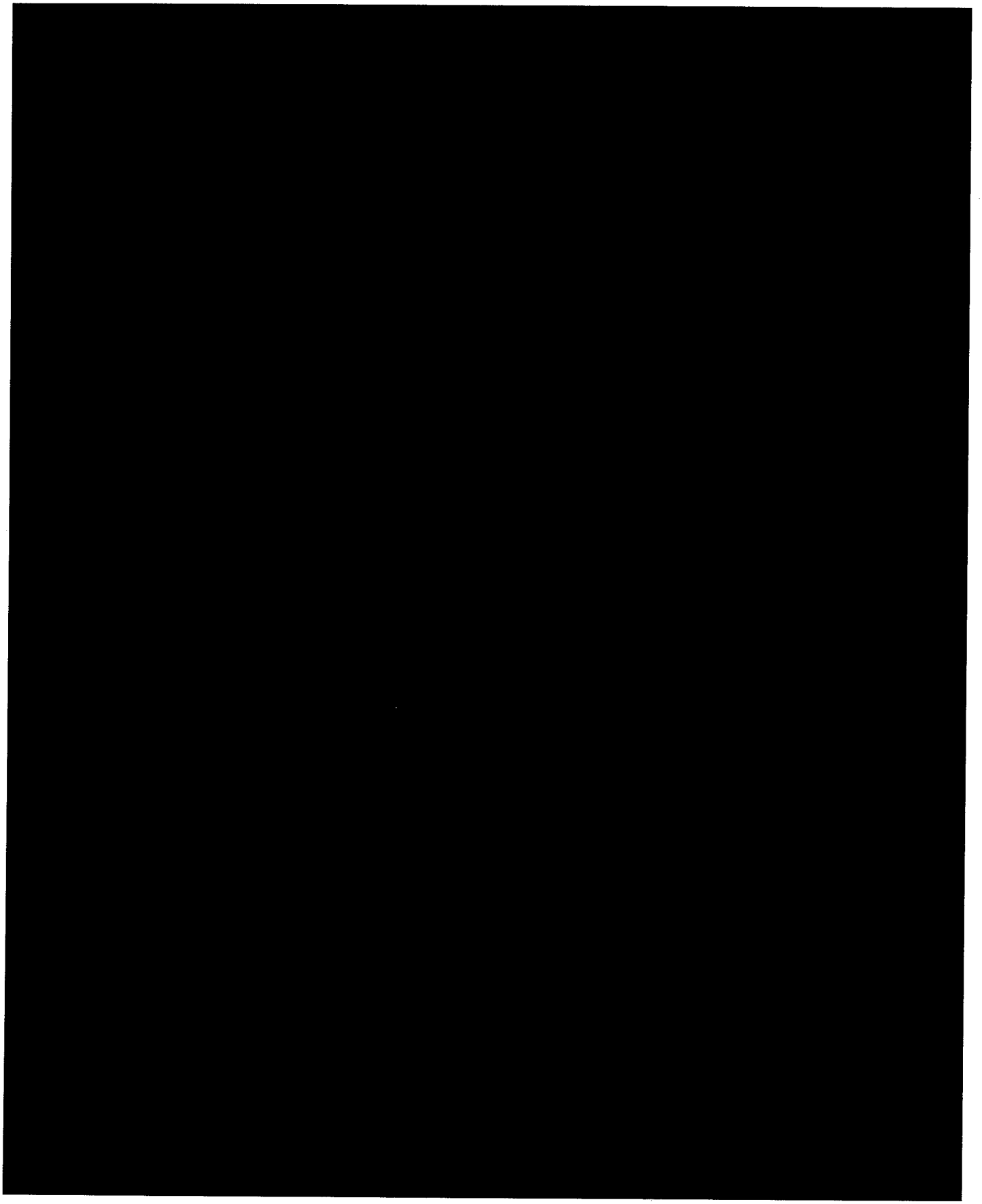
Exhibit R-1

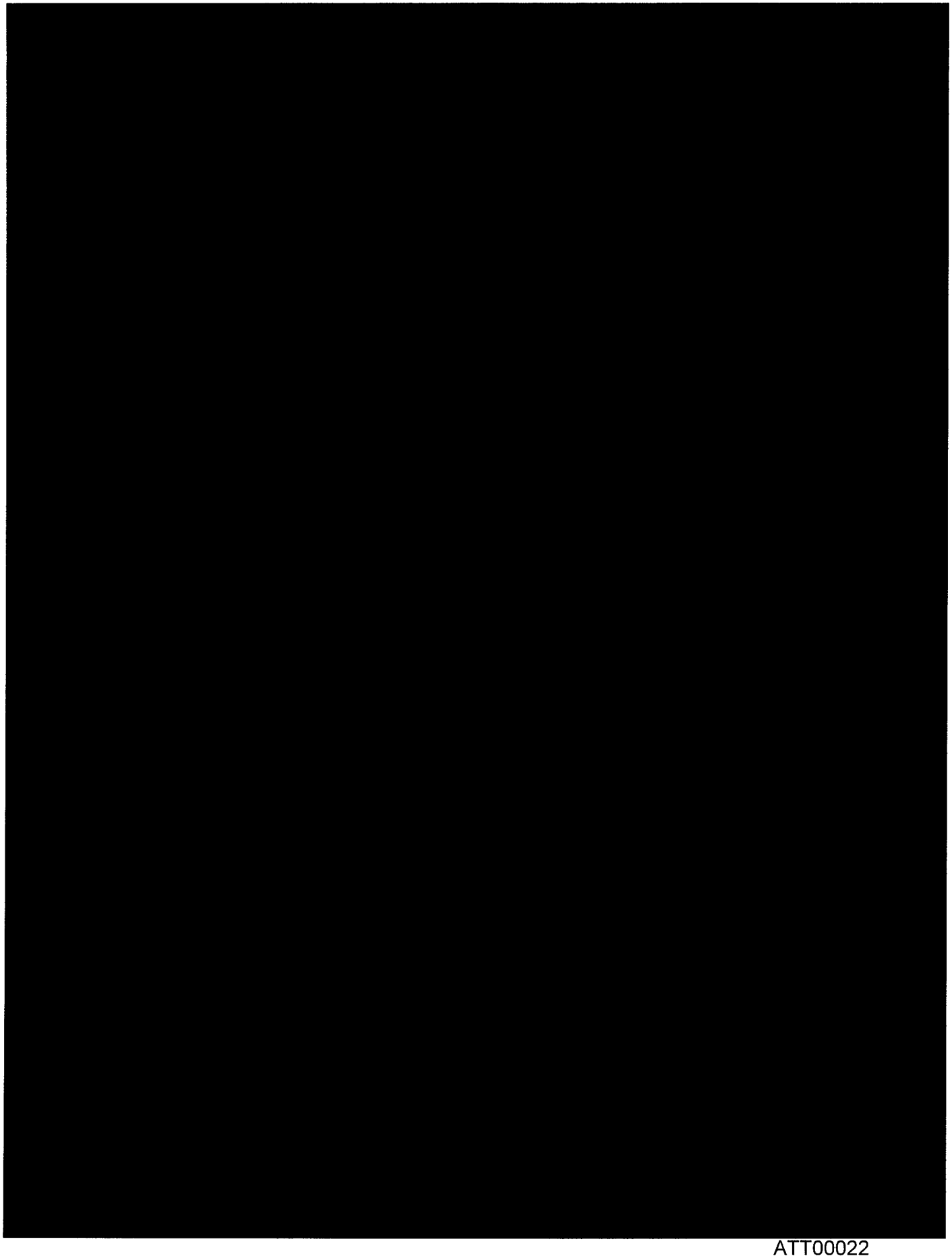


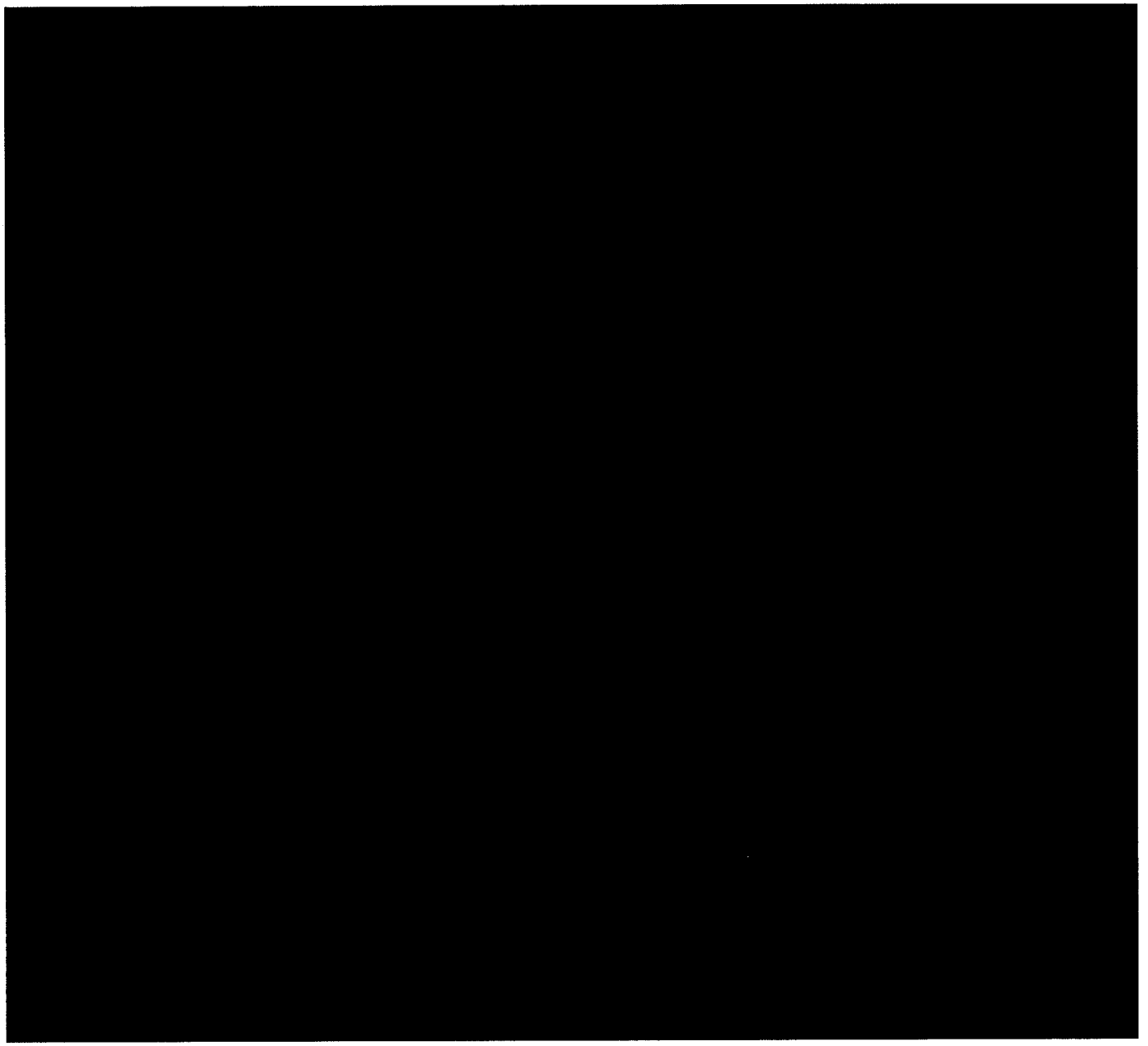


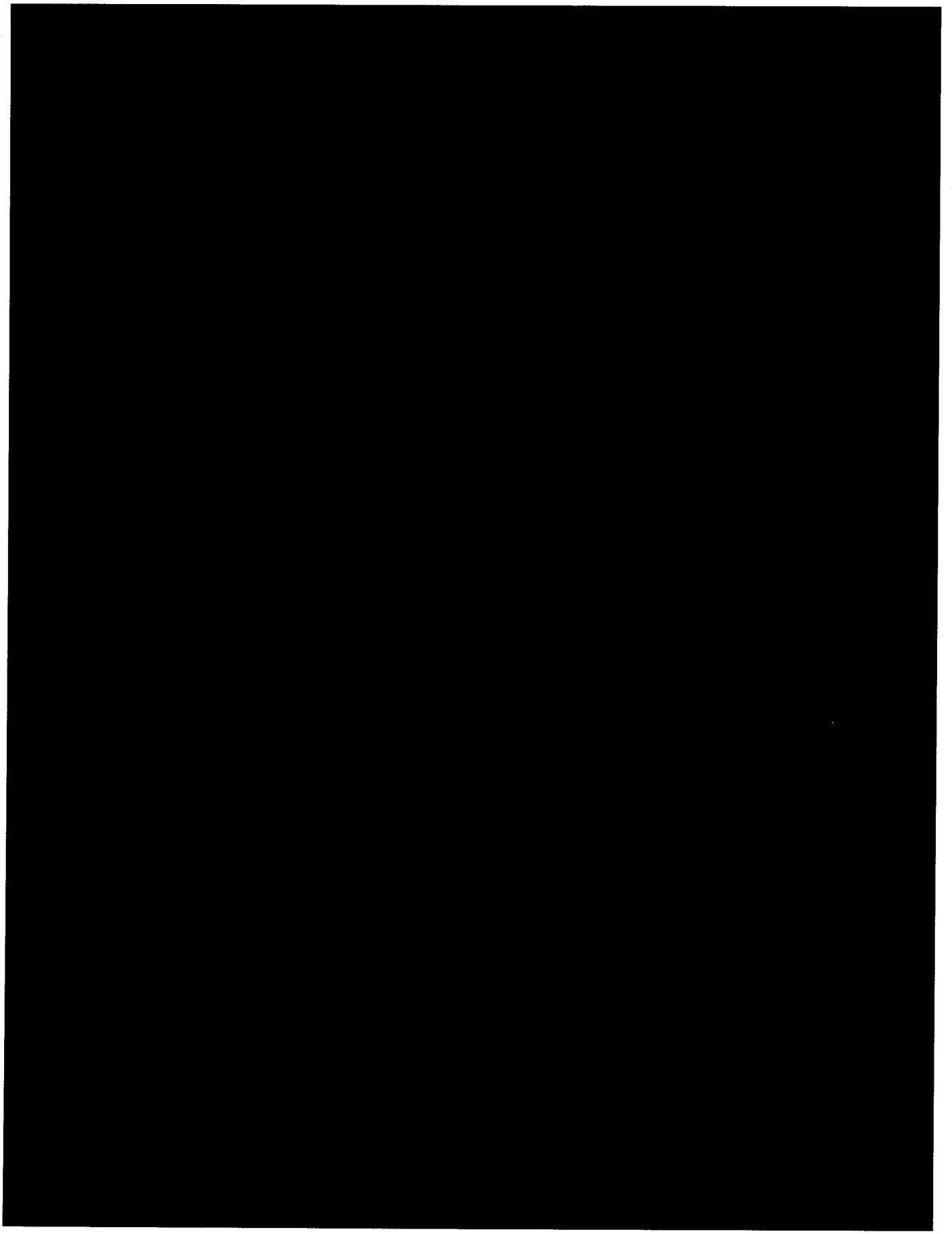












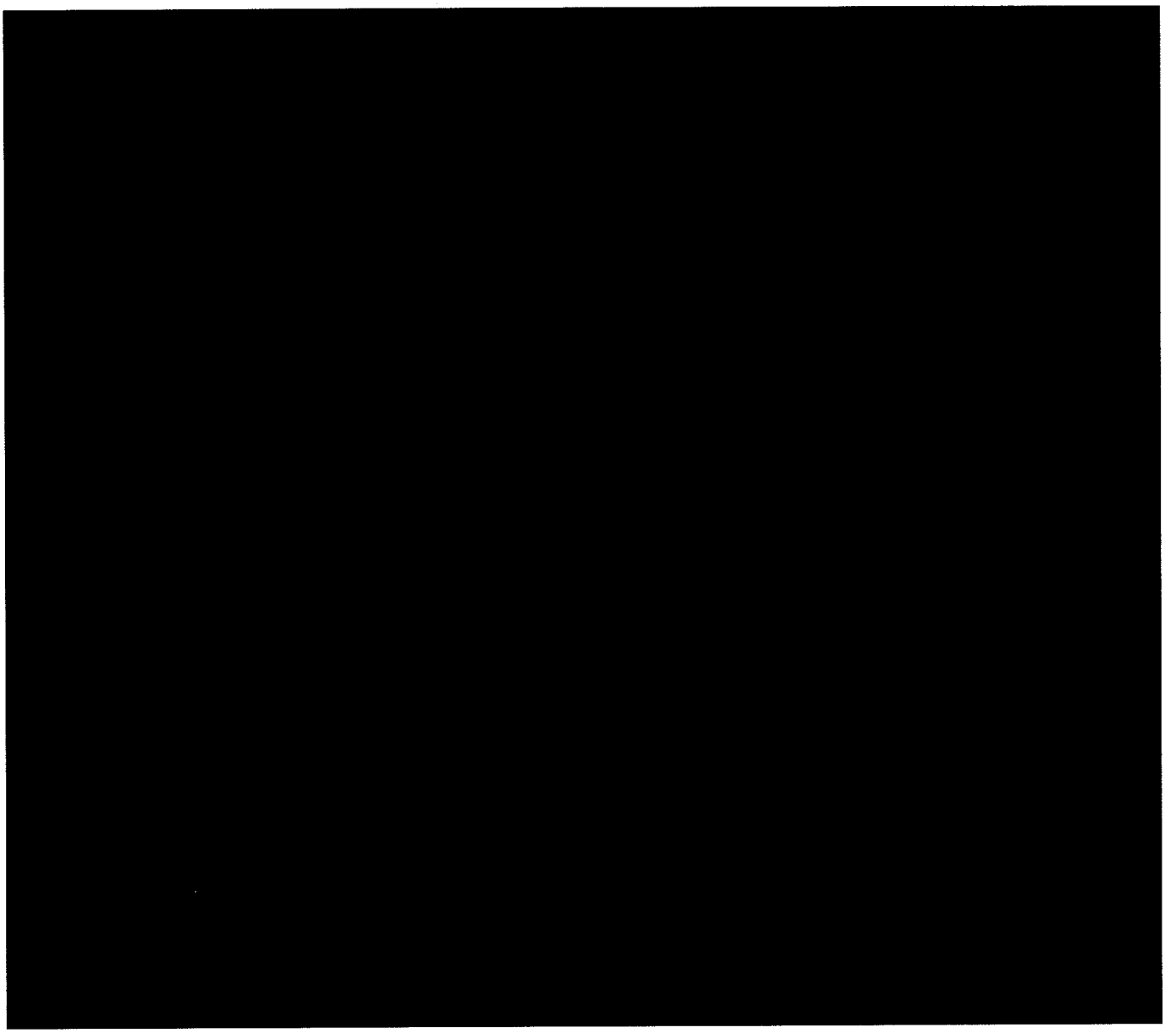
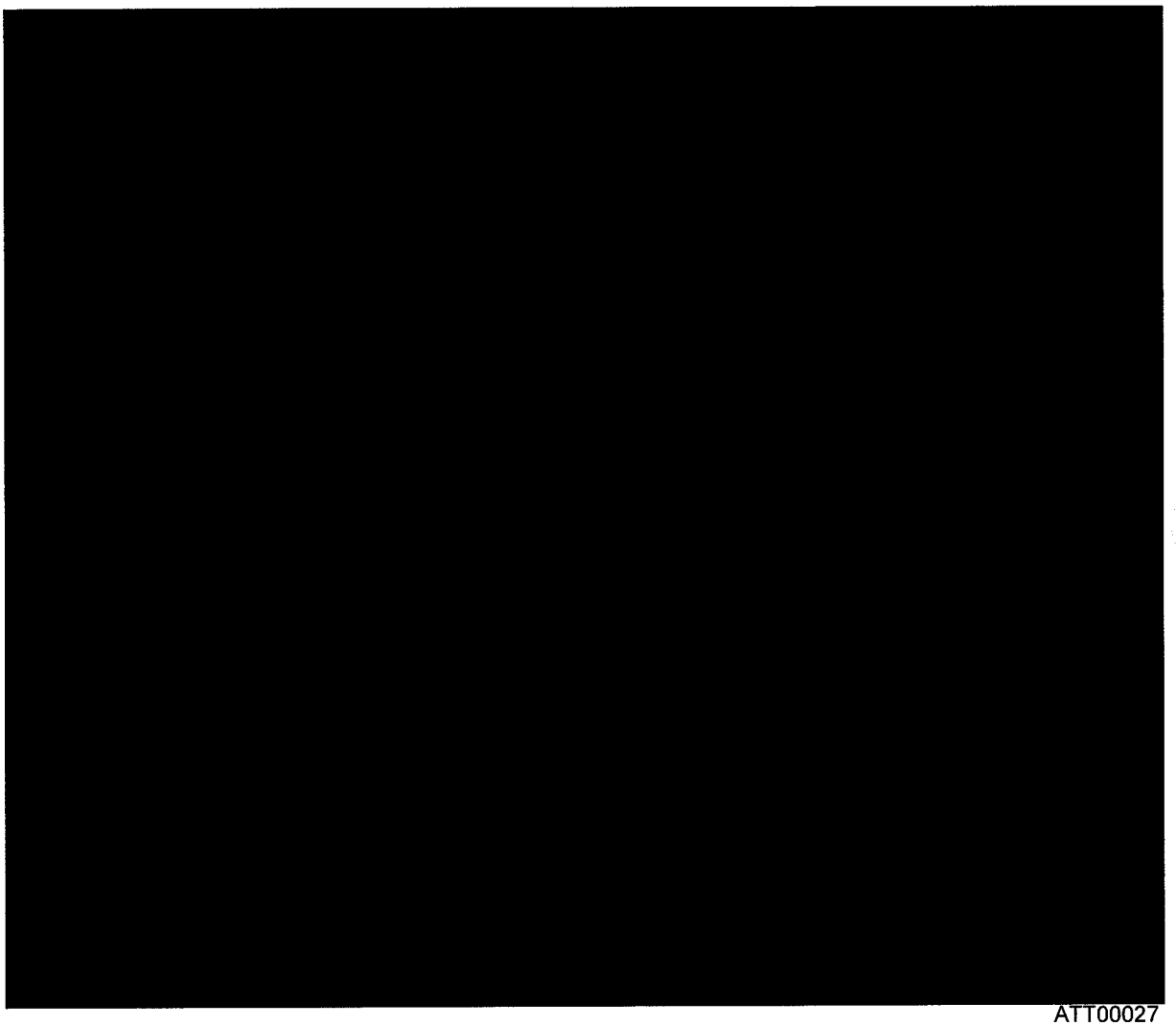


Exhibit R-2

PUBLIC VERSION



ATT00027

PUBLIC VERSION

Florida Power & Light Company, 700 Universe Blvd, Juno Beach FL. 33408-0420

FPL

February 17, 2014

Mr. Bart Fletcher
Public Utilities Supervisor
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Dear Mr. Fletcher:

Enclosed is Florida Power & Light Company's Rate of Return Surveillance Report to the Florida Public Service Commission for December 2013. This report was prepared using a thirteen month average and year-end rate base and adjustments consistent with Docket No. 120015-EI, Order No. PSC-13-0023-S-EI. The required rate of return was calculated using the return on common equity as authorized in the aforementioned docket and order.

This report also includes a pro forma adjustment to net operating income which reflects the annual effect of revenue normalization due to abnormal weather conditions. The pro forma return on common equity is 11.05%.

This report was prepared consistent with the guidelines provided in Commission Form PSC/AFA 14.

Sincerely,

Sol L Stamm
Director of Regulatory Accounting

Enclosures

Copy: J. R. Kelly, Office of Public Counsel

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
FPSC ADJUSTED BASIS
DECEMBER, 2013

AVERAGE	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 7,673,302,917	$ 7,523,645,805	$ (47,077,077)	$ (448,164,265)	$ 7,028,404,264	29.72%	4.80%	1.43%	4.80%	1.43%	4.80%	1.43%
SHORT TERM DEBT	441,440,251	432,359,642	(2,876,727)	(0)	429,482,915	1.82%	1.88%	0.03%	1.88%	0.03%	1.88%	0.03%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,250,577,401	11,019,148,340	(73,316,467)	(0)	10,945,831,873	46.29%	9.50%	4.40%	10.50%	4.86%	11.50%	5.32%
CUSTOMER DEPOSITS	433,786,655	433,690,909	(2,885,585)	0	430,805,324	1.82%	2.06%	0.04%	2.06%	0.04%	2.06%	0.04%
DEFERRED INCOME TAX	5,139,674,775	5,037,960,685	(32,222,910)	(194,996,505)	4,810,741,269	20.34%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	169,368,254	166,055,435	(7,356)	(164,949,642)	1,098,237	0.00%	7.66%	0.00%	8.27%	0.00%	8.88%	0.00%
TOTAL	$ 25,108,150,254	$ 24,612,860,815	$ (158,386,122)	$ (808,110,812)	$ 23,646,383,882	100.00%		5.89%		6.36%		6.82%

YEAR END	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 7,914,258,359	$ 7,759,150,592	$ (40,016,071)	$ (447,584,051)	$ 7,271,550,470	29.78%	4.74%	1.41%	4.74%	1.41%	4.74%	1.41%
SHORT TERM DEBT	183,330,671	179,546,200	(982,653)	0	178,563,547	0.73%	0.14%	0.00%	0.14%	0.00%	0.14%	0.00%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,746,055,635	11,503,583,364	(62,958,903)	0	11,440,624,461	46.85%	9.50%	4.45%	10.50%	4.92%	11.50%	5.39%
CUSTOMER DEPOSITS	402,028,063	401,943,168	(2,199,828)	0	399,743,341	1.64%	2.13%	0.03%	2.13%	0.03%	2.13%	0.03%
DEFERRED INCOME TAX	5,453,974,236	5,345,435,673	(28,188,260)	(194,996,505)	5,122,250,907	20.98%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	169,897,509	168,588,776	(25,617)	(161,908,184)	4,654,976	0.02%	7.65%	0.00%	8.26%	0.00%	8.87%	0.00%
TOTAL	$ 25,869,544,475	$ 25,356,247,773	$ (134,371,332)	$ (804,488,740)	$ 24,417,387,701	100.00%		5.90%		6.37%		6.84%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
PROFORMA ADJUSTED BASIS
DECEMBER, 2013

AVERAGE	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 7,028,404,264	$ 0	$ 7,028,404,264	29.72%	4.80%	1.43%	4.80%	1.43%	4.80%	1.43%
SHORT TERM DEBT	429,482,915	(0)	429,482,915	1.82%	1.88%	0.03%	1.88%	0.03%	1.88%	0.03%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	10,945,831,873	0	10,945,831,873	46.29%	9.50%	4.40%	10.50%	4.86%	11.50%	5.32%
CUSTOMER DEPOSITS	430,805,324	(0)	430,805,324	1.82%	2.06%	0.04%	2.06%	0.04%	2.06%	0.04%
DEFERRED INCOME TAX	4,810,741,269	(0)	4,810,741,269	20.34%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	1,098,237	0	1,098,237	0.00%	7.66%	0.00%	8.27%	0.00%	8.88%	0.00%
TOTAL	$ 23,646,363,882	$ 0	$ 23,646,363,882	100.00%		5.89%		6.36%		6.82%

YEAR END	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 7,271,550,470	$ (0)	$ 7,271,550,470	29.78%	4.74%	1.41%	4.74%	1.41%	4.74%	1.41%
SHORT TERM DEBT	178,563,547	0	178,563,547	0.73%	0.14%	0.00%	0.14%	0.00%	0.14%	0.00%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,440,624,461	(0)	11,440,624,461	46.85%	9.50%	4.45%	10.50%	4.92%	11.50%	5.39%
CUSTOMER DEPOSITS	399,743,341	0	399,743,341	1.64%	2.13%	0.03%	2.13%	0.03%	2.13%	0.03%
DEFERRED INCOME TAX	5,122,250,907	0	5,122,250,907	20.98%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	4,654,976	(0)	4,654,976	0.02%	7.65%	0.00%	8.26%	0.00%	8.87%	0.00%
TOTAL	$ 24,417,387,701	$ 0	$ 24,417,387,701	100.00%		5.90%		6.37%		6.84%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

PUBLIC VERSION

Florida Power & Light Company, 700 Universe Blvd, Juno Beach FL. 33408-0420

FPL

February 15, 2015

Mr. Bart Fletcher
Public Utilities Supervisor
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Dear Mr. Fletcher:

Enclosed is Florida Power & Light Company's Rate of Return Surveillance Report to the Florida Public Service Commission for December 2014. This report was prepared using a thirteen month average and year-end rate base and adjustments consistent with Docket No. 120015-EI, Order No. PSC-13-0023-S-EI. The required rate of return was calculated using the return on common equity as authorized in the aforementioned docket and order. The return on common equity is 11.50%.

This report was prepared consistent with the guidelines provided in Commission Form PSC/AFA 14.

Sincerely,

Kimberly Ousdahl
Vice President, Controller and Chief Accounting Officer

Enclosures

Copy: J. R. Kelly, Office of Public Counsel

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
FPSC ADJUSTED BASIS
DECEMBER, 2014

SCHEDULE 4: PAGE 1 OF 2

AVERAGE	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 7,956,007,116	$ 7,682,979,194	$ 347,126,147	$ (383,397,961)	$ 7,626,707,381	29.75%	4.79%	1.42%	4.79%	1.42%	4.79%	1.42%
SHORT TERM DEBT	279,435,134	268,686,314	12,812,282	-	281,498,595	1.10%	2.25%	0.02%	2.25%	0.02%	2.25%	0.02%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,783,115,706	11,329,883,489	540,263,476	-	11,870,126,965	46.30%	9.50%	4.40%	10.50%	4.86%	11.50%	5.33%
CUSTOMER DEPOSITS	396,422,775	396,710,864	18,917,120	-	415,627,984	1.62%	2.04%	0.03%	2.04%	0.03%	2.04%	0.03%
DEFERRED INCOME TAX	5,559,383,848	5,351,691,846	247,562,834	(160,052,524)	5,439,202,156	21.22%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	163,859,706	156,336,626	83,673	(154,581,922)	1,838,377	0.01%	7.86%	0.00%	8.26%	0.00%	8.87%	0.00%
TOTAL	$ 26,138,224,286	$ 25,166,268,333	$ 1,166,765,532	$ (698,032,407)	$ 25,635,001,458	100.00%		5.88%		6.34%		6.81%

YEAR END	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 8,230,872,238	$ 7,900,726,559	$ 353,328,769	$ (382,799,772)	$ 7,871,255,556	29.73%	4.77%	1.42%	4.77%	1.42%	4.77%	1.42%
SHORT TERM DEBT	997,119,797	955,370,249	44,900,649	-	1,000,270,898	3.78%	0.44%	0.02%	0.44%	0.02%	0.44%	0.02%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,471,953,410	10,991,621,088	516,586,030	-	11,508,207,116	43.47%	9.50%	4.13%	10.50%	4.56%	11.50%	5.00%
CUSTOMER DEPOSITS	399,530,224	399,775,480	18,788,714	-	418,564,195	1.58%	2.14%	0.03%	2.14%	0.03%	2.14%	0.03%
DEFERRED INCOME TAX	5,814,974,899	5,578,272,191	254,648,386	(160,052,524)	5,672,866,053	21.43%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	159,767,144	152,491,217	40,838	(151,622,297)	909,758	0.00%	7.58%	0.00%	8.17%	0.00%	8.77%	0.00%
TOTAL	$ 27,074,217,711	$ 25,976,256,781	$ 1,188,291,387	$ (694,474,593)	$ 26,472,073,575	100.00%		5.60%		6.03%		6.47%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

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PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
PROFORMA ADJUSTED BASIS
DECEMBER, 2014

AVERAGE	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 7,626,707,381	$ -	$ 7,626,707,381	29.75%	4.79%	1.42%	4.79%	1.42%	4.79%	1.42%
SHORT TERM DEBT	281,498,595	-	281,498,595	1.10%	2.25%	0.02%	2.25%	0.02%	2.25%	0.02%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,870,126,965	-	11,870,126,965	46.30%	9.50%	4.40%	10.50%	4.86%	11.50%	5.33%
CUSTOMER DEPOSITS	415,627,984	-	415,627,984	1.62%	2.04%	0.03%	2.04%	0.03%	2.04%	0.03%
DEFERRED INCOME TAX	5,439,202,156	-	5,439,202,156	21.22%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	1,838,377	-	1,838,377	0.01%	7.66%	0.00%	8.26%	0.00%	8.87%	0.00%
TOTAL	$ 25,635,001,458	$ -	$ 25,635,001,458	100.00%		5.88%		6.34%		6.81%

YEAR END	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 7,871,255,556	$ -	$ 7,871,255,556	29.73%	4.77%	1.42%	4.77%	1.42%	4.77%	1.42%
SHORT TERM DEBT	1,000,270,898	-	1,000,270,898	3.78%	0.44%	0.02%	0.44%	0.02%	0.44%	0.02%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	11,508,207,116	-	11,508,207,116	43.47%	9.50%	4.13%	10.50%	4.56%	11.50%	5.00%
CUSTOMER DEPOSITS	418,564,195	-	418,564,195	1.58%	2.14%	0.03%	2.14%	0.03%	2.14%	0.03%
DEFERRED INCOME TAX	5,672,866,053	-	5,672,866,053	21.43%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	909,758	-	909,758	0.00%	7.58%	0.00%	8.17%	0.00%	8.77%	0.00%
TOTAL	$ 26,472,073,575	$ -	$ 26,472,073,575	100.00%		5.60%		6.03%		6.47%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

PUBLIC VERSION

Florida Power & Light Company, 700 Universe Blvd, Juno Beach FL. 33408-0420

FPL

February 15, 2016

Mr. Bart Fletcher
Public Utilities Supervisor
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Dear Mr. Fletcher:

Enclosed is Florida Power & Light Company's Rate of Return Surveillance Report to the Florida Public Service Commission for December 2015. This report was prepared using a thirteen-month average and year-end rate base and adjustments consistent with Docket No. 120015-EI, Order No. PSC-13-0023-S-EI. The required rate of return was calculated using the return on common equity as authorized in the aforementioned docket and order. The return on common equity is 11.50%.

This report was prepared consistent with the guidelines provided in Commission Form PSC/AFA 14.

Sincerely,

Elizabeth Fuentes
Director of Regulatory Accounting

Enclosures

Copy: J. R. Kelly, Office of Public Counsel

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
FPSC ADJUSTED BASIS
DECEMBER, 2015

AVERAGE	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 8,346,785,244	$ 8,013,530,129	$ 183,744,953	$ (322,306,011)	$ 7,874,969,070	29.09%	4.72%	1.37%	4.72%	1.37%	4.72%	1.37%
SHORT TERM DEBT	287,511,137	275,833,524	6,584,943	0	282,218,467	1.04%	2.24%	0.02%	2.24%	0.02%	2.24%	0.02%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	12,966,037,790	12,430,386,946	296,964,544	-	12,727,351,490	47.02%	9.50%	4.47%	10.50%	4.94%	11.50%	5.41%
CUSTOMER DEPOSITS	409,518,660	409,586,973	9,785,118	0	419,372,092	1.55%	2.05%	0.03%	2.05%	0.03%	2.05%	0.03%
DEFERRED INCOME TAX	6,090,303,276	5,842,894,256	134,404,077	(216,988,024)	5,760,310,309	21.28%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	158,079,168	150,217,979	51,509	(148,061,890)	2,207,598	0.01%	7.67%	0.00%	8.29%	0.00%	8.91%	0.00%
TOTAL	$ 28,256,235,277	$ 27,122,249,808	$ 631,535,145	$ (687,355,926)	$ 27,066,429,026	100.00%		5.90%		6.37%		6.84%

YEAR END	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 8,812,177,894	$ 8,453,655,888	$ (67,901,048)	$ (322,043,803)	$ 8,063,711,037	29.05%	4.46%	1.30%	4.46%	1.30%	4.46%	1.30%
SHORT TERM DEBT	138,071,099	132,269,254	(1,104,482)	0	131,164,772	0.47%	0.71%	0.00%	0.71%	0.00%	0.71%	0.00%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	13,754,618,253	13,176,639,506	(110,028,322)	0	13,066,611,184	47.07%	9.50%	4.47%	10.50%	4.94%	11.50%	5.41%
CUSTOMER DEPOSITS	415,227,799	415,280,757	(3,467,701)	0	411,813,056	1.48%	2.14%	0.03%	2.14%	0.03%	2.14%	0.03%
DEFERRED INCOME TAX	6,628,178,712	6,353,993,162	(51,245,568)	(216,988,024)	6,085,759,569	21.92%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	154,075,943	146,395,517	(10,699)	(145,114,226)	1,270,593	0.00%	7.58%	0.00%	8.19%	0.00%	8.81%	0.00%
TOTAL	$ 29,902,349,700	$ 28,678,234,084	$ (233,757,820)	$ (684,146,053)	$ 27,760,330,211	100.00%		5.80%		6.27%		6.74%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
PROFORMA ADJUSTED BASIS
DECEMBER, 2015

AVERAGE	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 7,874,969,070	$ -	$ 7,874,969,070	29.09%	4.72%	1.37%	4.72%	1.37%	4.72%	1.37%
SHORT TERM DEBT	282,218,467	-	282,218,467	1.04%	2.24%	0.02%	2.24%	0.02%	2.24%	0.02%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	12,727,351,490	-	12,727,351,490	47.02%	9.50%	4.47%	10.50%	4.94%	11.50%	5.41%
CUSTOMER DEPOSITS	419,372,092	-	419,372,092	1.55%	2.05%	0.03%	2.05%	0.03%	2.05%	0.03%
DEFERRED INCOME TAX	5,760,310,309	-	5,760,310,309	21.28%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	2,207,598	-	2,207,598	0.01%	7.87%	0.00%	8.29%	0.00%	8.91%	0.00%
TOTAL	$ 27,066,429,026	$ -	$ 27,066,429,026	100.00%		5.90%		6.37%		6.84%

YEAR END	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 8,063,711,037	$ -	$ 8,063,711,037	29.05%	4.46%	1.30%	4.46%	1.30%	4.46%	1.30%
SHORT TERM DEBT	131,164,772	-	131,164,772	0.47%	0.71%	0.00%	0.71%	0.00%	0.71%	0.00%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	13,066,611,184	-	13,066,611,184	47.07%	9.50%	4.47%	10.50%	4.94%	11.50%	5.41%
CUSTOMER DEPOSITS	411,813,056	-	411,813,056	1.48%	2.14%	0.03%	2.14%	0.03%	2.14%	0.03%
DEFERRED INCOME TAX	6,085,759,569	-	6,085,759,569	21.92%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	1,270,593	-	1,270,593	0.00%	7.58%	0.00%	8.19%	0.00%	8.81%	0.00%
TOTAL	$ 27,760,330,211	$ -	$ 27,760,330,211	100.00%		5.80%		6.27%		6.74%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

PUBLIC VERSION

Florida Power & Light Company, 700 Universe Blvd, Juno Beach FL. 33408-0420

January 13, 2017

Mr. Bart Fletcher
Public Utilities Supervisor
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Dear Mr. Fletcher:

Enclosed is Florida Power & Light Company's Rate of Return Surveillance Report to the Florida Public Service Commission for November 2016. This report was prepared using a thirteen-month average and year-end rate base and adjustments consistent with Docket No. 120015-EI, Order No. PSC-13-0023-S-EI. The required rate of return was calculated using the return on common equity as authorized in the aforementioned docket and order. The return on common equity is 11.50%.

This report was prepared consistent with the guidelines provided in Commission Form PSC/AFA 14.

Sincerely,

Elizabeth Fuentes
Sr. Director of Regulatory Accounting

Enclosures

Copy: J. R. Kelly, Office of Public Counsel

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
FPSC ADJUSTED BASIS
NOVEMBER, 2016

SCHEDULE 4: PAGE 1 OF 2

AVERAGE	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 8,814,245,739	$ 8,456,383,897	$ 101,077,719	$ (272,117,221)	$ 8,285,344,395	28.39%	4.57%	1.30%	4.57%	1.30%	4.57%	1.30%
SHORT TERM DEBT	700,904,813	671,711,628	8,295,805	0	680,007,433	2.33%	1.71%	0.04%	1.71%	0.04%	1.71%	0.04%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	13,782,631,453	13,208,575,036	163,129,170	0	13,371,704,206	45.82%	9.50%	4.35%	10.50%	4.81%	11.50%	5.27%
CUSTOMER DEPOSITS	416,840,853	416,852,218	5,148,228	(0)	422,000,446	1.45%	2.09%	0.03%	2.09%	0.03%	2.09%	0.03%
DEFERRED INCOME TAX	7,023,555,430	6,731,778,940	76,346,645	(388,048,125)	6,422,077,460	22.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	154,593,397	146,728,822	52,879	(142,483,390)	4,318,111	0.01%	7.61%	0.00%	8.23%	0.00%	8.85%	0.00%
TOTAL	$ 30,892,871,686	$ 29,632,030,542	$ 358,050,246	$ (802,628,736)	$ 29,185,452,052	100.00%		5.72%		6.18%		6.64%

YEAR END	SYSTEM PER BOOKS 1	RETAIL PER BOOKS 2	ADJUSTMENTS PRO RATA 3	ADJUSTMENTS SPECIFIC 4	ADJUSTED RETAIL 5	RATIO (%) 6	LOW POINT COST RATE (%) 7	LOW POINT WEIGHTED COST (%) 8	MIDPOINT COST RATE (%) 9	MIDPOINT WEIGHTED COST (%) 10	HIGH POINT COST RATE (%) 11	HIGH POINT WEIGHTED COST (%) 12
LONG TERM DEBT	$ 8,810,365,353	$ 8,439,006,315	$ 123,082,774	$ (271,463,367)	$ 8,290,625,722	27.35%	4.54%	1.24%	4.54%	1.24%	4.54%	1.24%
SHORT TERM DEBT	455,294,667	435,604,248	6,564,444	(0)	442,168,692	1.46%	1.78%	0.03%	1.78%	0.03%	1.78%	0.03%
PREFERRED STOCK	-	-	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	14,717,224,143	14,080,738,961	212,193,120	(0)	14,292,932,081	47.16%	9.50%	4.48%	10.50%	4.95%	11.50%	5.42%
CUSTOMER DEPOSITS	416,996,227	416,937,033	6,283,134	-	423,220,167	1.40%	2.16%	0.03%	2.16%	0.03%	2.16%	0.03%
DEFERRED INCOME TAX	7,459,917,302	7,136,666,613	101,730,087	(388,048,125)	6,852,348,575	22.61%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	153,879,234	146,051,358	98,430	(139,519,743)	6,630,044	0.02%	7.68%	0.00%	8.31%	0.00%	8.94%	0.00%
TOTAL	$ 32,013,676,926	$ 30,657,004,529	$ 449,951,989	$ (799,031,235)	$ 30,307,925,282	100.00%		5.78%		6.25%		6.72%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

PUBLIC VERSION

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
CAPITAL STRUCTURE
PROFORMA ADJUSTED BASIS
NOVEMBER, 2016

AVERAGE	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 8,285,344,395	$ -	$ 8,285,344,395	28.39%	4.57%	1.30%	4.57%	1.30%	4.57%	1.30%
SHORT TERM DEBT	680,007,433	-	680,007,433	2.33%	1.71%	0.04%	1.71%	0.04%	1.71%	0.04%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	13,371,704,206	-	13,371,704,206	45.82%	9.50%	4.35%	10.50%	4.81%	11.50%	5.27%
CUSTOMER DEPOSITS	422,000,446	-	422,000,446	1.45%	2.09%	0.03%	2.09%	0.03%	2.09%	0.03%
DEFERRED INCOME TAX	6,422,077,460	-	6,422,077,460	22.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	4,318,111	-	4,318,111	0.01%	7.61%	0.00%	8.23%	0.00%	8.85%	0.00%
TOTAL	$ 29,185,452,052	$ -	$ 29,185,452,052	100.00%		5.72%		6.18%		6.64%

YEAR END	FPSC ADJUSTED 1	PRO-FORMA ADJUSTMENTS 2	TOTAL PRO-FORMA ADJUSTED 3	TOTAL RATIO (%) 4	LOW POINT COST RATE (%) 5	LOW POINT WEIGHTED COST (%) 6	MIDPOINT COST RATE (%) 7	MIDPOINT WEIGHTED COST (%) 8	HIGH POINT COST RATE (%) 9	HIGH POINT WEIGHTED COST (%) 10
LONG TERM DEBT	$ 8,290,625,722	$ -	$ 8,290,625,722	27.35%	4.54%	1.24%	4.54%	1.24%	4.54%	1.24%
SHORT TERM DEBT	442,168,692	-	442,168,692	1.46%	1.78%	0.03%	1.78%	0.03%	1.78%	0.03%
PREFERRED STOCK	-	-	-	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
COMMON EQUITY	14,292,932,081	-	14,292,932,081	47.16%	9.50%	4.48%	10.50%	4.95%	11.50%	5.42%
CUSTOMER DEPOSITS	423,220,167	-	423,220,167	1.40%	2.16%	0.03%	2.16%	0.03%	2.16%	0.03%
DEFERRED INCOME TAX	6,852,348,575	-	6,852,348,575	22.61%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
INVESTMENT TAX CREDITS (1)	6,830,044	-	6,630,044	0.02%	7.68%	0.00%	8.31%	0.00%	8.94%	0.00%
TOTAL	$ 30,307,925,282	$ -	$ 30,307,925,282	100.00%		5.78%		6.25%		6.72%

NOTE:
(1) INVESTMENT TAX CREDITS COST RATES ARE BASED ON THE WEIGHTED AVERAGE COST OF LONG TERM DEBT, PREFERRED STOCK AND COMMON EQUITY.
(2) COLUMNS MAY NOT FOOT DUE TO ROUNDING.

March 15, 2017

Mr. Andrew L. Maurey, Director
Division of Accounting & Finance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 2017 Forecasted Earnings Surveillance Report

Dear Mr. Maurey:

On February 15, 2017 you granted Florida Power & Light Company's ("FPL's") request for an extension of time to March 15, 2017 to file its 2017 forecasted earnings surveillance report ("FESR"). Consistent with that extension, I am enclosing FPL's 2017 FESR. Please note that the forecast results contained in the FESR reflect the Company's 2016 planning assumptions. In accordance with the Stipulation and Settlement Agreement that the Commission approved in Order No. PSC-16-0560-AS-EI, the Company will vary the portion of reserve Amount amortized in 2017 to maintain its actual return on equity within a range of 9.6% to 11.6%.

Sincerely,

Robert E Barrett

Robert E. Barrett
Vice President, Finance

Cc: J.R. Kelly, Office of Public Counsel

PUBLIC VERSION

FLORIDA PUBLIC SERVICE COMMISSION
ELECTRIC FORECASTED EARNINGS SURVEILLANCE REPORT
CAPITAL STRUCTURE ($000'S)
FPSC ADJUSTED BASIS

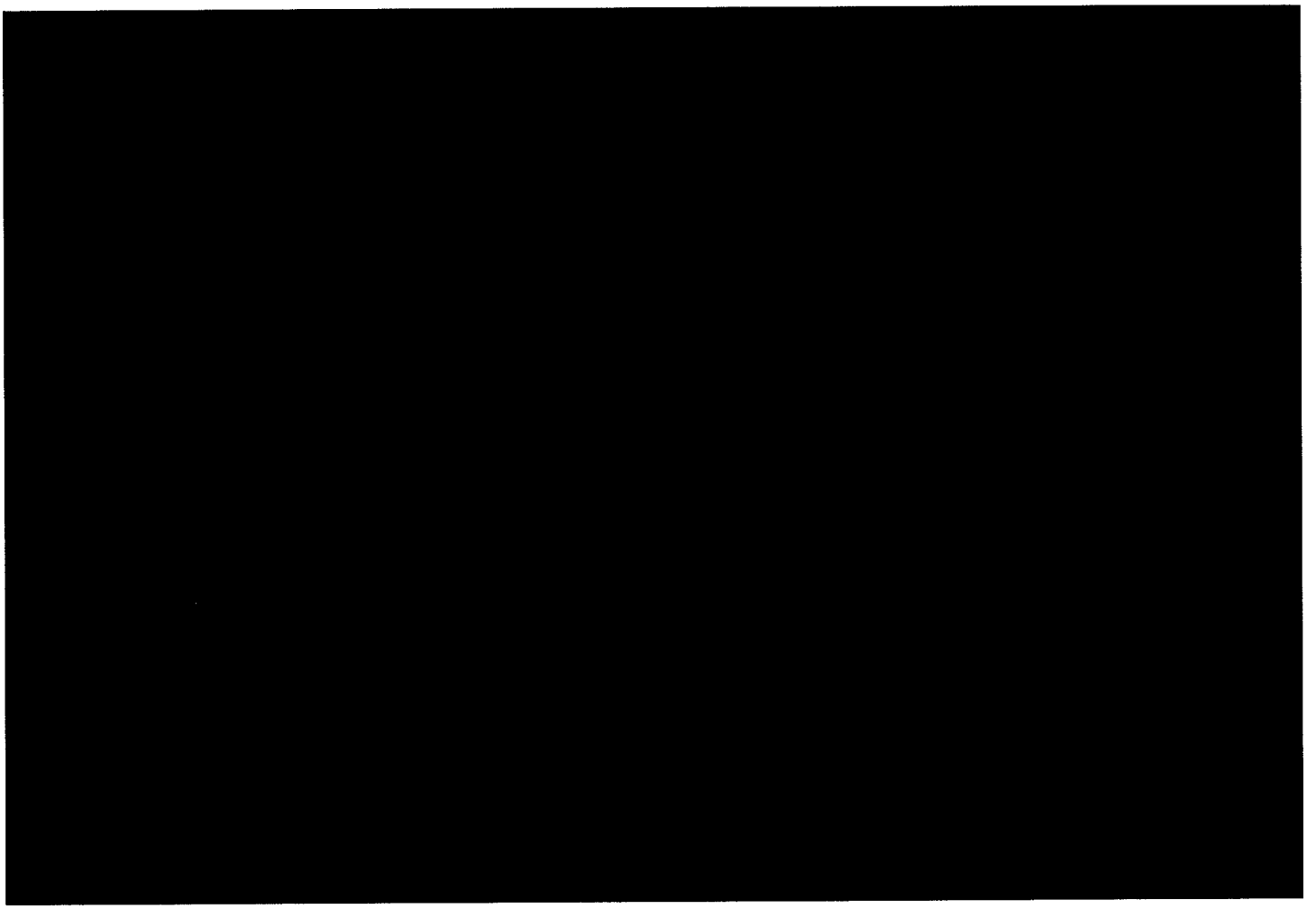
SCHEDULE 3
PAGE 1 OF 1

Company: Florida Power & Light Company and Subsidiaries
YEAR: 2017

AVERAGE	SYSTEM PER BOOKS	RETAIL PER BOOKS	ADJUSTMENTS PRORATA	ADJUSTMENTS SPECIFIC	ADJUSTED RETAIL	RATIO	LOWPOINT COST RATE	LOWPOINT WEIGHTED COST	MIDPOINT COST RATE	MIDPOINT WEIGHTED COST	HIGHPOINT COST RATE	HIGHPOINT WEIGHTED COST
LONG TERM DEBT	$10,014,898	$9,631,163	$135,281	($197,821)	$9,568,624	29.14%	4.50%	1.31%	4.50%	1.31%	4.50%	1.31%
SHORT TERM DEBT	598,295	575,015	8,246	0	583,261	1.78%	3.31%	0.06%	3.31%	0.06%	3.31%	0.06%
PREFERRED STOCK	0	0	0	0	0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
CUSTOMER DEPOSITS	365,711	365,246	5,238	0	370,485	1.13%	2.05%	0.02%	2.05%	0.02%	2.05%	0.02%
COMMON EQUITY	15,364,619	14,766,753	211,766	0	14,978,519	45.62%	9.60%	4.38%	10.55%	4.81%	11.60%	5.29%
DEFERRED INCOME TAXES	7,754,691	7,452,848	102,041	(337,390)	7,217,500	21.98%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TAX CREDITS WEIGHTED COST	260,587	248,495	1,615	(135,888)	114,222	0.35%	7.58%	0.03%	8.19%	0.03%	8.80%	0.03%
TOTAL	$34,358,803	$33,039,520	$464,188	($671,098)	$32,832,610	100.00%		5.80%		6.24%		6.72%

ATT00041

Exhibit R-3



PUBLIC VERSION

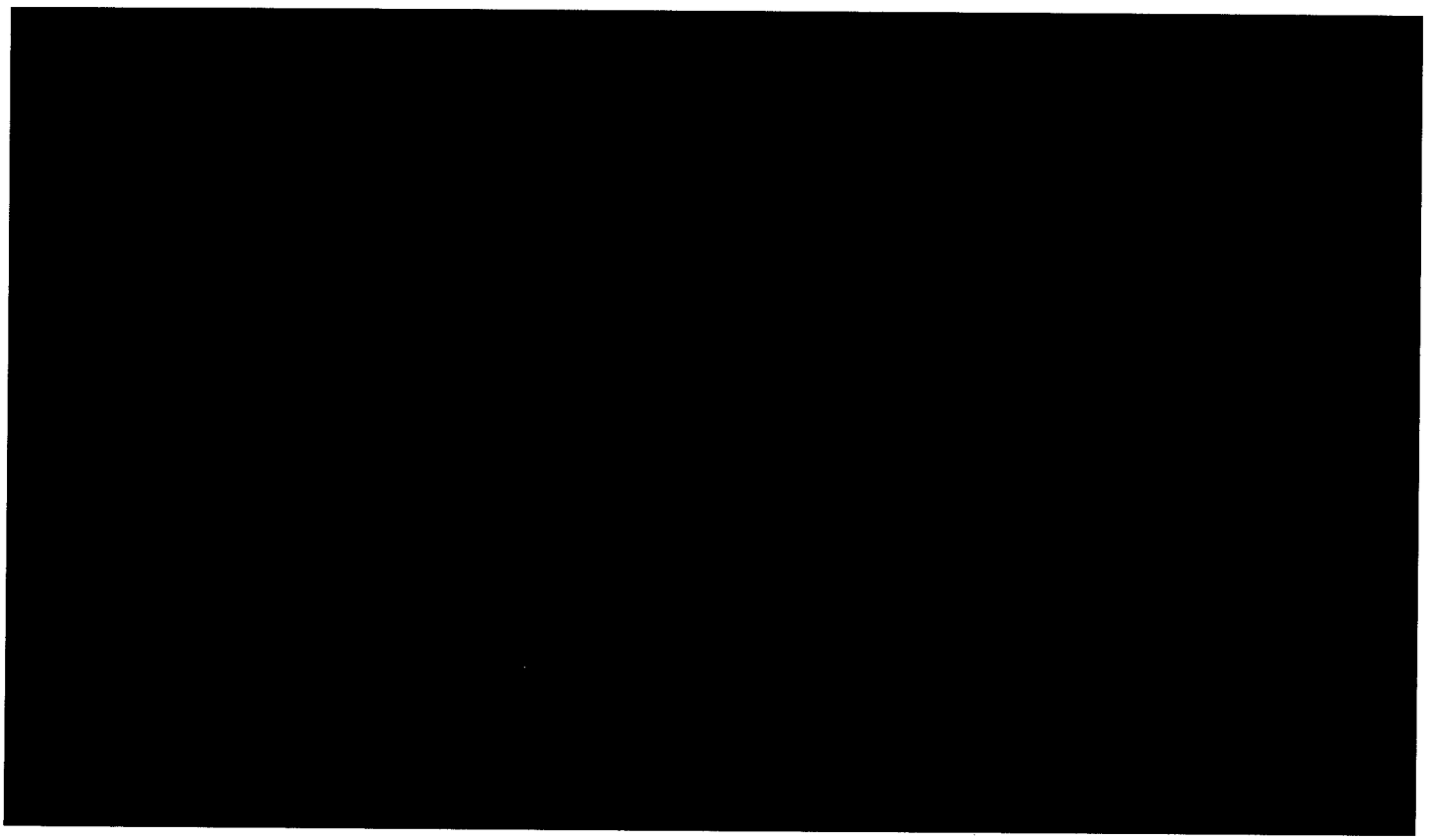
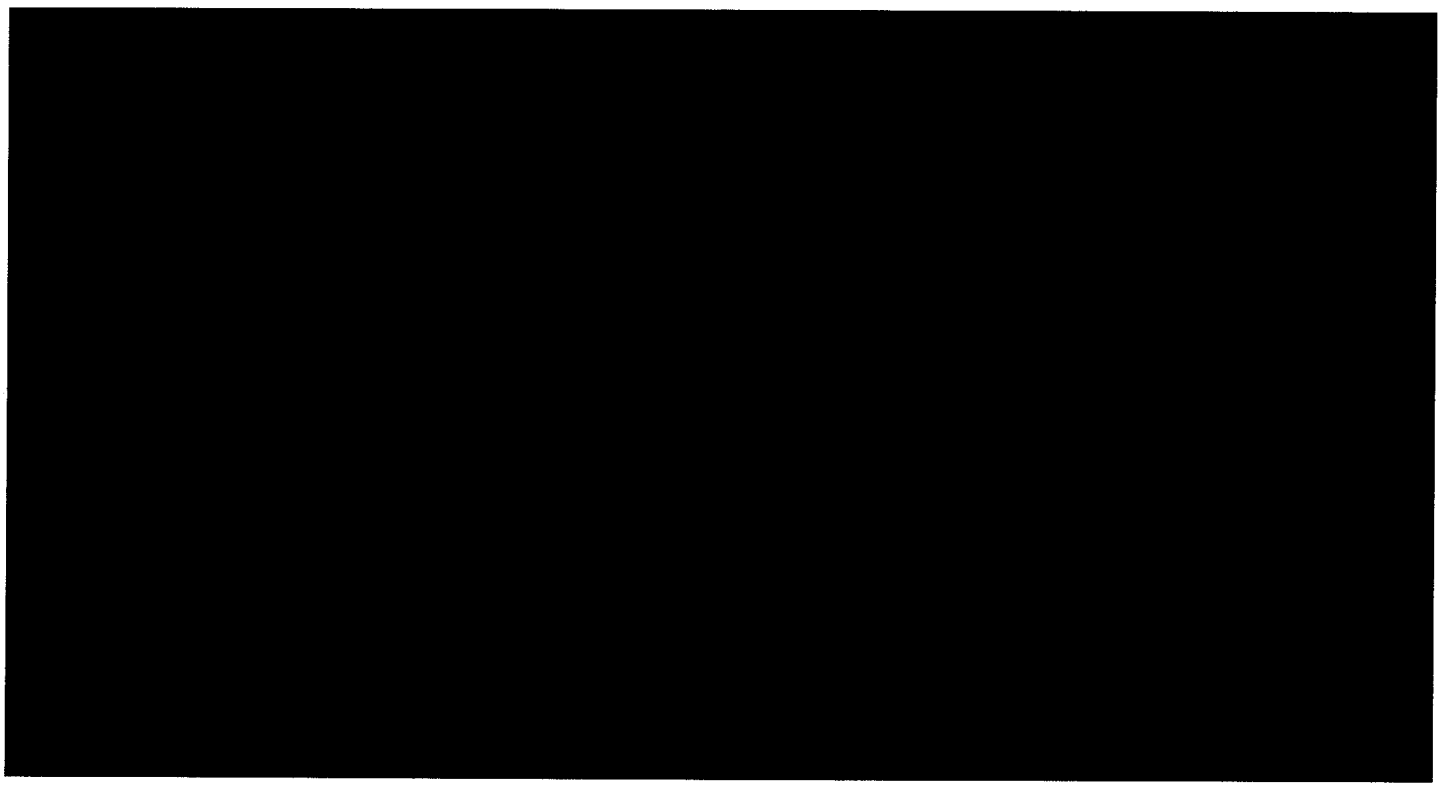


Exhibit R-4

PUBLIC VERSION



PUBLIC VERSION

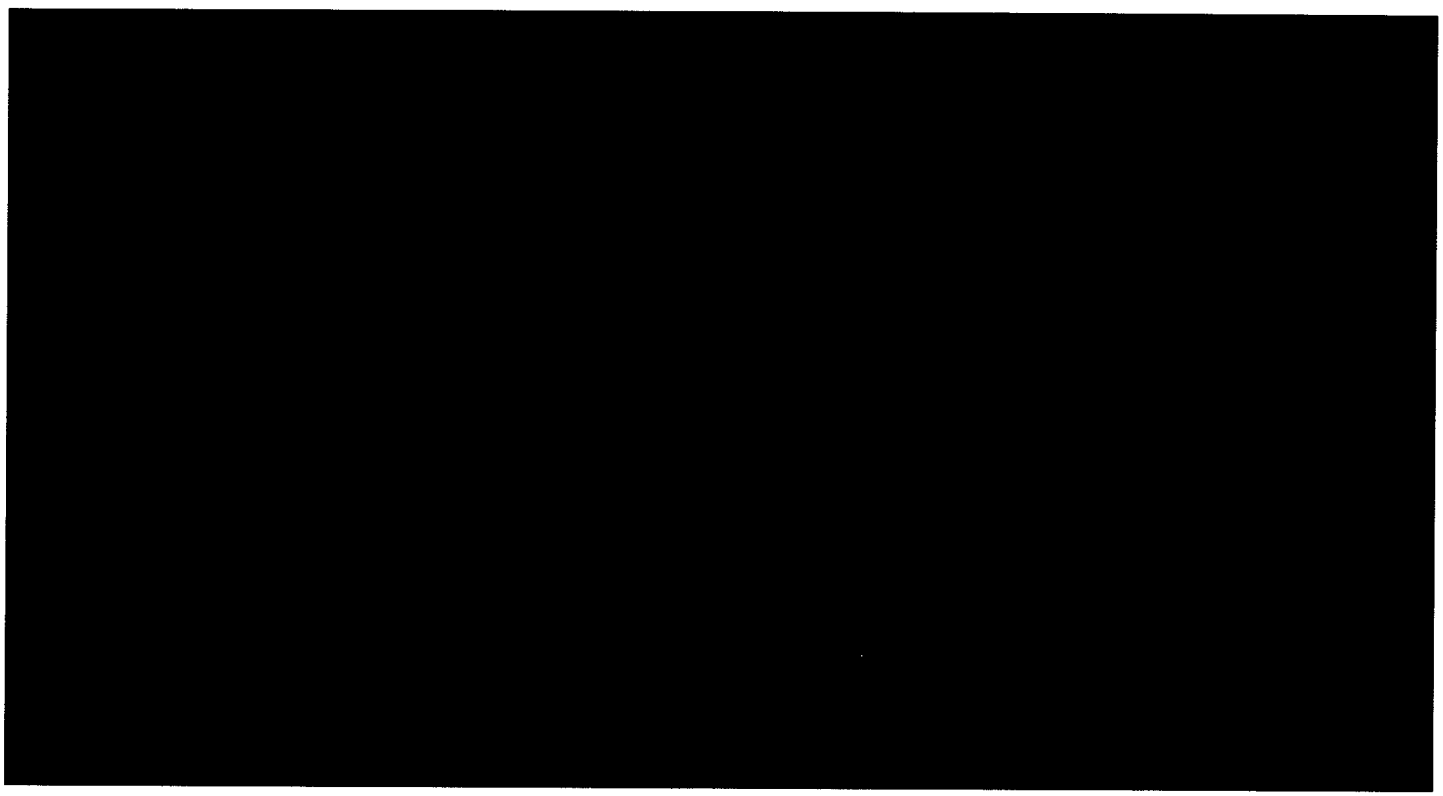


Exhibit B

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Defendant.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF DIANNE W. MILLER
IN SUPPORT OF POLE ATTACHMENT COMPLAINT

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BEAUFORT)

I, Dianne W. Miller, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"). I am executing this Affidavit in support of AT&T's Pole Attachment Complaint against Florida Power and Light Company ("FPL"). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath. I reserve the right to supplement or revise this Affidavit as additional information becomes available.

2. My job title is Director – Construction & Engineering, with responsibility for the National Joint Utility Team. In this role, I support various AT&T-affiliated incumbent local exchange carriers ("ILECs") across 21 states in the negotiation and implementation of joint use

agreements with investor-owned, municipal, and cooperative utilities. I also interact with operational and field teams, assist with joint use issues impacting the wireline network, and negotiate the rates, terms, and conditions of joint use. I am familiar with AT&T's Joint Use Agreement with FPL and I participated in AT&T's executive-level negotiations and non-binding mediation with FPL to obtain a just and reasonable pole attachment rate.

3. I have 45 years of experience in the telecommunications industry. I was hired by Southern Bell Telephone and Telegraph Company in 1973 in an administrative role supporting plant operations. I remained with the Company through its merger with South Central Bell Telephone Company to become BellSouth Telecommunications, Inc., which later became BellSouth Telecommunications, LLC. I obtained a BA in Business Economics *magna cum laude* from Wofford College while working as a dispatching manager for field technicians. I have since served in a variety of managerial and executive capacities involving network operations, DSL deployment, and joint use. Among other positions, I served as a Supervisor in the Construction Management Center in the late 1980s, where I was responsible for pole transfers and coordinating repairs of broken poles and lines. In the 1990s, I was a Construction Manager and participated in joint utility meetings on issues related to permitting, rights-of-way, road relocations, and deployment to new areas. In the early 2000s, I was a Director with responsibility for all joint use agreements across a 9-state southeastern region. Over the years, I have had a variety of other jobs involving wireline deployment and coordination with utilities on issues related to shared infrastructure.

4. Throughout my career, I have reviewed over a hundred joint use agreements. I have also become familiar with the operational practices and procedures surrounding the joint use of utility poles, including poles in AT&T's overlapping service area with FPL.

A. AT&T's Effort To Obtain Just And Reasonable Rates From FPL

5. BellSouth Telecommunications, LLC is a Georgia limited liability company d/b/a AT&T Florida with a principal place of business at 675 West Peachtree Street NW, Suite 4500, Atlanta, GA 30308. AT&T Florida ("AT&T") is an ILEC that provides telecommunications and other services in Florida. AT&T's overlapping service territory with FPL includes, but is not limited to, Miami, Fort Lauderdale, Port St. Lucie, West Palm Beach, and Daytona Beach, Florida.

6. AT&T became party to a Joint Use Agreement ("JUA") entered into by FPL and Southern Bell Telephone and Telegraph Company in 1975 and amended by FPL and BellSouth Telecommunications, Inc. in 2007. The JUA, as amended, is attached to the Complaint as Exhibit 1. It will terminate on August 26, 2019 pursuant to FPL's March 25, 2019 notice of termination, which is attached to the Complaint as Exhibit 23.

7. Each year, FPL issues AT&T an invoice for the net pole attachment rental amount that results when FPL's rent for use of AT&T's poles is subtracted from AT&T's rent for use of FPL's poles. FPL calculates its own rent for use of AT&T's poles by applying a per-pole rate to all jointly used AT&T poles. FPL calculates AT&T's rent for use of FPL's poles by assigning a per-pole base rate to all jointly used FPL poles (referred to as "wd pls" on the invoice, even though all types of poles are included) and adding a per-pole premium to two subsets of jointly used FPL poles: (1) concrete distribution poles (referred to as "spc pls" on the invoice) and (2) transmission poles (referred to as "Trans pls" on the invoice). FPL's most recent invoice for annual pole attachment rent, issued in February 2019, states that FPL owns 425,704 (67%) and AT&T owns 213,210 (33%) of 638,914 poles jointly used by the parties.

8. FPL's invoices for the 2014 through 2018 rental years are attached to the Complaint as Composite Exhibit 2. AT&T has processed payment on each of these invoices to

ensure that they all have been paid in full before the filing of the Complaint. AT&T also paid FPL more than [redacted] million in additional net annual pole attachment rent since the July 12, 2011 effective date of the *Pole Attachment Order* (reflecting the July 12, 2011 through 2013 time period), but I understand that AT&T's request for relief begins with the 2014 rental year because of a five-year statute of limitations.

9. FPL's rental invoices include net annual pole attachment rent and additional "true-up" amounts that FPL charges when a survey of a segment of its network produces different numbers of jointly used poles. The "true-up" amounts contained in the 2014 through 2018 invoices total [redacted]. The net pole attachment rental amounts total [redacted], calculated as follows:

Rental Year	AT&T's Rent to FPL: Per-Pole Rate and Premiums for AT&T's Use of FPL's Poles	x	FPL Poles	-	FPL's Rent to AT&T: Per-Pole Rate for FPL's Use of AT&T's Poles	x	AT&T Poles	=	Net Rent: Net Rent Paid by AT&T (rounded)
2014	Base Rate [redacted] + Concrete + Transm.		393,817 30,438 4,699		[redacted]		227,293		[redacted]
2015	Base Rate [redacted] + Concrete + Trans.		401,099 35,695 4,711		[redacted]		225,977		[redacted]
2016	Base Rate [redacted] + Concrete + Transm.		412,357 43,380 4,698		[redacted]		218,052		[redacted]
2017	Base Rate [redacted] + Concrete + Transm.		418,558 47,421 4,703		[redacted]		216,850		[redacted]
2018	Base Rate [redacted] + Concrete + Transm.		425,704 53,990 4,790		[redacted]		213,210		[redacted]

10. The base rates that FPL charged AT&T have been extremely high—and the base rates plus premiums significantly higher—when compared to the rates that AT&T calculated,

based on the best data available to it, using the FCC's new and pre-existing telecom rate formulas.[1] The base rates and premiums have also steadily increased in recent years, in spite of the principle of competitive neutrality adopted in the 2011 *Pole Attachment Order* and the JUA's requirement in Article VI that the "[j]oint use of poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law."

11. The overall net rental amount charged AT&T has also sharply escalated, with FPL charging AT&T over [redacted] million more for 2018 rent than it charged for 2014 rent. This increase is only partially the result of AT&T's deployment efforts in Florida, as much of the increase has resulted from FPL's storm hardening plan. Under the plan, FPL has accelerated the replacement of wood distribution poles (for which it does not charge AT&T a premium) with concrete distribution poles (for which it does charge AT&T a premium).[2] By 2018, FPL charged AT&T the base rate plus premium—amounting to a [redacted] per pole rate—for AT&T's use of 53,990 concrete distribution poles, an increase of 23,552 concrete distribution poles in five years. This pace is not expected to slow, which will further increase the rental rate disparity between AT&T and its competitors (absent FCC enforcement of AT&T's right to just and reasonable rates) because AT&T's competitors are entitled to the new telecom rate for their use of the same concrete distribution poles.[3]

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[1] *See* Compl. Ex. A at ATT00007-09, ATT00011-12 (Affidavit of Daniel P. Rhinehart (June 27, 2019) ¶¶ 14-17, 23-25) ("Rhinehart Aff.").

[2] *See, e.g.*, Petition of FPL for Approval of Storm Hardening Plan (Mar. 15, 2016), *available at* https://www.floridapsc.com/library/filings/2016/01382-2016/01382-2016.pdf (last visited June 27, 2019).

[3] *See, e.g.*, Compl. Ex. A at ATT00008 (Rhinehart Aff. ¶ 15) (explaining that the new telecom rate formula includes the cost of concrete distribution poles).

12. Operating in a highly competitive market, AT&T has tried to eliminate the significant and increasing pole rental rate disparity through negotiations with FPL. It has, in good faith, sought to settle this rate dispute with FPL through both a face-to-face executive-level meeting and non-binding mediation. On several occasions, AT&T has notified FPL in writing of the basis for the Complaint. Correspondence exchanged by the parties during AT&T's effort to obtain a just and reasonable rate is attached to the Complaint as Exhibits 4 to 29.

13. I assumed responsibility for the rate negotiations, which were initiated by my predecessor, Kyle Hitchcock, when I became Director – Construction & Engineering with responsibility for the National Joint Utility Team in November 2018. By that time, AT&T had asked FPL to explain how its 2017 rates complied with the JUA and federal law. FPL provided some information about how it calculated the rates, but insisted that it did not need to show that the rates complied with the JUA because AT&T paid similar rental invoices in the past. FPL rejected AT&T's arguments about the applicability of federal law by stating, without further detail, that it "believe[d] that AT&T is misinterpreting the FCC Pole Attachment orders and their application to our Agreement."[4] FPL declared AT&T in default of the JUA for failure to timely pay the 2017 invoice and asked AT&T to submit the parties' rate dispute to the pre-complaint dispute resolution process set forth in the JUA.[5]

14. AT&T disagreed that it could be in default of the JUA for failure to pay an invoice that did not comply with the JUA and federal law, but agreed to submit the rate dispute

[4] *See* Compl. Ex. 6 at ATT00173 (Notice of Default (Aug. 31, 2018)).

[5] *See id.*

to the JUA's pre-complaint dispute resolution process.[6] Doing so should have preserved the status quo until this rate dispute is finally resolved.[7] Instead, FPL has taken the position that the disputed default is a proven default that supports a series of escalating operational threats and restrictions. The constancy and timing of FPL's unjustified operational notices have led me to conclude that FPL has been trying to leverage its two-to-one pole ownership advantage to force AT&T to abandon its request for just and reasonable rates.

15. The parties' first executive-level meeting was scheduled for October 10, 2018, but FPL postponed the meeting in anticipation of Hurricane Michael. The meeting was rescheduled for December 7, 2018 at FPL's headquarters in Juno Beach, Florida. Before we were able to meet, FPL sent a notice declaring that it was suspending AT&T's right to attach to new FPL pole lines because of the disputed issues set for discussion at the meeting.[8] FPL informed AT&T that it would refrain from enforcing the suspension until the meeting, but threatened that it would "actively enforc[e]" the suspension if the rate dispute was not resolved at the meeting.[9]

16. I attended the December 7, 2018 executive-level meeting for AT&T, along with Mark Peters, Area Manager – Regulatory Relations, and Dan Rhinehart, Director – Regulatory. Before and during the meeting, FPL took the position that its invoiced rates comply with the JUA and all applicable law, but refused to discuss or provide any information about its new

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[6] Compl. Ex. 7 at ATT00176-177 (Letter from K. Hitchcock, AT&T, to M. Jarro, FPL (Sept. 13, 2018)).

[7] Compl. Ex. 1 at ATT00137 (JUA § 13A.4).

[8] Compl. Ex. 9 at ATT00183 (Notice of Suspension (Nov. 9, 2018)).

[9] *Id.*

telecom rental rates or its license agreements with AT&T's competitors.[10] FPL offered to answer questions we had about the invoiced rates if we provided them in writing, which we did shortly after the meeting.[11] In response, FPL claimed that its invoiced rates comply with federal law because "there is nothing in the 2011 FCC Order that affirmatively requires the parties to modify an existing agreed upon contract rate."[12]

17. Because the rate dispute was not resolved at the December 7, 2018 executive-level meeting, we agreed to submit the dispute to the next step in the JUA's pre-complaint dispute resolution process, which is non-binding mediation. After some back-and-forth, we scheduled the mediation for May 1, 2019, which was the first available date for one of FPL's proposed mediators.

18. FPL continued to escalate its operational threats while we prepared for mediation. FPL notified AT&T that it would be actively enforcing its prior notice, such that AT&T could no longer "attach to any new FPL pole lines."[13] FPL then informed AT&T that, if the dispute was not resolved at the mediation, FPL would not let AT&T "transfer its existing attachments from old FPL-owned poles to replacement FPL-owned poles."[14] And ultimately, FPL notified AT&T that it was "terminat[ing] AT&T's rights to attach to FPL-owned poles" and would require AT&T to remove its facilities from all FPL poles if the mediation was not unsuccessful.[15]

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[10] *See, e.g.*, Compl. Ex. 10 at ATT00188 (Email from M. Jarro, FPL, to D. Miller, AT&T (Dec. 6, 2018)).

[11] Compl. Ex. 12 at ATT00194-197 (Email from D. Bromley, FPL, to D. Miller, AT&T (Dec. 20, 2018)) (responding to questions from D. Miller, AT&T, to M. Jarro, et. al, FPL).

[12] *Id.* at ATT00197.

[13] Compl. Ex. 14 at ATT00202 (Notice of Enforcement of Suspension (Jan. 11, 2019)).

[14] Compl. Ex. 25 at ATT00255 (Notice of Termination (Apr. 8, 2019)).

[15] Compl. Ex. 23 at ATT00250 (Notice of Termination (Mar. 25, 2019)).

19. FPL also informed AT&T that—should any of AT&T's facilities remain on FPL's poles in six months—it was also providing six months' notice of an "additional termination" of "all rights related to the further granting of joint use of poles" under the JUA's termination provision.[16] FPL thus ensured that the JUA will terminate in August 2019, and that AT&T will have to identify and gain approval to deploy alternate infrastructure when expanding its service offerings in Florida going forward. In other words, FPL reacted to AT&T's request for just and reasonable rates by taking action that will increase AT&T's deployment costs and undermine AT&T's ability to quickly deploy broadband and other advanced services to customers in Florida.

20. I attended the May 1, 2019 non-binding mediation for AT&T, along with Mark Peters, Area Manager – Regulatory Relations, Dan Rhinehart, Director – Regulatory, Dorian Denburg, Assistant Vice President – Senior Legal Counsel, and Christopher Huther, outside counsel. The mediation was covered by the terms of a confidentiality agreement, so I will not disclose any specific statements made during the half-day mediation in this Affidavit.

21. I expected that our discussions would continue after the mediation, but FPL unilaterally declared the mediation "at an impasse"[17] and asserted that FPL considered AT&T to be "a trespasser on FPL poles."[18] I was disappointed to receive these notices, as they seem to be just a further attempt by FPL to coerce AT&T into abandoning its request for just and reasonable rates.

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[16] *Id.*

[17] Compl. Ex. 27 at ATT00271 (Letter from E. Silagy, FPL, to D. Miller, AT&T (May 21, 2019)).

[18] Compl. Ex. 28 at ATT00273 (Letter from M. Jarro, FPL, to D. Miller, AT&T (May 23, 2019)).

B. FPL Never Sought To Rebut The Presumption That AT&T Is Entitled To A New Telecom Rate.

22. Throughout our negotiations, FPL claimed that the invoiced rates comply with federal law because FPL is not required to agree to a different rate. FPL did not provide any other argument, information, or data to try to justify charging AT&T rates that are so much higher than the new telecom rate other than its "belie[f] that AT&T is misinterpreting the FCC Pole Attachment orders and their application to our Agreement."[19] FPL never told me that it could rebut the Commission's new telecom rate presumption, never claimed that AT&T enjoys any material advantage over its competitors, and never provided any data or quantifications to support such a claim. FPL refused to provide its new telecom rates and its executed license agreements with AT&T's competitors even after AT&T offered to accept them under the terms of a confidentiality agreement. FPL also never provided any basis for charging AT&T rental rates that are much higher than the rates that AT&T calculated, based on the best data available to it, using the FCC's pre-existing telecom rate formula,[20] which is the maximum rate that FPL could lawfully charge AT&T even if FPL could rebut the new telecom rate presumption.

23. I nonetheless considered whether the JUA provides AT&T any of the typical competitive benefits that electric utilities, including FPL, have alleged that ILECs enjoy.[21] Based on my general experience and understanding about joint use, I am not aware of anything in the JUA that gives AT&T an advantage, much less a net material advantage, over its competitors.

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[19] *See* Compl. Ex. 6 at ATT00173 (Notice of Default (Aug. 31, 2018)).

[20] *See* Compl. Ex. A at ATT00011-12 (Rhinehart Aff. ¶¶ 23-25).

[21] *See In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7771 (¶ 128) (2018); *Verizon Fla. LLC v. FPL*, Mem. Op. and Order, 30 FCC Rcd 1140, 1148 (¶ 21) (EB 2015).

24. As an initial matter, electric utilities, including FPL, that have attempted to demonstrate a net material advantage have generally relied on one-time operational differences that may arise at the time facilities are attached to a new pole line, such as how the attachment is engineered, made, and surveyed. Such differences, if they even exist, cannot occur under the JUA after August 26, 2019, the date that FPL has set for termination of the JUA, because AT&T will be unable to attach to any new FPL pole lines as of that date.[22] It is also highly doubtful that AT&T has been advantaged by any such differences, if they do exist, to date. Because AT&T incurs the cost to survey, engineer, and make its attachments, any differences in the method of attachment does not generally provide AT&T any cost savings as compared to its competitors.

25. Electric utilities also typically rely only on alleged competitive *advantages* without accounting for any *disadvantages* associated with an ILEC's use of an electric utility's poles. FPL's decision to terminate the JUA highlights one of these competitive disadvantages, specifically the fact that AT&T is not protected by a statutory right of access to FPL's poles in the same manner as AT&T's competitors. This difference gave FPL the ability to leverage its pole ownership advantage to try to perpetuate its unreasonably high rates, as detailed above. It also is a difference that has increased AT&T's costs as compared to its competitors because AT&T is required to own poles in order to share poles with FPL, and AT&T's competitors are not.

26. As a pole owner, AT&T incurs substantial costs to ensure the safety and reliability of the utility poles it shares with FPL and will continue to incur these costs even after the JUA terminates. AT&T's Construction & Engineering employees are trained in the wind loading and safety standards of FPL and the National Electric Safety Code ("NESC"), as well as

[22] Compl. Ex. 23 at ATT00250 (Notice of Termination (Mar. 25, 2019)).

AT&T's own safety, reliability, and quality standards. AT&T's technicians report problems with facilities or poles they encounter in the field, which creates a work ticket for their repair by AT&T. AT&T also has responsibility for replacing its poles when they pose a safety hazard, for disposing of poles that are replaced or no longer required, and for relocating its poles to accommodate a road widening or other project. Each of these functions imposes costs on AT&T that are not imposed on non-pole owners, such as AT&T's CLEC and cable competitors.

27. AT&T also incurs increased costs as compared to its competitors because AT&T's facilities are typically at the lowest location on FPL's poles. AT&T's location is the result of standard construction practices from the early days of joint use when AT&T was the only consistent communications attacher on utility poles. This practice must continue for efficient network management, as it lets all companies quickly identify the ownership of facilities on a pole and prevents facilities from crisscrossing mid-span. But it increases AT&T's costs for several reasons. When a pole leans, which may be the result of weather damage, normal wear and tear, or improperly engineered or constructed facilities of other attachers, AT&T's facilities can become low-hanging without notice to AT&T and vulnerable to being struck by large vehicles. AT&T is also the communications attacher that is the most likely to receive a request to temporarily raise its facilities to accommodate an oversized vehicle or load that exceeds standard vertical clearance. AT&T's facilities are also more susceptible to damage, as an attachment may become loose or a cable may be punctured by climbers as a worker ascends a pole to work on facilities above AT&T's.

28. AT&T is more likely to incur higher transfer costs than its competitors because the lowest communications attacher is usually the last to transfer its facilities to a replacement pole. This means that AT&T is frequently required to make a second trip to a pole location

because another attacher did not complete its transfer as scheduled. AT&T has regularly experienced these added costs in FPL's service area when trying to complete the thousands of transfers FPL's storm hardening plan has required.

29. Indeed, AT&T incurs significant transfer and make-ready costs in FPL's service area, and so should not be advantaged over its competitors in this regard either. Most recently, AT&T has devoted substantial resources in response to the extraordinary pace of FPL's storm hardening plan and has—at AT&T's own cost—transferred facilities from thousands of FPL's wood distribution poles to FPL's replacement concrete distribution poles. AT&T should also not require materially different make-ready from its competitors when seeking to attach to FPL's poles because FPL installs poles with sufficient space to accommodate AT&T and its competitors. According to FPL, some of its distribution poles "stand 55-feet tall" to better withstand a hurricane or similar storm.[23] Extensive make-ready should not be required on poles of such height.[24] And, in any event, because AT&T generally requires make-ready, if ever, only when it seeks to attach to a new pole line, it cannot be advantaged as compared to its competitors after it is unable to make such attachments when FPL's termination of the JUA takes effect in August 2019.[25]

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[23] *See* Featured Stories: FPL installs new poles to strengthen electric grid and help communities prepare for hurricane season, *available at* http://newsroom.fpl.com/featured-stories?item=30879 (last visited June 27, 2019).

[24] Indeed, the default presumptions for the FCC's rate formulas assume that a 37.5-foot pole can accommodate 5 attaching entities and still have 24 feet of unusable space. *See* 47 C.F.R. §§ 1.1409(c), 1.1410. These presumptions are consistent with the fact that, with 6 feet of unusable space below ground and 18 feet of unusable space above ground, 4 communications attachers can attach 1 foot apart in the communications space located 18 – 21 feet above ground and there will still be 10.5 feet on the pole for the electric utility.

[25] Compl. Ex. 23 at ATT00250 (Notice of Termination (Mar. 25, 2019)).

30. AT&T is also disadvantaged as compared to its competitors because the JUA includes an unrealistic space allocation that charges AT&T for space that is occupied by AT&T's competitors. The proper calculation of the new telecom rates that may be charged AT&T's competitors presume that they occupy 1 foot of space on a pole.[26] The JUA instead allocates 4 feet of space to AT&T for AT&T's "exclusive use,"[27] even though this space allocation is not something that AT&T wants, uses, or requires. AT&T installs light-weight copper and fiber optic cables that are comparable in size to the facilities of AT&T's competitors and do not occupy anywhere close to 4 feet of space across FPL's poles. Instead, AT&T occupies about the same amount of space on a pole as its competitors, which as mentioned above, is presumed to be 1 foot. FPL, as a result, lets AT&T's competitors attach their facilities within the 4 feet of space that the JUA allocates to AT&T, and collects additional rent from them for use of that same space. AT&T, in contrast, cannot and does not allow communications attachers to place facilities in the space allocated to FPL on AT&T's poles due to the nature of FPL's facilities, and must preserve the safety space between FPL's facilities and any communications attachments under the NESC.

[26] 47 C.F.R. § 1.1410.

[27] Compl. Ex. 1 at ATT00111-112 (JUA § 1.1.7).

31. As a result, while I am aware of operational aspects of the JUA that disadvantage AT&T as compared to its competitors, I am not aware of any operational differences that provide AT&T a net material advantage as compared to its competitors, and certainly not one that will continue after the JUA terminates in August 2019. It is therefore my opinion that FPL will not be able to justify charging AT&T a rate any higher than the properly calculated and competitively neutral new telecom rate.

Dianne W. Miller

Dianne W. Miller

Sworn to before me on
this 27th day of June, 2019

Notary Public

EXPIRE DATE
OCT 4, 2028

LISA FOX
Notary Public - State of South Carolina
My Commission Expires October 4, 2028

Exhibit C

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Defendant.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF MARK PETERS
IN SUPPORT OF POLE ATTACHMENT COMPLAINT

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

I, Mark Peters, being sworn, depose and say:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"). I am executing this Affidavit in support of AT&T's Pole Attachment Complaint against Florida Power and Light Company ("FPL"). I know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath. I reserve the right to supplement or revise this Affidavit as additional information becomes available.

2. My job title is Area Manager – Regulatory Relations. My current responsibilities include supporting various AT&T-affiliated entities with respect to regulatory, legislative, or contractual matters involving joint use, utility poles, conduit, and ducts. I am familiar with

AT&T's Joint Use Agreement with FPL ("JUA"), support AT&T's administration of the JUA, and participated in AT&T's executive-level meeting and non-binding mediation with FPL for a just and reasonable pole attachment rate. The mediation was subject to a confidentiality agreement, so I will not disclose any specific statements made during the half-day mediation in this Affidavit.

3. I have over 20 years of experience with AT&T-affiliated entities, which I will refer to collectively as the "Company." My employment with the Company began in 1998, when I was hired by Southwestern Bell Telephone Company as a Systems Technician. From 2000 to 2002, I filled engineering roles to support digital loop carrier and fiber multiplexer installations. I subsequently joined the national staff for the Construction and Engineering department, working initially on application development as a business client representative and, in 2009, I became the first national subject matter expert on issues relating to the Company's joint use relationships with electric companies. In this capacity, I supported the negotiation and revision of new and replacement joint use agreements and amendments, assisted in the implementation and administration of joint use agreements, provided input on proposed legislation concerning pole attachments, and helped establish joint use operational standards for the Company's incumbent local exchange carriers ("ILECs"). I continue to provide this joint use support in my current position, which I assumed in 2013. I also provide support on matters relating to third-party access to Company-owned utility poles and conduit, including the negotiation and implementation of license agreements with third parties attached to Company-owned poles and conduit.

4. I am also a Senior Master Sergeant in the U.S. Air Force Reserves. My military career began after high school, when I served on active duty in the U.S. Air Force for 10 years. I

was honorably discharged at the rank of Staff Sergeant. I have Associates Degrees in Applied Science, Information Technology and Networking from Tarrant County College, and in Applied Science, Transportation Logistics from the Community College of the Air Force.

5. Over the course of my career, I have reviewed several hundred pole attachment agreements, including joint use agreements and license agreements. I am aware of the terms and conditions that typically apply to cable companies and competitive local exchange carriers ("CLECs") that attach to poles owned by ILECs and investor-owned utilities. My knowledge also includes the practices and procedures surrounding the joint use of utility poles, including poles in AT&T's overlapping service area with FPL.

6. I considered, based on my familiarity with joint use and license agreements, whether FPL would have any basis for arguing that the JUA provides AT&T a net material advantage over its competitors. During the past year of negotiations with FPL, I expected that FPL would provide AT&T copies of the license agreements that FPL has with AT&T's competitors so that AT&T could review their terms and conditions and compare them with the terms and conditions in the JUA. Instead, FPL denied AT&T's repeated requests for copies of FPL's license agreements, refused to discuss with AT&T the "just and reasonable" rate requirement of federal law, and never identified or quantified anything in the JUA that allegedly provides AT&T an advantage over its competitors.

7. Based on the information available to me, it is my conclusion that the JUA does not give AT&T a net material advantage over cable companies and CLECs with respect to the attachment and maintenance of facilities on FPL's utility poles, and certainly does not justify the exceptionally high pole attachment rates that FPL charges AT&T.

8. I am generally aware of the types of competitive advantages that electric utilities, including FPL, have alleged in the past.[1] Many of them merely reflect a difference in how attachers incur costs when they deploy their facilities. But those differences can no longer exist, if they ever existed, after August 26, 2019, the date that the JUA terminates pursuant to FPL's notice of termination and after which AT&T will be unable to attach to new FPL pole lines. AT&T, as a result, cannot be competitively advantaged by differences that can no longer occur.

9. Even if such differences existed in the past, they did not justify charging AT&T a higher rental rate, as they generally reflect only a difference in how AT&T and its competitors incur costs when first making an attachment. For example, some electric utilities have asserted that AT&T's competitors pay the electric utility to complete, at cost, the same work that AT&T completes, at cost, to survey a pole and determine whether and what make-ready is needed. Because the cost to complete the same work should be about the same under either approach, there is no basis for requiring AT&T to pay a higher annual rental rate to account for costs that AT&T already incurred.

10. Electric utilities also regularly rely on terms in a joint use agreement that are reciprocal, meaning that AT&T must extend the same terms to FPL for its use of AT&T's poles. By contrast, license agreements typically do not impose reciprocal obligations on CLEC and cable competitors, and so this is a significant difference between the costs and obligations imposed on AT&T as compared to its competitors. When determining whether AT&T enjoys a "net material advantage" over its competitors, the additional costs and obligations associated with these reciprocal terms must be considered. And, by definition, AT&T cannot receive a "net

[1] *See In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7771 (¶ 128) (2018); *Verizon Fla. LLC v. FPL*, Mem. Op. and Order, 30 FCC Rcd 1140, 1148 (¶ 21) (EB 2015).

advantage" over its competitors if it must provide to FPL each and every alleged "benefit" that it receives. This is so because the unique cost to AT&T from providing that alleged "benefit" cancels out any unique value from the alleged "benefit" that it receives, leaving a net value of zero.

11. Electric utilities have also claimed that ILECs enjoy benefits that are not benefits in my experience. AT&T's typical position as the lowest attacher on FPL's poles, for example, is a competitive disadvantage given the added transfer costs that AT&T incurs when it needs to make multiple trips to a pole to verify that prerequisite transfers have been completed. AT&T's typical position on the pole also increases the risk that AT&T's facilities will be damaged by climbers and ladders, which may puncture cables or break support wires, and by motor vehicles when cables span roadways. AT&T has also been disadvantaged by the JUA's unrealistic allocation of 4 feet of space on a pole for AT&T's exclusive use. AT&T does not need, want, or use 4 feet of space across FPL's poles, and FPL does not reserve that amount of space on its poles for AT&T's exclusive use. AT&T installs the same types of light-weight copper and fiber optic cables that its competitors install, and so should pay the same rate for its use of comparable space on FPL's poles.

12. For all these reasons, it is my opinion that FPL cannot identify any net benefit that gives AT&T a material advantage over its cable and CLEC competitors that could justify AT&T's payment of a higher rental rate for use of FPL's poles.

Mark Peters

Sworn to before me on
this 27th day of June, 2019

Amy Michelle Monson

Notary Public

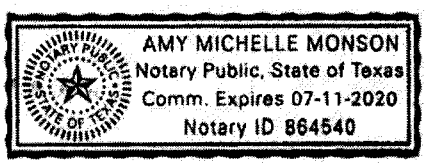

Exhibit D

Before the
Federal Communications Commission
Washington, DC 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T FLORIDA, Complainant, v. FLORIDA POWER AND LIGHT COMPANY, Defendant.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF CHRISTIAN M. DIPPON, PH.D.
IN SUPPORT OF POLE ATTACHMENT COMPLAINT

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

I, Christian M. Dippon, Ph.D., being sworn, depose and say:

1. My name is Christian M. Dippon. My business address is 1255 23rd Street, Suite 600, Washington, DC 20037. I am a Managing Director at the Washington, DC office of NERA Economic Consulting (NERA) where I also serve as Chair of the Global Energy, Environment, Communications & Infrastructure (EECI) practice. I have specialized in complex litigation and regulatory matters in the communications, Internet, and high-tech sectors for over 23 years. I received a Bachelor of Science in Business Administration (with honors) from the California State University, a Master of Arts in Economics from the University of California, and a Doctor of Philosophy in Economics from Curtin University (Perth, Australia).

2. My research has included the dynamics of the multisided markets of the Internet ecosystem, the competitive ramifications of disruptive technologies and market consolidations, and the need (or lack of need) for regulatory intervention. I have authored and edited several books as well as book chapters in anthologies and have written numerous articles on telecommunications competition and strategies. I also frequently lecture in these areas at industry conferences, continuing legal education programs, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Sydney Morning Herald*, have cited my work.

3. I routinely offer expert testimony in regulatory and litigation cases in the telecommunications sector and have testified in depositions, jury and bench trials in state and federal courts, domestic (AAA) and international (UNCITRAL, ICC, ICSID) arbitrations, and in matters before international courts, the Federal Communications Commission (FCC), the International Trade Commission, the Canadian Radio-television and Telecommunications Commission, and the Competition Bureau Canada. I attach a copy of my curriculum vitae as Exhibit D-1.

4. This affidavit was prepared at the request of counsel for Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T) in this matter. Counsel requested that I examine whether the pole attachment rates that Florida Power and Light Company (FPL) charges AT&T are just and reasonable and competitively neutral and, if not, whether calculating the rates based on the FCC's new telecom rate formula offers an economically superior outcome. Counsel also asked me to examine whether there are factors that individually or collectively provide AT&T a net competitive advantage that would warrant pole attachment rates for AT&T that are higher than the rates calculated under the FCC's new telecom rate formula.

5. My conclusions follow. Specifically, I explain why the pole attachment rates that FPL has been charging AT&T under the parties' 1975 Joint Use Agreement (JUA), as amended in 2007,[1] are *not* just and reasonable and *not* competitively neutral. I also detail why these rates and FPL's refusal to lower them are evidence of FPL's abuse of its position as the owner of the majority of the poles jointly used by the parties and of how the application of the FCC's new telecom rate formula will ensure competitive neutrality. Finally, I explain that there is no basis for a deviation from the applicable new telecom rate standard because I understand FPL has not asserted and I am not aware of any material, much less net material, competitive benefits to AT&T with respect to its use of FPL's poles.

6. AT&T retained me as an independent expert in this matter. As such, neither my compensation nor my firm's compensation is dependent in any way on the substance of my opinions or the outcome of this matter. I may revise and supplement my opinions upon further review and analysis of any new data, materials, analysis, or pleadings.

I. BACKGROUND

A. The Dispute

7. This matter concerns a dispute between AT&T and FPL with respect to the just and reasonable rates for AT&T's use of FPL's utility poles. AT&T is an incumbent local exchange carrier (ILEC) in Florida that offers landline voice, video, and broadband Internet access services over a copper and fiber network that depends, in part, on utility pole infrastructure.[2] AT&T competes in the provision of its services with competitive local exchange

[1] Joint Use Agreement Between Florida Power & Light Company and Southern Bell Telephone and Telegraph Company, January 1, 1975, amended June 1, 2007 (hereinafter JUA).

[2] AT&T's U-verse video service is available in FPL's service territory, including Miami-Ft. Lauderdale, West Palm Beach-Ft. Pierce, and portions of Orlando-Daytona Beach-Melbourne-

carriers (CLECs) that obtained wholesale access to AT&T's last-mile infrastructure at cost-based rates due to the Telecommunications Act of 1996.[3] Additionally, because of technological progress, AT&T faces competition from cable TV, satellite, and fixed wireless providers in the provision of Internet access, voice services, and video programming. AT&T also competes with mobile wireless providers for voice traffic. With the deployment of 5G services, AT&T soon will also be competing with other mobile wireless providers for broadband Internet.[4]

8. One of AT&T's predecessor companies, Southern Bell Telephone and Telegraph Company, entered into the JUA with FPL in 1975 to jointly use each other's poles "in those parts of the State of Florida now or hereafter served by both Telephone Company and Electric Company."[5] FPL is the largest power company in Florida,[6] and it is a subsidiary of NextEra Energy, Inc.,[7] which reportedly is "the world's largest utility company."[8] FPL had a monopoly

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TV markets. (See Florida Power & Light Company, FPL Service Territory, Effective: February 18, 2019; S&P Global, Market Intelligence, U.S. Multichannel Operator Comparison by Market, 3rd quarter 2018.) For examples of AT&T's broadband, see "Where is AT&T U-verse available in Florida?" (https://internet-tv.deals/att-u-verse/availability/uverse-florida.html); AT&T, "Ultra-Fast Internet Powered by AT&T Fiber Available in 12 New Metros," December 12, 2018 (https://about.att.com/story/2018/internet-powered-by-att-fiber-available-12-metros.html).

[3] Telecommunications Act of 1996, Pub. L. No. 104, 110 Stat. 56, codified throughout Title 47 of the United States Code (47 U.S.C.).

[4] See AT&T Comments, GN Docket No. 18-238, Sept. 17, 2018, p. 4 ("AT&T plans to introduce mobile 5G to customers in twelve cities this year.") and p. 7 ("With 5G services offering speeds of up to 1 Gig and beyond, consumers will undoubtedly view wireless services as an even more compelling alternative to fixed.").

[5] JUA, Section 2.1.

[6] Florida Energy Facts (http://floridaenergy.ufl.edu/florida-energy-facts/, accessed June 13, 2019).

[7] FPL, Company profile (https://www.fpl.com/about/company-profile.html, accessed June 13, 2019).

[8] NextEra Energy, Inc., Company (http://www.nexteraenergy.com/company.html, accessed June 13, 2019).

for the provision of electricity over its distribution network when it entered the JUA, and it continues to face no significant competitive threats today.

9. Article X of the JUA details the pole attachment "rental and procedure for payments."[9] It states that the majority pole owner, which I understand has always been FPL, each year calculates and charges the minority pole owner an "adjustment rate."[10] This adjustment rate is to be "the annual average cost of joint use poles for the next preceding year," calculated as the product of "the average historical in-place cost of joint use poles excluding special poles" and "an annual charge rate comprised of amortization factors, taxes and other elements of cost as determined in accordance with acceptable accounting practices."[11] The JUA states that the majority pole owner will charge the adjustment rate for "normal joint use poles" and certain "special poles" and will charge "1.5 the adjustment rate" for other "special poles."[12]

10. I understand that for over one year AT&T has been seeking to understand and validate the method by which FPL calculated the pole attachment rates that FPL invoiced for the 2017 rental year.[13] In correspondence, FPL explained that it uses the "commutative property of multiplication" to convert the JUA's adjustment rate (which applies exclusively to the minority pole owner) into two per pole attachment rates that, when applied to AT&T's use of FPL's poles

[9] JUA, Art. X.

[10] Ibid, Section 10.6.

[11] Ibid.

[12] Ibid, Sections 10.4-10.6.

[13] See Phillip Simmons (AT&T) email to TJ Kennedy (FPL), Re: FPL 2017 Joint Use Billing, April 20, 2018 (attached to Phillip Simmons (AT&T) email to TJ Kennedy (FPL), Re: FPL 2017 Joint Use Billing, May 8, 2018).

and FPL's use of AT&T's poles, result in the same annual net rental amount.[14] FPL explained that it completes this calculation because "[i]n the early 1980's, the [Florida Public Service Commission] ordered FPL to capture and record its joint use financials on a 'gross' basis rather than 'net' basis, i.e., revenues and expenses needed to be recorded separately."[15]

11. As a result, for all joint use poles, FPL charges AT&T a per pole annual rental rate that is 47.4% of the "adjustment rate," which, in turn, is "the annual average cost of joint use poles."[16] Conversely, FPL assigns to itself a per pole annual rental rate for use of AT&T's poles that is 52.6% of the adjustment rate.[17]

12. FPL also charges AT&T an added per pole premium for use of "special poles," which I understand are FPL's concrete distribution poles.[18] The per pole premium charged is 50% of the adjustment rate;[19] thus it has the effect of increasing AT&T's payment for concrete distribution poles to 47.4% + 50% = 97.4% of the adjustment rate. FPL also charges AT&T an added per pole premium of [redacted] of the adjustment rate for use of "transmission poles" although FPL has not been able to "locate any documentation showing AT&T agreed to this

[14] See TJ Kennedy (FPL) email to P. Simmons (AT&T), Re: FPL 2017 Joint Use Billing, May 8, 2018 (attached to P. Simmons (AT&T) email to TJ Kennedy (FPL), Re: FPL 2017 Joint Use Billing, May 8, 2018).

[15] Ibid.

[16] JUA, Section 1.1.19.

[17] Ibid.

[18] Affidavit of D. Miller, June 27, 2019, ¶ 7 (hereinafter Miller Aff.); Email from D. Bromley (FPL) to D. Miller (AT&T), Mar. 20, 2019.

[19] JUA, Section 10.5.

transmission rate calculation."[20] This premium has the effect of increasing AT&T's payment for transmission poles to [redacted] of the adjustment rate.

13. For instance, the invoice that FPL issued for the 2017 rental year was in the amount of [redacted] and was based on a purported [redacted] annual pole cost.[21] As a result, FPL charged AT&T [redacted] per pole (47.4% x [redacted]) for all FPL-owned poles. FPL then added [redacted] per pole (50% x [redacted]) for all FPL-owned concrete distribution poles, which had the effect of increasing the rate to [redacted] per pole (97.4% x [redacted]). FPL also added [redacted] per pole ([redacted] x [redacted]) for all FPL-owned transmission poles, which had the effect of increasing the rate to [redacted] per pole ([redacted] x [redacted]). Finally, FPL assigned a single rate of [redacted] per pole (52.6% x [redacted]) to its use of AT&T's distribution poles. The 2017 invoice charged AT&T for use of 418,558 FPL poles (including 47,421 concrete distribution poles and 4,703 transmission poles) less FPL's rent for use of 216,850 AT&T poles.[22] This equates to a pole ownership disparity of 66% to 34% in FPL's favor. That disparity has since increased further in FPL's favor to 67% to 33%.[23]

14. AT&T expressed concern to FPL about "the magnitude of the invoiced rates."[24] As such, AT&T requested that it be charged "a competitively neutral, just and reasonable rate" based on the FCC's new telecom rate formula.[25] AT&T calculates this rate as $13.32 per pole for

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[20] See D. Bromley (FPL) email to D. Miller (AT&T), FPL / AT&T follow-up, Dec. 20, 2018.

[21] See Payment Coupon, Mar. 5, 2018 (hereinafter 2017 Invoice); Joint Use Distribution Poles 2017, Joint Use Pole Attachment Rate Calculation, Feb. 26, 2018.

[22] 2017 Invoice.

[23] See Payment Coupon, Feb. 1, 2019 (hereinafter 2018 Invoice).

[24] See Kyle Hitchcock (AT&T) email to TJ Kennedy, Re: AT&T Invoice #1800155013 now more than 120 Days Past Due, August 21, 2018.

[25] Ibid.

the 2017-rental year based on data available to AT&T.[26] FPL refused to lower the rental rate charged to AT&T stating that it "believe[s] that AT&T is misinterpreting the FCC Pole Attachment orders and their application to our Agreement."[27] Further FPL claimed, "there is nothing in the 2011 FCC Order that affirmatively requires the parties to modify an existing agreed upon contract rate."[28] FPL also sent AT&T a series of operational notices that sought to restrict AT&T's ability to maintain, improve, and expand its service offerings, and FPL ultimately terminated the JUA effective August 26, 2019.[29] I understand that as of that date, AT&T will not be able to deploy facilities on new FPL pole lines, and it will need to identify and gain approval from governmental entities and/or private property owners to construct alternative infrastructure before it can further expand its competitive service offerings in Florida.[30]

B. The FCC's Definition of Just and Reasonable Pole Attachment Rates

15. There should be no dispute that pole attachment rates, past, present, and future, for AT&T's use of FPL's poles must be just and reasonable given the FCC's 2011 *Pole Attachment Order*, which recognized that 47 U.S.C. § 224 requires that "incumbent LECs … are entitled to rates, terms and conditions that are 'just and reasonable.'"[31] The present matter is

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[26] Affidavit of D. Rhinehart, June 27, 2019, ¶ 14 (hereinafter Rhinehart Aff.).

[27] See Letter from M. Jarro (FPL) to AT&T Florida, August 31, 2018.

[28] See Email from D. Bromley (FPL) to D. Miller (AT&T), Dec. 20, 2019.

[29] See Notice of Suspension, Nov. 9, 2018; Notice of Enforcement of Suspension of AT&T's Attachments to FPL Poles, Jan. 11, 2019; Notice of Termination, Mar. 25, 2019; Notice of Termination, Apr. 8, 2019; Letter from E. Silagy (FPL) to D. Miller (AT&T), May 21, 2019; Letter from M. Jarro (FPL) to D. Miller (AT&T), May 23, 2019.

[30] See JUA, Section 12.3.

[31] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), ¶ 202 (hereinafter *Pole Attachment Order*).

therefore a dispute about the application of this standard and specifically what formulaic approach yields just and reasonable rates. Two FCC orders – one issued in 2011 and another in 2018 – offer specific guidance on this topic and define just and reasonable rates as competitively neutral rates.

16. In 2011, the FCC issued a comprehensive *Pole Attachment Order* "to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."[32] The FCC was "persuaded by evidence in the record that widely disparate pole rental rates distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband, contrary to the policy goals of the [Communications] Act" because "access to poles and other infrastructure is critical to deployment of telecommunications and broadband services."[33]

17. Among the 2011 reforms were those intended to rationalize pole attachment rates to "minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services."[34] The FCC explained that it was requiring "competitively neutral" pole attachment rates to "help remove market distortions that affect attachers' deployment decisions" and "improve[ ] the ability of different providers to compete with each other on an equal footing, better enabling efficient competition."[35]

18. The FCC applied this principle of competitive neutrality to the pole attachment rates that ILECs pay electric utilities like FPL.[36] The FCC stated that when an ILEC is "attaching

[32] Ibid, ¶ 1.

[33] Ibid, ¶ 6.

[34] Ibid, ¶ 126.

[35] Ibid.

[36] Ibid, ¶¶ 217–18.

to other utilities' poles on terms and conditions that are comparable to those that apply to a telecommunications carrier or a cable operator – which generally will be paying a rate equal or similar to the cable rate under our rules – competitive neutrality counsels in favor of affording [the ILEC] the same rate as the comparable provider (whether the telecommunications carrier or the cable operator)."[37] However, the FCC continues: "[j]ust as considerations of competitive neutrality counsel in favor of similar treatment of similarly situated providers, so too should differently situated providers be treated differently."[38] Therefore, if a JUA "includes provisions that materially advantage the [ILEC] *vis a vis* a telecommunications carrier or cable operator," the FCC found that "a different rate should apply."[39] The FCC further stated, "[T]he pre-existing, high-end telecom rate" would serve "as a reference point" on that rate because it "helps account for particular arrangements that provide net advantages to [ILECs] relative to cable operators or telecommunications carriers."[40]

19. In 2018, the FCC responded to reports that despite the 2011 Order "electric utilities continue to charge pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers."[41] To address this persisting problem, the FCC took another step in its *Third Report and Order* to eliminate "outdated disparities between the

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[37] Ibid, ¶ 217.

[38] Ibid, ¶ 218.

[39] Ibid.

[40] Ibid.

[41] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 14 FCC Rcd 18049 (2018), ¶ 123 (hereinafter *Third Report and Order*) (internal quotation marks omitted).

pole attachment rates [ILECs] must pay compared to other similarly-situated telecommunications attachers."[42] In particular, the FCC adopted a presumption that for new and newly renewed joint use agreements, ILECs "are similarly situated to other telecommunications attachers" and entitled to a pole attachment rate "no higher than the pole attachment rate for telecommunications attachers calculated in accordance with section 1.1406(e)(2) of the Commission's rules," meaning the FCC's new telecom rate formula.[43] To rebut this presumption, an electric utility must prove by clear and convincing evidence that an ILEC "receives net benefits that materially advantage the incumbent LEC over other telecommunications attachers."[44] In the event that the electric utility rebuts the presumption, the FCC sets the preexisting telecom rate (meaning the rate derived from the telecom rate formula in effect prior to the 2011 *Pole Attachment Order*) as the maximum just and reasonable rate that may be charged.[45]

20. Thus, the FCC requires that just and reasonable rates meet two necessary and related conditions. First, a just and reasonable rate must be competitively neutral. That is, the rate must be consistent with the rates charged to similarly situated telecommunications attachers. Second, the just and reasonable rate charged to an ILEC is one that falls within a specified range between the FCC's new telecom and preexisting telecom rate formulas. The low end of this range – the FCC's new telecom rate formula – reflects the maximum just and reasonable rate that may be charged to AT&T's CLEC competitors for pole attachments when "providing

[42] Ibid, ¶ 3.

[43] Ibid, ¶¶ 123, 126.

[44] Ibid, ¶ 128.

[45] Ibid, ¶ 129.

telecommunications services."[46] The FCC's new telecom rate is thus appropriately the presumptive just and reasonable rate for ILECs under the FCC's *Third Report and Order* because it is the competitively neutral rate where other terms and conditions of attachment are materially comparable. The high end of the range (the FCC's preexisting telecom rate formula) permits recovery of additional pole costs as appropriate to reflect any net material advantages provided an ILEC as compared to a CLEC or cable competitor.

21. The FCC's definition of just and reasonable is consistent with economic principles. Access to FPL's pole infrastructure is an essential input to AT&T's services in Florida. Duplication of FPL's pole network by AT&T or any other party is neither economically feasible nor socially desirable. Therefore, FPL has market power when granting access to its pole infrastructure under the essential facilities doctrine (i.e., pole attachment is a bottleneck service).[47] FPL not only has market power but also exercised this power by leveraging its pole ownership advantage to mandate excessive pole attachment fees on a "take-it-or-leave-it basis" and terminating the JUA when AT&T insisted on fair and reasonable rates that are competitively neutral. This is the exact outcome the FCC's regulatory approach seeks to prevent. By requiring FPL to set its pole attachment rates on a competitively neutral basis, the FCC ensures that there are limits to the market power that FPL can exercise, thereby avoiding the distorted competitive

[46] 47 C.F.R. § 1.1406(d)(2). This so-called "new telecom rate" approximates the rate that results from the FCC's cable formula, which applies to AT&T's cable competitors for pole attachments when they are "providing cable services." 47 C.F.R. § 1.1406(d)(1); see also *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order on Reconsideration, 30 FCC Rcd 13731 (2015), ¶¶ 1-4 (hereinafter *Cost Allocator Order*).

[47] "[F]irms who supply 'essential' or 'bottleneck' facilities in an economy; inputs or facilities which others (including rivals) need to access on reasonable terms to be able to operate in an industry." (Christopher Decker, *Modern Economic Regulation: An Introduction to Theory and Practice* (Cambridge: Cambridge Univ. Press, 2015), p. 49.)

outcome present in Florida. By requiring that the rates be competitively neutral with reference to a regulatory-prescribed formula, the FCC ensures that FPL (or any pole owner for that matter) cannot exercise its market power by charging excessive rates to some broadband providers, but not others.

II. THE RATES CHARGED BY FPL ARE NOT JUST AND REASONABLE OR COMPETITIVELY NEUTRAL

22. Several indicators demonstrate that the rates charged by FPL violate competitive neutrality and are unjust and unreasonable.

A. FPL's Rates Violate the FCC's Definition of Just and Reasonable Pole Attachment Rates

23. First and foremost, the rates charged by FPL violate the FCC's definition of just and reasonable rates because they are not based on the new telecom rate formula and they are not competitively neutral. The factual evidence in this matter demonstrates that AT&T pays a rental rate that is far higher than the competitively neutral rate. As noted above, for the 2017 rental year, FPL charged AT&T [redacted] per wood distribution pole, [redacted] per concrete distribution pole, and [redacted] per transmission pole.[48] The wood distribution pole rate is [redacted]-times the $13.32 per pole rate that AT&T calculated for the 2017 rental year under the new telecom rate formula, and the concrete distribution pole rate is [redacted] times that $13.32 per pole rate. The new telecom rental rate is the maximum that AT&T's competitors can be charged by FPL for the use of space on any of the FPL poles, irrespective of material, because the new telecom rate formula

[48] 2017 Invoice.

includes the cost of wood, concrete, and steel distribution poles, which is reported in Account 364 of FPL's FERC Form 1.[49]

24. The stark imbalance in rental rates charged AT&T and its competitors is incompatible with the FCC's principle of competitive neutrality. Using the 2017 rental rates, FPL would need to provide "clear and convincing evidence" that AT&T receives net material benefits under the JUA – and will continue to receive net material benefits after the JUA terminates – that are not provided to AT&T's competitors that amount to more than [redacted] every year for every wood distribution pole to which AT&T is attached, and more than [redacted] every year for every concrete distribution pole to which AT&T is attached. As I discuss in Section III, there is no economic evidence that the JUA gives AT&T a material benefit, much less a net material benefit, as compared to its competitors, and there is no reason to believe that benefits of this magnitude exist.

25. The unreasonableness of the rates charged by FPL is also evident by comparing them to the rates resulting from the FCC's preexisting telecom rate formula. This rental rate formula, which applied prior to the 2011 *Pole Attachment Order* to set the maximum rate that could be charged AT&T's CLEC competitors, is now the maximum rate that may be charged an ILEC under the *Third Report and Order*.[50] In 2011, the FCC explained that this rate was an appropriate high-end reference point because it "helps account for particular arrangements that

[49] Rhinehart Aff., ¶¶ 11, 15; *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12176 (2001), App. E-2 ("*Consolidated Partial Order*"); 18 C.F.R. § Pt. 101.

[50] *Third Report and Order*, ¶ 129.

provide net advantages to [ILECs] relative to cable operators or telecommunications carriers."[51] AT&T calculates the rate under the preexisting telecom rate formula at $20.18 per pole for the 2017 rental year, which is about [redacted] per wood distribution pole rate, and about [redacted] per concrete distribution pole rate, FPL charged AT&T for that rental year.[52]

B. FPL's Rates and Conduct Are Indicative of Unequal Bargaining Power

26. FPL has been able to impose unjust and unreasonably high rental rates on AT&T because of the bargaining power it enjoys by virtue of the significant and growing disparity in pole ownership. For the 2014 rental year, which I understand is the earliest rental year for which AT&T seeks refunds, FPL owned 63% of 621,110 joint use poles.[53] Since that time, the pole ownership disparity has increased year after year.[54] As of FPL's 2018 invoice, issued in February 2019, FPL estimated that it owns 67% of 638,914 joint use poles.[55] The unequal bargaining power reflected by this two-to-one ratio, and steadily increasing, pole ownership advantage is not only manifested by the rental rates but in other provisions of the JUA as well. It is also reflected in FPL's response to AT&T's request for rate reductions, which sought to leverage AT&T's comparably greater reliance on FPL poles to avoid such rate reductions.

27. First, the JUA allocates four feet of usable space to AT&T and six feet of usable space to FPL when AT&T uses far less space than what AT&T pays for and FPL uses far more, including 40 inches of separation space required by its facilities.[56] This reveals that the synergies

[51] *Pole Attachment Order*, ¶ 218.

[52] Rhinehart Aff., ¶¶ 24-25.

[53] Miller Aff., ¶ 9.

[54] Ibid.

[55] See 2018 Invoice.

[56] See JUA, Section 1.1.7; Miller Aff., ¶ 30; *Consolidated Partial Order*, ¶ 51 ("the 40-inch safety space … is usable and used by the electric utility").

of a joint pole network are not shared proportionately. In contrast, the FCC's new telecom rate formula assigns to each attacher the usable space it actually *occupies* and divides the cost of the unusable space among *all attaching entities*, ensuring that communications attachers *do not pay for the electric utility's power separation space*:

$$SpaceFactor(FCC) = \left[\frac{(SpaceOccupied) + \frac{2}{3}\left(\frac{UnusableSpace}{No.\,of\,AttachingEntities}\right)}{PoleHeight}\right] \times CostAllocator$$

This formula is more closely aligned with the outcome of a negotiation among equals because it requires all attaching entities to share the costs of the unusable space and presumes that communications attachers occupy one foot of space that does not include the electric utility's power separation space.[57]

28. Second, AT&T pays much more than FPL on a per-foot basis. For 2017 rent, AT&T paid [redacted] per pole for four feet of allocated space on wood distribution poles, and [redacted] per pole for four feet of allocated space on concrete distribution poles, when FPL paid [redacted] per pole for six feet of allocated space on AT&T's distribution poles.[58] On wood distribution poles, FPL was thus allocated 50% more usable space than AT&T but paid a rental rate that was only [redacted] more than the rate paid by AT&T. On FPL's concrete distribution poles, the comparison is further warped, as AT&T paid [redacted] per pole for the 2017 rental year, thereby reducing FPL's cost responsibility before it collected rent from other attachers (e.g., cable and CLECs).

[57] See *Consolidated Partial Order*, ¶ 51; 47 C.F.R. § 1.1410.

[58] See 2017 Invoice.

29. Third, FPL unreasonably assigns a fixed cost proportion to AT&T that fails to account for additional rent from any of the third parties with which AT&T competes.[59] On wood distribution poles, FPL assigns AT&T 47.4% of the adjustment rate, which is defined as "the annual average cost of joint use poles for the next preceding year."[60] This factor does not decrease when a third party attaches to an FPL pole. Instead, FPL continues to collect the full 47.4% of the pole cost from AT&T as well as additional rent from the third party, thereby reducing FPL's cost-sharing responsibility while keeping AT&T's share constant. Even worse, the additional entities typically attach in the four feet of space allocated to AT&T, meaning that AT&T must bear the cost of four feet of allocated space but receives no offset from the revenues that FPL receives when portions of that space are rented to others.[61] Such an outcome cannot be the result of just and reasonable rates because a just and reasonable rate would imply that all parties attaching to the pole pay a proportionate share of the pole costs.

30. Fourth, FPL's ability to leverage its significant pole ownership advantage is evident in its demand that AT&T pay far higher rates for use of transmission poles without any indication that AT&T ever agreed to that amount. FPL conceded that it is "not able to locate any documentation showing AT&T agreed to this transmission rate calculation,"[62] and it provided only a 1993 letter in which FPL declared, "[t]he transmission pole rate is [redacted] the distribution rate."[63] FPL's demand that AT&T continue to pay rental rates regardless of contractual support

[59] See JUA, Section 1.1.19.

[60] See JUA, Section 10.6.

[61] See Miller Aff., ¶ 30.

[62] Email from D. Bromley (FPL) to D. Miller (AT&T), Mar. 20, 2019.

[63] Dave Bromley (FPL) email to Dan Rhinehart (AT&T), Subject: FPL Transmission Rate, December 10, 2018, attaching Dennis La Belle (FPL) letter to Earl Christian (Southern Bell), Re: 1993 Joint Use Rate, July 6, 1993.

is indicative of the kind of behavior only made possible when a company controls far more essential infrastructure than the other party controls and thus has superior bargaining power.

31. Finally, the fact that FPL was able to impose and insist on unjust and unreasonably high rental rates on AT&T because of its pole ownership advantage is evident in the actions that FPL has taken in response to a request for their reduction. If FPL required access to AT&T's poles as much as AT&T requires access to FPL's poles (i.e., a balanced bargaining situation), then it is highly unlikely that FPL would have terminated the JUA, let alone insisted that AT&T remove its attachments from FPL's poles solely because AT&T sought confirmation that FPL's invoice complied with the JUA and federal law.

32. In summary, FPL has charged rates and taken actions during the parties' negotiations that are consistent with negotiations between unequal bargaining partners. FPL assigns a disproportionate amount of pole cost to AT&T as compared to AT&T's competitors and as compared to FPL. FPL fails to credit AT&T for rent from third parties and exercises its leverage by taking actions that seek to undermine, instead of promoting, deployment during the parties' negotiations.

III. AT&T DOES NOT ENJOY MATERIAL NET BENEFITS

33. The preceding discussion establishes that the pole attachment rates charged by FPL are unjust and unreasonable and have imposed artificially inflated costs on AT&T that are inconsistent with competitive market conditions. Under the principle of competitive neutrality, FPL should charge AT&T the new telecom rate that applies to its competitors *unless* FPL can prove that AT&T receives net benefits under the JUA that materially advantage AT&T over its competitors sufficient to justify a higher rate.

34. FPL has not identified any possible competitive benefits that the JUA provides AT&T over its competitors, so I considered benefits that electric utilities, including FPL, have

cited in the past.[64] I concluded that these general assertions do not justify charging AT&T a rate higher than the new telecom rate under the principle of competitive neutrality. Consequently, the proper pole attachment rate for AT&T is the new telecom rate with no further adjustments.

35. I arrived at my finding based on several considerations. First, AT&T is not advantaged by having a JUA (instead of a license agreement) with FPL. Even if the JUA were to provide AT&T benefits, the JUA also disadvantages AT&T due to the responsibilities imposed by the Agreement. Considering both the rights and the responsibilities is an indispensable requirement of competitive neutrality. In fact, as the FCC previously acknowledged, "A failure to weigh, and account for, the different rights and responsibilities in joint use agreement could lead to marketplace distortions."[65] To set an ILEC on equal footing with its competitors, any costs avoided by the ILEC under a JUA – but not avoided by its competitors under a license agreement – must offset any costs incurred by the ILEC under the JUA – but not incurred by its competitors under a license agreement. Thus, accounting only for any avoided costs in a new rental rate will leave the ILEC worse off than its competitors because the ILEC will be required to pay not only the rental rate but also the additional unique costs associated with the obligations under the JUA. The most obvious of the unique costs imposed on AT&T under the JUA that are not imposed on its competitors under the license agreements are those associated with pole ownership. These substantial costs must be weighed in the analysis to ensure competitive neutrality. Another example involves engineering and survey work required before placing an attachment on a pole. AT&T conducts these services itself, whereas its competitors, under some

[64] See *Third Report and Order*, ¶ 128; *Verizon Fla. LLC v. FPL*, Mem. Op. and Order, 30 FCC Rcd 1140, 1148 (¶ 21) (EB 2015).

[65] *Pole Attachment Order*, ¶ 216, n. 654.

license agreements, pay the electric entity to conduct the same services at cost.[66] Where that occurs, AT&T would double pay if it were required to incur the cost of the services and pay a higher rental rate because it does so.

36. Second, a proper analysis of benefits must also consider the reciprocal benefits that FPL receives from AT&T as part of the JUA. These benefits are a necessary consideration in measuring net competitive benefits because they are costs that CATV and CLEC competitors do not incur. For instance, the JUA might offer some intangible benefits in the form of predictability of costs that other attachers might not enjoy. However, even assuming the existence of such benefits does not mean that AT&T enjoys a net advantage over its competitors as the company must also extend the same predictability to FPL in return. Similarly, the JUA might offer AT&T benefits in the form of liability sharing with FPL as the companies agree to share liability for some damages.[67] Again, this does not result in net benefits as AT&T extends that same liability sharing provision to FPL, resulting in no *net* benefits.

37. Third, competitive neutrality must necessarily look to the actual conditions in the competitive communications marketplace. As a result, a higher rate is not warranted simply because the JUA allocates four feet of space to AT&T. As stated, AT&T does not use four feet of space across FPL's poles, and FPL has allowed others to attach within the space paid for by AT&T.[68] A higher rate is also not justified because AT&T typically occupies the lowest position on the pole. The evidence confirms that AT&T's typical position on the pole, as compared to the positions of its competitors, has subjected its facilities to increased damage, higher transfer costs,

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[66] Miller Aff., ¶ 24; Affidavit of M. Peters, June 27, 2019, ¶ 9.

[67] See JUA, Section 13.1.3.

[68] See Miller Aff., ¶ 30.

and more requests to temporarily raise the facilities to accommodate oversized loads.[69] Thus, AT&T's location on the pole is not a competitive advantage for AT&T. Moreover, AT&T's location on the pole is the result of historical conditions that must continue today so that facilities of different providers do not crisscross midspan.[70] There is no good reason to charge AT&T a higher rate for something that it cannot change and that operates to the benefit of all attachers.

38. Fourth, even if a benefit did exist for some poles or existed temporarily, this must not allow FPL to charge a higher rate for all poles and to do so indefinitely. Rather, all benefits must be distributed over all FPL poles to which AT&T attaches and only be reflected in the rate for the year in which AT&T receives any such benefit. Given the considerations above, if a benefit were to be found, it would likely apply to only a small number of poles and/or be temporary. This, in turn, would not provide AT&T with a material competitive benefit that justifies a higher rate during that rental year, much less in future years after FPL's termination of the JUA takes effect.

39. Fifth and related to the preceding point, the mere existence of net benefits does not entitle FPL to a pole attachment rate that is randomly higher than the rate under the new telecom rate formula. The value of any alleged benefits must be quantified and, if present and material, added to the rate based on the new telecom rate. As there is no evidence of specific benefits to AT&T, FPL cannot justify the [redacted] per pole rate differential on wood distribution poles, let alone the [redacted] per pole rate differential on concrete distribution poles (using 2017 rates as an example).

[69] Ibid, ¶ 27.

[70] Ibid.

40. These considerations confirm that there is no objective or quantitative basis for concluding that AT&T enjoys competitive benefits, let alone net benefits that could justify the disparity between the new telecom rate applicable to AT&T's competitors and the rates charged by FPL. It is therefore my opinion that the new telecom rate is the competitively neutral rate, and thus is the rate that FPL should charge AT&T.

IV. CONCLUSION

41. Based on these considerations, I find that the pole attachment rates that FPL has charged AT&T for all time periods at issue in AT&T's complaint (since 2014) have not been and will not be just and reasonable or competitively neutral rates. I recommend that the FCC set the just and reasonable rate for AT&T's use of FPL's poles as the properly calculated per pole new telecom rate because AT&T does not receive net benefits under the JUA that provide it a material advantage over its CLEC and cable competitors.

Christian M. Dippon, Ph.D.

Sworn to before me on
this 28th day of June 2019

Notary Public
LaCretia D. Gray exp 6/30/23

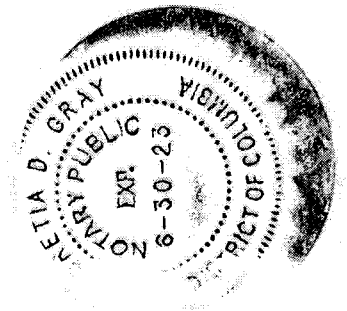

Exhibit D-1

PUBLIC VERSION

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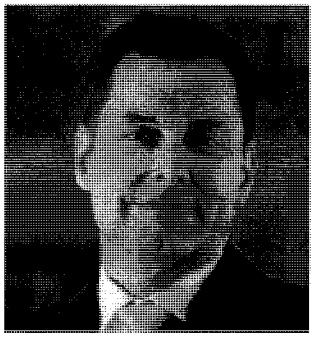

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CHAIR, NERA'S GLOBAL ENERGY, ENVIRONMENT, COMMUNICATIONS & INFRASTRUCTURE PRACTICE

Dr. Dippon is a Managing Director at NERA and a leading authority in complex litigation disputes and competition matters in the communications, Internet, and high-tech sectors. He is also the Chair of NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice, where he leads over 100 experts in the areas of energy, communications, media, Internet, environment, auctions, transport, and water. Global Arbitration Review (2019) ranks Dr. Dippon among the world's leading commercial arbitration experts, saying: "Christian Dippon is regarded by clients as 'a highly intelligent, articulate and sophisticated expert who possesses deep technical knowledge of the telecommunications industry.'"[1]

Dr. Dippon advises his clients in economic damages assessments, class certifications and damages, false advertising, antitrust matters, and regulatory and competition issues. He has extensive testimonial and litigation experience, including depositions, jury and bench trials in state and federal courts, domestic (AAA) and international arbitrations (UNCITRAL, ICC, ICSID), and submissions before international courts. He assists clients with a broad range of litigation disputes related to wireline, wireless, cable, media, Internet, consumer electronics, and the high-tech sector. Dr. Dippon also routinely testifies before US and international regulatory authorities, including the Federal Communications Commission, the International Trade Commission, the Canadian Radio-television and Telecommunications Commission, and the Competition Bureau Canada.

Dr. Dippon has authored and edited several books as well as book chapters in anthologies and has written numerous articles on telecommunications competition and strategies. He also frequently lectures in these areas at industry conferences, continuing education programs for lawyers, and at universities. National and international newspapers and magazines, including the *Financial Times*, *Business Week*, *Forbes*, the *Chicago Tribune*, and the *Sydney Morning Herald*, have cited his work.

[1] https://whoswholegal.com/profiles/88280/0/dippon/christian-dippon/

Dr. Dippon serves on NERA's Board of Directors, the Board of Directors of the International Telecommunications Society (ITS), and on the Editorial Board of *Telecommunications Policy*. He is a member of the Economic Club of Washington, DC, the American Economic Association (AEA), the American Bar Association (ABA), and the Federal Communications Bar Association (FCBA).

Education

Curtin University, Perth, Australia
PhD in Economics, 2011

University of California, Santa Barbara, CA, USA
MA in Economics, 1995

California State University, Hayward, CA, USA
BS *cum laude* in Business Administration, 1993

Thesis

"Consumer Preferences for Mobile Phone Service in the U.S.: An Application of Efficient Design on Conjoint Analysis," Curtin University, 2011.

Professional Experience

NERA Economic Consulting

2017–present	Chair, NERA's Global Energy, Environment, Communications & Infrastructure (EECI) Practice
2017–present	Member, Board of Directors, NERA Economic Consulting
2014–present	Senior Vice President / Managing Director
2014–2017	Co-Chair, Communications, Media & Internet Practice
2015–2017	Head, NERA Washington, DC
2014–2015	Co-Head, NERA Washington, DC
2012–2014	Chair, Communications, Media & Internet Practice
2004–2014	Vice President
2000–2004	Senior Consultant
1998–2000	Consultant
1997–1998	Senior Analyst
1996–1997	Analyst

BMW Thailand

1993–1994 Business Analyst

Honors and Professional Activities

Member, International Bar Association (IBA)

Member, The Economic Club, Washington, DC

Editorial Board, Telecommunications Policy

Board of Directors, International Telecommunications Society (ITS)

Assistant Treasurer, International Telecommunications Society (ITS)

Member, American Economic Association (AEA)

Member, Federal Communications Bar Association (FCBA)

Associate, American Bar Association (ABA)

Who's Who Legal Arbitration 2019, Expert Witness

Testimony in Regulatory and Judicial Proceedings (2010–Present)

ON BEHALF OF [CONFIDENTIAL SATELLITE INDUSTRY]

In the Matter of an Arbitration und the Rules of Arbitration of the International Centre for Settlement of Investment Disputes, ICSID Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], (Expert Report on Behalf of Claimant], January 9, 2019 (Economic Damages / Industry expertise).

ON BEHALF OF [CONFIDENTIAL CONSUMER ELECTRONICS]

In the Matter of an Arbitration under the Rules of Arbitration of the International Chamber of Commerce, ICC Case No. [Confidential], [Confidential], Claimant against [Confidential], Respondent against [Confidential], Counterclaim-Respondent, July 6, 2018 (Expert Report on Behalf of Respondent], November 16, 2018 [Second Expert Report on Behalf of Respondent], December 20 – 21, 2018 [Oral Testimony on Behalf of Respondent] (Economic Damages / Industry expertise).

ON BEHALF OF ALCATEL-LUCENT USA INC.

In the Superior Court of California, County of Santa Clara, *In re: Alcatel-Lucent USA Inc. v. Brilliant Telecommunications, Inc., Juniper Networks, Inc., et al.*, December 7, 2012, December 13, 2012, February 21 and 25, 2013. (Economic Damages / Industry expertise)

ON BEHALF OF AT&T ALABAMA

Before the Federal Communications Commission, Washington, DC 20554, BellSouth Telecommunications, LLC d/b/a AT&T Alabama, Complainant v. Alabama Power Company, Defendant, Proceeding No. 19-119, Bureau ID No. EB-19-MD-002 Affidavit of Christian M. Dippon, Ph.D. In Support of Pole Attachment Complaint. April 16, 2019. (Regulatory Rate Dispute / Industry Expertise)

ON BEHALF OF BELL MOBILITY

Before the Superior Court, Province of Quebec, District of Montreal, In the Matter of *Gagnon vs. Bell Mobility*, No: 500-06-000496-105, October 25, 2013, March 14, 2014 (updated version from October 25, 2013, and April 2–3, 2014. (Economic damages)

ON BEHALF OF CALINNOVATES

Before the Federal Communications Commission, Washington, DC, In the Matter of Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, Commercial Availability of Navigation Devices, CS Docket No. 97-80, April 22, 2016 (Public policy), October 11, 2016. (Economic damages)

Before the Federal Communications Commission, Washington, DC, In the Matter of Protecting and Promoting the Open Internet, GN Docket 14-28, "Economic Repercussions of Applying Title II to Internet Services," White Paper, by Christian Dippon, PhD and Jonathan Falk, filed as attachment to the Reply Comments of CALinnovates, September 11, 2014. (Public policy)

ON BEHALF OF CELLCOM ISRAEL, LTD.

Before the Israel Ministry of Communications, Expert Report of NERA Economic Consulting, "Reply to Frontier's Responses, Estimating the Cost of Wholesale Access Service on Bezeq's Network," Christian Dippon with Marta Petrucci, Leen Dickx, and Howard Cobb (Finite State Systems), September 29, 2014. (Regulatory policy and cost modeling)

Before the Israel Ministry of Communications, Expert Report of NERA Economic Consulting, "Estimating the Cost of Wholesale Access Services on Bezeq's Network, A Cost Modeling Review," Christian Dippon with Nigel Attenborough, Marta Petrucci, Sally Tam, Anthony Schmitz, and Howard Cobb, March 10, 2014. (Regulatory policy and cost modeling)

ON BEHALF OF COMCAST CORPORATION

Before the Federal Communications Commission, Washington, DC, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Notice of Proposed Rulemaking, White Paper, "Public Interest Benefits of Repealing Utility-Style Title II Regulation and Reapplying Light-Touch Regulation to Broadband Internet Services, July 17 and August 28, 2017. (Competition analysis)

ON BEHALF OF THE COMMERCE COMMISSION NEW ZEALAND

"Review of Covec's 'Economic Analysis of 700MHz Allocation,'" Christian Dippon with James Mellsop, Richard Marsden, and Kevin Counsell, February 14, 2014. (Regulatory policy and competition analysis)

ON BEHALF OF THE COMPETITION BUREAU CANADA

The Commissioner of Competition, Applicant and Chatr Wireless Inc, and Rogers Communications Inc., Respondents, Ontario Superior Court of Justice, June 13, 2012, July 25, 2012, August 15–16, 2012. (Economic damages / Industry expertise)

ON BEHALF OF FPL GROUP INC.

In reference to *Adelphia Communications Corp., et al., Adelphia Recovery Trust, v. FPL Group Inc.*, United States Bankruptcy Court Southern District of New York, July 8, 2011, July 26, 2011, April 17, 2012, and May 2–3, 2012. (Competition analysis)

ON BEHALF OF MICROSOFT MOBILE OY AND NOKIA INC.

Before the United States International Trade Commission, In the Matter of Certain 3G Mobile Handsets and Components, Investigation No. 337-TA-613, September 12, 2014, October 3, 2014, October 15, 2014, November 21, 2014, December 12, 2014, and January 28, 2015. (Competition analysis)

Before the United States International Trade Commission, In the Matter of Certain Wireless Devices including Mobile Phones and Tablets II, Investigation No. 337-TA-905, June 26, 2014. (Competition analysis)

ON BEHALF OF MONSTER, INC.

Circuit Court of Cook County, Illinois County Department, Chancery Division, *Amy Joseph, individually and on behalf of all others similarly situated, Plaintiff, Benjamin Perez, individually and on behalf of all others similarly situated, Intervening Plaintiff vs. Monster, Inc., a Delaware Corporation and Best Buy Co, Inc., a Minnesota Corporation, Defendants*, Case No. 2015 CH 13991, September 9, 2016 and February 8, 2018. (Economic damages)

ON BEHALF OF NETLINK TRUST

Before the Info-communications Development Authority of Singapore (IDA), "The Appropriate Cost Methodology for Price Regulation of Interconnection Wholesale Fiber Services," Christian Dippon with Dr. Bruno Soria, December 15, 2015. (Regulatory policy)

ON BEHALF OF NOKIA CORPORATION AND NOKIA INC.

Before the United States International Trade Commission, In the Matter of Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof, Investigation No. 337-TA-

868, August 23, 2013, September 5, 2013, September 20, 2013, October 8, 2013, November 19, 2013, December 6, 2013, January 6, 2014, and February 18, 2014. (Competition analysis)

Before the United States International Trade Commission, In the Matter of Certain Integrated Circuit Devices and Products Containing the Same, Investigation No. 337-TA-873, August 30, 2013, September 16, 2013, and March 6, 2014. (Competition analysis)

ON BEHALF OF NOKIA SOLUTIONS AND NETWORKS US LLC

In the Matter of the Arbitration between *MTPCS, LLC d/b/a Cellular One vs. Nokia Solutions and Networks US LLC d/b/a Nokia Networks*, Before the American Arbitration Association, RE: 01-15-0003-5349, December 5–6, 2016 (Economic damages and competition analysis) and May 4, 2016. (Economic damages)

Before the American Arbitration Association, *Nokia Siemens Networks US LLC n/k/a Nokia Solutions Networks US, Plaintiff vs. Viaero Wireless a/k/a NE Colorado Cellular, Inc., Defendant*, Case No. 50 494 T 00510 13, May 27, 2014 and June 2, 2014. (Economic damages)

ON BEHALF OF QATAR TELECOM (QTEL)

In Connection with *Vodafone Qatar Q.S.C v. Qatar Telecom (Qtel) Q.S.C,* Pursuant to Dispute Resolution Agreement Dated 11 November 2010, January 20, 2011 and February 21, 2011. (Economic damages)

ON BEHALF OF SINGAPORE TELECOMMUNICATIONS LIMITED AND SINGAPORE TELECOM MOBILE PTE. LTD.

Before the District Court of Tangerang, "Economic Assessment and Examination of Alleged Anticompetitive Behavior in the Indonesian Mobile Market," Expert Report by Christian Dippon, Nigel Attenborough, and William Taylor, April 21, 2010. (Economic damages)

Before the Central Jakarta District Court, "Economic Assessment and Examination of Alleged Anticompetitive Behavior in the Indonesian Mobile Market," Expert Report by Christian Dippon, Nigel Attenborough, and William Taylor, Prepared for Singapore Telecommunications Limited and Singapore Telecom Mobile Pte. Ltd., January 15, 2010. (Economic damages and competition analysis)

ON BEHALF OF SONY COMPUTER ENTERTAINMENT AMERICA LLC

Before the United States District Court Northern District of California San Francisco Division, In Re Sony PS3 "Other OS" Litigation, Case No. CV-10-1811 SC, April 4, 2017 and June 7, 2017. (Economic damages)

ON BEHALF OF SPRINT COMMUNICATION COMPANY L.P., SPRINT SPECTRUM L.P., AND NEXTEL OPERATIONS, INC.

Before the United States District Court for the Eastern District of Pennsylvania, *Comcast Cable Communications, LLC; TVWorks, LLC, and Comcast Mo Group Inc. v. of Sprint Communication Company L.P., Sprint Spectrum L.P., and Nextel Operations, Inc.*, Civil Action No. 2:12-cv-00859-JD, July 15, 2015. (Economic damages), March 18, 2016 (Economic damages), February 14, 2017 (Economic damages and incremental cost modeling)

ON BEHALF OF SPRINT SPECTRUM LP AND WIRELESS CO. LP, NEXTEL COMMUNICATIONS INC., AND NEXTEL CALIFORNIA INC.

Superior Court of the State of California, County of Alameda, JCCP No. 4332, Case No. RG03114147, *Ayyad, et al. v. Sprint Spectrum Limited Partnership, et. al.*, Cellphone Termination Fee Cases, September 13, 2011, April 26, 2013, May 29, 2013, July 16, 2013, July 30, 2013, April 1, 2016, and January 29, 2016. (Economic damages)

ON BEHALF OF TELE FÁCIL MEXICO, S.A. DE C.V.

In the Matter of an Arbitration Under the North American Free Trade Agreement and The Arbitration Rules of the United Nations Commission on International Trade Law (1976) between *Joshua Dean Nelson, in His Own Right and On Behalf of Tele Fácil Mexico, S.A., De C.V., and Jorge Luis Blanco (the Claimants) and The United Mexican States (the Respondent),* ICSID Case No. UNCT/17/1, November 7, 2017, June 5, 2018, November 21, 2018, April 21, 2019 (hearings). (Economic damages)

ON BEHALF OF TELUS COMMUNICATIONS INC.

Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2019-57, Review of Mobile Wireless Services, An Examination of the Regulatory Framework for Mobile Virtual Network Operators and Other Wholesale Mobile Services, Expert Report of Christian M. Dippon. Ph.D., On Behalf of TELUS Communications, Inc., May 15, 2019. (Competition policy / industry expertise)

Before the Competition Bureau Canada, Market Study Notice: Competition in Broadband Services, "Expert Report of Christian M. Dippon, Ph.D. On Behalf of TELUS Communications Inc., August 31, 2018 and November 26, 2018. (Competition Policy / industry expertise)

Before Innovation, Science and Economic Development Canada, SLPB-004-18, June 2018, Spectrum Management and Telecommunications, "Expert Report of Christian M. Dippon, PhD On Behalf of TELUS Communications Inc.," Consultation on Revisions to the 3500 MHz Band to Accommodate Flexible Use and Preliminary Consultation on Changes to the 3800 MHz Band, August 10, 2018. (Competition Policy / industry expertise)

Before Innovation, Science and Economic Development Canada, SLPB-005-17, August 2017, Spectrum Management and Telecommunications, "Expert Report of Christian M. Dippon, PhD

On Behalf of TELUS Communications Inc.," Consultation on a Technical, Policy and Licensing Framework for Spectrum in the 600 MHz Band, October 2, 2017 and November 3, 2017. (Competition Policy / industry expertise)

Before the Canadian Radio-television and Telecommunications Commission, CRTC 2017-259, Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming services, September 8, 2017 and December 1, 2017. (Competition Policy / industry expertise)

Zedi Canada Inc. vs. TELUS Communications Company, Expert Report, May 27, 2016; Oral Testimony, June 23, 2016. (Economic damages / industry expertise)

Before the Canadian Radio-television and Telecommunications Commission, Regulatory framework for wholesale mobile wireless services, CRTC 2015-177, November 23, 2015 (Regulatory policy), May 31, 2016 (Competition analysis and cost modeling), April 4, 2017. (Regulatory cost modeling)

Before the Canadian Radio-Television and Telecommunications Commission, CRTC 2014-76, Review of Wholesale Mobile Services, August 20, 2014 (Competition analysis and regulatory policy) and September 30, 2014. (Regulatory policy)

In the Supreme Court of British Columbia between Michelle Seidel, Plaintiff, and TELUS Communications Inc., Defendant, Proceeding under the Class Proceeding Act, R.S.B.C. 1996, c.50, No. L050143, Vancouver Registry, March 3, 2014 and July 4, 2014. (Economic damages)

Before the Canadian Radio-television and Telecommunications Commission, In the Matter of Wholesale Mobile Wireless Roaming in Canada, CRTC 2013-685, January 29, 2014. (Regulatory policy)

ON BEHALF OF U MOBILE SDN BHD

"The Refarming of the 900 MHz Spectrum in Malaysia, Expert Report," September 25, 2010. (Economic damages)

ON BEHALF OF 425331 CANADA INC. AND NEXTWAVE HOLDCO LLC

Inukshuk Wireless Partnership, Plaintiff vs. 425331 Canada Inc. and Nextwave HoldCo, LLC, Ontario Superior Court of Justice, Court File CV-13-10031-00CL, April 5, 2013. (Economic damages)

White Papers and Consulting Reports (2010–Present)

ON BEHALF OF [MERGING PARTY]

Economic Supplement, A Critical Review of Rewheel's Digital Fuel Monitor Reports, March 26, 2019.

ON BEHALF OF TELUS COMMUNICATIONS INC.

Oversimplified and Misleading Price Comparisons Must Not Guide Policy and Regulatory Decisions, A Critical Review of Rewheel's Digital Fuel Monitor Reports, March 13, 2019.

ON BEHALF OF TELUS COMMUNICATIONS INC.

An Accurate Price Comparison of Communications Services in Canada and Select Foreign Jurisdictions, October 19, 2018.

ON BEHALF OF [MERGING PARTY]

An Examination of the European Experience with Mergers in the Wireless Sector, Economic Lessons for the Evaluation of [Confidential], Christian M. Dippon, September 17, 2018.

ON BEHALF OF THE AUSTRALIAN CONSUMER AND COMPETITION COMMISSION

"NBN Co's Proposed Price Structure: An Economic Evaluation," with Katherine Lowe, Howard Cobb, and Sally Tam, August 31, 2012.

ON BEHALF OF BROADBAND AUSTRALIA LIMITED

"An Economic Analysis of the Value of Australian Spectrum," August 5, 2010.

ON BEHALF OF CALINNOVATES

"This Old Act: Economic Repercussions of Relying on the Telecommunications Act of 1996, January 30, 2017.

ON BEHALF OF THE INTERNET ASSOCIATION

"Economic Value of Internet Intermediaries and the Role of Liability Protections," June 5, 2017

ON BEHALF OF THE ISRAEL MINISTRY OF COMMUNICATIONS AND MINISTRY OF FINANCE
"An Examination of Charges for Mobile Network Elements in Israel," with Nigel Attenborough, Thomas Reynolds, and Sumit Sharma, May 3, 2010; "Mobile Network Cost Elements Model, A Technical Report," with Nigel Attenborough, Thomas Reynolds, and Sumit Sharma, May 4, 2010.

ON BEHALF OF NETVISION LTD

"Creating Effective Wholesale Access Markets in Israel, Economic Assessment and Policy Recommendation," April 6, 2011.

ON BEHALF OF THE PALESTINE TELECOMMUNICATIONS COMPANY

"Pricing Consultancy and Regulatory Support, Final Recommendations," August 4, 2012.

ON BEHALF OF TURK TELECOM

"Wholesale Access to Fiber Ducts and Dark Fiber – A Benchmark Study," June 28, 2013.

ON BEHALF OF U MOBILE SDN BHD

"U Mobile Sdn BhD, Application for Spectrum Assignment (2600 MHz Spectrum)," November 19, 2010.

ON BEHALF OF WHITWORTH ANALYTICS

"FirstNet: An Economic Analysis of Opting-In vs. Opting-Out," March 2017.

ON BEHALF OF WIRELESS BROADBAND AUSTRALIA LIMITED

"An Economic Analysis of the Value of Australian Spectrum, August 5, 2010.

Book Publications

"Measuring Economic Damages with Maximum Certainty," with Julie Carey and Will Taylor, Chapter forthcoming in *The Guide to Damages in International Arbitrations, Fourth Edition,* Global Arbitration Review, 2019.

"Stated Consumer Behavior with D-Efficient Choice Set Designs: The Case of Mobile Service Bundles," with Gary Madden, Chapter in forthcoming book *Essays in Honor of Gary Madden,* publication pending 2019.

K&L Gates – NERA 2008 Global Telecom Review, A Legal and Economic Examination of Current Industry Issues, Christian Dippon and Martin Stern (Eds.), April 23, 2008.

"Regulation under Fixed Mobile Convergence, Examining Recent Developments in Hong Kong," by Keith Lee, Wendy Lo, Christine Yam, and Christian Dippon, Chapter 4 in *K&L Gates – NERA 2008 Global Telecom Review, A Legal and Economic Examination of Current Industry Issues*, April 23, 2008, pages 21–26.

"Size Matters, Relevant Market Definition and Competition Review in a World with Intermodal Competition," by Christian Dippon, Chapter 3 in *K&L Gates – NERA 2008 Global Telecom Review, A Legal and Economic Examination of Current Industry Issues*, April 23, 2008, pages 15–20.

"Mobile Virtual Network Operators: Blessing or Curse? An Economic Evaluation of the MVNO Value Proposition," by Christian Dippon and Aniruddha Banerjee, National Economic Research Associates, Inc., ISBN 0-9748788-2-0, 2006.

"The Implications of Convergence in Telecommunications," by Christian Dippon and Timothy Tardiff, published in *The Preston Gates Guide to Telecommunications in Asia*, 2006 Edition, Asia Law & Practice, 2006, ISBN 962-936-155-8, pages 31–40.

"When East Meets West –Converging Trends in the Economics of Intellectual Property Damages Calculation," by Christian Dippon and Noriko Kakihara, Chapter 19 in *Economic Approaches to Intellectual Property Policy, Litigation, and Management*, edited by Dr. Gregory Leonard and Dr. Lauren J. Stiroh, National Economic Research Associates, Inc., 2005, ISBN 0-9748788-1-2, pages 277–291.

"Marketing Research," Chapter 4 in *Internet Marketing: Building Advantage in a Networked Economy*, an MBA coursework textbook by Rafi Mohammed, Robert J. Fisher, Bernard Jaworski, Aileen M. Cahill, published by McGraw-Hill Higher Education, ISBN 0-07-251022-6, pages 127–167.

Paper and Article Publications (2010–Present)

"Do Economic, Institutional, or Political Variables Explain Regulated Wholesale Unbundled Local Loop Rate Setting," with Dr. Gary Madden and Dr. Hiroaki Suenaga, *Applied Economics,* Volume 48, 2016 – Issue 39.

"FCC Open Internet Order Creates Uncertainty and Risk," with Marty Stern and Sam Castic (K&L Gates), published in *Corporate Counsel*, July 27, 2015.

"Is It Worth the Effort? Measuring the Benefits of D-Efficient Survey Design to Qualitative Choice Analysis," November 1, 2014.

"Consumer Demand for Mobile Phone Service in the US: An Examination beyond the Mobile Phone," November 1, 2014.

"Is Faster Necessarily Better? Third Generation (3G) Take-up Rates and the Implications for Next Generation Services," published in *International Journal of Communications, Network and System Sciences,* Vol.5 No.8, 2012, September 2012.

"Replacement of the Legacy High-Cost Universal Support Fund with a Connect America Fund, Key Economic and Legal Considerations," with Christopher Huther and Megan Troy, *Communications & Strategies* 80, 4Q2010, pages 67–81.

"Is Faster Necessarily Better? Third Generation (3G) Take-up Rates and the Implications for Next Generation Services," June 28, 2010, presented at the International Telecommunications Society (ITS) 18th Biennial and Silver Anniversary Conference, Tokyo, Japan, June 30, 2010.

"Wholesale unbundling and intermodal competition," with Dr. Harold Ware, published in *Telecommunications Policy*, Volume 34, Numbers 1-2, February-March 2010.

Selected News Citations (2010–Present)

Denis Carmel, "Wireless market comparisons: New study slams ISED report; which is right?" CARTT, December 21, 2018.

Giuseppe Marci, "Economists Predict Net Neutrality Cost 700K Jobs and $35 Billion Annually," *Inside Sources,* July 20, 2017.

Giuseppe Marci, "Former FCC Economist Says Unlocking the Set-Top Box Will Hurt the TV Market," *Inside Sources,* April 23, 2016.

CALInnovates, PRNewswire, "FCC Set-Top Box Proposal Based Upon Faulty Economic Foundation, Will Harm Consumers, Innovators And Golden Age of Television, Warns CALInnovates," April 22, 2016.

Sophia Harris, "Telus speed claim not based on real-world experience," *CBC News*, October 15, 2014.

Gus Sentementes, "Data-thirsty smartphones lead wireless companies to prep 4G networks," *The Baltimore Sun,* October 18, 2010.

Selected Speeches and Presentations

"How to Effectively Prove and Recover Lost Profit Damages: Practical Guide in 2019," with Julie Carey, The Knowledge Group, Webcast, May 2, 2019.

"Properly Comparing International Prices of Telecommunication Services, Statistical Method and Policy Implications for the Canadian Case Study," Presented at the 22nd Biennial Conference of the International Telecommunications Society, June 25, 2018.

"Can Femtocells Resolve the Spectrum Crunch?" Presented at the International Telecommunications Society 6th Africa-Asia-Australasia Regional Conference, Curtin Business School, Curtin University, Bentley, Western Australia, August 7, 2013.

"Modern Approaches to Spectrum Valuation," Presented at the International Telecommunications Society 6th Africa-Asia-Australasia Regional Conference, Curtin Business School, Curtin University, Bentley, Western Australia, August 5, 2013.

"Consumer Demand for Mobile Phone Service in the US: An Examination Beyond the Mobile Phone," Presented at the International Telecommunications Society (ITS) 19th Biennial Conference, Bangkok, Thailand, November 20, 2012.

"The Link Between Spectrum Availability and Mobile Market Consolidation," Session Chair, Second Annual Spectrum Management Conference, Washington DC, October 23, 2012.

"Broadband, Productivity, and Product Innovation - A Look behind the Scenes in the United States," invited Keynote Address, 5th Africa-Asia-Australasia Regional Conference, International Telecommunications Society Perth, Western Australia, November 15, 2011.

"Build It and They Will Come, Consumer Willingness to Pay for Mobile Broadband Services," 5th Africa-Asia-Australasia Regional Conference, International Telecommunications Society Perth, Western Australia, November 14, 2011.

"Consumer Preferences for Mobile Phone Service in the US – An Application of Efficient Design to Conjoint Analysis," Guest Lecture, University of California, Santa Barbara, March 1, 2011.

June 5, 2019

Exhibit 1

JOINT USE AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

TABLE OF CONTENTS

Section 0.1 THIS AGREEMENT, made and entered into this 1st 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 Southern Bell Telephone and Telegraph Company, a corporation organized and existing under the laws of the State of New York herein referred to as the "Telephone Company."

WITNESSETH

Section 0.2 WHEREAS, the parties hereto desired 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, 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 materials, 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 Owner'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 F.P.&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.

1.1.19. OBJECTIVE PERCENTAGE shall be based on space utilized by each Company on the average height pole used for joint use in the common operating area and shall mean 47.4% of the total joint use pole for Telephone Company and 52.6% of the total joint use poles for Electric Company.

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 the 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 Artice 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 pounds 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, 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 in accordance with the following plan:

(A) The parties hereto shall determine what circuits shall be removed from the joint poles involved, and the net cost of establishing in a new location such circuits or lines as may be necessary to furnish the same business facilities existing at the time such change was decided upon.

(B) The costs of moving such circuits to the new location shall be equitably apportioned between the parties hereto.

(C) In the event of disagreement as to which party's circuits shall be removed from such joint poles, the circuits whose moving shall involve the least total cost shall be moved to the new location.

(D) The net cost of establishing service in the new location shall be exclusive of any increased cost due to substituting for the existing facilities other facilities of a substantially new or improved type or increased capacity, but shall include the cost of the new pole line including rights of way, the cost of relocating attachments from the old poles to the new location and the cost of placing the attachments on the poles in the new location.

(E) In the event of disagreement as to what constitutes an equitable apportionment of such costs, the said costs shall be borne by the Licensee.

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 Section 4.3 and 4.4 of this Article IV.

Section 4.3 Where the parties conclude arrangements for joint use and unless it is mutually agreed otherwise, the party owning less than its objective percentage of joint use poles under this Agreement shall erect or replace within a reasonable time any joint use pole, or any pole about to be so used, that is required by either of the parties and be the Owner thereof. This obligation shall include wood poles only.

The costs associated with such new and replacement poles, and such other changes in the existing pole line as the new conditions may require, are to be as outlined in Section 4.4.

Section 4.4 The costs of erecting joint use poles coming under this agreement shall be borne as provided in one or more of the following Subsections.

4.4.1. For any new pole that is taller and/or stronger than a normal joint use pole, the cost of the extra height and/or strength shall be apportioned as follows:

(A) If the extra height and/or strength is due wholly to the Owner's requirements, the entire cost of the pole shall be borne by the Owner.

(B) If the extra height and/or strength is due wholly to the Licensee's requirements, the Licensee shall pay the Owner a sum equal to the difference between the installed cost of the required pole and the installed cost of a normal joint use pole. Notwithstanding the foregoing, where pole line economy resulting from the use of fewer poles can be effected by the Owner increasing the strength of poles, billing will be based only on the extra height.

(C) Where the extra height and/or strength is due to the requirements of both parties herein to provide Code clearances or meet the requirements of public authority or property owners, the Licensee shall pay the Owner a sum equal to one-half (½) the difference between the installed cost of the required pole and the installed cost of a normal joint use pole.

4.4.2. For a new pole to which no existing facilities of either party are to be attached (e.g., new pole lines), a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required, the obligation of the parties for such extra cost shall be in accordance with Section 4.4.1.

4.4.3. For a new pole to which existing facilities of either party must be attached (e.g., adding pole in existing line) and:

(A) The pole is of benefit to both parties, a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required, the obligation of the parties for such extra cost shall be in accordance with Section 4.4.1. Each party shall bear its own cost of attaching.

(B) The pole is of benefit only to the Licensee, the Licensee shall pay the Owner a sum equal to the installed cost of the required pole plus the cost of attaching the Owner's facilities to said pole.

(C) The pole is of benefit only to the Owner, the Owner shall pay the Licensee a sum equal to the cost of attaching the Licensee's facilities to said pole.

4.4.4. Where an existing joint use pole is inadequate and said pole is replaced, the party requiring such replacement shall be obligated for the cost as follows:

(A) If such party is the Owner of both the existing and replacement pole, that party shall bear the cost of the pole and the cost of transferring the Licensee's attachments.

(B) If such party is the Licensee of both the existing and replacement pole, that party shall pay the Owner a sum equal to (a) the difference between the installed cost of the required pole and the installed cost of the removed pole, plus (b) the then value in place of the removed pole, plus (c) the removal cost of the pole removed, plus (d) the Owner's transfer cost, less (e) the salvage value of the removed pole.

(C) If such party is the Owner of the existing pole and the Licensee of the replacement pole, such party shall pay the new Owner's transfer cost plus any cost for a pole taller and/or stronger than a normal joint use pole in accordance with Section 4.4.1, and shall remove the existing pole.

(D) If such party is the Licensee of the existing pole and the Owner of the replacement pole, such party shall bear the cost of the pole and pay the former Owner a sum equal to (a) the then value in place of the removed pole, plus (b) the removal cost of the pole removed, plus (c) the former Owner's transfer cost, less (d) the salvage value of the removed pole.

4.4.5. Where an existing joint use pole is replaced due to deterioration or damage, each party shall pay its own transfer costs. If the required pole is taller and/or stronger than a normal joint use pole, or taller and/or stronger than the existing pole, the provisions of 4.4.1 apply.

Section 4.5 Any payments made by the Licensee under the foregoing provisions of this Article shall not in any way affect the ownership of said poles.

Section 4.6 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 4.7 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 4.8 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:

(A) $.50 when the location is specified to Electric Company before Electric Company orders the pole.

(B) 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 specifications 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 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 rate 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:

(A) Intermediate poles set in an existing joint use wood pole line.

(B) Junction poles where Telephone Company aerial facilities cross an Electric Company line of special poles.

(C) Poles supporting any of the following:

(1) Telephone Company terminal with riser cable of 100 pairs or less in size.

(2) Telephone Company aerial drops only on field side.

(3) 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.

(4) An emergency telephone.

(D) Poles set to replace Telephone Company poles in a Telephone Company route.

(E) 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 used for normal joint use poles for the 1975 calendar year is $14.49.

For subsequent calendar years the adjustment rate for normal joint use poles will be the average annual cost of joint use poles for the next preceding year as determined by the party having more than its objective percentage ownership of jointly used poles.

In order to determine the average annual cost of providing and maintaining the joint use poles of either party, the average historical in-place cost of joint use poles excluding special poles shall be multiplied by an annual charge rate comprised of amortization factors, taxes and other elements of cost as determined in accordance with acceptable accounting practices.

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 Special poles will be included when determining the percentage of ownership.

Section 10.9 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 party having less than its objective percentage ownership of jointly used poles shall pay an equity settlement to the other party for the calendar year a sum equal to the appropriate adjustment rate times the number of poles it is deficient from its objective percentage of ownership. For this computation, the deficient number of poles will include all special poles used by the deficient party as Licensee. The adjustment rate of Section 10.5 will be applied to all special poles not excluded by the provisions of Section 10.4. The remainder of the deficient number of poles will be billed at the rate specified in Section 10.6. This sum shall be due and payable upon the first day of February following each year end determination of the number of jointly used poles owned by each party.

Section 10.10 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 agreed 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 agreed 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 prorated adjustment will be added to the normal billing for the year following completion of the field inventory.

Section 10.11 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 10.12 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 of five (5) years. The adjustment rate shall then become subject to renegotiation at the request of either party annually thereafter upon not less than six (6) months' prior notice.

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; except that upon termination under this Article the party owning less than its objective percentage of joint use poles shall pay an adjustment rental rate equal to the adjustment rate in effect at the time notice is given.

ARTICLE XII

DEFAULTS

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 each 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 negligency 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 (½) of all damages for such injuries to persons other than employees of either party, and for one-half (½) 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 (½) 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, transferee, 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 construed 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 Miami, 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, 1980, 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 thereto, by their respective officers thereunto duly authorized, on the day and year first above written.

FLORIDA POWER & LIGHT COMPANY

Witnesses:

D. K. Eyman

Jane Bauer

By: _____
Senior Vice president

Attest: _____
Secretary

Seal

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Witnesses:

Millie Mueller

Ann Dillon

By: _____
Vice President - Florida

Attest: _____
Secretary

Seal

PUBLIC VERSION

"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_____

ATT00130

"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.

PUBLIC VERSION

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_____

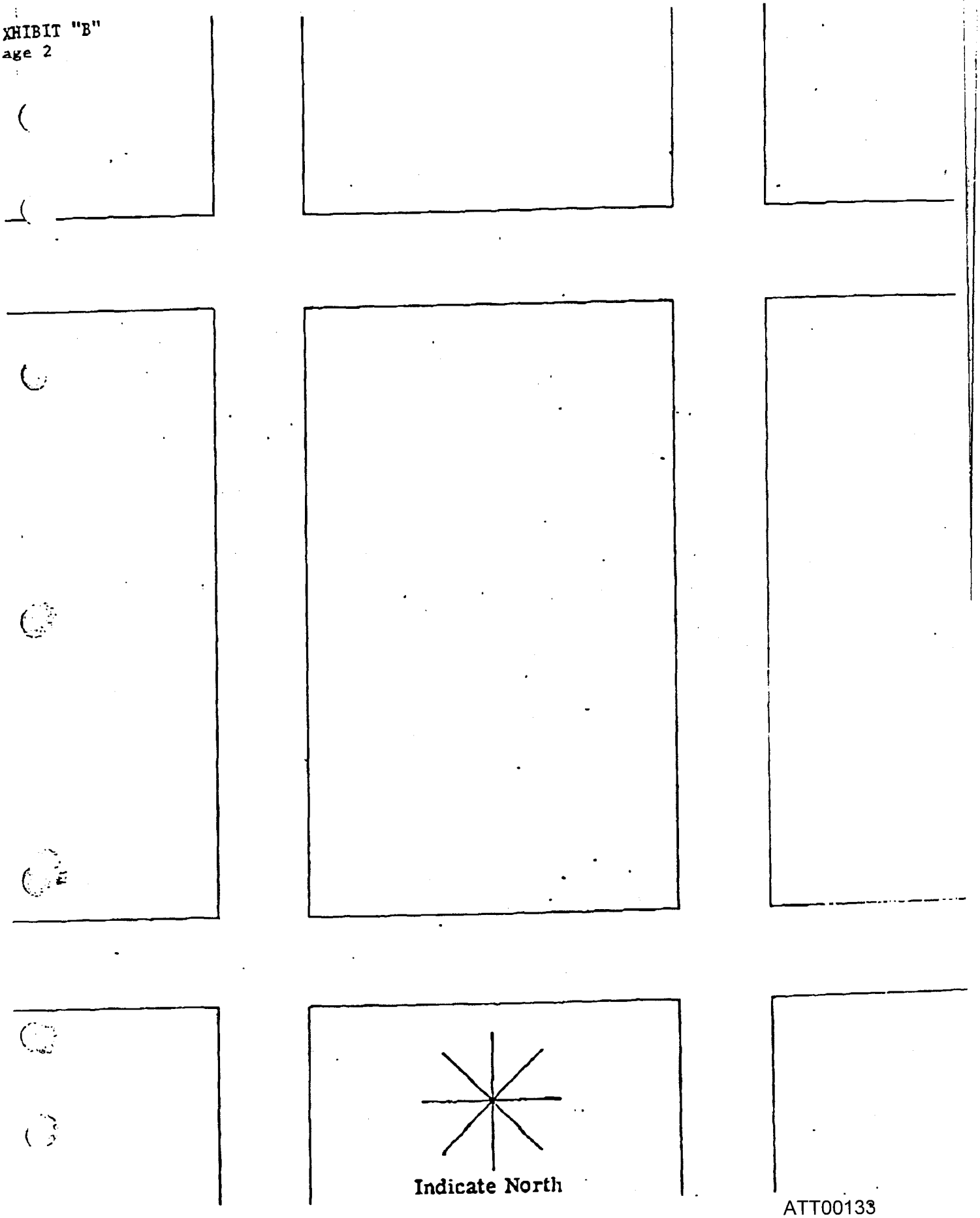
Approved for Telephone Co.

_____
Name Title

Date_____

ATT00132

or the last attachment removed from, any one pole.



PUBLIC VERSION

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_____

AMENDMENT TO JOINT USE AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND BELLSOUTH TELECOMMUNICATIONS, INC. (f/k/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY) d/b/a AT&T Florida

This Amendment to the Joint Use Agreement ("Amendment") dated and effective this 1st day of June 2007, is entered into by and between Florida Power & Light Company ("Electric Company") and BellSouth Telecommunications, Inc. (f/k/a Southern Bell Telephone and Telegraph Company), d/b/a AT&T Florida, ("Telephone Company") (collectively "the Parties").

RECITALS:

WHEREAS, Electric Company and Telephone Company are parties to that certain Joint Use Agreement dated January 1, 1975 (the "JUA");

WHEREAS, the Parties agree to amend the JUA as set forth in this Amendment, effective as of the date first set forth above; and

NOW THEREFORE, in consideration of the good and valuable mutual promises described herein, receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties do hereby agree and the JUA is amended as follows:

TERMS OF THIS AMENDMENT:

General

1. This Amendment is being executed by the Parties in connection with, and is deemed to be an integral part of the JUA, with the same binding force and effect as if the terms of this Amendment had been set forth in the body of the JUA.

2. The terms and conditions of the JUA shall survive, provided that, whenever the terms of this Amendment and the terms of the JUA are in conflict, the terms of this Amendment shall govern and control.

A. **By Adding Article IVA. NAMED STORM OR MAJOR DISASTERS as follows:**

Section 4A.1 Prior to hurricane season each year, the Electric Company and the Telephone Company shall meet to discuss their respective preparations, response efforts and ability to replace poles in the event of a named storm or other major disaster (other major disaster defined as any situation which may result in the federal or state government designating any portion of the parties' common service territory as a disaster area)(hereinafter "Named Storm or Major Disaster"). In the event of a Named Storm or Major Disaster, to the extent reasonably possible under the circumstances, the Parties will use their best efforts to keep one another informed as to their respective response efforts to facilitate coordination of work.

Section 4A.2 Pole replacements shall be billed using the Named Storm or Major Disaster pole replacement labor and material charges, as set forth in accordance with Exhibit "A" to the Confidential Settlement Agreement and Mutual Specific Release, effective June 1, 2007. If imported crews are not utilized in response to a specific Named Storm or Major Disaster, the Named Storm or Major Disaster pole replacement rate shall not apply and Section 4.7 of the JUA shall control in any other emergency.

Section 4A.3 **Post Storm Survey:** Following any Named Storm or Major Disaster, the Parties shall promptly attempt to reach an agreement on the net number of AT&T Florida Poles replaced by FPL giving AT&T Florida credit for any FPL Poles replaced by AT&T Florida. If the Parties cannot promptly reach an agreement on the net number of AT&T Florida Poles replaced by FPL, the Parties agree to promptly (and the Parties should endeavor to begin this process no later than the first January 31 following the storm(s) at issue) undertake a Post Storm Survey through the use of a mutually agreeable third party to identify the net number of AT&T Florida Poles replaced by FPL. The Parties shall equally split the cost of the Post Storm Survey; however, a 15% administrative fee shall be paid to the Party administering the survey. The Post Storm Survey shall be performed in a mutually agreeable manner and shall identify all poles each Party replaced for the other Party. In the event the Parties cannot promptly mutually agree on the procedures and guidelines for performing the Post Storm Survey, the Parties agree to use the procedures and guidelines adopted in the performance of the pole surveys administered by FPL for 2004 and 2005.

Section 4A.4 **Proper Identification of Poles Replaced in Emergency Situations, Named Storms or Major Disasters:** Whenever a Licensee replaces an Owner's pole during an emergency situation, Named Storm or Major Disaster, the Owner and Licensee shall take whatever steps are necessary to ensure that their records accurately reflect the proper ownership of the joint use poles for purposes of any inventories and/or joint use payments. To avoid any misidentification, the Owner shall undertake to tag, brand and/or otherwise clearly identify the joint use poles replaced by the Licensee for Owner as soon as possible, using its best efforts to complete this step within 12 months from the identification of the replaced poles.

Section 4A.5 Upon the occurrence of a named storm or major disaster, the deadlines for completing work and providing notices under this Agreement except for those set forth in subsection Section 4A.1 above shall be suspended for a reasonable time period during the pendency of restoration efforts resulting from the event.

B. By adding Article XIIIA, DISPUTE RESOLUTION, as follows:

Section 13A.1. Good Faith Participation

In the event of a Dispute arising out of or relating to the JUA that is not resolved in the normal course of business, the Parties shall in good faith attempt to resolve the Dispute promptly through the upper management escalation and non-binding mediation processes set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations / mediations pursuant to this Section are confidential, may not be disclosed by either Party without the express written consent of

the other Party, and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

Section 13A.2. Upper Management Negotiations and Mediation

To initiate the dispute resolution process, either Party may give the other Party written notice, via overnight mail to the operational and legal addresses referenced in Section XV of the existence of any such Dispute that is not resolved in the normal course of business. Within fifteen (15) business days after receipt of the notice, the Party receiving the notice shall submit to the disputing party a written response. The notice and the response each shall include: (a) a statement of each Party's position and a summary of arguments supporting that position; and (b) the name and title of the representative who will represent the Party in the negotiations and, if known, of any other person who will accompany the representative. Within thirty (30) calendar days after receipt of the disputing Party's notice, the representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute. If the Dispute has not been resolved by negotiation within sixty (60) calendar days of receipt of the disputing Party's notice, or if the Parties fail to meet within thirty (30) calendar days after receipt of the disputing Party's notice or upon mutual agreement of the Parties, either Party may initiate mediation. The Parties shall agree upon a mediator within fifteen (15) calendar days after referral of the Dispute to non-binding mediation and such mediation shall take place in Miami, Florida within One-Hundred (100) calendar days of receipt of the disputing Party's notice. In the event the Parties cannot agree on a mediator, within such fifteen (15) calendar day period, a mediator shall be selected by the American Arbitration Association. In the event that such dispute is not resolved within sixty (60) calendar days following the first day of mediation, either party may initiate litigation.

Compensation of the mediator and other mediation fees, costs, and expenses assessed shall be borne equally by the Parties. Each Party shall otherwise pay for its own costs incurred to participate in the mediation.

Section 13A.3 Enforcement

The Parties regard the aforesaid obligation to escalate to upper management and mediate as an essential and material provision of this JUA Amendment and one that is legally binding upon them. In case of a violation of such obligation by either Party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

Section13A.4. No Delay

Each Party shall continue to perform its obligations under the JUA pending final resolution of any Dispute, unless to do so would be impossible or impracticable under the circumstances.

C. By replacing ARTICLE XV, SERVICE OF NOTICES, with the following:

All notices required to be given under the JUA shall be delivered via overnight delivery and email, except where another form of notice is specially required under the JUA or Amendment, to the following addresses:

For Operational Notices:

The Electric Company:
Florida Power & Light Company
Attention: Registered Agent
9250 West Flagler Street
Miami, FL 33174

For Official/Legal Notices:
Florida Power & Light Company
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408

For Operational Notices:

The Telephone Company:
AT&T Florida
Attention: Specialist Contract Administration Support
Network Operations & Industrial Engineering Support
Suite/Floor 15HH1
301 W. Bay Street
Jacksonville, FL 32202-5184

For Official/Legal Notices:
AT&T Florida
Attention: General Counsel-Florida
150 W. Flagler Street Suite 1910
Miami, FL 33130

AT&T South Legal Department
Attn: Chief Rights-of-Way Counsel
675 W. Peachtree St. Suite 4300
Atlanta, Ga 30375-0001

Either Party can modify the designated representatives for receiving notices by serving written notice on the other Party identifying the new contact, address and email.

D. Authorization of the Amendment by the Parties

Each Party hereby represents and warrants that (i) its execution and delivery of, and agreement to the obligations created herein, has been duly authorized by all requisite corporation action; and (ii) this Amendment as so executed and delivered constitutes

its legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

E. Execution by Counterparts

The Parties acknowledge and agree that this Amendment may be executed in multiple counterparts, and transmitted via telecopy, and each such counterpart (whether transmitted via telecopy or otherwise) shall, when so executed, constitute an integral part of one and the same agreement between the Parties.

F. Status of the Joint Use Agreement

Except as expressly modified by this Amendment [redacted], all of the terms, conditions, covenants, agreements and understandings contained in the Joint Use Agreement shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Parties.

G. Preparation of the Amendment

The Parties acknowledge and agree that the terms and conditions of this Amendment have been freely and fairly negotiated. No provision of this Amendment is to be interpreted for or against any Party because that Party or its counsel drafted such provisions.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment effective as of the date first written above.

Florida Power & Light Company

By: Gilberto Cifuentes

Name: Gilberto Alfonso

Title: VP Distribution

BellSouth Telecommunications, Inc.
(f/k/a Southern Bell Telephone and
Telegraph Company), d/b/a AT&T Florida

By: [signature]

Name: Scott A. Mulcahy

Title: Vice President, Network Ops., Florida

Exhibit 2

PUBLIC VERSION

PAYMENT COUPON

/4115006401147100000042180008022200682822696

4,1,1500,640114,7100000042,1800080222,0,0682822696
Please mail this portion with your check

1800080222 1 of 2

Cust. No.:**7100000042**	Inv. No.:**1800080222**
This Month's Charges Past Due After 04/04/2015	Amount Due This Invoice [redacted]

AT&T FLORIDA
MARSHA PURCELL
2221 INDUSTRIAL DR
PANAMA CITY FL 32405

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company
Invoice
Customer Name and Address

AT&T FLORIDA
MARSHA PURCELL
2221 INDUSTRIAL DR
PANAMA CITY FL 32405

Federal Tax Id.#: 59-0247775

Customer Number: **7100000042**
Invoice Number: **1800080222**
Invoice Date: **03/05/2015**

4,1,1500,640114,7100000042,1800080222,0,0682822696
Please retain this portion for your records

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800080222

Description	Amount
FPL on ATT pls 227,293 @ [redacted]	[redacted]
2014 Survey-ATT on fewer FPL pls	
ATT on FPL wd pls 393,817 @ [redacted]	
ATT on FPL spc pls 30,438 @ [redacted]	
ATT on FPL trans pls 4,699 @ [redacted]	
2013 Survey-FPL on fewer ATT pls	
2013 Survey-ATT on addl FPL pls	
2014 Survey-FPL on fewer ATT pls	

PUBLIC VERSION

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800080222

Description	Amount

For Inquiries Contact:
Tom Kennedy 954-321-2241

Total Amount Due [redacted]
This Month's Charges Past Due After 04/04/2015

PAYMENT COUPON

PUBLIC VERSION

/411500640114710000004218001047832083952437 5

4,1,1500,640114,7100000042,1800104783,2,0839524375

Please mail this portion with your check

1800104783 1 of 1

Cust. No.:7100000042	Inv. No.:1800104783
This Month's Charges Past Due After 03/31/2016	Amount Due This Invoice [redacted]

AT&T FLORIDA
STEVE MASSIE
8601 W SUNRISE BLVD # ROOM 2303
PLANTATION FL 33322

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company

Invoice

Customer Name and Address

AT&T FLORIDA
STEVE MASSIE
8601 W SUNRISE BLVD # ROOM 2303
PLANTATION FL 33322

Federal Tax Id.#: 59-0247775

Customer Number: **7100000042**

Invoice Number: **1800104783**

Invoice Date: **03/01/2016**

4,1,1500,640114,7100000042,1800104783,2,0839524375

Please retain this portion for your records

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800104783

Description	Amount
FPL on ATT pls 225,977 @ [redacted]	[redacted]
ATT on FPL wd pls 401,099 @ [redacted]	
ATT on FPL spc pls 35,695 @ [redacted]	
ATT on FPL trans pls 4,711 @ [redacted]	
East Survey - FPL on fewer ATT pls	
East Survey - ATT on addl FPL pls	

For Inquiries Contact:	Total Amount Due [redacted]
Tom Kennedy 954-321-2241	This Month's Charges Past Due After 03/31/2016

PAYMENT COUPON PUBLIC VERSION

/411500640114710000004218001304983104422168 2

4,1,1500,640114,7100000042,1800130498,3,1044221682
Please mail this portion with your check

1800130498 1 of 2

Cust. No.:7100000042	Inv. No.:1800130498
This Month's Charges Past Due After 04/07/2017	Amount Due This Invoice [redacted]

AT&T FLORIDA
STEVE MASSIE
8601 W SUNRISE BLVD # ROOM #2C 20
PLANTATION FL 33322

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company
Invoice
Customer Name and Address

AT&T FLORIDA
STEVE MASSIE
8601 W SUNRISE BLVD # ROOM #2C 20
PLANTATION FL 33322

Federal Tax Id.#: 59-0247775

Customer Number: **7100000042**

Invoice Number: **1800130498**

Invoice Date: **03/08/2017**

4,1,1500,640114,7100000042,1800130498,3,1044221682
Please retain this portion for your records

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800130498

Description	Amount
FPL on AT&T pls 218,052 @ [redacted]	[redacted]
AT&T on FPL wd pls 412,357 @ [redacted]	
AT&T on FPL spc pls 43,380 @ [redacted]	
AT&T on FPL trans pls 4,698 @ [redacted]	
Broward Survey - FPL on fewer AT&T pls	
Broward Survey - AT&T on more FPL pls	
Dade Survey - FPL on fewer AT&T pls	
Dade Survey - AT&T on more FPL pls	

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800130498

Description	Amount

For Inquiries Contact:
Tom Kennedy 954-321-2241

Total Amount Due [redacted]
This Month's Charges Past Due After 04/07/2017

PAYMENT COUPON PUBLIC VERSION

/411500640114710000004218001550135092441417 4

4,1,1500,640114,7100000042,1800155013,5,0924414174
Please mail this portion with your check

1800155013 1 of 1

Cust. No.:**7100000042**	Inv. No.:**1800155013**
This Month's Charges Past Due After 04/04/2018	Amount Due This Invoice [redacted]

AT&T FLORIDA
PHIL SIMMONS
11760 US HIGHWAY 1, ROOM N/A
NORTH PALM BEACH FL 33408

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company
Invoice
Customer Name and Address

AT&T FLORIDA
PHIL SIMMONS
11760 US HIGHWAY 1, ROOM N/A
NORTH PALM BEACH FL 33408

Federal Tax Id.#: 59-0247775

Customer Number: **7100000042**

Invoice Number: **1800155013**

Invoice Date: **03/05/2018**

4,1,1500,640114,7100000042,1800155013,5,0924414174
Please retain this portion for your records

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800155013

Description	Amount
FPL on AT&T poles 216,850 @ [redacted]	[redacted]
AT&T on FPL wood pls 418,558 @ [redacted]	
AT&T on FPL spc pls 47,421 @ [redacted]	
AT&T on FPL Trans pls 4,703 @ [redacted]	

For Inquiries Contact: Tom Kennedy 954-321-2241	**Total Amount Due** [redacted] This Month's Charges Past Due After 04/04/2018

PUBLIC VERSION

PAYMENT COUPON

/411500640114710000004218001797718105322837 9

4,1,1500,640114,7100000042,1800179771,8,1053228379
Please mail this portion with your check

1800179771 1 of 2

Cust. No.:**7100000042**	Inv. No.:**1800179771**
This Month's Charges Past Due After 03/03/2019	Amount Due This Invoice [redacted]

AT&T FLORIDA
PHILLIP SIMMONS
11760 US HIGHWAY 1, ROOM N/A
NORTH PALM BEACH FL 33408

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company

Invoice
Customer Name and Address

AT&T FLORIDA
PHILLIP SIMMONS
11760 US HIGHWAY 1, ROOM N/A
NORTH PALM BEACH FL 33408

Federal Tax Id.#: 59-0247775

Customer Number: **7100000042**

Invoice Number: **1800179771**

Invoice Date: **02/01/2019**

4,1,1500,640114,7100000042,1800179771,8,1053228379
Please retain this portion for your records

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800179771

Description	Amount
FPL on AT&T poles 213,210 @ [redacted]	[redacted]
AT&T on FPL poles 425,704 @ [redacted]	
AT&T on FPL SPC poles 53,990 @ [redacted]	
AT&T on FPL Trans poles 4,790 @ [redacted]	
2018 Brevard survey, fewer FPL atts on AT&T poles	
2018 Brev. survey, more AT&T atts on FPL SPC pls	
2018 North FL survey, fewer FPL atts on AT&T pls	
2018 North FL survey, more AT&T atts on FPL pls	

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800179771

Description	Amount

For Inquiries Contact:
Tom Kennedy 954-321-2241

Total Amount Due [redacted]
This Month's Charges Past Due After 03/03/2019

Exhibit 3

From: Kennedy, T J <T.J.Kennedy@fpl.com>
Sent: Tuesday, March 6, 2018 10:04 AM
To: SIMMONS, PHILLIP R; RICHARDS JR., JOHNNY; ELLZEY, JONATHAN
Subject: 2017 Joint Use Billing
Attachments: ATT-17.pdf; 2017 Joint Use Rate.pdf; JU - ATT BY CNTY rev_3-02-18.xlsx

Good morning gentlemen,

Attached is a copy of the 2017 joint use invoice that was sent to Phil via US Mail this week.

I am also attaching a file (2017 Joint Use Rate.pdf) that documents the calculation for the 2017 joint use rate. For 2017 we will be using [redacted] as the joint use adjustment rate for the average annual cost of providing and maintaining the joint use poles.

Also attached is the current joint use forecast spreadsheet for our companies which includes a revision to the file a sent to Johnny two months ago with a revision to include the 2017 rate calculation. I expect to revise the forecast again following the Brevard county survey, currently in progress.

Please call me if you have any questions.

Thank you,
Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

From: Kennedy, T J
Sent: Thursday, January 18, 2018 11:32 AM
To: RICHARDS JR., JOHNNY
Subject: AT&T / FPL Joint Use Forecast

Hi Johnny,

Thank you for your time this morning. This first email I am sending you comes with the current joint use forecast for our companies. The forecast remains the same as last year, if you'd like to compare. As I mentioned there is currently a survey going on in Brevard county that will adjust the forecast in 2018/2019. In the meantime the 2017 billing will be based on the 2017 forecast with no survey true-up. The attached spreadsheet should open up to the 2017 billing calculation page. At this time I am waiting on the rate calculation to be completed by FPL's accounting department. I intend to send the invoice as soon as the rate is calculated. I will forward the rate calculation with the invoice.

Storm restoration information to follow in a separate email.

Best regards,
Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

PAYMENT COUPON PUBLIC VERSION

/411500640114710000004218001550135092441417 4

4,1,1500,640114,7100000042,1800155013,5,0924414174
Please mail this portion with your check

1800155013 1 of 1

Cust. No.:**7100000042**	Inv. No.:**1800155013**
This Month's Charges Past Due After 04/04/2018	Amount Due This Invoice [redacted]

AT&T FLORIDA
PHIL SIMMONS
11760 US HIGHWAY 1, ROOM N/A
NORTH PALM BEACH FL 33408

Make check payable to FPL in USD and mail payments to address below

FPL
General Mail Facility
Miami FL 33188-0001

Florida Power & Light Company
Invoice
Customer Name and Address

AT&T FLORIDA
PHIL SIMMONS
11760 US HIGHWAY 1, ROOM N/A
NORTH PALM BEACH FL 33408

Federal Tax Id.#: 59-0247775

Customer Number: **7100000042**

Invoice Number: **1800155013**

Invoice Date: **03/05/2018**

4,1,1500,640114,7100000042,1800155013,5,0924414174
Please retain this portion for your records

CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800155013

Description	Amount
FPL on AT&T poles 216,850 @ [redacted]	[redacted]
AT&T on FPL wood pls 418,558 @ [redacted]	
AT&T on FPL spc pls 47,421 @ [redacted]	
AT&T on FPL Trans pls 4,703 @ [redacted]	

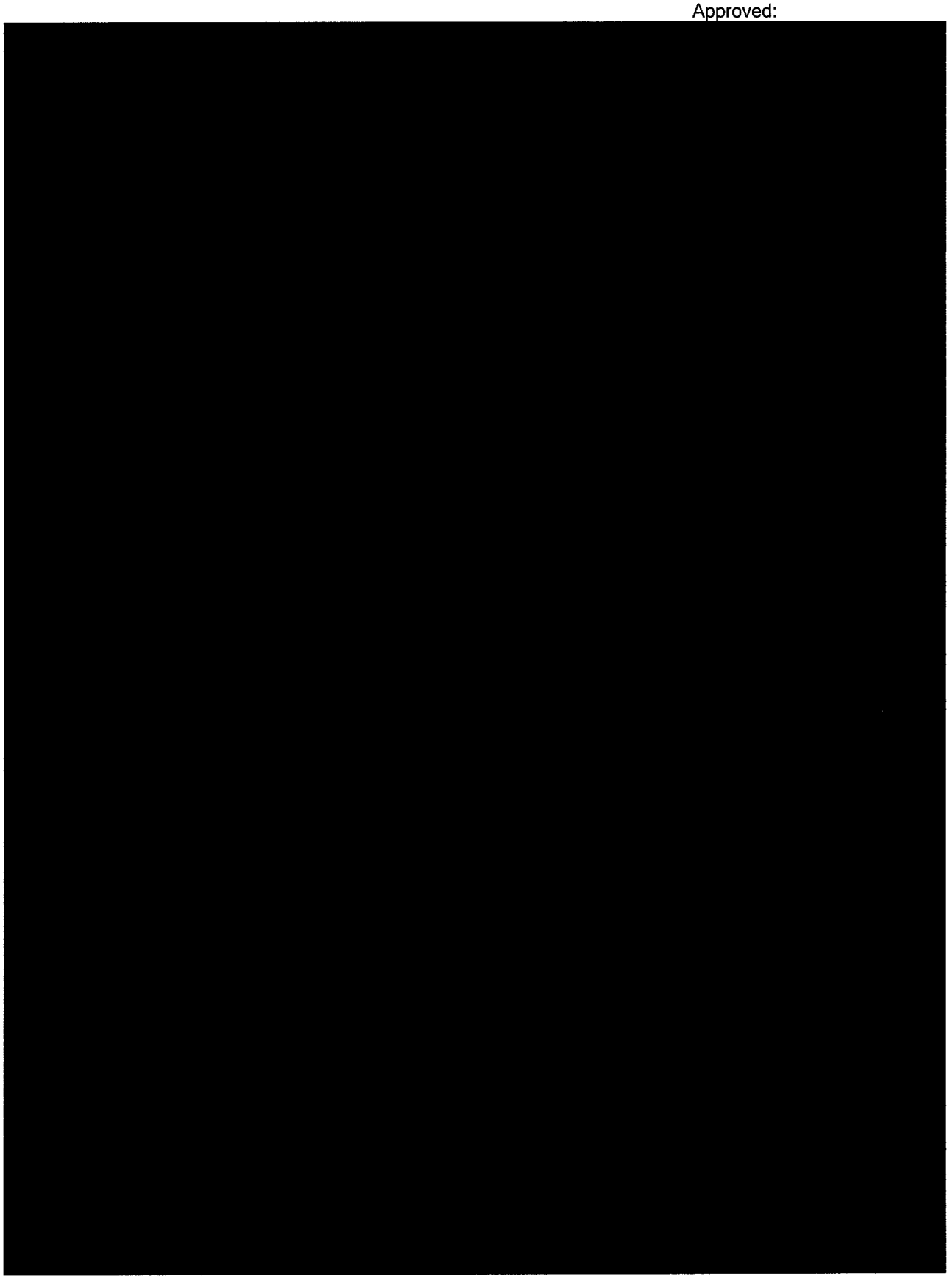
For Inquiries Contact: Tom Kennedy 954-321-2241	**Total Amount Due** [redacted] This Month's Charges Past Due After 04/04/2018

PUBLIC VERSION

Joint Use Distribution Poles 2017

JOINT USE POLE ATTACHMENT RATE CALCULATION

Last Updated: 02/26/18
Completed: 02/26/18
Approved:



[redacted]

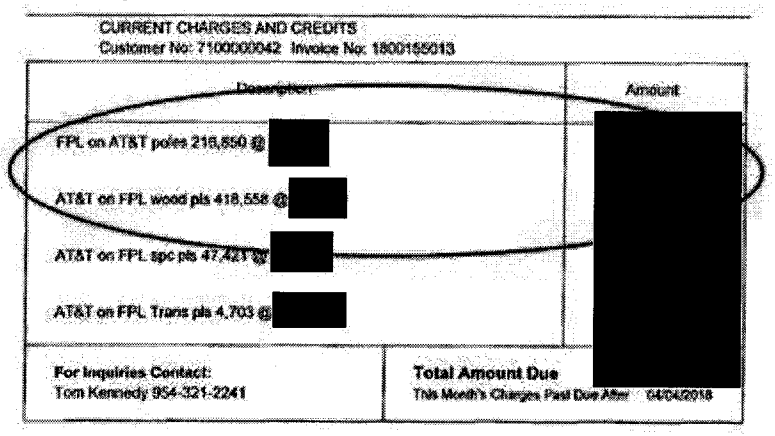
Exhibit 4

From: Kennedy, T J <T.J.Kennedy@fpl.com>
Sent: Tuesday, May 08, 2018 11:44 AM
To: SIMMONS, PHILLIP R <PS2831@att.com>
Cc: RICHARDS JR., JOHNNY <jr0068@att.com>; HITCHCOCK, KYLE F <kh1392@att.com>
Subject: RE: FPL 2017 Joint Use Billing

Phil,

The following information addresses all your requests for information and should allow you to proceed with the processing of the payment for invoice number 1800155013:

In the early 1980's the FPSC ordered FPL to capture and record its joint use financials on a "gross" basis rather than "net" basis, i.e., revenues and expenses needed to be recorded separately; as a result, for the past 35 plus years, FPL has been billing AT&T in the exact manner of the 2017 invoice.


CURRENT CHARGES AND CREDITS
Customer No: 7100000042 Invoice No: 1800155013

Description | Amount

FPL on AT&T poles 216,850 @ [redacted]

AT&T on FPL wood pls 418,558 @ [redacted]

AT&T on FPL spc pls 47,421 @ [redacted]

AT&T on FPL Trans pls 4,703 @ [redacted]

[redacted]

For Inquiries Contact:
Tom Kennedy 954-321-2241

Total Amount Due
This Month's Charges Past Due After 04/04/2018

Using the commutative property of multiplication, lines one and two of the invoice represent the same calculation as a single line item net amount based on deficiency (give or take a small deviation due to significant digits and "calculation(s) as displayed").

2017 per pole method used by FPL since the 1980's:
Lines 1 & 2 = [redacted] due to FPL

Compared to the deficiency method (which is the same calculation using the commutative property of multiplication):

Deficiency Calculation				
FPL Poles		418,558		
AT&T Poles		216,850		
Total Poles		635,408		
AT&T Goal 47.4%		301183.392		
Actual		216,850		
Poles Deficient		84,333		
	x	$ [redacted]		Adjustment Rate
		[redacted]		Due to FPL

- *Any documentation and or amendments that supersede Article X Section 10.9 of the JUA signed in 1975*

  I am aware of no amendments, but I can produce numerous years of paid invoices calculated in this manner.

- *All financial information used to calculate the rate of* [redacted] *per pole.*

  With the information provided below on the carrying charge, you now have all the financial information used to calculate the [redacted] per pole rate.

- *Clarify what the WMS estimate represents.*

  WMS is the acronym for FPL's Work Management System. A WMS estimate is the estimated cost to install a pole under normal condition for the year the rate is calculated.

- *Clarification for what is Clearing and Grubbing and any [SIC]*

  Clearing and Grubbing is the first time preparation of land and vegetation to install a pole. It is a capital expense associated with installing poles.

- *Any contractual language that includes it as a factor in the rate calculation.*

  See section 10.6 of the joint use agreement. In particular,

  > *In order to determine the average annual cost of providing and maintaining the joint use poles of either party, the average historical in-place cost of joint use poles excluding special poles shall be multiplied by an annual charge rate comprised of amortization factors, taxes and other elements of cost as determined in accordance with acceptable accounting practices.*

- *The financial information used to calculate the "Carrying Charge".*

  The carrying charges used in the calculation of the joint use rate are based on current financial indicators and include the following :

  - Composite income tax rate
  - FPL's after tax cost of capital
  - Current book depreciation rate for the type of assets included in calculation (wood poles)

- Current tax depreciation rate for the assets included in the calculation
- Inflation forecast (CPI) as of the current year of the calculation

- *The financial information used to calculate the "% Left".*

  There is no financial information used to calculate the "% left"

- *Iowa Curve formula used to calculate the "% Left."*

  Iowa-type curves are a widely used group of generalized survivor curves that contain the range of survivor characteristics usually experienced by utilities and other industrial companies. The Iowa curves were developed at Iowa State University in the 1950's through an extensive process of observing and classifying the ages at which various types of property used by utilities have been retired. FPL uses this methodology based on a [redacted] life for the poles. Each year, the calculation is updated to reflect the most recent year pole installations, however the assumed percentage of surviving poles remains consistent. Poles installed prior to the [redacted] period drop out of the calculation as new years are added.

- *The financial information used to calculate the "Costs (Composite) for Rate Schedule."*

  "Costs (Composite) for Rate Schedule" is not a financial calculation. It is a mathematical calculation using the financial calculations from the WMS estimate described above, to determine the weighted average of the bare cost of a pole, excluding clearing and grubbing.

As a reminder, FPL has not been paid by AT&T for the joint use of our poles beyond 2016. Your payment for 2017 joint use is now **34 DAYS PAST DUE**. Please expedite your payment.

Sincerely,

Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

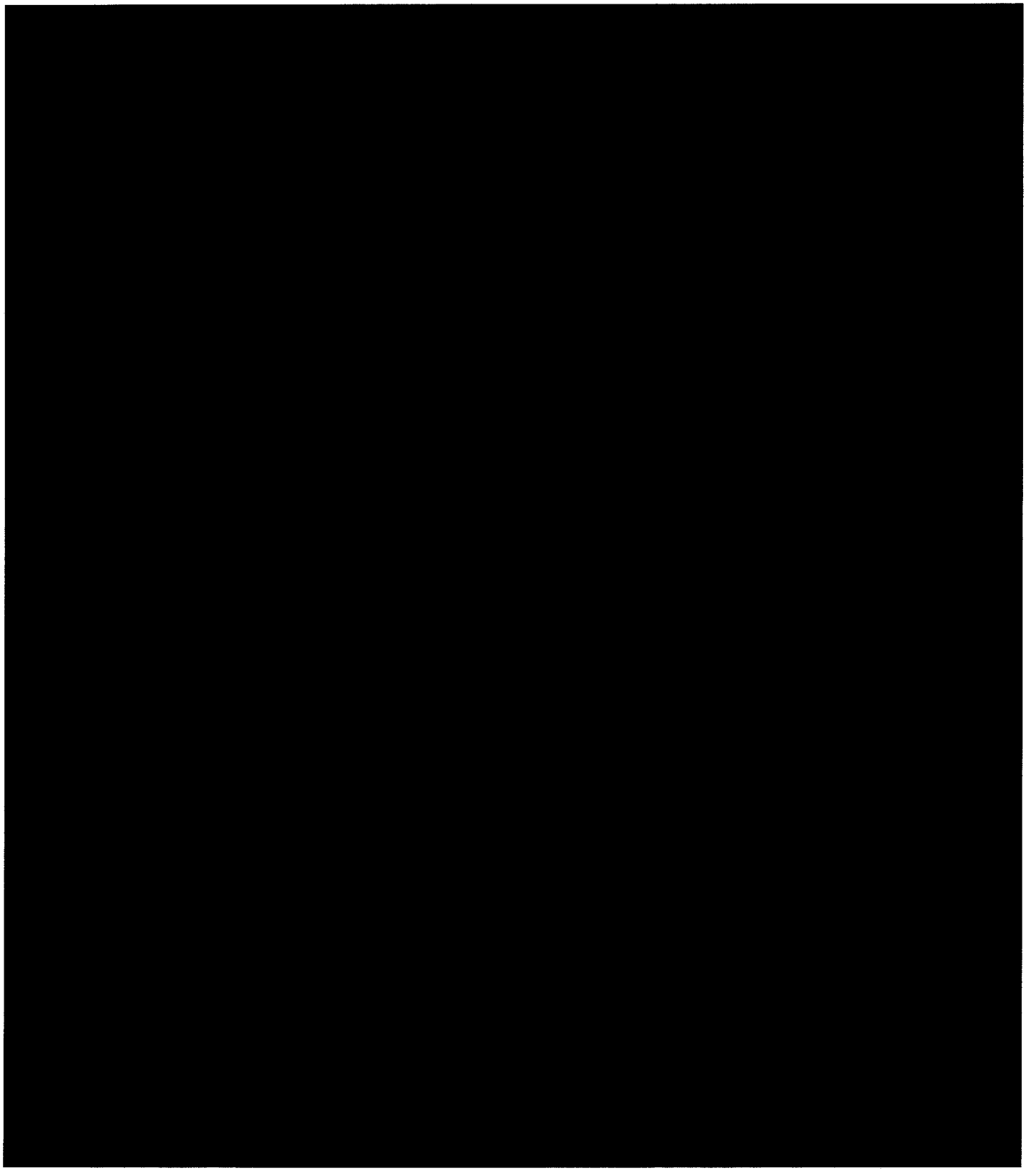
From: SIMMONS, PHILLIP R [mailto:PS2831@att.com]
Sent: Friday, April 20, 2018 6:13 PM
To: Kennedy, T J
Cc: RICHARDS JR., JOHNNY; HITCHCOCK, KYLE F
Subject: RE: FPL 2017 Joint Use Billing

Mr. Kennedy,

This is a follow up to our phone conversation that occurred 4/3/18 and our subsequent discussion which occurred today 04/20/18, regarding the processing of invoice #1800155013, submitted 3/4/2018. During both calls several concerns related to the calculations and the financial information used to develop the "Joint Use Pole Attachment Rate Calculation " summary were identified. Also following our last conversation we determined that further clarification was needed, regarding the per pole Rental rate used in the invoice calculations, in instead of the deficiency percentage calculation called for in the our contract. Please note AT&T requires that the vetting of all submitted invoices and associated documentation prior to the processing of any payment.

Please provide the following:

- Any documentation and or amendments that supersede Article X Section 10.9 of the JUA signed in 1975
- All financial information used to calculate the rate of [redacted] per pole.
- Clarify what the WMS estimate represents.
- Clarification for what is Clearing and Grubbing and any
- Any contractual language that includes it as a factor in the rate calculation.
- The financial information used to calculate the "Carrying Charge".
- The financial information used to calculate the "% Left".
- Iowa Curve formula used to calculate the "% Left."
- The financial information used to calculate the "Costs (Composite) for Rate Schedule."



Thanks in advance for your assistance with this matter,

Phillip R. Simmons
Senior Sourcing Manager.
AT&T Technology Operations
Program Office/M&P

11760 US HWY 1 North Palm Beach
m 516-606-2076 I ps2831@att.com

MOBILIZING **YOUR** WORLD

From: Kennedy, T J [mailto:T.J.Kennedy@fpl.com]
Sent: Tuesday, March 06, 2018 10:04 AM
To: SIMMONS, PHILLIP R <PS2831@att.com>; RICHARDS JR., JOHNNY <jr0068@att.com>; ELLZEY, JONATHAN <je3403@att.com>
Subject: 2017 Joint Use Billing

Good morning gentlemen,

Attached is a copy of the 2017 joint use invoice that was sent to Phil via US Mail this week.

I am also attaching a file (2017 Joint Use Rate.pdf) that documents the calculation for the 2017 joint use rate. For 2017 we will be using [redacted] as the joint use adjustment rate for the average annual cost of providing and maintaining the joint use poles.

Also attached is the current joint use forecast spreadsheet for our companies which includes a revision to the file a sent to Johnny two months ago with a revision to include the 2017 rate calculation. I expect to revise the forecast again following the Brevard county survey, currently in progress.

Please call me if you have any questions.

Thank you,
Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

From: Kennedy, T J
Sent: Thursday, January 18, 2018 11:32 AM
To: RICHARDS JR., JOHNNY
Subject: AT&T / FPL Joint Use Forecast

Hi Johnny,

Thank you for your time this morning. This first email I am sending you comes with the current joint use forecast for our companies. The forecast remains the same as last year, if you'd like to compare. As I mentioned there is currently a survey going on in Brevard county that will adjust the forecast in 2018/2019. In the meantime the 2017 billing will be based on the 2017 forecast with no survey true-up. The attached spreadsheet should open up to the 2017 billing calculation page. At this time I am waiting on the rate calculation to be completed by FPL's accounting department. I intend to send the invoice as soon as the rate is calculated. I will forward the rate calculation with the invoice.

Storm restoration information to follow in a separate email.

Best regards,
Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

Exhibit 5

From: HITCHCOCK, KYLE F
Sent: Tuesday, August 21, 2018 7:46 AM
To: 'Kennedy, T J' <T.J.Kennedy@fpl.com>; SIMMONS, PHILLIP R <PS2831@att.com>
Cc: Bromley, Dave <Dave.Bromley@fpl.com>
Subject: RE: AT&T Invoice #1800155013 now more than 120 Days Past Due

Tom,

Thank you for responding to Phillip's requests for information about FPL's 2017 invoice. As he explained, AT&T now requires that all submitted invoices be reviewed for contractual and legal compliance prior to payment. As part of that process, I have had a chance to review the information that you provided. Unfortunately, I have significant concerns about FPL's insistence that AT&T pay these invoiced amounts. You have not substantiated FPL's rate calculations, the inputs to those calculations or the way those inputs were calculated. Instead, you claim that the parties "apparently" agreed (but not in writing) to deviate from the contract and rely on AT&T's prior payment of rental invoices that you now say were calculated the same way. Even if this were true, the Joint Use Agreement includes a non-waiver provision that means that any past failure to insist on enforcement of the contractual language cannot preclude us from now requiring FPL to demonstrate it has a right to these invoiced amounts under the terms of the Joint Use Agreement.

I am also concerned with the magnitude of the invoiced rates given FPL's obligation under the contract and the law of which I am aware to charge AT&T "just and reasonable" pole attachment rates. Article VI of the contract requires that the joint use of poles "at all times be in conformity with all applicable provisions of law" and federal law has long required that AT&T be charged a competitively neutral, just and reasonable rate. The FCC made that clear in its 2011 Pole Attachment Order and again earlier this month in its Third Report and Order. I trust you are aware that the FCC adopted a presumption that the just and reasonable rate for an ILEC like AT&T should be the new telecom rate, unless the power company can prove that the ILEC has some net material advantage over its competitors. We are aware of no such advantage, particularly since AT&T bears so many unique costs that disadvantage it relative to its competitors. But even if FPL were able to prove some net material advantage, the FCC set the pre-existing telecom rate as a "hard cap" on the rate that may be charged. The invoiced rates far exceed the rates produced by both FCC rate formulas.

I appreciate your patience as we work through this vetting process. To the extent that you have any additional information that supports FPL's invoice and its compliance with all legal and contractual obligations, I would appreciate receiving it.

Always,

Kyle Hitchcock
Associate Director National Joint Utility Team
AT&T Technology Operations, National C&E

AT&T
W63N548 Hanover Ave, Cedarburg, WI 53012
o 262.376.5217 | kh1392@att.com

MOBILIZING **YOUR** WORLD

From: Kennedy, T J <T.J.Kennedy@fpl.com>
Sent: Friday, August 10, 2018 7:56 AM
To: SIMMONS, PHILLIP R <PS2831@att.com>
Cc: HITCHCOCK, KYLE F <kh1392@att.com>; FRASER, OMAR T <of2172@att.com>; Bromley, Dave <Dave.Bromley@fpl.com>
Subject: FW: AT&T Invoice #1800155013 now more than 120 Days Past Due

Phillip, on July 23 we provided AT&T with the information it requested regarding the methodology employed to calculate the joint use rate. It has now been over 120 days since FPL forwarded the invoice to AT&T for payment. FPL requests that AT&T remit payment as required under the terms of our contract. Your prompt attention to this important matter will be greatly appreciated.

Sincerely,
Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

From: SIMMONS, PHILLIP R <PS2831@att.com>
Sent: Wednesday, July 25, 2018 2:44 PM
To: Kennedy, T J <T.J.Kennedy@fpl.com>
Cc: SIMMONS, PHILLIP R <PS2831@att.com>
Subject: RE: AT&T Invoice #1800155013 now more than 90 Days Past Due

TJ,

- AT&T is required to review the submitted documents, in order to fully understand the carrying charge rate methodology used by FPL.
- In regards to FPL'S invoice concerns, it is important to note that AT&T invoice vetting process requires a thorough review and subsequent approval, by several management levels. That said, invoice 1800155013, is being pushed through this process as expeditiously as possible. If you have any additional questions and or concerns regarding this message, please feel free to contact me or Mr. Kyle Hitchcock directly.

PHILLIP R SIMMONS WIRELIN...
AT&T Services, Inc.
SR SOURCING MANAGER
51330466 (WIRELINE ACCESS - C&E)
+1 5166062076 Work
+1 5166062076 Mobile
ps2831@att.com

KYLE F HITCHCOCK WIRELINE ...
AT&T Services, Inc.
ASSOC DIRECTOR SOURCING OPERAT...
51330466 (WIRELINE ACCESS - C&E)
+1 2623765217 Work
+1 4144699590 Mobile
kh1392@att.com

Best Regards,
Phillip R. Simmons
Senior Sourcing Manager.
AT&T Technology Operations
Program Office/M&P
11760 US HWY 1 North Palm Beach
m 516-606-2076 I ps2831@att.com

MOBILIZING **YOUR** WORLD

From: Kennedy, T J <T.J.Kennedy@fpl.com>
Sent: Monday, July 23, 2018 3:41 PM
To: SIMMONS, PHILLIP R <PS2831@att.com>
Cc: FRASER, OMAR T <of2172@att.com>; Bromley, Dave <Dave.Bromley@fpl.com>
Subject: RE: AT&T Invoice #1800155013 now more than 90 Days Past Due

Phillip,

While FPL has responded to your specific questions below (in red), FPL notes that its 2017 joint use adjustment rate has been calculated consistent with the methodology that has been in place and used for decades, without issue or dispute from AT&T.

FPL's invoice concerns a significant amount of money and is well past due. If this invoice is not paid within the next 7 days, FPL will have to consider charging AT&T interest. Please do not hesitate to call me if you have any questions or wish to discuss.

Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

From: SIMMONS, PHILLIP R <PS2831@att.com>
Sent: Tuesday, July 17, 2018 1:17 PM
To: Kennedy, T J <T.J.Kennedy@fpl.com>
Subject: RE: AT&T Invoice #1800155013 now 90 Days Past Due

Hi TJ,

Regarding invoice # 1800155013 being 90 days past due. As you are aware on May 9, 2018, FPL provided responses to our concerns regarding the calculations, formulas and financial information used to develop the FPL Joint use attachment rates. As a result of the ongoing review, the following information is required so that we can fully validate this invoice for processing.

Please provide the following information:

- Written contractual agreement language and or addenda as it relates to the **"Transmission Pole Rates".**
  As defined in our agreement, transmission poles are not "normal joint use poles" nor "special poles" and there is no specific agreement language related to calculating "Transmission Pole Rates". Additionally, per the agreement, attachments to transmission poles can only occur with written approval from FPL. FPL's transmission pole rate calculation methodology ([redacted]) has been in place for decades and apparently was discussed and agreed upon years ago.
- Work papers for **"Carrying Charge Rate"** (for each Year)
  - Like to see at least 2 years minimum.
    See attached detailed calculations.
  - Data used to support the development of the "Carrying Charge Rate."
    See attached detailed calculations.
  - Explanation, Why in any given vintage year of data (e.g. 2004) we continued to pay [redacted] ?
    The methodology for applying the annual carrying charge, which has been in place for decades without dispute or issue, apparently was discussed and agreed upon years ago. Additionally, in reviewing the annual historical carrying charges for the vintage years 1943-2017, it is evident that this methodology has cut both ways, as the annual carrying charge rate has increased as well as decreased during this time frame.

Best Regards,

Phillip R. Simmons
Senior Sourcing Manager.
AT&T Technology Operations
Program Office/M&P
11760 US HWY 1 North Palm Beach
m 516-606-2076 I ps2831@att.com

MOBILIZING **YOUR** WORLD

From: SIMMONS, PHILLIP R
Sent: Friday, July 13, 2018 3:52 PM
To: 'Kennedy, T J' <T.J.Kennedy@fpl.com>
Subject: RE: AT&T Invoice #1800155013 now 90 Days Past Due
Importance: High

Hi TJ,

Apologies for the delayed response I have been out of town attending to family affairs. I will follow up to see were we are as it relates to the invoice review and get back to you my findings.

Best Regards,

Phillip R. Simmons
Senior Sourcing Manager.
AT&T Technology Operations
Program Office/M&P
11760 US HWY 1 North Palm Beach
m 516-606-2076 I ps2831@att.com

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From: Kennedy, T J <T.J.Kennedy@fpl.com>
Sent: Tuesday, July 10, 2018 1:51 PM
To: SIMMONS, PHILLIP R <PS2831@att.com>

Cc: FRASER, OMAR T <of2172@att.com>; Bromley, Dave <Dave.Bromley@fpl.com>
Subject: RE: AT&T Invoice #1800155013 now 90 Days Past Due

Hi Phil,

FPL records indicate that FPL invoice # 1800155013 sent to AT&T on March 5th, 2018, copy attached, is now 90 days past due. Just a reminder AT&T has not paid FPL for use of FPL's poles beyond 2016.

Would you please run a check on this invoice and advise me if AT&T has mailed the payment to FPL yet? If so and if it has been more than a couple weeks, what is the check number and when was it sent? Also, please send a copy of the remittance.

If not, would you please report on when FPL will receive payment?

Thank you,
Tom

From: SIMMONS, PHILLIP R <PS2831@att.com>
Sent: Monday, June 4, 2018 2:55 PM
To: Kennedy, T J <T.J.Kennedy@fpl.com>
Cc: FRASER, OMAR T <of2172@att.com>
Subject: RE: AT&T Invoice #1800155013 now 60 Days Past Due

CAUTION - EXTERNAL EMAIL

Hi Tom,

Regarding invoice # 1800155013 being 60 days past due. As you are aware on April 20, 2018, AT&T sent you a communication outlining several concerns as it relates to the calculations and the financial information used to develop the "Joint Use Pole Attachment Rates." In response to these concerns, on May 9, 2018, FPL provided their responses to our inquiries, currently those response are being reviewed by the National Joint Utility Team (NJUT) team to ensure accuracy and contractual compliance. That said, the review process is ongoing, and we anticipate that it should be completed in the near future.

Best Regards,

Phillip R. Simmons
Senior Sourcing Manager.
AT&T Technology Operations
Program Office/M&P
11760 US HWY 1 North Palm Beach
m 516-606-2076 I ps2831@att.com

MOBILIZING **YOUR** WORLD

From: Kennedy, T J <T.J.Kennedy@fpl.com>
Sent: Monday, June 04, 2018 9:28 AM
To: SIMMONS, PHILLIP R <PS2831@att.com>
Cc: FRASER, OMAR T <of2172@att.com>
Subject: AT&T Invoice #1800155013 now 60 Days Past Due

Good morning Phil,

FPL records indicate that FPL invoice # 1800155013 sent to AT&T on March 5th, 2018, copy attached, is now 60 days past due. Just a reminder that this payment due represents what AT&T owes FPL for the joint use of FPL poles in the year 2017.

Would you please run a check on this invoice and advise me if AT&T has mailed the payment to FPL yet? If so and if it has been more than a couple weeks, what is the check number and when was it sent? Also, please send a copy of the remittance.

If not, would you please report on when FPL will receive payment?

Thank you,
Tom

THOMAS J. KENNEDY, P.E.
PRINCIPAL REGULATORY ANALYST
7200 NW 4TH STREET DRS/AOB
PLANTATION, FLORIDA 33317-2211
TEL 954.321.2241
T.J.KENNEDY@FPL.COM

Exhibit 6

15430 Endeavor Drive, Jupiter FL 33478

August 31, 2018

Via Overnight Delivery

AT&T Florida Attention: General Counsel – Florida 150 W. Flagler Street, Suite 1910 Miami, FL 33130	AT&T South Legal Department Attention: Chief Rights-of-Way Counsel 675 W. Peachtree St., Suite 4300 Atlanta, GA 30375-0001

Subject: Notice of Default for Non-Payment; Notice of Default in Maintenance of Joint Use Poles; and Notice to Initiate the Dispute Resolution Process

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Dear Ms. Karno and Ms. Denburg:

This letter is being delivered to you in accordance with Article XV of the Agreement, as a amended, in your respective capacities as General Counsel – Florida and Chief Rights-of-Way Counsel.

Notice of Default for Non-Payment

The parties have been sharing utility poles under the terms of the Agreement since 1975. The Agreement sets forth a formula for calculating the amount due for the previous calendar year between the parties. Based upon this formula as interpreted by the parties, FPL has been issuing invoices for payment to AT&T for more than 40 years without issue.

Under the terms of the Agreement, AT&T's payment for the 2017 calendar year was due from AT&T on February 1, 2018. FPL started sharing information with AT&T regarding billing in January of 2018. On March 5, 2018, FPL issued an invoice to AT&T for payment in the principal amount of [redacted]. A copy of the invoice is enclosed. Although almost 6 months have elapsed since FPL's invoice was delivered, AT&T has not remitted any payment for services rendered for the 2017 calendar year. FPL has responded to AT&T's questions and provided requested documentation to support the charges for this invoice.

AT&T initially indicated that payment was being withheld while FPL's invoice went through AT&T's vetting process which required approval of several management levels. Nothing

in the Agreement allows either joint user to withhold payment for 120 days past the due date to undertake a prolonged management vetting process. Most recently, AT&T claimed for the first time that the contractual rate agreed to between the parties is contrary the FCC Pole Attachment orders. We believe that AT&T is misinterpreting the FCC Pole Attachment orders and their application to our Agreement. Moreover, under the Agreement, a party is required to provide at least six months prior notice if it wants to renegotiate the rental rate. *See* Article XI. No such notice was ever provided to FPL and still has not been provided as of this date.

AT&T's continued refusal to pay FPL's invoice for the 2017 calendar year constitutes a default under the Agreement. Pursuant to Article XII, FPL hereby notifies AT&T of its default for failure to pay the amounts due for 2017 and reserves all rights in the event AT&T fails to timely cure this default.

Notice of Default in Maintenance of Joint Use Poles

Under the Agreement, the parties are required to maintain their poles in a safe and serviceable condition and replace the poles when they become defective. *See* Article VIII. AT&T has not been timely replacing poles that have failed its own inspection process. More importantly, AT&T is not promptly replacing poles that are reported as being in a dangerous and unsafe condition. This not only presents an issue with the reliability of our service, but also presents an unnecessary dangerous condition for the general public. These important obligations need to be promptly carried out by AT&T.

Moreover, as addressed in the past, AT&T is not promptly transferring its facilities as FPL replaces its poles as required under Section 3.3 of the Agreement. This has resulted in permits being withheld to FPL by various counties and constant complaints from public officials and the community in general.

AT&T's failure to maintain its poles and to promptly transfer its facilities as FPL replaces its poles constitutes additional defaults under the Agreement. Pursuant to Article XII, FPL hereby notifies AT&T of these defaults and reserves all rights in the event AT&T fails to timely cure them.

Notice to Initiate the Dispute Resolution Process

Without waiving its rights due to AT&T's defaults, FPL also invokes the dispute resolution process set forth in Section XIIIA of the June 1, 2007 amendment to the Agreement. That process requires AT&T to respond in writing within fifteen (15) calendar days to FPL's claims, setting forth a statement of AT&T's position, a summary of its arguments and the name and title of the representative(s) who will represent AT&T at a meeting with FPL. The parties are required to meet within thirty (30) calendar days after receipt of this notice. FPL proposes to

have the meeting at its Juno Beach, Florida office at a convenient date and time for both parties within that thirty-day period. As of this date, the persons that will be appearing on behalf of FPL are as follows:

Michael Jarro, Senior Director Central Maintenance
Tom Allain, General Manager Central Maintenance Programs
Dave Bromley, Manager Regulatory Service

The following dates and times are currently available for a meeting:

September 18, 2018: 8:00 am – 11:00 am
October 4, 2018: 1:00 pm – 5:00 pm
October 5, 2018: 9:00 am – 12:00 pm

Please let me know if any one of these dates and times works for you and if not, propose some alternative dates and times for consideration. If you want to discuss the matters addressed in this letter and/or the proposed dates for the initial meeting, you may contact me at (561) 904-3751. Your prompt attention to this very important issue is appreciated.

Sincerely,

Michael Jarro
Sr. Director Central Maintenance

Enclosure

cc via overnight:

AT&T Florida
Attention: Joe York, President of AT&T Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

cc via email:

Phil Simmons, AT&T Area Manager (pa2831@us.att.com)
Kyle Hitchcok, Assoc. Director National Joint Utilities (kh1392@att.com)
Omar T. Fraser, Sr. Contract Manager (of2172@att.com)

Exhibit 7

PUBLIC VERSION

AT&T

Kyle F. Hitchcock
Associate Director
National Joint Utility Team

AT&T Technology Operations
W63N548 Hanover Avenue
National C&E
FLR 1
Cedarburg, WI 53012

T: (262) 376-5217
kh1392@att.com

September 13, 2018

Michael Jarro, Senior Director Central Maintenance
Florida Power & Light Company
15430 Endeavor Drive
Jupiter, FL 33478

BY OVERNIGHT DELIVERY

Re: Response to August 31, 2018 Notice of Default and FPL's Initiation of the Alternate Dispute Resolution Process

Dear Mr. Jarro:

This letter responds to your August 31, 2018 letter alleging that AT&T is in default of the Joint Use Agreement and initiating its alternate dispute resolution procedures. We disagree with the substance and sufficiency of FPL's allegations, but would like to meet with FPL as soon as possible to address the issues that you raised in your letter.

First, we disagree with FPL's claim that AT&T is in default of the Joint Use Agreement as a result of our asking FPL to substantiate its 2017 rental invoice. AT&T cannot be in default of the Joint Use Agreement where it has instead insisted on compliance with the Joint Use Agreement. We had hoped that FPL could quickly resolve our initial concerns with FPL's invoice. Instead, FPL's communications only heightened those concerns. For example, on May 8, Mr. Kennedy was unable to identify a contractual basis for several aspects of FPL's rate calculations, including the inputs to the calculations and the way the inputs were calculated. Similarly, on July 23, Mr. Kennedy responded to AT&T's question about the contractual basis for the invoiced transmission pole rates by acknowledging that "there is no specific agreement language related to calculating 'Transmission Pole Rates.'" And the only response that we received to my August 21 request for information showing that the invoiced rates comply "with all applicable provisions of law" as required by Article VI was your letter stating that FPL "believe[s] that AT&T is misinterpreting the FCC Pole Attachment orders and their application to our Agreement." That simply-stated belief does not substantiate the invoiced rental rates, which far exceed the rates that are charged our competitors.

FPL has argued that it need not establish that the invoiced rates comply with the Joint Use Agreement because the 2017 rates were "calculated consistent with the methodology that has been in place and used for decades, without issue or dispute from AT&T." But Article XVII of the Joint Use Agreement contemplates this scenario and gives AT&T the right – irrespective of any past conduct – to now ask FPL to establish that it has the right to collect from AT&T the amounts that it has invoiced. FPL has also argued that AT&T would need to ask to renegotiate the rental rates under Article XI in order to obtain rates different from those invoiced. But the Joint Use Agreement already requires FPL to charge AT&T rates that comply with the contract and all applicable provisions of law.

Second, we disagree with FPL's claim that AT&T is in default of the Joint Use Agreement because of the speed with which AT&T is completing pole replacements and transfers. Because FPL did not identify any specific poles or facilities that should have been more quickly replaced or transferred, we conducted a preliminary review which confirmed that AT&T has been systematically completing needed replacement and transfer work. AT&T, of course, always endeavors to complete this work promptly and will continue to do so. But we found that FPL's allegations about the current plant are unfounded. Any exceptions have been caused by the delays of other attachers or are de minimus.

We would nonetheless welcome a meeting with FPL to discuss the concerns that you have raised. I will plan to attend with Dan Rhinehart, Director-Regulatory and Mark Peters, Area Manager-Regulatory Relations. We agree with FPL to a date for the meeting beyond the 30-day default period set by the alternate dispute resolution procedure but are unable to meet on the dates that FPL proposed. We are available and willing to meet at your Juno Beach office preferably on October 10 or 11 or, alternatively, October 16 - 18. Please let me know if any of those dates would work for you.

Sincerely,

S/ Kyle Hitchcock

Kyle Hitchcock
Associate Director, National Joint Utility Team
AT&T Technology Operations, National C&E

cc by overnight delivery:

Florida Power & Light Company
Attn: Registered Agent
9250 West Flagler Street
Miami, FL 33174

Florida Power & Light Company
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408

Thomas J. Kennedy, P.E., Principal Regulatory Analyst
Florida Power & Light Company
7200 NW 4th Street, DRS/AOB
Plantation, FL 33317

Exhibit 8

From: RHINEHART, DAN
Sent: Thursday, October 04, 2018 9:58 AM
To: Jarro, Michael <Michael.Jarro@fpl.com>; HITCHCOCK, KYLE F <kh1392@att.com>
Cc: Bennett, Charles <Charles.Bennett@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; Bromley, Dave <Dave.Bromley@fpl.com>; PETERS, MARK A <mp2586@att.com>
Subject: RE: AT&T Florida and FPL Meeting re JUA - Oct 10, 2018

Good morning Mr. Jarro,

I am sending this email on behalf of Kyle Hitchcock who is having computer issues today.

This email confirms our meeting for October 10 from 10 - 1 at your Juno Beach office. The AT&T attendees will be Mr. Hitchcock, Associate Director National Joint Utility Team, Mark Peters, Area Manager-Regulatory Relations, and myself, Dan Rhinehart, Director-Regulatory. Please let me know if your list of attendees has changed since your August 31 letter.

We expect that our meeting will focus on the rental rate invoice that FPL sent for 2017 so that AT&T can understand the contractual basis for the inputs and formula that FPL used and the rates that it charged. Since the contract requires compliance with all applicable law, we are also interested in learning what steps FPL has taken to ensure compliance with federal law and its requirement for competitively neutral, just and reasonable rates.

To facilitate our discussions, we would appreciate receiving copies of FPL's executed license agreements with other attachers inclusive of any rates and fees schedules and its 2017 new telecom rate calculations prior to the meeting. We would further request that copies of the new telecom pole rate development for the years 2012 through 2018 and any supporting documents relied on by FPL in the development of those rates be made available at the time of or before our meeting.

We look forward to seeing you next week.

Dan Rhinehart
Director - Regulatory
Dallas, TX 75202 and Austin, TX 78759
(512) 372-5608 – Austin Office
(214) 729-7948 – Mobile

Dan Rhinehart

From: Jarro, Michael <Michael.Jarro@fpl.com>
Sent: Thursday, September 20, 2018 8:37 AM
To: HITCHCOCK, KYLE F <kh1392@att.com>
Cc: Bennett, Charles <Charles.Bennett@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; Bromley, Dave

<Dave.Bromley@fpl.com>; PETERS, MARK A <mp2586@att.com>; RHINEHART, DAN <dr3539@att.com>
Subject: RE: AT&T Florida and FPL Meeting re JUA - Oct 10, 2018

Thanks Mr. Hitchcock. We look forward to seeing you and the team on the 10th. Safe travels.

Thanks,

michaeljarro
senior director,
central maintenance and construction
(561) 904-3751 tel
(305) 345-7160 mobile

From: HITCHCOCK, KYLE F <kh1392@att.com>
Sent: Tuesday, September 18, 2018 4:53 PM
To: Jarro, Michael <Michael.Jarro@fpl.com>
Cc: Bennett, Charles <Charles.Bennett@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; Bromley, Dave <Dave.Bromley@fpl.com>; PETERS, MARK A <mp2586@att.com>; RHINEHART, DAN <dr3539@att.com>
Subject: RE: AT&T Florida and FPL Meeting re JUA - Oct 10, 2018

Good day to you Mr. Jarro.

We appreciate meeting on October 10th; a good time to block out is 10 AM to 1 PM.

Can you please confirm the address to the Juno Beach location, we believe it is 700 Universe Blvd.

Always,

Kyle Hitchcock
Associate Director National Joint Utility Team
AT&T Technology Operations, National C&E

AT&T
W63N548 Hanover Ave, Cedarburg, WI 53012
o 262.376.5217 | kh1392@att.com

MOBILIZING **YOUR** WORLD

From: Jarro, Michael <Michael.Jarro@fpl.com>
Sent: Monday, September 17, 2018 3:33 PM
To: HITCHCOCK, KYLE F <kh1392@att.com>
Cc: Bennett, Charles <Charles.Bennett@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; Bromley, Dave <Dave.Bromley@fpl.com>
Subject: AT&T Florida and FPL Meeting re JUA - Oct 10, 2018

Mr. Hitchcock,

Please see attached letter.

Thanks,

michaeljarro
senior director,
central maintenance and construction
(561) 904-3751 tel
(305) 345-7160 mobile

Exhibit 9

15430 Endeavor Drive, Jupiter FL 33478

November 9, 2018

Via Overnight Delivery and Email where designated

AT&T Florida Attention: General Counsel – Florida 150 W. Flagler Street, Suite 1910 Miami, FL 33130	AT&T South Legal Department Attention: Chief Rights-of-Way Counsel 675 W. Peachtree St., Suite 4300 Atlanta, GA 30375-0001
AT&T Technology Operations Attn: Kyle Hitchcock, Associate Director W63N548 Hanover Avenue National C&E, FLR 1 Cedarburg, WI 53012 Kh1392@att.com	AT&T Attn: Isaac Rodriguez, AT&T Technology Operations – Construction & Engineering 208 S. Akard St. Dallas, TX 75202 Ir8307@att.com

Subject: Notice of Suspension for Failure to Correct Pending Defaults

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Dear Mr. Hitchcock and Mr. Rodriguez:

On August 31, 2018, FPL provided AT&T with written notice outlining several ongoing defaults under the Agreement (hereinafter "**Notice**"). A copy of the Notice is attached for your convenience. The defaults outlined in the Notice have not been corrected and have continued to exist for more than 60 days after FPL served its Notice. Accordingly, as set forth in Section 12.1 of the Agreement, all rights of AT&T that relate to the further granting of joint use poles were automatically suspended at the expiration of the 60 day period. At this time, in light of the upcoming meeting scheduled for December 7, 2018, FPL will forbear from actively enforcing the suspension against AT&T.

We look forward to working with AT&T to resolve the defaults identified by FPL at the upcoming meeting that hopefully will avoid the need for FPL's active enforcement of the suspension that is currently in place.

Sincerely,

Michael Jarro
Sr. Director Central Maintenance
(561) 904-3751

Enclosure:

FPL's Notice of Default

cc via email:

Phil Simmons, AT&T Area Manager (ps2831@us.att.com)
Omar T. Fraser, Sr. Contract Manager (of2172@att.com)

Exhibit 10

From: Jarro, Michael [mailto:Michael.Jarro@fpl.com]
Sent: Thursday, December 06, 2018 5:11 PM
To: MILLER, DIANNE W <dm6516@att.com>
Subject: RE: Response: FPL Notice of Suspension

Ms. Miller:

As I understand the information exchange that has occurred throughout this year, FPL has responded to all of AT&T's requests for information regarding how the joint use rate was calculated by FPL. Over that same period, AT&T has never once responded that FPL provided the wrong information, that our calculation was wrong or that we were missing information in the calculation.

Section 10.6 of the joint use agreement provides: "In order to determine the average annual cost of providing and maintaining the joint use poles of either party, the average historical in-place cost of joint use poles excluding special poles shall be multiplied by an annual charge rate comprised of amortization factors, taxes and other elements of cost as determined in accordance with acceptable accounting practices." FPL abided by this agreed upon framework as the parties have for an extended period of time.

As previously mentioned, FPL believes the 2017 calculated billing rates comply with our contract and applicable law. What information does AT&T have to support its allegation that FPL is not following that formula or what information has AT&T specifically requested – and FPL not provided – that goes to a miscalculation pursuant to that formula set forth in the Joint Use Agreement?

I see that you are referencing the 2011 FCC Order. Can you help me understand which provision of the 2011 order dictates that an existing joint use agreement doesn't need to be followed simply by virtue of the Order having been issued? While this admittedly is a matter probably best left to the law department, we don't see anything in the Order that changes the rate or formula set forth in the Agreement, or that allows either party to disregard the procedures set forth in the Agreement, such as the provision that requires notice of a desire or intent to renegotiate the rate.

Sincerely,

michaeljarro
senior director,
central maintenance and construction
(561) 904-3751 tel
(305) 345-7160 mobile

From: MILLER, DIANNE W <dm6516@att.com>
Sent: Thursday, December 6, 2018 10:13 AM
To: Jarro, Michael <Michael.Jarro@fpl.com>
Subject: Response: FPL Notice of Suspension

Mr. Jarro,

We also seek a quick resolution of this matter but are concerned that your email suggests that FPL intends to continue to impede AT&T's ability to process the 2017 pole attachment rental invoice. Since FPL issued the invoice in March,

AT&T sought one thing: confirmation that the invoice complies with the parties' Joint Use Agreement. For months, FPL has refused to show that it has a right to the amounts invoiced, instead insisting that past practice negates any requirement to comply with the contract, admitting that there is no contractual basis for certain aspects of the invoiced rates, and now refusing to provide information that is pertinent to the analysis. We urge FPL to reconsider these positions and to attend Friday's meeting prepared to discuss the inputs and calculations for each rate invoiced for 2017 pole attachment rent, the contractual basis for each input and step of each calculation, and the steps that FPL has taken to ensure that the invoiced amounts comply with "all applicable provisions of laws" as required by Article VI.

We disagree with several claims in your email but, in the interest of reaching common ground on Friday, will not respond to every point here. I must emphasize, however, that it is not at all conducive to our discussions for FPL to claim that AT&T has somehow misrepresented its "true objective" and "true intent" this year. AT&T's objective is unchanged – it seeks to pay only those amounts that are due under the Joint Use Agreement. Because our contract requires compliance with law, AT&T need not ask for a renegotiated rate to ask FPL to explain what it has done to ensure that the rental rates comply with the contract and applicable law, including the 2011 Pole Attachment Order. The contract explicitly requires that compliance, and so FPL must have compared our Joint Use Agreement with the rates, terms, and conditions that apply to our competitors in order to assess whether the invoiced rates are "just and reasonable." We are simply asking to see the new telecom rates and license agreements that were relevant to FPL's analysis. We are certainly willing to receive them under circumstances that preserve confidentiality, either through redaction of the other entity's name or pursuant to a confidentiality agreement.

Dianne

Dianne Miller
Director - Construction & Engineering
Dianne.miller@att.com

. **From:** Jarro, Michael [mailto:Michael.Jarro@fpl.com]
Sent: Tuesday, December 04, 2018 1:27 PM
To: MILLER, DIANNE W <dm6516@att.com>
Subject: RE: FPL Notice of Suspension

Ms. Miller,

Following the delivery of FPL's invoice in the first week of March of 2018 for services rendered to AT&T for the prior year, AT&T had a contractual obligation to promptly pay FPL for the use of its poles. FPL calculated the rate consistent with the terms of the Joint Use Agreement ("JUA") and consistent with the past history of this long standing JUA between the parties without issue. Over the summer of 2018, FPL promptly responded to AT&T's requests for information and provided all information to AT&T that supports FPL's calculation under the Agreement.

For several months, FPL patiently waited for payment. AT&T kept advising FPL that its invoice was in the "vetting process" and "being pushed through the process as expeditiously as possible". To date, AT&T has not identified a single term of the JUA that FPL failed to follow. Instead, AT&T waited until August 21 to advise FPL that its true objective was to seek a different calculation that was not provided for under the JUA but instead pursuant to a new FCC order inapplicable to the invoice. This led FPL to promptly initiate the dispute resolution process on August 31, 2018. The dispute process would have been initiated much sooner if FPL knew this was AT&T's true intent.

Ms. Miller, we are not aware of any federal law that requires FPL to take affirmative action to change an agreed upon contract rate. The parties specifically agreed in the JUA that if a party wants to renegotiate the contract rate it requires a timely written request. We have previously notified AT&T of this contractual requirement, but as of this date we have not received such a request from AT&T.

FPL cannot provide copies of its executed license agreements with other attachers. As AT&T must be aware, such information is confidential and FPL does not release this information to third parties. Again, there is nothing within the Agreement that makes the requested telecom rates calculations relevant to the rate to be charged AT&T under the JUA.

We look forward to addressing these issues with you on Friday and hopefully moving towards a resolution of this important matter to FPL.

Sincerely,

michaeljarro
senior director,
central maintenance and construction
(561) 904-3751 tel
(305) 345-7160 mobile

From: MILLER, DIANNE W <dm6516@att.com>
Sent: Monday, December 3, 2018 4:10 PM
To: Jarro, Michael <Michael.Jarro@fpl.com>
Subject: FPL Notice of Suspension

Mr. Jarro,

As you'll recall, FPL rescheduled our October 10 meeting for this coming Friday, December 7. In the interim, Mr. Hitchcock retired, and so I will be attending the meeting in his place along with Mark Peters, Area Manager-Regulatory Relations, and Dan Rhinehart, Director-Regulatory.

In preparing for the meeting, I learned that we have not yet received the information that we requested from FPL on October 4. In particular, AT&T asked for copies of FPL's executed license agreements with other attachers, including any rates and fees schedules, and FPL's 2012 through 2018 new telecom rate calculations, including all inputs and any supporting documents relied on by FPL in the development of those rates.

Please forward the requested materials. FPL has now sent two notices alleging that AT&T is in default of our companies' Joint Use Agreement for failure to pay a 2017 invoice that, in spite of repeated requests, FPL has been unable to show complies with the Joint Use Agreement. As we explained on September 13 and October 4, AT&T cannot be in default of contract when it has insisted on compliance with the contract. We nonetheless tried to facilitate a fast resolution of this matter by agreeing to meet and requesting information in advance of that meeting that would show whether FPL complied with the Joint Use Agreement's rate formula and its requirement that the invoiced rates comply with "all applicable provisions of law." We are disappointed that, instead of sending the requested information at any time during the last two months, FPL instead chose to send another notice alleging default.

We continue to dispute FPL's claim of default, but hope that we will be able to resolve our differences on Friday. To better ensure that result, please send the information we requested in October without further delay.

We look forward to seeing you then,

Dianne

Dianne Miller
Director - Construction & Engineering
Dianne.miller@att.com

Exhibit 11

Attachments: 20181210142111781.pdf

From: Bromley, Dave <Dave.Bromley@fpl.com>
Sent: Monday, December 10, 2018 1:50 PM
To: RHINEHART, DAN <dr3539@att.com>
Cc: MILLER, DIANNE W <dm6516@att.com>
Subject: FPL Transmission Rate

Hey, Dan - During Friday's meeting, I mentioned that I had recalled seeing an FPL/AT&T letter that dated back to the 90's and showed FPL's transmission rate being [redacted] the normal joint use adjustment rate. Per your request, attached is that letter. Hope this helps.

Dan - Please send me an email back just to confirm I sent this to the right place.

PUBLIC VERSION

Florida Power & Light Company, P.O. Box 025209, Miami, FL 33102-5209

FPL

July 6, 1993

Mr Earl Chirstian
Southern Bell
21JJ1 Bell South Tower
301 West Bay Street
Jacksonville, FL 32202

RE: 1993 Joint Use Rate

Dear Mr. Christian:

The 1993 joint use pole rental rate has been revised to reflect the differences in pole classifications - distribution (35', 40' & 45' poles) & transmission poles. These new rates will better delineate actual field conditions.

According to the terms of our Joint Use Pole Agreement, the average annual cost of joint use distribution poles for year ending December, 1992 will be used to calculate the 1993 joint use distribution pole rate. The transmission pole rate is [redacted] the distribution rate. The attached analysis indicates that the 1993 joint use pole rates will be:

Distribution
Transmission [redacted]

These rate will be apply to all joint use poles used in 1993.

Dennis M. La Belle
Joint Use Coordinator
(305) 347-7206

cc: D.A. Appler
Supv. Accounting Control
Supv. Cash Control

ATT00192

Exhibit 12

From: Bromley, Dave [mailto:Dave.Bromley@fpl.com]
Sent: Thursday, December 20, 2018 5:54 AM
To: MILLER, DIANNE W <dm6516@att.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>; Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>
Subject: FPL / AT&T follow-up

Diane,

FPL is providing responses (see red below) to some of your questions today. Other questions are concerning to FPL as it appears AT&T in some cases is seeking records associated with events that occurred over 25 years ago. FPL no longer has some of these records, just as AT&T no longer has those records. Asking FPL to produce such records is akin to FPL asking AT&T to produce copies of the written approvals that allow AT&T to attach to FPL's transmission lines as required by Section 2.3 of Article II. It is doubtful that AT&T could produce such written approvals. Our relationship and understanding of annual joint use billings has been in place for decades and the absence of records that indicate any issues or concerns with these billings along with AT&T's timely payments indicate that all were in agreement with what was happening.

At our December 7 meeting, AT&T mentioned that the main driver behind the delay in AT&T's payment was an internal audit report that included findings associated with joint use billings. To help us better understand these issues, please promptly provide us with a copy of the audit report as it relates to our dispute. This will help us identify the specific concerns and issues of AT&T. We would also like to know if this was the first such internal audit conducted by AT&T over the term of the Joint Use Agreement. If not, we would like to receive copies of those audits and would expect that, in light of the current dispute, that you suspend any record destruction schedule to ensure that any records, including audits, billings, reports, correspondence or other documents, relating to the AT&T and FPL Joint Use Agreement, are maintained.

Questions to FP&L Following the FP&L – AT&T Meeting of December 7, 2018

To: Michael Jarro, Tom Allain, Dave Bromley (cc: Rhinehart, Peters,)

Michael, Tom, Dave,

We're glad that we could finally sit down with you last Friday to discuss AT&T's questions about FP&L's calculation of rental rates under our companies' Joint Use Agreement. We had hoped that FP&L would be able to show us its calculations and all supporting data at the meeting. You provided answers to several of our questions but, with respect to others, asked that we follow-up in writing. Because we previously requested much of this information in phone calls, emails, and letters that date back to early April, we are including them here with additional specificity to try to assist FP&L in responding.

Just to be clear, the AT&T detailed questions regarding rate development under Article X and the additional support for the Gross Rent Billing (which was discussed at our December 7 meeting) had not been previously asked/requested. Regarding additional support for and/or questions about the Transmission Pole Rate and Rate Development under Article VI, FPL has previously addressed these matters in its responses and/or at the meeting, but will address them here again for the sake of your convenience.

We would appreciate your response to these questions as soon as possible. Receipt of the requested information to confirm FP&L's compliance with the Joint Use Agreement is a predicate to AT&T's ability to evaluate and, if proper under the contract, process the invoice.

We respectfully disagree that FPL must respond to AT&T's information requests in order to "confirm compliance." AT&T's unilateral decision to cease payment of its longstanding obligations under the Agreement was just that, "unilateral" without any basis whatsoever that FPL was not in compliance. That said, we have answered many of AT&T's questions and will endeavor to answer some additional requests for information to the extent FPL believes that the questions are well founded and legitimately asked in the interest of facilitating AT&T's payment of its obligations under the Agreement.

Transmission Pole Rate

On July 17, we asked for "written contractual language and/or addenda as it relates to the 'Transmission Pole Rates.'" Thank you for sending on Monday a copy of the July 6, 1993 letter from FP&L to Southern Bell that refers to a Transmission Pole attachment rate. We would, however, still like to see documentation showing that AT&T (or Southern Bell) agreed to the [redacted] rate methodology for 1993 and all other rental years.

FPL timely provided a response to this request on July 23. Additionally, the July 3, 1993 letter provided last week is the earliest dated document that FPL has been able to locate that indicates that FPL was charging AT&T the adjustment rate, [redacted], for transmission poles. While FPL is not able to locate any documentation showing AT&T agreed to this transmission rate calculation, FPL has no documentation that indicates AT&T disagreed with it. Likewise, FPL is not aware of any verbal objections made by AT&T to this rate. The fact that AT&T has been paying this fully disclosed rate – unchallenged and without written or oral objection for decades – indicates that AT&T agreed with this transmission rate calculation.

Rate Development Under Article X

In early April, we raised "several concerns related to the calculation and the financial information used to develop the 'Joint Use Pole Attachment Rate Calculation'" that have not been resolved. In particular:

Again, FPL notes that these detailed questions/request for information set forth below were not previously asked/requested and are being asked for the first time more than 9 months after FPL submitted its invoice for payment.

Asset Life: We would like to understand why FP&L uses different asset lives in the rate development and elsewhere (e.g., [redacted] year asset life for the Carrying Charge Rate, 44-year average service life and 32.16 year average remaining life reported in the 2017 FERC 1, page 337.1, and [redacted] asset life assumed in the percent left calculation of the Adjustment Rate). Please explain these differences, provide any supporting documentation showing the actual asset life of the joint use poles, and explain why the values used in the rate calculation are the correct ones under the Joint Use Agreement.

Depreciation Rate: We would like to understand why FP&L uses a different depreciation rate in the Carrying Charge Rate development ([redacted]) and its 2017 FERC 1 (3.58%). It appears that the [redacted] depreciation rate does not include the cost of removal, but the 3.56% depreciation rate does. Please explain how FP&L accounts for the cost of removal of poles (for example, is the cost of removal accrued into the depreciation reserve and then charged to the depreciation reserve on removal, or is the cost of removal expensed in the year incurred?) and why the [redacted] depreciation rate is the correct one under the Joint Use Agreement.

Carrying Charge Rate: We remain confused about FP&L's use of a year-by-year Carrying Charge Rate under the Joint Use Agreement instead of a current-year Carrying Charge Rate. Please explain why FP&L is using this methodology and identify the contractual support for its use. On May 8, Tom Kennedy stated that "WMS is the acronym for FPL's Work Management System" and explained that it is used to estimate the "cost to install a pole under normal condition for the year the rate is calculated." We would still like validation of these WMS cost estimates. For example, we would like to see FP&L's continuing property records identifying the number of poles by type and size along with their associated total gross investment by account or subaccount and total counts and investment amounts by inventoried unit type for appurtenances for year-end 2016 and 2017. We'd also like information about the number of poles by type (wood, concrete, etc.), size (height), and class with their

respective booked investment and the units and cost of appurtenance items totaling the $302,793,090 reported for 2017.

Iowa Curve: On May 8, Tom Kennedy informed us that FP&L uses an Iowa Curve methodology to assume the percentage of surviving poles used in the rate calculation. We would still like to see further support for this methodology. For example, we would like to see any documentation showing that AT&T agreed to the use of an Iowa Curve. We would also like to see any vintage year investment records for FP&L's poles, would like to know whether the same R2.5 Curve cited on page 337.1 of FP&L's 2017 FERC 1 was used to compute the invoiced Adjustment Rate, and would like to understand, if it was not, what Curve was used and why. Whatever Curve was used, we would like to see its full formula.

Special Poles: Section 10.6 states that FP&L cannot use special poles when calculating the Adjustment Rate. We would like to understand what actions FP&L has taken to ensure that the cost of special poles is excluded. For example, are the costs for the special poles listed in the JU – ATT BY CNTY inventory excluded from the cost calculation and how? What materials are special poles made of? Are any wood poles? What inventory methods or procedures does FP&L follow to ensure compliance with this requirement Procedures: We think that it would accelerate our evaluation if FP&L would provide us copies of any methods and procedures that are used when FP&L develops the Carrying Charge Rate and the Adjustment Rate.

As mentioned at our meeting, it is very troubling that AT&T has waited over nine months after the FPL invoice was submitted for payment for the ***2017 calendar year*** to ask FPL for this information. As we have repeatedly informed AT&T, and as AT&T knows, FPL has not changed its billing practices that have been accepted by the parties for decades. These billing practices are not inconsistent with the terms of the Agreement.

Before FPL makes the effort to respond to the information requested in this section, please provide the internal audit that was alluded to at the meeting that led to AT&T's decision to not pay the FPL invoice. We want to fully understand the issues preventing AT&T from releasing payment before we start the process of gathering this information. This will better assure that we can fully respond to any issues that AT&T contends are holding up the release of payment to FPL.

Rate Development Under Article VI

AT&T has asked on several occasions, including August 21, September 13, October 4, and December 3, for documents that show what actions FP&L has taken to ensure compliance with Article VI's requirement that the invoiced rates comply with all applicable law, including federal law. We again request insight into FP&L's analysis and the following documents:

As stated at the December 7 meeting, it is FPL's view that Article VI (Specifications) has nothing to do with the rate but rather concerns compliance of the poles , e.g., with the National Electrical Safety Code. Nothing in Article VI suggests otherwise.

Executed License Agreements: FP&L must have considered the terms and conditions of the license agreements it has with our competitors when deciding whether the rate charged AT&T is just and reasonable. Please provide copies of FP&L's executed license agreements (the name of the other entity may be redacted) and a copy of the draft license agreement that FP&L offers to new licensees.

New Telecom Rate Calculations: FP&L must also have considered the new telecom rates charged our competitors when deciding whether the rate charged AT&T is just and reasonable. Please provide us, at a minimum, FP&L's 2017 new telecom rate calculation and all of its inputs so that we can compare the new telecom rate to the 2017 rates that FP&L invoiced AT&T.

FPL has previously responded to these requests. FPL does not believe that the requested documents and information contained therein are relevant in the calculation of the agreed upon contract rate. There is nothing in the Agreement

that remotely suggests such requested information should be considered in calculating the rate. *See* Section 10.6 of the Agreement for the relevant factors in calculating the rate.

Also, as we have previously communicated, there is nothing in the 2011 FCC Order that affirmatively requires the parties to modify an existing agreed upon contract rate. If you disagree, please explain.

As stated in prior emails and at the meeting, if AT&T wants to re-negotiate the contract rate with FPL, the Agreement requires 6 months written notice. To date, FPL has not received such written notice and AT&T indicated at the December 7 meeting that AT&T had not and was not initiating re-negotiation of the rate. If AT&T does not want to re-negotiate the rate, FPL must continue to rely upon the terms of the Agreement for calculating the rate. FPL has done nothing different in calculating the rate this year as compared to the calculation performed over the past several decades without objection from AT&T.

Gross Rent Billing

On May 8, Tom Kennedy informed us that the FPSC ordered FP&L to shift from the "Deficiency Billing" approach required by the Joint Use Agreement to one where the company books gross revenue and gross expense. We would still like to see supporting documents for this change, including the FPSC's Order and any documentation showing that AT&T was notified about the change and agreed to it.

As provided in Mr. Kennedy's May 8, 2019 email to Mr. Simmons, it was demonstrated that FPL's "gross revenue and gross expense" methodology produces the same result as the "Deficiency Billing" methodology. In other words, you get the same result regardless of what approach you use. If you still think this document will somehow bring some value, we will look for this document once the internal audit is produced by AT&T.

Again, thank you for meeting with us last Friday. We look forward to receiving this information soon, so that we can review the steps that FP&L took to validate the rental invoice.

Exhibit 13

15430 Endeavor Drive, Jupiter FL 33478

January 8, 2019

Via Overnight Delivery
AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

Via Overnight Delivery
AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Via Email
AT&T Technology Operations
Attn: Dianne Miller, Director National Joint
Utility Team
Dm6516@att.com

Subject: FPL's Notice to Initiate Mediation with AT&T

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Dear General Counsel, Chief Rights of Way Counsel, and Ms. Miller:

Thank you for coming to Juno Beach, Florida on December 7, 2018 in an effort to meet and resolve the issues identified in FPL's Notice of Default dated August 31, 2018 (enclosed). Since we unfortunately were not successful in resolving these issues, FPL desires to continue to move forward with the dispute resolution process as outlined in the Agreement.

FPL provides this notice of its right to initiate non-binding mediation which is the next step in the dispute resolution process set forth in the Agreement. Under the Agreement, we are required to agree to a mediator within fifteen (15) calendar days of this notice (Thursday, January 24, 2018). For that purpose, FPL proposes the following mediators for your consideration:

John G. Douglass, Professor of Law,
Univ. of Richmond Law School (804) 289-8198
Rate: [redacted] per hour (mediation must be done in the DC area)

Terrance White
Upchurch Watson White and Max
1400 Hand Avenue, Suite D
Ormond Beach, FL 32174
(386) 253-1560
Rate: [redacted] per hour, portal to portal

Please let us know if any of these mediators are acceptable. Your prompt response is necessary so we can get on the selected mediator's calendar.

We hope that the mediation can be promptly scheduled to allow a resolution of the pending dispute. Your cooperation is appreciated.

Sincerely,

Michael Jarro
Vice President, Transmission and Substation
(561) 904-3751

Enclosure:

FPL's Notice of Default dated August 31, 2018

cc: via email:

Phil Simmons, AT&T Area Manager (ps2831@us.att.com)
Omar T. Fraser, Sr. Contract Manager (of2172@att.com)
Isaac Rodriguez (Ir8307@att.com)

Exhibit 14

15430 Endeavor Drive, Jupiter FL 33478

FPL

January 11, 2019

Via Overnight Delivery
AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

Via Overnight Delivery
AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Via Email
AT&T Technology Operations
Attn: Dianne Miller, Director National Joint Utility Team
Dm6516@att.com

Subject: FPL's Notice of Enforcement of Suspension of AT&T's Attachments to FPL Poles

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively the "**Agreement**")

Dear General Counsel, Chief Rights of Way Counsel, and Ms. Miller:

Under the terms of the Agreement at Section 12.1, on November 4, 2018, all of AT&T's rights that relate to the further granting of joint use poles were automatically suspended. This suspension occurred as a result of AT&T's failure to timely correct the defaults identified in FPL's Notice of Default dated August 31, 2018. On November 9, 2018, AT&T was notified that FPL would forbear from actively enforcing the automatic suspension in light of the meeting scheduled for December 7, 2018.

Unfortunately, the parties were unable to reach a resolution of the identified defaults. Please be advised that starting on ***Wednesday, January 16, 2019***, FPL will begin actively enforcing the suspension that has been in place since November 4, 2018. This suspension precludes AT&T's right to attach to any new FPL pole lines. Please take the appropriate action to inform your field personnel that no further attachments will be permitted until the previously identified defaults are cured. For clarity purposes, the suspension will not preclude AT&T from transferring its existing attachments from FPL's existing poles to new replacement FPL poles.

We hope that the mediation FPL has requested can be promptly scheduled to allow a resolution to the pending dispute and a lifting of the suspension. Your cooperation is appreciated.

Sincerely,

Michael Jarro
Vice President, Transmission and Substation
(561) 904-3751

cc: via email

Phil Simmons, AT&T Area Manager (ps2831@us.att.com)
Omar T. Fraser, Sr. Contract Manager (of2172@att.com)
Isaac Rodriguez (Ir8307@att.com)

Exhibit 15

Attachments: 2019 01 15 Response to FPL.docx

From: MILLER, DIANNE W
Sent: Wednesday, January 16, 2019 4:10 PM
To: Jarro, Michael <Michael.Jarro@fpl.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: Response to FPL Letters - Mediation and Suspension

Michael,

I will be sending hard copies via overnight delivery. Please let us know as promptly as possible if the proposed mediator is acceptable to FPL.

Regards,

Dianne Miller
AT&T
Director - Construction & Engineering

January 16, 2019

Michael Jarro, Vice President, Transmission and Substation
Florida Power & Light Company
15430 Endeavor Drive
Jupiter, FL 33478
Michael.Jarro@fpl.com

Re: Response to January 8, 2019 Notice to Initiate Mediation and January 11, 2019 Notice of Enforcement of Suspension

Dear Mr. Jarro:

This letter responds to the two letters that you sent AT&T Florida last week, in which you asked AT&T to agree to non-binding mediation and claimed that FPL can suspend AT&T's right to attach to new FPL pole lines pending agreement at that mediation. We would be glad to participate in non-binding mediation but disagree that FPL can suspend AT&T's right to attach to new FPL pole lines while we engage in that process.

First, we accept FPL's invitation to continue our discussions in a non-binding mediation pursuant to the Joint Use Agreement. In order to minimize travel costs and respect our agreement that "such mediation shall take place in Miami, Florida," we propose that the companies agree to the following mediator:

Laurie L. Riemer, Esq.
Mediation Offices of Laurie Riemer, Esq.
20155 NE 38th Court, #3104, Aventura, FL 33180
(305) 932-2200
$225 per party per hour

Please let us know promptly if Ms. Riemer is acceptable to FPL, so that we can work on identifying a mutually agreeable date for the non-binding mediation.

Second, we reject FPL's claim that it can suspend AT&T's right to attach to new FPL pole lines. As Mr. Hitchcock detailed at length in his September 13, 2018 letter, AT&T is not in default of the Joint Use Agreement. And, even if FPL disagrees, our Joint Use Agreement does not allow FPL to restrict AT&T's attachment rights while the companies engage in the agreed-upon dispute resolution process.

Sincerely,

Dianne Miller
AT&T
Director – Construction & Engineering

cc by overnight delivery:

Florida Power & Light Company
Attn: Registered Agent
9250 West Flagler Street
Miami, FL 33174

Florida Power & Light Company
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408

Exhibit 16

15430 Endeavor Drive, Jupiter FL 33478

January 18, 2019

Via Overnight Delivery
AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

Via Overnight Delivery
AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Via Email
AT&T Technology Operations
Attn: Dianne Miller, Director National Joint
Utility Team
Dm6516@att.com

Subject: FPL's Notice to Initiate Mediation with AT&T / Notice of Enforcement of Suspension

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Dear General Counsel, Chief Rights of Way Counsel, and Ms. Miller:

Thank you for your prompt response to FPL's request to continue the dispute resolution process with non-binding mediation. FPL agrees to your request for mediation to take place in Miami but we cannot agree to your proposed mediator. Below are three additional proposed mediators located in Miami for your consideration that are suggested in addition to the two previously identified mediators by FPL:

Scott J. Silverman (Retired 11th Circuit Judge)
JAMS
600 Brickell Avenue, Suite 2600
Miami, FL 33131
(305) 371-5267
Website: http://scottjsilverman.com/

Brian Spector
PO Box 566206
Miami, FL 33256-6206
(305) 666-1664
Website: http://bspector.com

John Freud
Mediation Solutions, Inc.
3191 Grand Avenue
P.O. Box 1986
Miami, FL, 33133
(305) 371-9120
Website: www.msolinc.net

We respectfully disagree with AT&T's interpretation of the Agreement as it applies to the suspension of AT&T's rights. FPL has identified multiple defaults of the Agreement and none have been corrected. The Agreement specifically provides for the suspension when the defaults are not timely corrected. We are not aware of any provision in the dispute resolution process that precludes FPL from enforcing the rights provided for in the agreement while engaged in the dispute resolution process.

Please let us know if one of these mediators is acceptable so we can get on his calendar.

Sincerely,

Michael Jarro
Vice President, Transmission and Substation
(561) 904-3751

Enclosure:

cc: via email

Phil Simmons, AT&T Area Manager (ps2831@us.att.com)
Omar T. Fraser, Sr. Contract Manager (of2172@att.com)
Isaac Rodriguez (lr8307@att.com)

Exhibit 17

Attachments: 012419 Correspondence re Mediation.pdf; 011819 Medition Correspondence.pdf

From: "MILLER, DIANNE W" <dm6516@att.com>
Date: January 24, 2019 at 4:19:11 PM EST
To: "Jarro, Michael" <Michael.Jarro@fpl.com>
Cc: "RHINEHART, DAN" <dr3539@att.com>, "PETERS, MARK A" <mp2586@att.com>
Subject: RESPONSE: AT&T / FPL - Selection of a Mediator

Mr. Jarro:

We were disappointed to learn that FPL could not agree to our proposal to engage Ms. Riemer for our upcoming non-binding mediation, but appreciate your recommendation of additional mediators in the Miami area. We agree to use John Freud, Esq. at Mediation Solutions, Inc., and hope that he will be able to help us resolve our pending disputes over FPL's calculation of the invoiced rental rates, the "just and reasonable" rental rates that AT&T is entitled to under the federal Pole Attachment Act, and the operational issues identified in your August 31, 2018 letter.

Please let us know who will be attending the non-binding mediation for FPL so that we can identify the appropriate individuals for AT&T. Please also let us know some dates that your team is available for the non-binding mediation, so that we can promptly schedule a mutually agreeable date.

Dianne Miller
Director – National Joint Utility Team

From: Jarro, Michael [mailto:Michael.Jarro@fpl.com]
Sent: Thursday, January 24, 2019 3:12 PM
To: MILLER, DIANNE W <dm6516@att.com>; SIMMONS, PHILLIP R <PS2831@att.com>; FRASER, OMAR T <of2172@att.com>; RODRIGUEZ, ISAAC <IR8307@att.com>
Subject: AT&T / FPL - Selection of a Mediator
Importance: High

Diane,

Attached is additional correspondence regarding the selection of the mediator. We need to get this finalized today. Your prompt attention to this will be appreciated.

Sincerely,

MichaelJarro

Vice President,
Transmission and Substation
(561) 904-3751 tel
(305) 345-7160 mobile

Exhibit 18

15430 Endeavor Drive, Jupiter FL 33478

January 28, 2019

Via Overnight Delivery
AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

Via Overnight Delivery
AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Via Email
AT&T Technology Operations
Attn: Dianne Miller, Director National Joint Utility Team
Dm6516@att.com

Subject: FPL's Notice to Initiate Mediation with AT&T / **Requires Immediate Attention**

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Dear General Counsel, Chief Rights of Way Counsel, and Ms. Miller:

Thank you for AT&T's response agreeing to mediate with John Freud. Unfortunately, between the time we initially suggested him and by the time we received your response, his schedule filled up. His first availability at this time is not until May 1 and he has 8 other litigants on his waiting list. We have contacted the other two mediators we suggested and their availability is as follows:

Mediator	Available Dates that work with FPL
Scott Silverman (former 11th Circuit Judge)	**March:** 18-22, and 25-28 **April:** 11 and 12
Brian Spector	**April:** 1, 3, 8 and 10

Both of these mediators are well respected by the Florida bar. Please let us know if AT&T Florida is agreeable to either of these mediators and if so, which dates work for you. If we cannot agree to a mediator by Thursday, January 31, 2019, we will need to request the American Arbitration Association to select one for us as provided in the Joint Use Agreement.

We disagree with your statement suggesting that the mediation will be used to resolve the "just and reasonable rental rates that AT&T is entitled to under the federal Pole Attachment

Act." To date, the disputes we have been attempting to resolve consist of the payment due pursuant to the calculation methodology set forth in the Agreement, AT&T's replacement of poles and completion of transfer work. In correspondence between the parties as well as at the upper management meeting held on December 7, 2018, FPL has specifically inquired whether AT&T was invoking its rights to renegotiate the contractual rate which is a right provided for under Article XI of the Joint Use Agreement. You made it very clear at the December 7 meeting that AT&T was not attempting to renegotiate or change the contractual rates set forth in the Joint Use Agreement. The use of the federal Pole Attachment Act to modify the parties agreed upon formula for calculating the rate that has been in place for more than 40 years will constitute a renegotiation of the rate. And, as we indicated at the meeting, FPL has not received a formal six-month written notice to invoke the contractual provision or taken any other steps required to seek a change in rates. If this position has changed, please provide the appropriate notice required under the Joint Use Agreement and any steps required under the Pole Attachment Act or by federal regulations.

Your prompt response as to the selection of mediators will be greatly appreciated.

Sincerely,

Michael Jarro
Vice President, Transmission and Substation
(561) 904-3751

cc: via email:

Phil Simmons, AT&T Area Manager (ps2831@us.att.com)
Omar T. Fraser, Sr. Contract Manager (of2172@att.com)
Isaac Rodriguez (Ir8307@att.com)

Exhibit 19

Attachments: 20190128141144743.pdf; FPL Response - Selection of Mediator 1-30-19.docx

From: MILLER, DIANNE W
Sent: Wednesday, January 30, 2019 1:32 PM
To: Jarro, Michael <Michael.Jarro@fpl.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: RESPONSE: AT&T / FPL - Selection of a Mediator

Michael,

Attached is response to your latest correspondence regarding the selection of a mediator.

Regards,

Dianne Miller
AT&T
Director - National Joint Utility Team

From: Jarro, Michael [mailto:Michael.Jarro@fpl.com]
Sent: Monday, January 28, 2019 9:33 PM
To: MILLER, DIANNE W <dm6516@att.com>; SIMMONS, PHILLIP R <PS2831@att.com>; FRASER, OMAR T <of2172@att.com>; RODRIGUEZ, ISAAC <IR8307@att.com>
Subject: AT&T / FPL - Selection of a Mediator

Diane,

Attached is a follow-up correspondence regarding the selection of the mediator. Your prompt attention to this will be appreciated.

Sincerely,

MichaelJarro
Vice President,
Transmission and Substation
(561) 904-3751 tel
(305) 345-7160 mobile

January 30, 2019

Mr. Jarro:

I was surprised by your letter and disappointed that FPL walked away from our agreement to use a mediator that FPL proposed. AT&T is willing to consider the alternate mediators and dates that you have proposed, but can't complete that process within the two days you requested. There is no deadline set by our agreement to select a second mediator after the parties already agreed to one. And I can't confirm AT&T's availability on the dates that you provided because we first need to know the names and titles of the FPL team attending so that AT&T can assemble an appropriate team. That is why I requested that information from you in my January 24 email.

I can get back to you about the alternate mediators within a week, and then we can see what dates work after we learn about your team. In the meantime, AT&T remains agreeable to using John Freund, Esq., whose availability in early May is only about two weeks after the availability you list for the other mediators in your letter. We also renew our proposal to engage Laurie Riemer, Esq., who we understand has mediated cases for/with FPL.

I am discouraged that FPL appears unwilling to even try to resolve our dispute over the "just and reasonable" rental rates that AT&T is entitled to under the federal Pole Attachment Act at the upcoming mediation. The issue will certainly be part of the mediation, just as it has been a part of our executive-level discussions to date. As we have explained repeatedly, AT&T does not need to make a formal request under Article XI to renegotiate the rental rate because AT&T is already entitled to a just and reasonable rate under the contract and under federal law. I remain hopeful that our companies can successfully resolve the entirety of our rental rate dispute at the mediation and urge FPL to ensure that those who attend have knowledge and authority to resolve our dispute.

Please let me know as soon as possible who will be attending the mediation for FPL and whether John Freund remains agreeable or if Laurie Riemer would be an acceptable alternate.

Regards,
Dianne Miller
Director – National Joint Utility Team

Exhibit 20

15430 Endeavor Drive, Jupiter FL 33478

FPL

January 31, 2019

Via Overnight Delivery
AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

Via Overnight Delivery
AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Via Email
AT&T Technology Operations
Attn: Dianne Miller, Director National Joint Utility Team
Dm6516@att.com

AT&T Services, Inc.
Jeffrey Brooks Thomas
Assistant V.P. and Senior Legal Counsel
Jeffrey.thomas.1@att.com

Subject: FPL's Notice to Initiate Mediation with AT&T / **Requires Immediate Attention**

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Dear General Counsel, Chief Rights of Way Counsel, Ms. Miller and Mr. Thomas:

Under the Dispute Resolution Clause ("DRC"), the parties are required to agree to a mediator within 15 days of the issuance of the request for mediation. FPL has offered 5 different mediators within this time frame to AT&T. As stated multiple times, FPL is not agreeable to use the only proposed mediator offered by AT&T

FPL has not walked away from any agreement to use a mediator. The DRC requires that mediation take place within 100 days of the disputing parties' notice to mediate (April 19, 2019). By the time AT&T indicated it would agree to mediator John Freud, his availability for mediating the case within the 100 day window was lost. The earliest possible date Mr. Freud can mediate this dispute is a half day on the morning of May 1, 2019 which is outside the 100 day window. Thus, my request for AT&T to consider the other two mediators previously offered by FPL.

Below, FPL offers two options to resolve the search and agreement for a mediator:

First Alternative: FPL will waive the requirement that mediation occur within 100 days if AT&T agrees to use John Freud on May 1, 2019 in Miami. The mediation will be from 8:00 am to 12:00 to 12:30 pm. If this is acceptable to AT&T, ***I must have confirmation in writing by noon tomorrow, February 1, 2019*** from AT&T that it is likewise waiving the 100 day requirement and that all necessary AT&T representatives are available at this date and time. Our counsel has a hold on the May 1 date with the mediator's office that will expire at 2:00 pm

tomorrow if not taken. The mediator's office has advised that it has others that would like to take this slot and they need a commitment now. If this date and time is not acceptable, we need to select another mediator. Mr. Freud's next available date is not until the afternoon of June 20 and FPL is not willing to wait until that date.

Second Alternative: AT&T agree to mediate with one of the two previously proposed mediators. Our office has confirmed the dates for Brian Spector and has made a request as to whether Mr. Silverman is still available on the dates that were recently provided. The below available dates work with FPL's schedule:

Mediator	Available Dates that work with FPL
Scott Silverman (former 11th Circuit Judge) (waiting for confirmation that these dates are still available)	**March:** 18-22, and 25-28 **April:** 11 and 12
Brian Spector	**April:** 1, 3, 8, 10 and 15

If for some reason AT&T cannot agree to one of the two proposed mediators with one of the proposed dates, please offer FPL alternatives dates with another proposed mediator that will take place within the 100 day window (prior to April 19, 2019). If we cannot reach an agreement by 5:00 pm on Tuesday, February 5, 2019, FPL will make a written request on Wednesday, February 6, 2019 for the American Arbitration Association to select a mediator that can perform the mediation within the 100 day window as required under the DCR.

In regard to your request as to who will be attending the mediation on behalf of FPL, I will be attending the mediation along with Dave Bromley, Manager, Regulatory Service and Tom Allain, General Manager Central Maintenance. FPL will also have counsel present. Please promptly let us know how you would like to proceed with the mediators and who will be attending on behalf of AT&T.

Finally, FPL disagrees with AT&T's assessment of the application of federal law to our longstanding written agreement, as well as AT&T's characterization of the scope of the issues that have been identified and discussed to date. I think we have both previously made our positions clear on this point.

Sincerely,

Michael Jarro
Vice President, Transmission and Substation
(561) 904-3751

Exhibit 21

From: MILLER, DIANNE W
Sent: Monday, February 04, 2019 11:51 AM
To: 'Jarro, Michael' <Michael.Jarro@fpl.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: FW: RESPONSE: AT&T / FPL - Selection of a Mediator

Michael,

We can do Mr. Freud on May 1

Dianne

From: Jarro, Michael [mailto:Michael.Jarro@fpl.com]
Sent: Saturday, February 02, 2019 1:18 AM
To: MILLER, DIANNE W <dm6516@att.com>
Subject: RE: RESPONSE: AT&T / FPL - Selection of a Mediator

Diane,

Unfortunately, in light of numerous commitments that we have going on in late April and May, the mediation participants for FPL are not available to be out of the office for two days (which includes travel to DC) during the week you requested in April. Please let us know if you will agree to one of the other proposed mediators and dates that FPL already provided to AT&T. We were able to get an extension until noon on Monday for scheduling the mediation with Mr. Freud on May 1. At that time, they will give that date to someone else. If we do not have an agreed mediator and date by the COB on February 5, we will simply have to turn this over to the American Arbitration Association to schedule a mediation within the prescribed 100 day window.

Thanks,

MichaelJarro
Vice President,
Transmission and Substation
(561) 904-3751 tel
(305) 345-7160 mobile

From: MILLER, DIANNE W <dm6516@att.com>
Sent: Friday, February 1, 2019 12:00 PM
To: Jarro, Michael <Michael.Jarro@fpl.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: RESPONSE: AT&T / FPL - Selection of a Mediator

Michael,

AT&T has been working to try to make May 1 work, but cannot confirm that date right now. However, AT&T is available to meet in Washington, DC with John Douglass as FPL proposed on two earlier dates – Monday, April 29 or Tuesday, April 30. If either of those dates works for FPL, we can confirm the mediation today, and AT&T will agree to waive the Miami, FL and 100-day requirements of the agreement. Please let me know if that is agreeable to FPL.

Dianne Miller
AT&T
Director – National Joint Utility Team

From: Jarro, Michael [mailto:Michael.Jarro@fpl.com]
Sent: Thursday, January 31, 2019 2:42 PM
To: MILLER, DIANNE W <dm6516@att.com>; THOMAS, JEFFREY B (Legal) <jt1579@att.com>
Subject: AT&T / FPL - Selection of a Mediator

Diane,

Attached is FPL's reply re the mediation. Your prompt attention is needed.

Thanks,

MichaelJarro
Vice President,
Transmission and Substation
(561) 904-3751 tel
(305) 345-7160 mobile

Exhibit 22

Attachments: Desktop Procedure - Joint Use Pole Attachment Rental - 2019.doc

From: Bromley, Dave [mailto:Dave.Bromley@fpl.com]
Sent: Wednesday, March 20, 2019 2:31 PM
To: MILLER, DIANNE W <dm6516@att.com>
Cc: Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: FPL / AT&T follow-up

Diane,

As we communicated back in December, before responding to all of AT&T's inquiries, we were awaiting AT&T's production of the internal audit of our joint use agreement which we understood to be the catalyst of AT&T's decision to not pay FPL's invoice. In light of your representation below that there is no specific internal AT&T audit concerning our joint use agreement, we have supplemented our prior responses provided back in December. The added responses have been provided below in **magenta**.

Sincerely,

Dave Bromley

From: "MILLER, DIANNE W" <dm6516@att.com>
Date: January 31, 2019 at 8:16:07 PM EST
To: "Bromley, Dave" <Dave.Bromley@fpl.com>
Cc: "Jarro, Michael" <Michael.Jarro@fpl.com>, "t.g.allain@fpl.com" <t.g.allain@fpl.com>, "RHINEHART, DAN" <dr3539@att.com>, "PETERS, MARK A" <mp2586@att.com>
Subject: FPL / AT&T follow-up

Dave,

As we explained at our last meeting, AT&T's inquiry into FPL's rate calculations was prompted in part by an internal review that resulted in findings about joint use billings. You've asked that AT&T "provide us with a copy of the audit report as it relates to our dispute" both to "help [FPL] better understand these issues" and "so that FPL can identify the specific concerns and issues of AT&T."

AT&T's internal report did not address any specific utility or any particular Joint Use Agreement but, rather, AT&T processes for vetting invoices prior to payment. Consequently, AT&T declines to provide you this report, particularly because it will not help FPL better understand or identify the specific concerns that AT&T has. As we have explained numerous times, AT&T's concern is that FPL has not invoiced rental amounts that comply with the terms of our Joint Use Agreement.

We therefore take this opportunity to renew our request for complete answers to the questions that we provided previously about FPL's rate calculations and invoicing, including the following:

- Invoicing: What inventory methods or procedures does FP&L follow to ensure compliance with the requirement of Section 10.5 that Special Poles that fall under the definitions of Section 10.4 are

billed at the normal adjustment rate and are not billed at 1.5 times the adjustment rates. Are Section 10.4 Special Poles included in the JU – ATT BY CNTY inventory?

See FPL's answer re: special poles below.

Your prompt attention to this request will be greatly appreciated.

Dianne

From: Bromley, Dave [mailto:Dave.Bromley@fpl.com]
Sent: Wednesday, January 30, 2019 10:52 AM
To: MILLER, DIANNE W <dm6516@att.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>; Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>
Subject: RE: FPL / AT&T follow-up

Good morning, Diane – Just following up again regarding our request for a copy of the internal audit report. Is this something that you are going to be able to provide?

From: Bromley, Dave
Sent: Tuesday, January 8, 2019 9:57 AM
To: 'MILLER, DIANNE W' <dm6516@att.com>
Cc: 'RHINEHART, DAN' <dr3539@att.com>; 'mp2586@att.com' <mp2586@att.com>; Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>
Subject: FPL / AT&T follow-up

Diane,

Included In my response to your list of questions (see December 20, 2018 email below) was a request for a copy of the internal audit that led to AT&T's decision not to pay the FPL invoice. Obtaining the internal audit as soon possible will help FPL understand AT&T's decision to not pay the FPL invoice and assist with moving the settlement discussions forward. Your prompt attention to this request will be greatly appreciated.

Sincerely,

Dave Bromley

> **From:** <Dave.Bromley@fpl.com>
> **Date:** December 20, 2018 at 5:53:53 AM EST
> **To:** "MILLER, DIANNE W" <dm6516@att.com>
> **Cc:** "RHINEHART, DAN" <dr3539@att.com>, "mp2586@att.com" <mp2586@att.com>, "Jarro, Michael" <Michael.Jarro@fpl.com>, "Allain, Tom" <T.G.Allain@fpl.com>
> **Subject: FPL / AT&T follow-up**
>
> Diane,
>
> FPL is providing responses (see red below) to some of your questions today. Other questions are concerning to FPL as it appears AT&T in some cases is seeking records associated with events that occurred over 25 years ago. FPL no longer has some of these records, just as AT&T no longer has those records. Asking FPL to produce such records is akin to FPL asking AT&T to produce copies of the written approvals that allow AT&T to

attach to FPL's transmission lines as required by Section 2.3 of Article II. It is doubtful that AT&T could produce such written approvals. Our relationship and understanding of annual joint use billings has been in place for decades and the absence of records that indicate any issues or concerns with these billings along with AT&T's timely payments indicate that all were in agreement with what was happening.

At our December 7 meeting, AT&T mentioned that the main driver behind the delay in AT&T's payment was an internal audit report that included findings associated with joint use billings. To help us better understand these issues, please promptly provide us with a copy of the audit report as it relates to our dispute. This will help us identify the specific concerns and issues of AT&T. We would also like to know if this was the first such internal audit conducted by AT&T over the term of the Joint Use Agreement. If not, we would like to receive copies of those audits and would expect that, in light of the current dispute, that you suspend any record destruction schedule to ensure that any records, including audits, billings, reports, correspondence or other documents, relating to the AT&T and FPL Joint Use Agreement, are maintained.

Questions to FP&L Following the FP&L – AT&T Meeting of December 7, 2018

To: Michael Jarro, Tom Allain, Dave Bromley (cc: Rhinehart, Peters,)

Michael, Tom, Dave,

We're glad that we could finally sit down with you last Friday to discuss AT&T's questions about FP&L's calculation of rental rates under our companies' Joint Use Agreement. We had hoped that FP&L would be able to show us its calculations and all supporting data at the meeting. You provided answers to several of our questions but, with respect to others, asked that we follow-up in writing. Because we previously requested much of this information in phone calls, emails, and letters that date back to early April, we are including them here with additional specificity to try to assist FP&L in responding.

Just to be clear, the AT&T detailed questions regarding rate development under Article X and the additional support for the Gross Rent Billing (which was discussed at our December 7 meeting) had not been previously asked/requested. Regarding additional support for and/or questions about the Transmission Pole Rate and Rate Development under Article VI, FPL has previously addressed these matters in its responses and/or at the meeting, but will address them here again for the sake of your convenience.

We would appreciate your response to these questions as soon as possible. Receipt of the requested information to confirm FP&L's compliance with the Joint Use Agreement is a predicate to AT&T's ability to evaluate and, if proper under the contract, process the invoice.

We respectfully disagree that FPL must respond to AT&T's information requests in order to "confirm compliance." AT&T's unilateral decision to cease payment of its longstanding obligations under the Agreement was just that, "unilateral" without any basis whatsoever that FPL was not in compliance. That said, we have answered many of AT&T's questions and will endeavor to answer some additional requests for information to the extent FPL believes that the questions are well founded and legitimately asked in the interest of facilitating AT&T's payment of its obligations under the Agreement.

Transmission Pole Rate

On July 17, we asked for "written contractual language and/or addenda as it relates to the 'Transmission Pole Rates.'" Thank you for sending on Monday a copy of the July 6, 1993 letter from FP&L to Southern Bell that refers to a Transmission Pole attachment rate. We would, however, still like to see documentation showing that AT&T (or Southern Bell) agreed to the [redacted] rate methodology for 1993 and all other rental years.

FPL timely provided a response to this request on July 23. Additionally, the July 3, 1993 letter provided last week is the earliest dated document that FPL has been able to locate that indicates that FPL was charging AT&T the adjustment rate, [redacted], for transmission poles. While FPL is not able to locate any documentation showing AT&T agreed to this transmission rate calculation, FPL has no documentation that indicates AT&T disagreed with it. Likewise, FPL is not aware of any verbal objections made by AT&T to this rate. The fact that AT&T has been paying this fully disclosed rate – unchallenged and without written or oral objection for decades – indicates that AT&T agreed with this transmission rate calculation.

FPL points you to all invoices and payments made by AT&T for 1993 and all other rental years through 2017 wherein AT&T paid for its attachments to FPL's transmission poles. These documents should be in AT&T's possession.

Rate Development Under Article X

In early April, we raised "several concerns related to the calculation and the financial information used to develop the 'Joint Use Pole Attachment Rate Calculation'" that have not been resolved. In particular:

Again, FPL notes that these detailed questions/request for information set forth below were not previously asked/requested and are being asked for the first time more than 9 months after FPL submitted its invoice for payment.

Asset Life: We would like to understand why FP&L uses different asset lives in the rate development and elsewhere (e.g., [redacted] year asset life for the Carrying Charge Rate, 44-year average service life and 32.16 year average remaining life reported in the 2017 FERC 1, page 337.1, and [redacted] asset life assumed in the percent left calculation of the Adjustment Rate). Please explain these differences, provide any supporting documentation showing the actual asset life of the joint use poles, and explain why the values used in the rate calculation are the correct ones under the Joint Use Agreement.

Historically, FPL has used the average remaining life contained within FPL's most recent FPSC-approved depreciation study (currently [redacted]) vs. the average service life (currently 44 years) to develop the depreciation rate utilized to determine the annual carrying charge rate, as the average remaining life is the method the FPSC has approved for FPL. The [redacted] life method as used in the Iowa curve, is intended to capture the very small population of surviving poles that are no longer being depreciated, but still have carrying charges associated with them. FPL maintains pole information as mass property consistent with standard industry practice. FPL's rate methodology is not inconsistent with the Joint Use Agreement, as there is no specific direction provided in the joint use agreement for calculating

depreciation rates/expense. (Also, see FPL's response to AT&T's question on the Depreciation Rate)

Depreciation Rate: We would like to understand why FP&L uses a different depreciation rate in the Carrying Charge Rate development ([redacted]) and its 2017 FERC 1 (3.58%). It appears that the [redacted] depreciation rate does not include the cost of removal, but the 3.56% depreciation rate does. Please explain how FP&L accounts for the cost of removal of poles (for example, is the cost of removal accrued into the depreciation reserve and then charged to the depreciation reserve on removal, or is the cost of removal expensed in the year incurred?) and why the [redacted] depreciation rate is the correct one under the Joint Use Agreement.

The [redacted] depreciation rate does not reflect the cost of removal. The cost of removal is accrued into the depreciation reserve (through a depreciation rate that includes removal, e.g., 3.58%) and when assets are retired, removal is charged to the reserve. Using a depreciation rate exclusive of removal has caused the Carrying Charge Rate to be lower than it should be.

Carrying Charge Rate: We remain confused about FP&L's use of a year-by-year Carrying Charge Rate under the Joint Use Agreement instead of a current-year Carrying Charge Rate. Please explain why FP&L is using this methodology and identify the contractual support for its use. On May 8, Tom Kennedy stated that "WMS is the acronym for FPL's Work Management System" and explained that it is used to estimate the "cost to install a pole under normal condition for the year the rate is calculated." We would still like validation of these WMS cost estimates. For example, we would like to see FP&L's continuing property records identifying the number of poles by type and size along with their associated total gross investment by account or subaccount and total counts and investment amounts by inventoried unit type for appurtenances for year-end 2016 and 2017. We'd also like information about the number of poles by type (wood, concrete, etc.), size (height), and class with their respective booked investment and the units and cost of appurtenance items totaling the $302,793,090 reported for 2017.

The year-by-year carrying charge rate is based on the cumulative present value of the revenue requirement (including return, taxes and depreciation) related to the poles placed in service in a given year. The percent of surviving poles to total surviving poles for each year is used to weight the product of the carrying charge rate and pole cost. The sum of these weighted averages by year equals the joint use rate. The Joint Use Agreement does not include any specific methodology language for calculating the Carrying Charge Rate and the weighted average based on surviving poles has been historically used for decades (without objection by AT&T) to approximate a reasonable estimate of the carrying charges for previous years. FPL's methodology is not inconsistent with the Joint Use Agreement. See attached files for requested information for 2016 and 2017.

Iowa Curve: On May 8, Tom Kennedy informed us that FP&L uses an Iowa Curve methodology to assume the percentage of surviving poles used in the rate calculation. We would still like to see further support for this methodology. For example, we would like to see any documentation showing that AT&T agreed to the use of an Iowa Curve. We would also like to see any vintage year

investment records for FP&L's poles, would like to know whether the same R2.5 Curve cited on page 337.1 of FP&L's 2017 FERC 1 was used to compute the invoiced Adjustment Rate, and would like to understand, if it was not, what Curve was used and why. Whatever Curve was used, we would like to see its full formula.

The invoiced Adjustment Rate was computed using an Iowa curve that estimates the percentage of surviving poles based on a [redacted] life and is not the same R2.5 cited in the FERC Form 1. Since FPL treats its poles as mass property consistent with standard industry practice, this use of the Iowa Curve is appropriate to determine surviving poles percentages. The requested vintage information is contained in the attached files referenced above. FPL also points you to all payments made by AT&T through 2017. FPL annually provides its calculation documents prior to the due date for payment. These documents should be in AT&T's possession.

Special Poles: Section 10.6 states that FP&L cannot use special poles when calculating the Adjustment Rate. We would like to understand what actions FP&L has taken to ensure that the cost of special poles is excluded. For example, are the costs for the special poles listed in the JU – ATT BY CNTY inventory excluded from the cost calculation and how? What materials are special poles made of? Are any wood poles? What inventory methods or procedures does FP&L follow to ensure compliance with this requirement Procedures: We think that it would accelerate our evaluation if FP&L would provide us copies of any methods and procedures that are used when FP&L develops the Carrying Charge Rate and the Adjustment Rate.

Only AT&T has the ability to identify poles that meet criteria in Section 10.4 (C). Therefore, FPL is reliant on AT&T to identify poles that should be excluded. Special poles are solely made up of concrete poles, which are identified in surveys (which AT&T verifies as being accurate). AT&T is provided the number of joint use poles (including special poles), by company in the file JU – ATT BY CNTY), which FPL provides AT&T - usually a month or so in advance of the annual billing. The advance notice provides AT&T the opportunity to advise FPL of any changes that need to be made to the joint use numbers/forecast prior to the annual billing. To date, FPL is not aware that AT&T has ever requested an adjustment to the count of special poles. See attached procedures.

As mentioned at our meeting, it is very troubling that AT&T has waited over nine months after the FPL invoice was submitted for payment for the ***2017 calendar year*** to ask FPL for this information. As we have repeatedly informed AT&T, and as AT&T knows, FPL has not changed its billing practices that have been accepted by the parties for decades. These billing practices are not inconsistent with the terms of the Agreement.

Before FPL makes the effort to respond to the information requested in this section, please provide the internal audit that was alluded to at the meeting that led to AT&T's decision to not pay the FPL invoice. We want to fully understand the issues preventing AT&T from releasing payment before we start the process of gathering this information. This will better assure that we can fully respond to any issues that AT&T contends are holding up the release of payment to FPL.

Rate Development Under Article VI

AT&T has asked on several occasions, including August 21, September 13, October 4, and December 3, for documents that show what actions FP&L has taken to ensure compliance with Article VI's requirement that the invoiced rates comply with all applicable law, including federal law. We again request insight into FP&L's analysis and the following documents:

As stated at the December 7 meeting, it is FPL's view that Article VI (Specifications) has nothing to do with the rate but rather concerns compliance of the poles , e.g., with the National Electrical Safety Code. Nothing in Article VI suggests otherwise.

Executed License Agreements: FP&L must have considered the terms and conditions of the license agreements it has with our competitors when deciding whether the rate charged AT&T is just and reasonable. Please provide copies of FP&L's executed license agreements (the name of the other entity may be redacted) and a copy of the draft license agreement that FP&L offers to new licensees.

New Telecom Rate Calculations: FP&L must also have considered the new telecom rates charged our competitors when deciding whether the rate charged AT&T is just and reasonable. Please provide us, at a minimum, FP&L's 2017 new telecom rate calculation and all of its inputs so that we can compare the new telecom rate to the 2017 rates that FP&L invoiced AT&T.

FPL has previously responded to these requests. FPL does not believe that the requested documents and information contained therein are relevant in the calculation of the agreed upon contract rate. There is nothing in the Agreement that remotely suggests such requested information should be considered in calculating the rate. *See* Section 10.6 of the Agreement for the relevant factors in calculating the rate.

Also, as we have previously communicated, there is nothing in the 2011 FCC Order that affirmatively requires the parties to modify an existing agreed upon contract rate. If you disagree, please explain.

As stated in prior emails and at the meeting, if AT&T wants to re-negotiate the contract rate with FPL, the Agreement requires 6 months written notice. To date, FPL has not received such written notice and AT&T indicated at the December 7 meeting that AT&T had not and was not initiating re-negotiation of the rate. If AT&T does not want to re-negotiate the rate, FPL must continue to rely upon the terms of the Agreement for calculating the rate. FPL has done nothing different in calculating the rate this year as compared to the calculation performed over the past several decades without objection from AT&T.

As FPL previously provided to AT&T, FPL cannot provide copies of executed license agreements with other attachers and there is nothing within the FPL/AT&T Joint Use Agreement (JUA) that makes the requested telecom rates calculations relevant to the rate FPL charged AT&T in 2017.

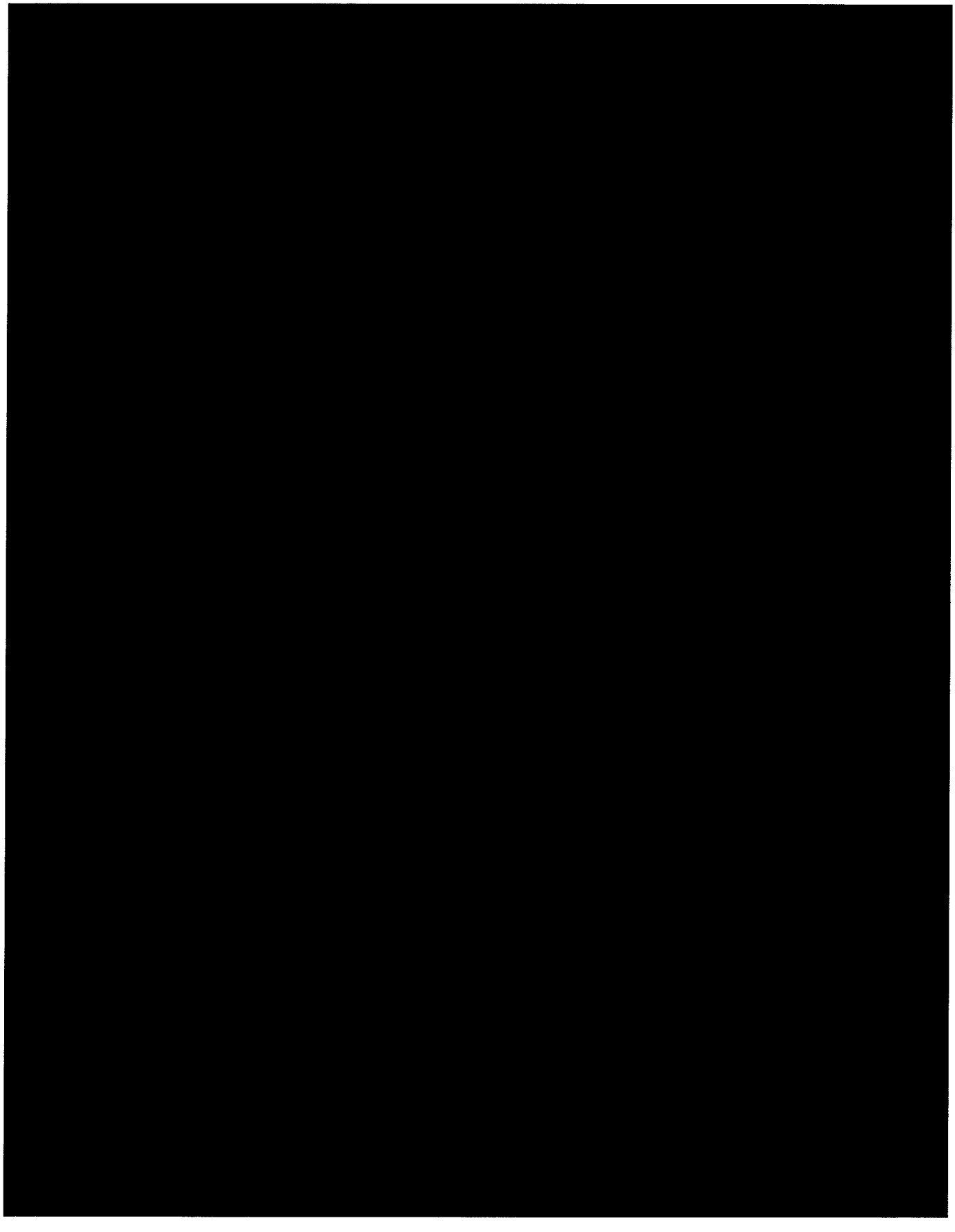
Gross Rent Billing

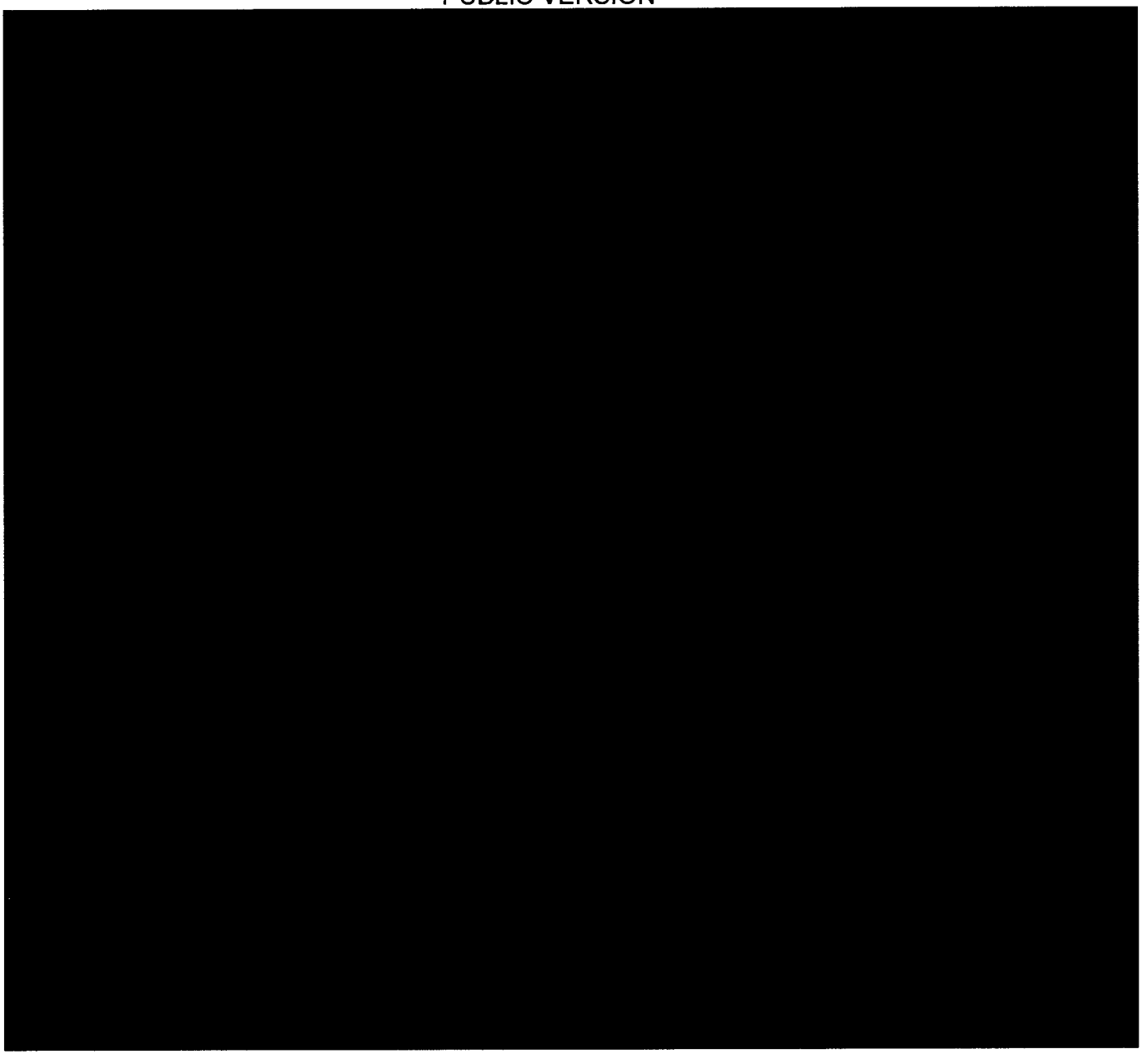
On May 8, Tom Kennedy informed us that the FPSC ordered FP&L to shift from the "Deficiency Billing" approach required by the Joint Use Agreement to one where the company books gross revenue and gross expense. We would still like to see supporting documents for this change, including the FPSC's Order and any documentation showing that AT&T was notified about the change and agreed to it.

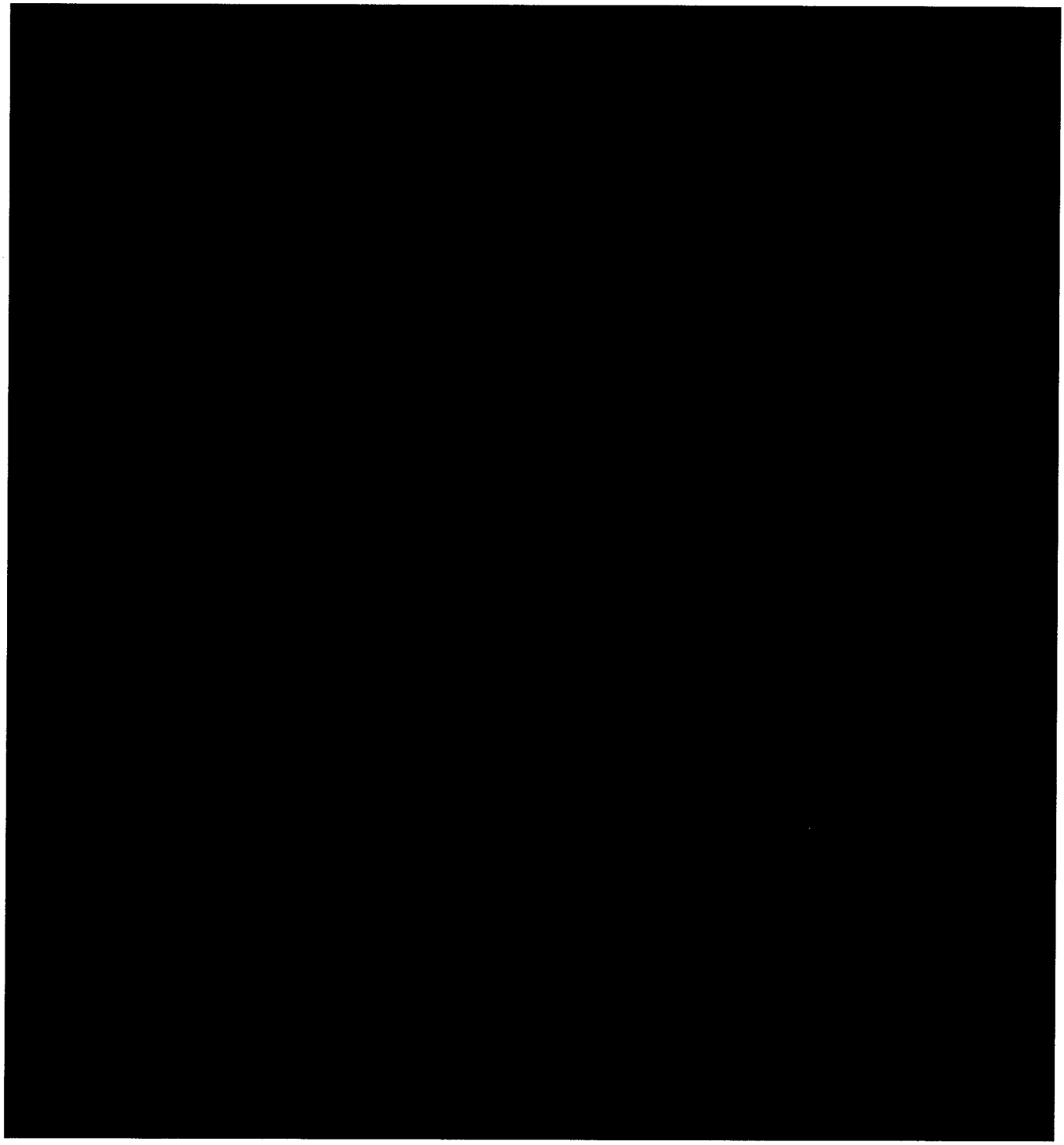
As provided in Mr. Kennedy's May 8, 2019 email to Mr. Simmons, it was demonstrated that FPL's "gross revenue and gross expense" methodology produces the same result as the "Deficiency Billing" methodology. In other words, you get the same result regardless of what approach you use. If you still think this document will somehow bring some value, we will look for this document once the internal audit is produced by AT&T.

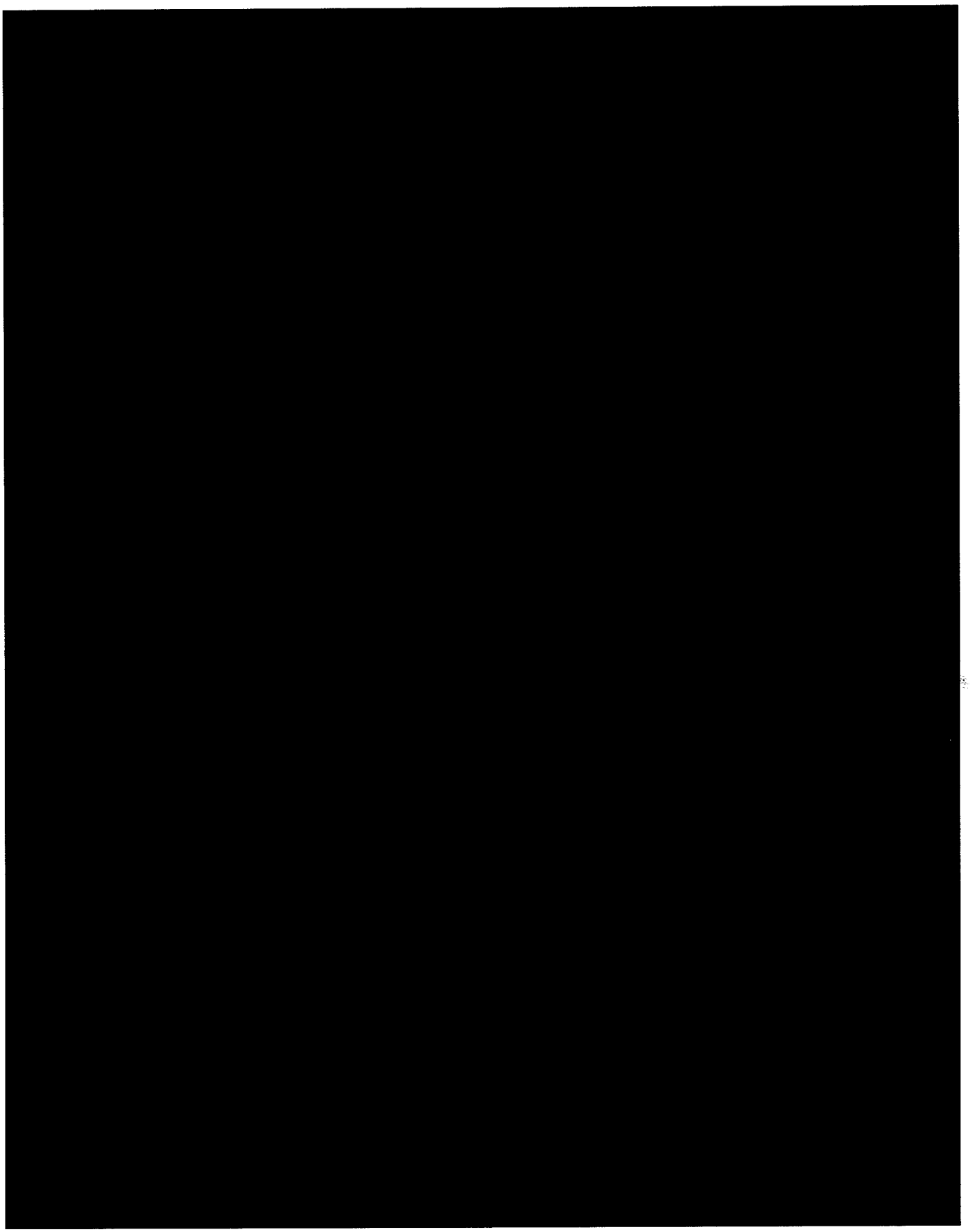
FPL is unable to locate the specific FPSC order/directive that required FPL to record joint use revenues and expenses gross vs. net or any specific documentation that directly shows that AT&T was notified/agreed to this "change". However, the practice to record joint use revenues gross vs. net has been in place for decades, without any objection from AT&T and, as provided in Tom Kennedy's May 8, 2018 memo to Phillip Simmons, this methodology was not really a "change" as it produces the same result as the Deficiency Billing" method.

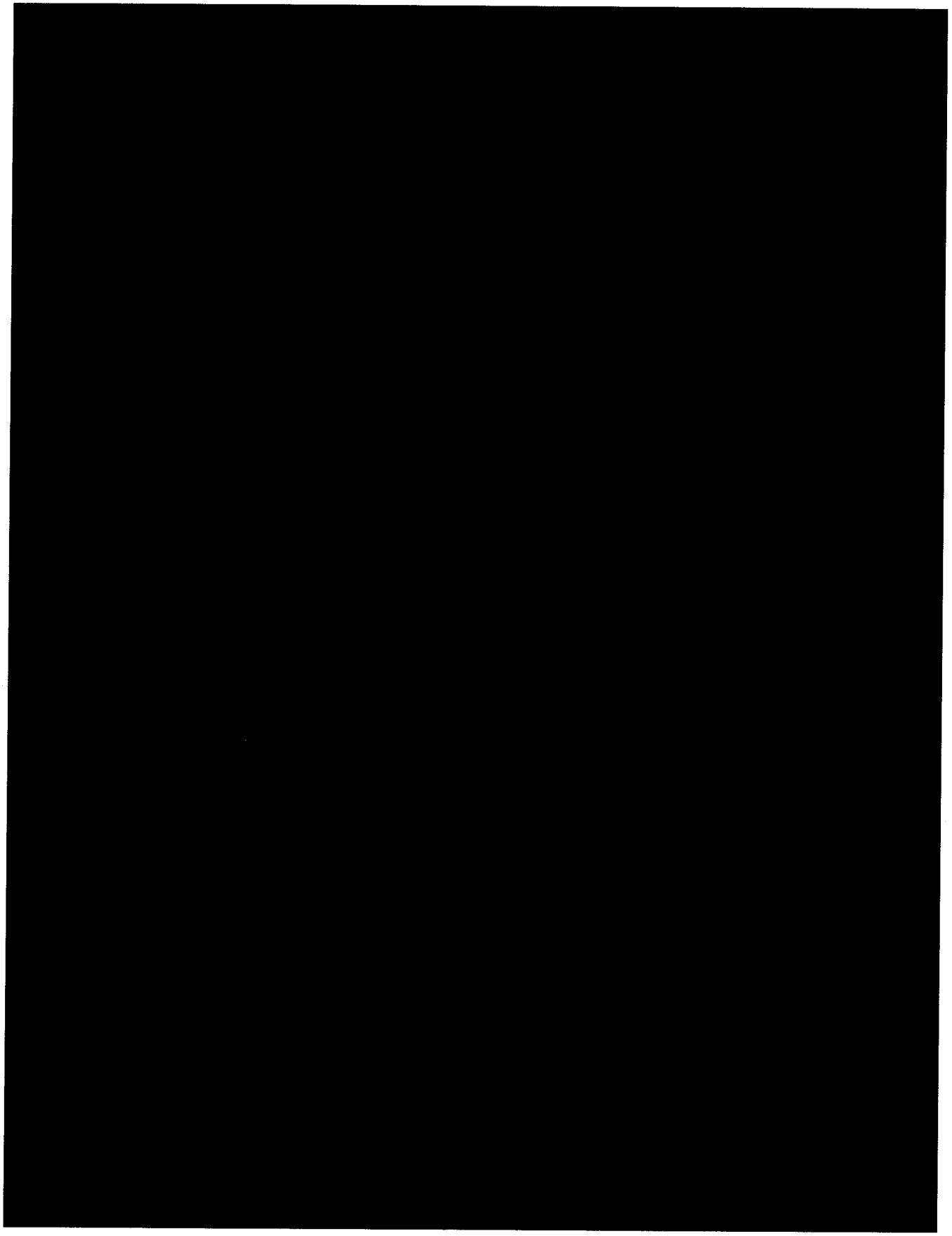
Again, thank you for meeting with us last Friday. We look forward to receiving this information soon, so that we can review the steps that FP&L took to validate the rental invoice.

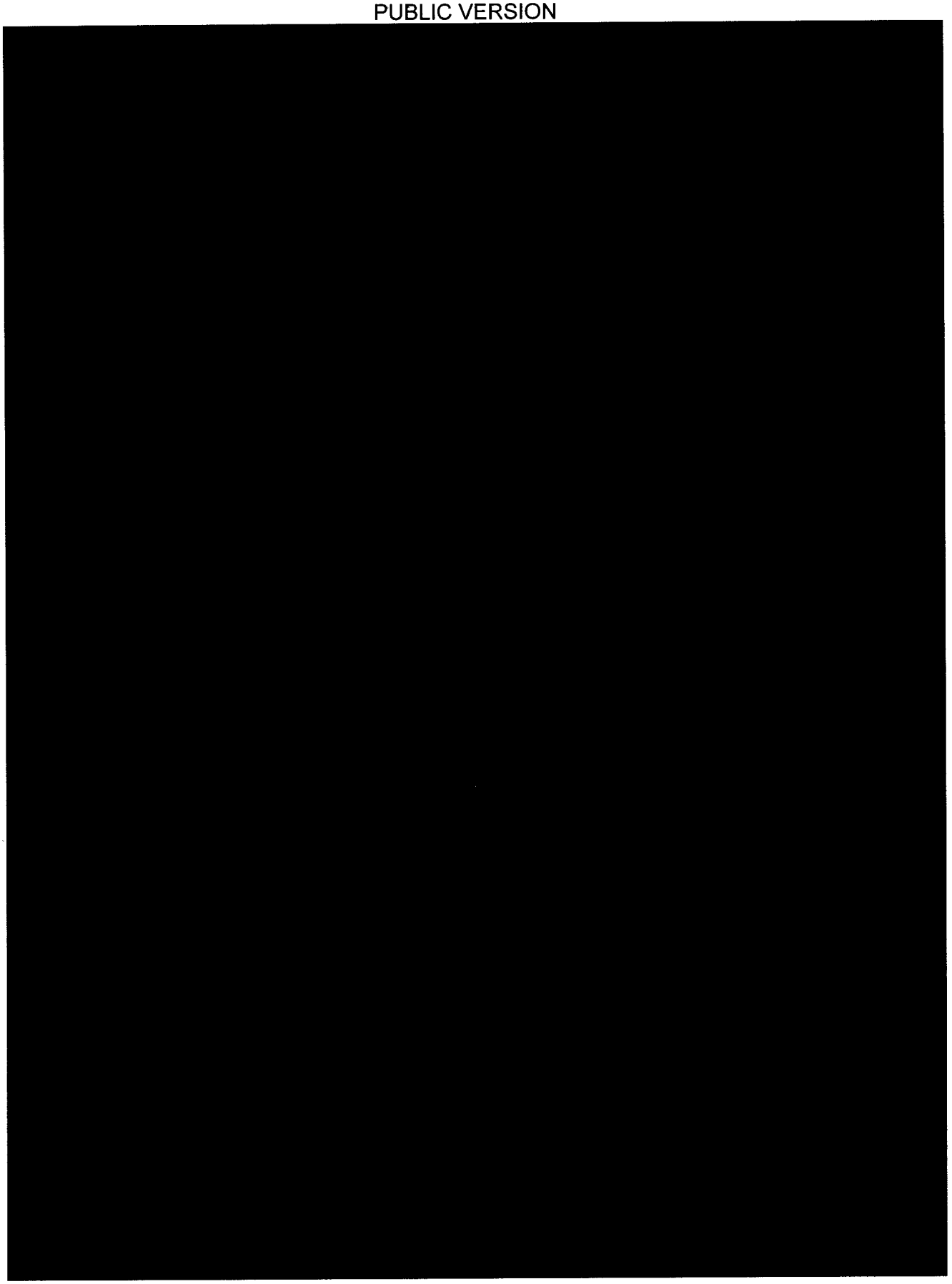


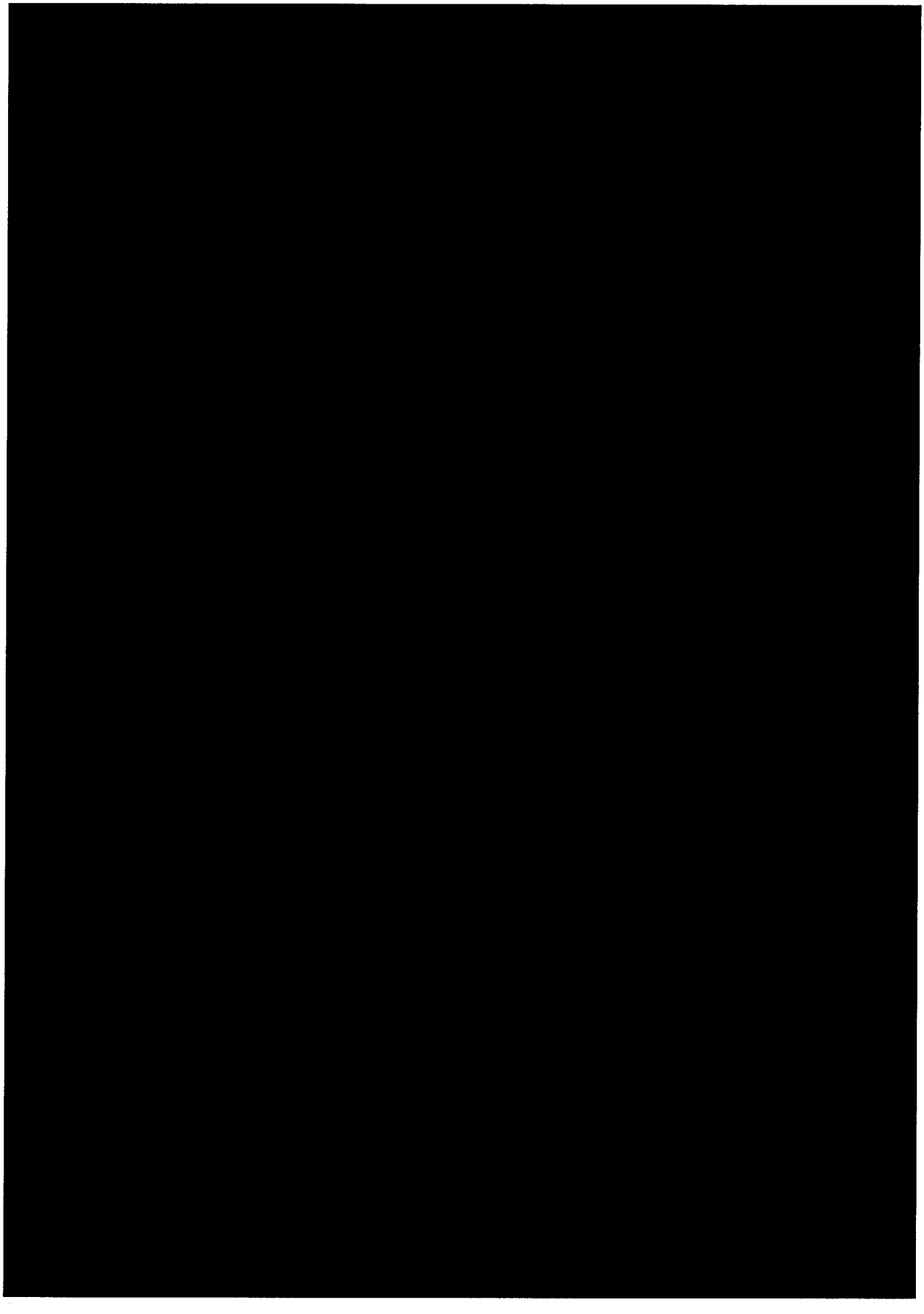


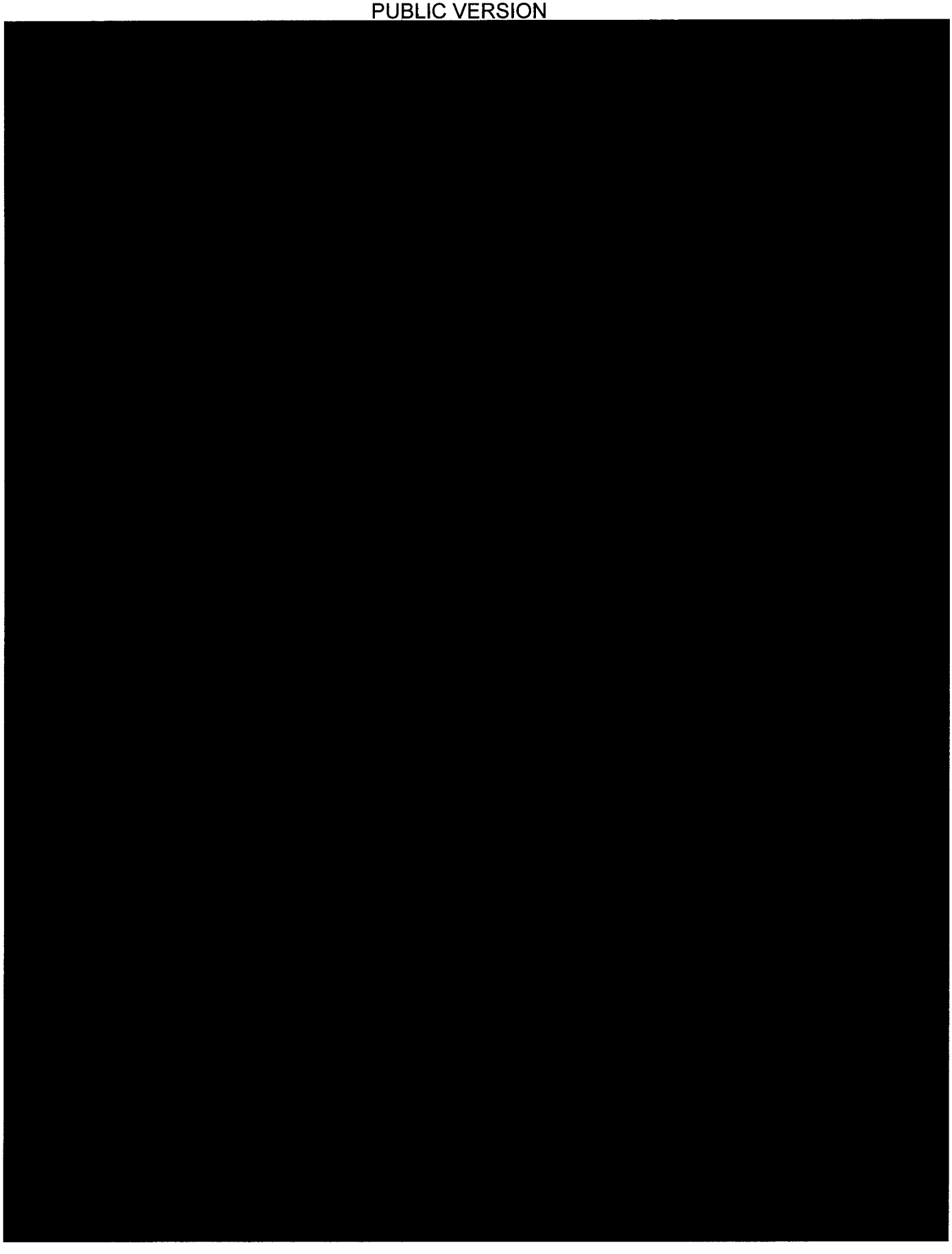


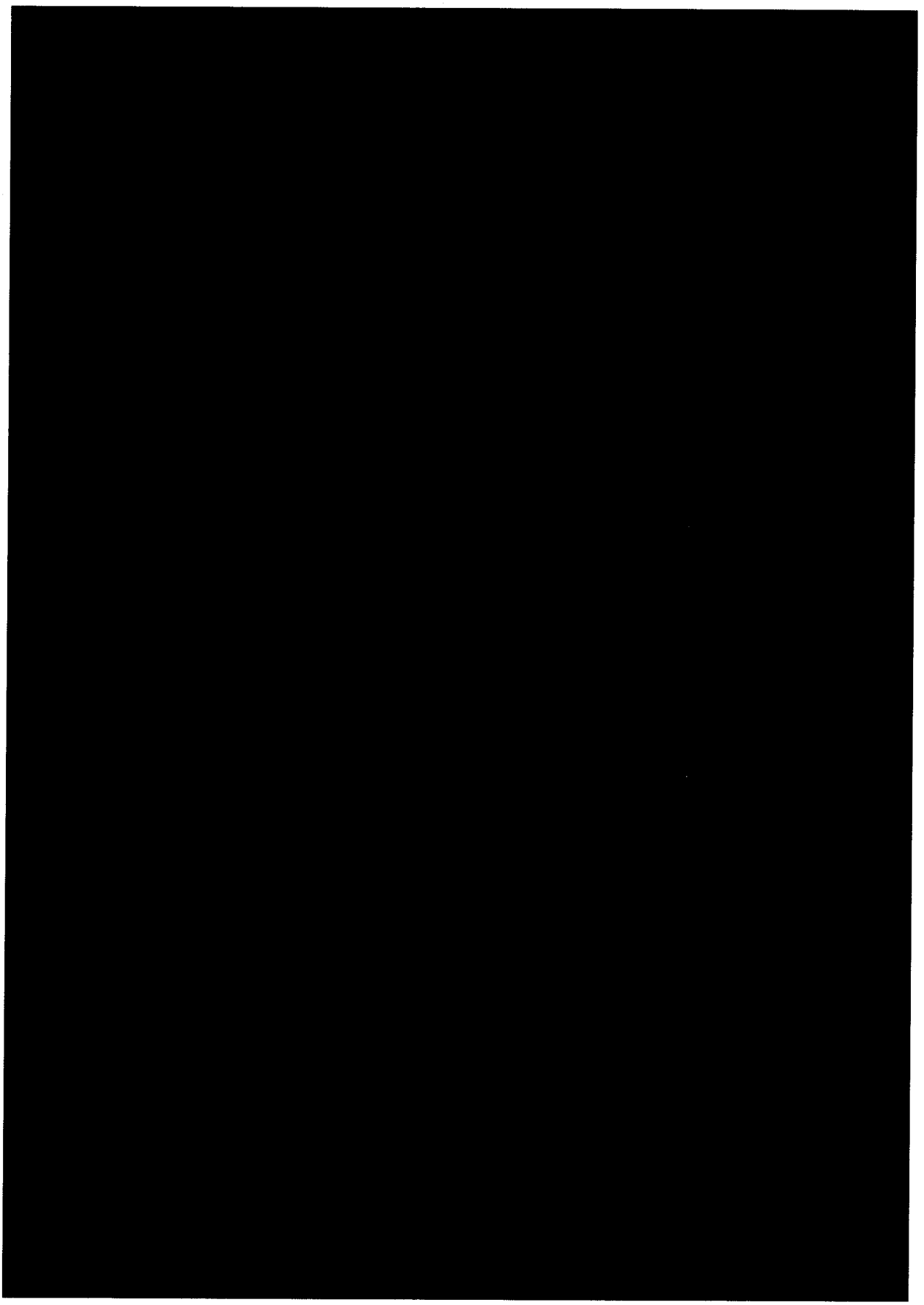


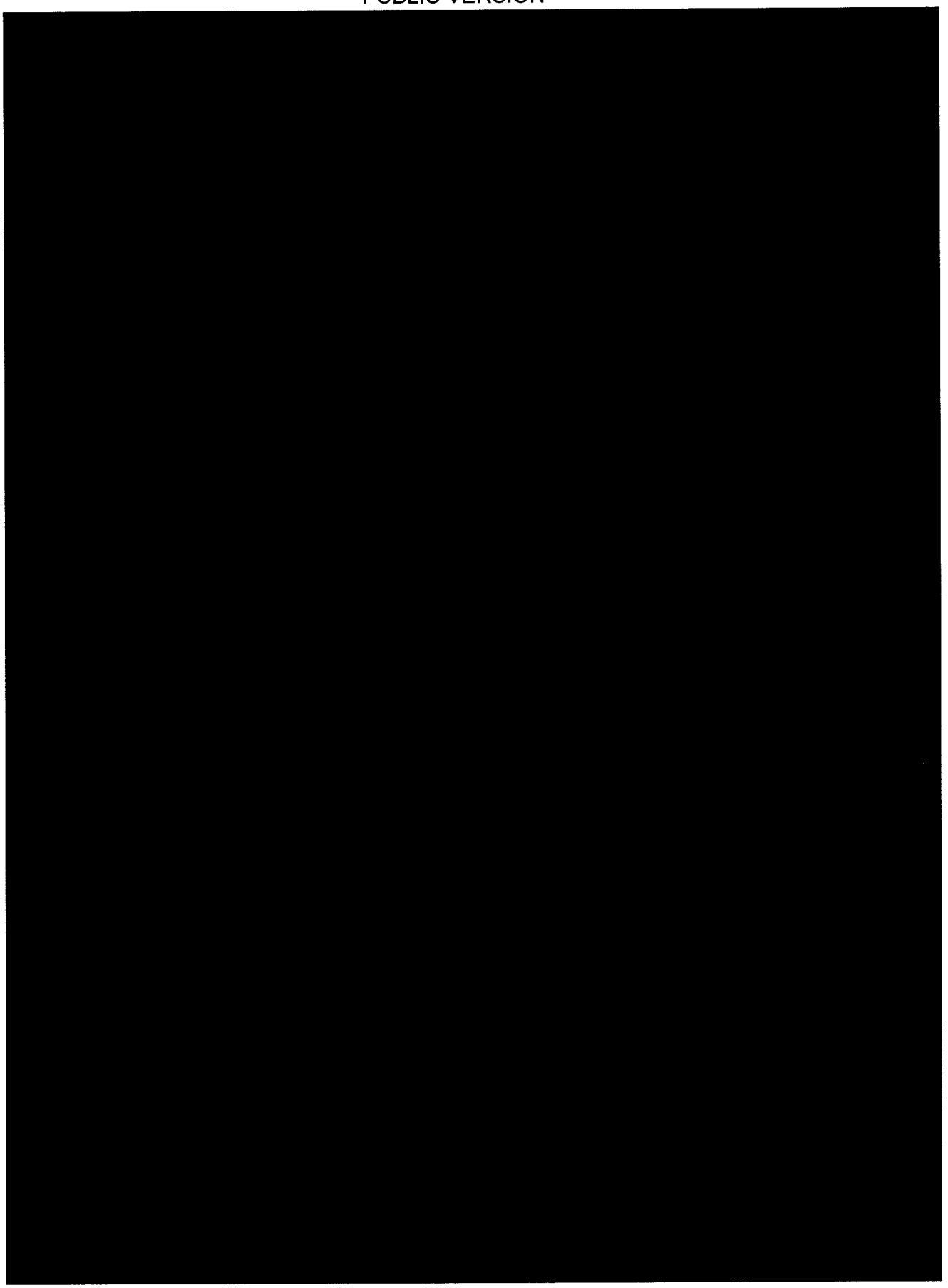


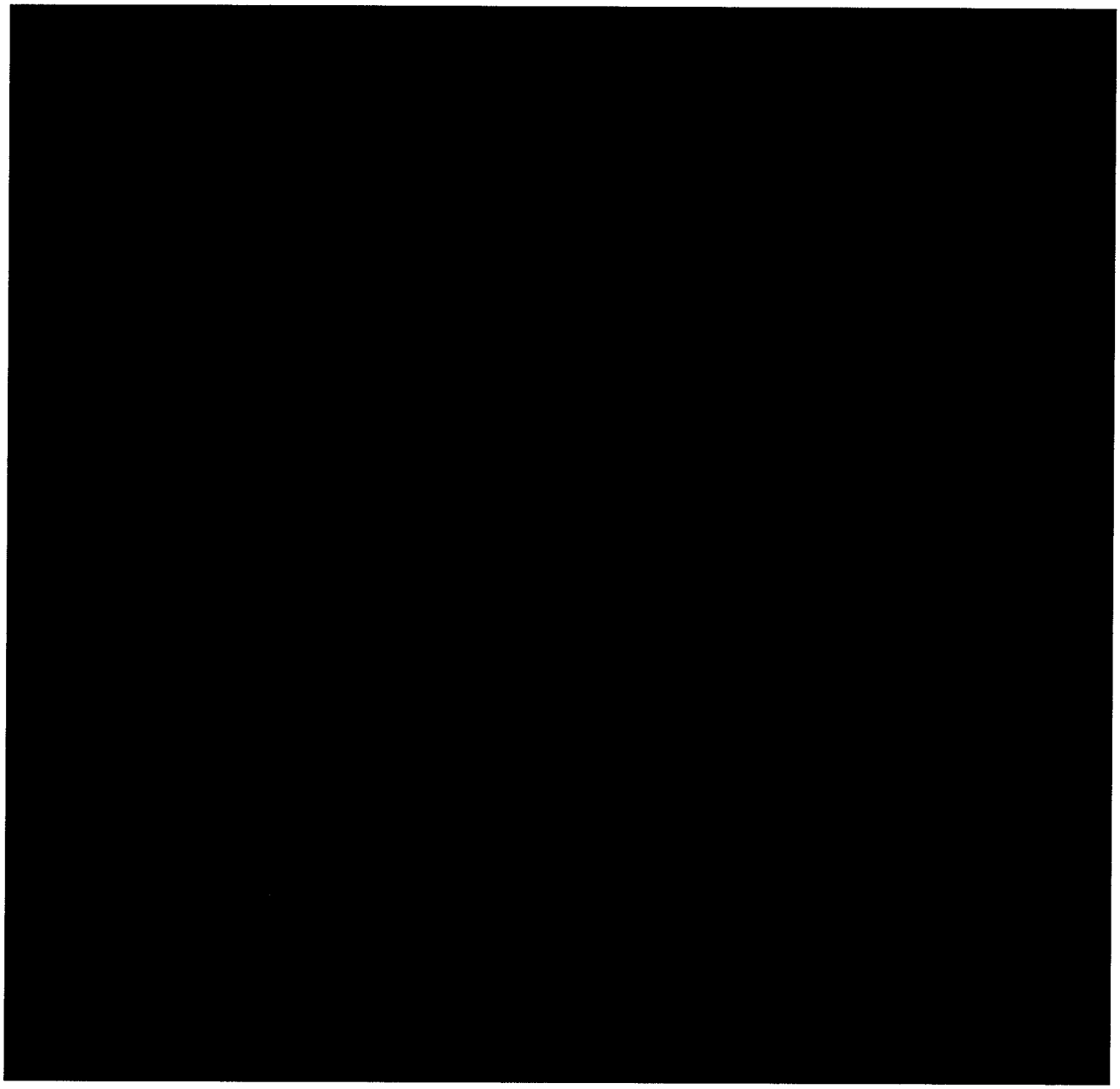


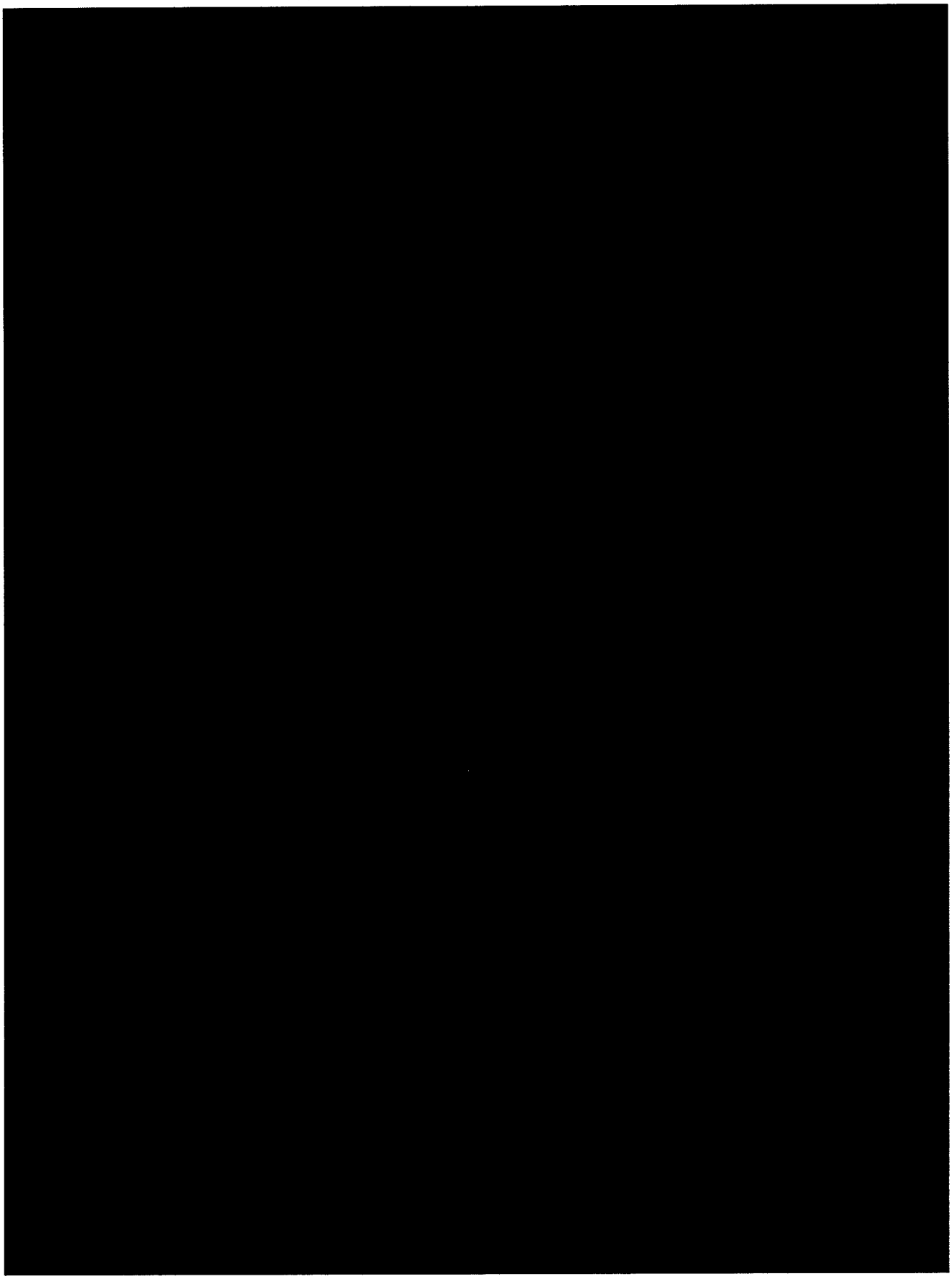












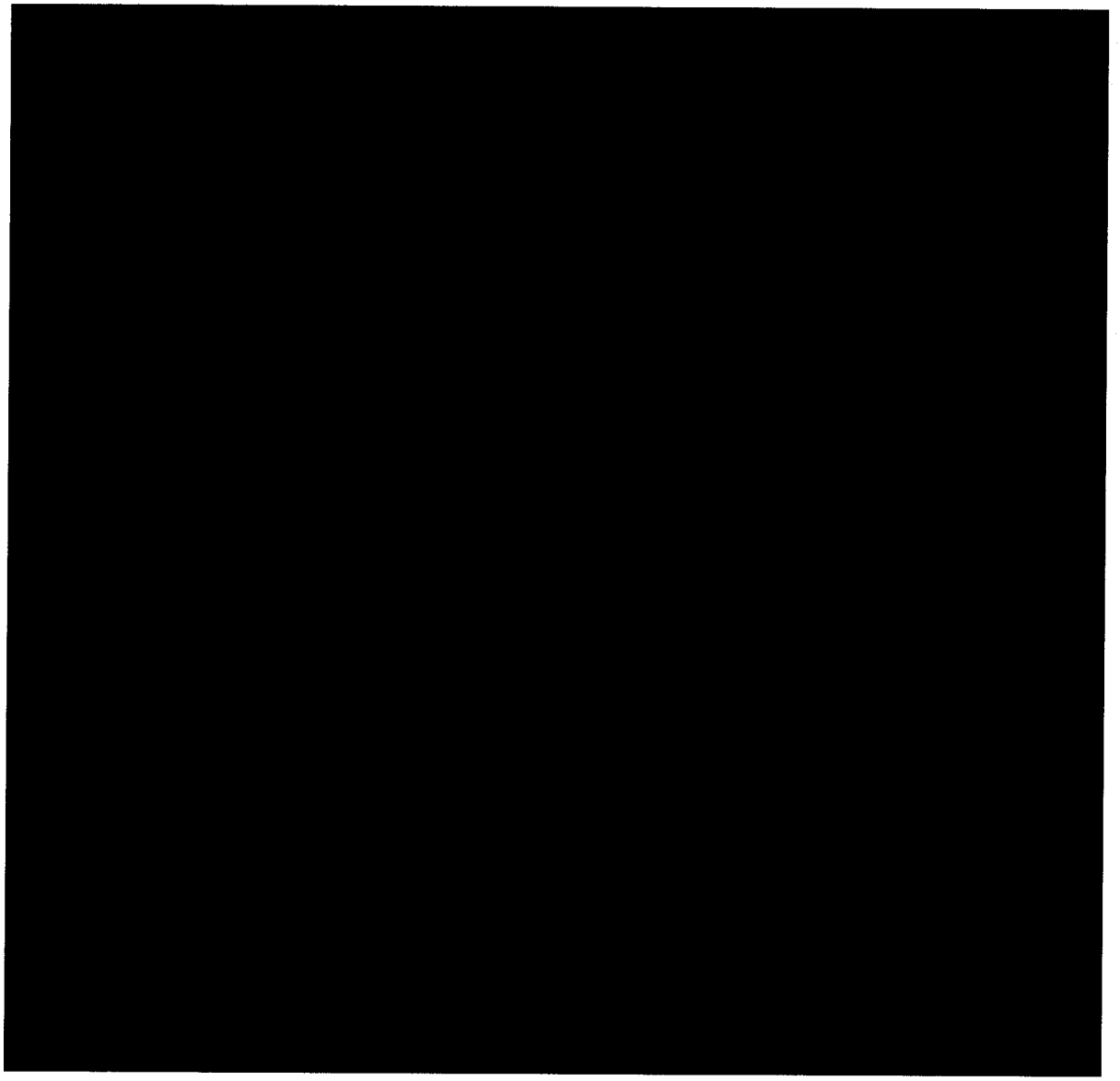


Exhibit 23

PUBLIC VERSION

15430 Endeavor Drive, Jupiter FL 33478

March 25, 2019

Via Overnight Delivery

AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Subject: FPL's Notice of Terminating AT&T's Rights to Attach to all FPL Poles

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

To Whom it May Concern:

This letter is being delivered to you in accordance with Articles XII and XVI of the Agreement. Effective immediately, AT&T's right to attach to FPL's utility poles is terminated.

During 2017 and 2018 and continuing through the present, AT&T has been attached to more than 420,000 FPL poles. On March 5, 2018, FPL sent an invoice to AT&T in the amount of [redacted] for AT&T's attachments to FPL poles ***during the 2017 calendar year***. Payment on that invoice was due by April 4, 2018. Despite FPL's repeated requests for payment, AT&T has not made any payment to date on a substantial indebtedness that is over a year old. Yet AT&T has continued to occupy and use FPL's poles to conduct AT&T's business.

On August 31, 2018, FPL sent AT&T a formal written notice identifying three separate defaults which included the failure to pay FPL's invoice for the 2017 calendar year ("**Notice**"). AT&T failed to take any action to cure any of the three defaults within 60 days of the Notice, which resulted in a suspension of AT&T's rights under Section 12.1 of the Agreement. More than 200 days have elapsed since the start of that suspension and, despite FPL's repeated efforts to resolve this matter, AT&T still has made no payment and has applied little to no effort toward curing the other two defaults identified in the Notice. At the same time, AT&T continues to occupy and use FPL's poles to conduct AT&T business.

On February 1, 2019, FPL issued its invoice to AT&T in the amount of [redacted] for AT&T's attachments to FPL poles during the 2018 calendar year. Payment on that invoice was due by March 3, 2019. With respect to that invoice, FPL has received neither payment nor any communication from AT&T regarding its inability to pay; yet AT&T has continued to use FPL's poles to conduct AT&T business.

To date, AT&T's total outstanding balance amounts to more than [redacted] million with interest. Interest charges are accruing daily. AT&T has given no indication that it intends to pay the amounts it owes under the Agreement.

In contrast to AT&T's default, throughout the entire 44 years that the Agreement has been in place, FPL has timely compensated AT&T for the FPL attachments on AT&T-owned poles. We would observe further that, among the many telecommunications and cable companies who attach to FPL poles, AT&T is the only company on notice from FPL for delinquency in payments and default of its contractual requirements. AT&T's unwillingness to meet its long-standing obligations or to request a payment plan, if one is needed, adversely affects all FPL customers. As you know, the payments from AT&T and others who attach to FPL's poles serve to offset the costs of FPL's infrastructure reflected in FPL's rates. Thus, AT&T's [redacted] million indebtedness falls on the shoulders of FPL customers who are bearing the costs of poles used by AT&T, with no offset from AT&T for the value associated with AT&T's usage as prescribed by the Agreement. We cannot allow this to continue.

As a consequence of AT&T's continuing defaults identified in the Notice and failure to cure its default of the payment obligation within 60 days of the suspension, FPL hereby invokes its rights pursuant to Section 12.3 of the Agreement to terminate AT&T's rights to attach to FPL-owned poles. Accordingly, all of AT&T's existing attachments must be removed from FPL-owned poles and no new attachments to FPL-owned poles are permitted.

Finally, pursuant to Article XVI of the Agreement, FPL hereby provides notice that it is terminating all rights related to the further granting of joint use of poles, to the extent any rights of AT&T might survive the termination effectuated pursuant to Section 12.3. As provided in Article XVI, this additional termination will be effective in 6 months from the date of this letter, i.e., August 26, 2019.

In light of the upcoming mediation scheduled for May 1, 2019, FPL will not take any immediate adverse action or require AT&T to begin removing its facilities. In the event the pending disputes are not resolved at the close of the mediation process, FPL demands that AT&T promptly provide a written plan to expeditiously remove its facilities from all FPL poles. As a consequence of the termination of AT&T's attachment rights, until ATT's facilities are removed, it is obligated to continue to pay FPL for its unauthorized attachments and may be responsible for other compensation and damages arising from AT&T's failure to remove its facilities.

Sincerely,

Michael Jarro
Vice President,
Transmission and Substations

cc: Diane Miller (via email dm6516@att.com)

Enclosures:
Joint Use Invoice for 2017 Calendar Year
Joint Use Invoice for 2018 Calendar Year

Exhibit 24

PUBLIC VERSION

AT&T

April 3, 2019

Michael Jarro, Vice President, Transmission and Substation
Florida Power & Light Company
15430 Endeavor Drive
Jupiter, FL 33478
Michael.Jarro@fpl.com

Re: Response to March 25, 2019 Notice of Termination

Dear Michael:

We received your March 25, 2019 letter in which you claim that FPL has terminated AT&T's right to attach to FPL's poles under two separate and independent provisions in the Joint Use Agreement, as amended ("JUA"), specifically Section 12.3 and Article XVI. AT&T disagrees that FPL has terminated AT&T's right to attach to poles under Section 12.3 but recognizes FPL's termination of the "further granting of joint use" for both companies.

Under Section 12.3, FPL has not, and cannot, terminate AT&T's rights to attach to FPL's poles because AT&T is not in default of a money payment obligation under the JUA. We have previously detailed at length the reasons why AT&T is not in default of any of its obligations under the JUA, and so will not repeat them here. We will note, however, that FPL's attempt to terminate AT&T's attachment rights under Section 12.3 is itself a violation of the JUA, as FPL is obligated to participate in good faith in the ongoing contractual dispute resolution process and to maintain the status quo until the dispute is finally resolved. Instead, FPL has refused to discuss the "just and reasonable" rental rate required by the JUA and by law, has failed to show how its invoiced rates otherwise comply with the JUA, and has repeatedly threatened to harm AT&T operationally because AT&T challenged FPL's invoice using the agreed-upon dispute resolution process.

FPL's March 25 notice is particularly unwarranted in that it claims far broader rights than FPL would have under Section 12.3 even if there was a valid basis for FPL's August 31, 2018 notice of default. Two of the alleged defaults in that notice cannot support a termination under Section 12.3 because they are about the "maintenance of joint use poles." The other is an alleged "default for non-payment" of FPL's 2017 rental invoice—not for *both* the 2017 and 2018 rental invoices that FPL now relies upon. FPL's effort to expand the matters in dispute is both unwarranted and unconducive to the good faith negotiations that FPL agreed to engage in.

Sincerely,

Dianne Miller
AT&T
Director – National Joint Utility Team

AT&T

cc by overnight delivery:

Florida Power & Light Company
Attn: Registered Agent
9250 West Flagler Street
Miami, FL 33174

Florida Power & Light Company
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408

Exhibit 25

15430 Endeavor Drive, Jupiter FL 33478

April 8, 2019

Via Overnight Delivery or Email where designated

AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Subject: Notice of Termination

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

To Whom It May Concern:

On March 25, 2019, pursuant to Section 12.3 of the Agreement, FPL terminated AT&T's rights to attach to FPL-owned poles. As a consequence of FPL terminating AT&T's rights, no attachments to FPL-owned poles are permitted and AT&T's existing attachments must therefore be removed from FPL-owned poles.

As stated in FPL's notice of termination, FPL will not take any immediate adverse action to require AT&T to begin removing its facilities pending the outcome of the upcoming mediation scheduled for May 1, 2019. By way of this letter, FPL provides notice that FPL also will forbear from actively enforcing the termination of AT&T's rights to transfer its existing attachments from old FPL-owned poles to replacement FPL-owned poles. This forbearance does not extend to new attachments. New attachments by AT&T remain prohibited.

FPL is in good faith voluntarily and temporarily forbearing from enforcing the aforementioned rights through May 1, 2019. This forbearance should not be construed by AT&T as a waiver of any rights available to FPL under the Agreement and its termination notice.

We look forward to working with AT&T to resolve the matter at mediation and hope to avoid the need for FPL's active enforcement of the termination.

Sincerely,

Michael Jarro
Vice President,
Transmission and Substations

Enclosure:

FPL's Notice of Termination dated March 25, 2019

cc via email:

Phil Simmons (ps2831@us.att.com)
Omar T. Fraser (of2172@att.com)
Dianne Miller (dm6516@att.com)
Jonathan Ellzey (je3403@att.com)
Barbara J. Ball (bb2448@att.com)
Mark Peters (mp2586@att.com; PS2831@att.com)
Isaac Rodriguez (IR8307@att.com)

Exhibit 26

Attachments: Poles 2016 FERC.xlsx; Poles 2017 FERC.xlsx

From: Bromley, Dave [mailto:Dave.Bromley@fpl.com]
Sent: Friday, April 19, 2019 10:00 AM
To: MILLER, DIANNE W <dm6516@att.com>
Cc: Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: RE: FPL / AT&T follow-up

Diane, above are the attachments that were inadvertently omitted from my previous transmittal. We disagree with all other statements in your April 2 email but continue to look forward to working toward a resolution at mediation.

From: MILLER, DIANNE W <dm6516@att.com>
Sent: Tuesday, April 2, 2019 3:23 PM
To: Bromley, Dave <Dave.Bromley@fpl.com>
Cc: Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: FPL / AT&T follow-up

Dave:

Thank you for the additional information that you provided about the rates FPL invoiced. We remain confused about why FPL did not provide information about the calculation of its rates, and again note that FPL's obligation to invoice proper rates under our Joint Use Agreement and the law could never be changed by an internal report at AT&T, particularly when, as we previously said, that report spoke only to AT&T's processes for vetting invoices and did not address any specific utility or any individual joint use agreement.

Although we appreciate the additional information, we cannot help but notice that FPL's support for its invoiced rates remains woefully inadequate. FPL continues to attempt to justify its invoiced rates based almost exclusively on the fact that AT&T did not previously require FPL to explain the contractual basis for its calculations. But the Joint Use Agreement includes a non-waiver provision, meaning it is of no consequence that AT&T paid prior invoices that were not calculated consistent with the Agreement.

We find particularly curious FPL's new claim that it has satisfied its obligations regarding special poles because "only AT&T has the ability to identify poles that meet criteria in Section 10.4(C)." But since FPL owns all the special poles, it has the obligation to exclude their costs from the rental rates FPL calculates. FPL also must ensure that special poles that fall within Section 10.4—which includes more than just the poles covered by Section 10.4(C)—are properly invoiced at the Section 10.6 rental rate, and not at a rate 1.5 times that rate. We remain concerned that FPL has been unable to explain how it ensures compliance with these provisions.

And, while you now provided a copy of FPL's desktop procedures, the procedures raise more questions than they answer. The procedures do not refer to special poles at all. But they do concede that FPL made [redacted] – neither of which is attached, and neither of which is in our files. We have been

asking for all of FPL's support for its invoiced rates, contractual and otherwise, for nearly a year. Please provide us copies of these clearly relevant documents as soon as possible, along with the carrying charge rate files referenced in your email but not attached.

Perhaps most obviously absent from your email is any information about how FPL has ensured compliance with its obligations under the contract and the law to charge AT&T a just and reasonable rate. We've made our position on this point clear at our prior meeting and in prior correspondence and look forward to discussing it with you at our upcoming May 1 mediation.

Regards,

Dianne Miller
AT&T
Director – National Joint Utility Team

From: Bromley, Dave [mailto:Dave.Bromley@fpl.com]
Sent: Wednesday, March 20, 2019 2:31 PM
To: MILLER, DIANNE W <dm6516@att.com>
Cc: Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>; RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>
Subject: FPL / AT&T follow-up

Diane,

As we communicated back in December, before responding to all of AT&T's inquiries, we were awaiting AT&T's production of the internal audit of our joint use agreement which we understood to be the catalyst of AT&T's decision to not pay FPL's invoice. In light of your representation below that there is no specific internal AT&T audit concerning our joint use agreement, we have supplemented our prior responses provided back in December. The added responses have been provided below in **magenta**.

Sincerely,

Dave Bromley

From: "MILLER, DIANNE W" <dm6516@att.com>
Date: January 31, 2019 at 8:16:07 PM EST
To: "Bromley, Dave" <Dave.Bromley@fpl.com>
Cc: "Jarro, Michael" <Michael.Jarro@fpl.com>, "t.g.allain@fpl.com" <t.g.allain@fpl.com>, "RHINEHART, DAN" <dr3539@att.com>, "PETERS, MARK A" <mp2586@att.com>
Subject: FPL / AT&T follow-up

CAUTION - EXTERNAL EMAIL

Dave,

As we explained at our last meeting, AT&T's inquiry into FPL's rate calculations was prompted in part by an internal review that resulted in findings about joint use billings. You've asked that AT&T "provide us with a copy of the audit report as it relates to our dispute" both to "help [FPL] better understand these issues" and "so that FPL can identify the specific concerns and issues of AT&T."

AT&T's internal report did not address any specific utility or any particular Joint Use Agreement but, rather, AT&T processes for vetting invoices prior to payment. Consequently, AT&T declines to provide you this report, particularly because it will not help FPL better understand or identify the specific concerns that AT&T has. As we have explained numerous times, AT&T's concern is that FPL has not invoiced rental amounts that comply with the terms of our Joint Use Agreement.

We therefore take this opportunity to renew our request for complete answers to the questions that we provided previously about FPL's rate calculations and invoicing, including the following:

- Invoicing: What inventory methods or procedures does FP&L follow to ensure compliance with the requirement of Section 10.5 that Special Poles that fall under the definitions of Section 10.4 are billed at the normal adjustment rate and are not billed at 1.5 times the adjustment rates. Are Section 10.4 Special Poles included in the JU – ATT BY CNTY inventory?

  See FPL's answer re: special poles below.

Your prompt attention to this request will be greatly appreciated.

Dianne

From: Bromley, Dave [mailto:Dave.Bromley@fpl.com]
Sent: Wednesday, January 30, 2019 10:52 AM
To: MILLER, DIANNE W <dm6516@att.com>
Cc: RHINEHART, DAN <dr3539@att.com>; PETERS, MARK A <mp2586@att.com>; Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>
Subject: RE: FPL / AT&T follow-up

Good morning, Diane – Just following up again regarding our request for a copy of the internal audit report. Is this something that you are going to be able to provide?

From: Bromley, Dave
Sent: Tuesday, January 8, 2019 9:57 AM
To: 'MILLER, DIANNE W' <dm6516@att.com>
Cc: 'RHINEHART, DAN' <dr3539@att.com>; 'mp2586@att.com' <mp2586@att.com>; Jarro, Michael <Michael.Jarro@fpl.com>; Allain, Tom <T.G.Allain@fpl.com>
Subject: FPL / AT&T follow-up

Diane,

Included In my response to your list of questions (see December 20, 2018 email below) was a request for a copy of the internal audit that led to AT&T's decision not to pay the FPL invoice. Obtaining the internal audit as soon possible will help FPL understand AT&T's decision to not pay the FPL invoice and assist with moving the settlement discussions forward. Your prompt attention to this request will be greatly appreciated.

Sincerely,

Dave Bromley

From: <Dave.Bromley@fpl.com>
Date: December 20, 2018 at 5:53:53 AM EST
To: "MILLER, DIANNE W" <dm6516@att.com>

Cc: "RHINEHART, DAN" <dr3539@att.com>, "mp2586@att.com" <mp2586@att.com>, "Jarro, Michael" <Michael.Jarro@fpl.com>, "Allain, Tom" <T.G.Allain@fpl.com>
Subject: FPL / AT&T follow-up

Diane,

FPL is providing responses (see red below) to some of your questions today. Other questions are concerning to FPL as it appears AT&T in some cases is seeking records associated with events that occurred over 25 years ago. FPL no longer has some of these records, just as AT&T no longer has those records. Asking FPL to produce such records is akin to FPL asking AT&T to produce copies of the written approvals that allow AT&T to attach to FPL's transmission lines as required by Section 2.3 of Article II. It is doubtful that AT&T could produce such written approvals. Our relationship and understanding of annual joint use billings has been in place for decades and the absence of records that indicate any issues or concerns with these billings along with AT&T's timely payments indicate that all were in agreement with what was happening.

At our December 7 meeting, AT&T mentioned that the main driver behind the delay in AT&T's payment was an internal audit report that included findings associated with joint use billings. To help us better understand these issues, please promptly provide us with a copy of the audit report as it relates to our dispute. This will help us identify the specific concerns and issues of AT&T. We would also like to know if this was the first such internal audit conducted by AT&T over the term of the Joint Use Agreement. If not, we would like to receive copies of those audits and would expect that, in light of the current dispute, that you suspend any record destruction schedule to ensure that any records, including audits, billings, reports, correspondence or other documents, relating to the AT&T and FPL Joint Use Agreement, are maintained.

Questions to FP&L Following the FP&L – AT&T Meeting of December 7, 2018

To: Michael Jarro, Tom Allain, Dave Bromley (cc: Rhinehart, Peters,)

Michael, Tom, Dave,

We're glad that we could finally sit down with you last Friday to discuss AT&T's questions about FP&L's calculation of rental rates under our companies' Joint Use Agreement. We had hoped that FP&L would be able to show us its calculations and all supporting data at the meeting. You provided answers to several of our questions but, with respect to others, asked that we follow-up in writing. Because we previously requested much of this information in phone calls, emails, and letters that date back to early April, we are including them here with additional specificity to try to assist FP&L in responding.

Just to be clear, the AT&T detailed questions regarding rate development under Article X and the additional support for the Gross Rent Billing (which was discussed at our December 7 meeting) had not been previously asked/requested. Regarding additional support for and/or questions about the Transmission Pole Rate and Rate Development under Article VI, FPL has previously addressed these matters in its responses and/or at the meeting, but will address them here again for the sake of your convenience.

We would appreciate your response to these questions as soon as possible. Receipt of the requested information to confirm FP&L's compliance with the Joint Use Agreement

is a predicate to AT&T's ability to evaluate and, if proper under the contract, process the invoice.

We respectfully disagree that FPL must respond to AT&T's information requests in order to "confirm compliance." AT&T's unilateral decision to cease payment of its longstanding obligations under the Agreement was just that, "unilateral" without any basis whatsoever that FPL was not in compliance. That said, we have answered many of AT&T's questions and will endeavor to answer some additional requests for information to the extent FPL believes that the questions are well founded and legitimately asked in the interest of facilitating AT&T's payment of its obligations under the Agreement.

Transmission Pole Rate

On July 17, we asked for "written contractual language and/or addenda as it relates to the 'Transmission Pole Rates.'" Thank you for sending on Monday a copy of the July 6, 1993 letter from FP&L to Southern Bell that refers to a Transmission Pole attachment rate. We would, however, still like to see documentation showing that AT&T (or Southern Bell) agreed to the [redacted] rate methodology for 1993 and all other rental years.

FPL timely provided a response to this request on July 23. Additionally, the July 3, 1993 letter provided last week is the earliest dated document that FPL has been able to locate that indicates that FPL was charging AT&T the adjustment rate, [redacted], for transmission poles. While FPL is not able to locate any documentation showing AT&T agreed to this transmission rate calculation, FPL has no documentation that indicates AT&T disagreed with it. Likewise, FPL is not aware of any verbal objections made by AT&T to this rate. The fact that AT&T has been paying this fully disclosed rate – unchallenged and without written or oral objection for decades – indicates that AT&T agreed with this transmission rate calculation.

FPL points you to all invoices and payments made by AT&T for 1993 and all other rental years through 2017 wherein AT&T paid for its attachments to FPL's transmission poles. These documents should be in AT&T's possession.

Rate Development Under Article X

In early April, we raised "several concerns related to the calculation and the financial information used to develop the 'Joint Use Pole Attachment Rate Calculation'" that have not been resolved. In particular:

Again, FPL notes that these detailed questions/request for information set forth below were not previously asked/requested and are being asked for the first time more than 9 months after FPL submitted its invoice for payment.

Asset Life: We would like to understand why FP&L uses different asset lives in the rate development and elsewhere (e.g., [redacted] year asset life for the Carrying Charge Rate, 44-year average service life and 32.16 year average remaining life reported in the 2017 FERC 1, page 337.1, and [redacted] asset life assumed in the percent left calculation of the Adjustment Rate). Please explain these differences, provide any supporting documentation showing the actual

asset life of the joint use poles, and explain why the values used in the rate calculation are the correct ones under the Joint Use Agreement.

Historically, FPL has used the average remaining life contained within FPL's most recent FPSC-approved depreciation study (currently [redacted]) vs. the average service life (currently 44 years) to develop the depreciation rate utilized to determine the annual carrying charge rate, as the average remaining life is the method the FPSC has approved for FPL. The [redacted] life method as used in the Iowa curve, is intended to capture the very small population of surviving poles that are no longer being depreciated, but still have carrying charges associated with them. FPL maintains pole information as mass property consistent with standard industry practice. FPL's rate methodology is not inconsistent with the Joint Use Agreement, as there is no specific direction provided in the joint use agreement for calculating depreciation rates/expense. (Also, see FPL's response to AT&T's question on the Depreciation Rate)

Depreciation Rate: We would like to understand why FP&L uses a different depreciation rate in the Carrying Charge Rate development ([redacted]) and its 2017 FERC 1 (3.58%). It appears that the [redacted] depreciation rate does not include the cost of removal, but the 3.56% depreciation rate does. Please explain how FP&L accounts for the cost of removal of poles (for example, is the cost of removal accrued into the depreciation reserve and then charged to the depreciation reserve on removal, or is the cost of removal expensed in the year incurred?) and why the [redacted] depreciation rate is the correct one under the Joint Use Agreement.

The [redacted] depreciation rate does not reflect the cost of removal. The cost of removal is accrued into the depreciation reserve (through a depreciation rate that includes removal, e.g., 3.58%) and when assets are retired, removal is charged to the reserve. Using a depreciation rate exclusive of removal has caused the Carrying Charge Rate to be lower than it should be.

Carrying Charge Rate: We remain confused about FP&L's use of a year-by-year Carrying Charge Rate under the Joint Use Agreement instead of a current-year Carrying Charge Rate. Please explain why FP&L is using this methodology and identify the contractual support for its use. On May 8, Tom Kennedy stated that "WMS is the acronym for FPL's Work Management System" and explained that it is used to estimate the "cost to install a pole under normal condition for the year the rate is calculated." We would still like validation of these WMS cost estimates. For example, we would like to see FP&L's continuing property records identifying the number of poles by type and size along with their associated total gross investment by account or subaccount and total counts and investment amounts by inventoried unit type for appurtenances for year-end 2016 and 2017. We'd also like information about the number of poles by type (wood, concrete, etc.), size (height), and class with their respective booked investment and the units and cost of appurtenance items totaling the $302,793,090 reported for 2017.

The year-by-year carrying charge rate is based on the cumulative present value of the revenue requirement (including return, taxes and depreciation) related to the poles placed in service in a given year. The percent of surviving poles to total surviving poles for each year is used to weight the product of the

carrying charge rate and pole cost. The sum of these weighted averages by year equals the joint use rate. The Joint Use Agreement does not include any specific methodology language for calculating the Carrying Charge Rate and the weighted average based on surviving poles has been historically used for decades (without objection by AT&T) to approximate a reasonable estimate of the carrying charges for previous years. FPL's methodology is not inconsistent with the Joint Use Agreement. See attached files for requested information for 2016 and 2017.

Iowa Curve: On May 8, Tom Kennedy informed us that FP&L uses an Iowa Curve methodology to assume the percentage of surviving poles used in the rate calculation. We would still like to see further support for this methodology. For example, we would like to see any documentation showing that AT&T agreed to the use of an Iowa Curve. We would also like to see any vintage year investment records for FP&L's poles, would like to know whether the same R2.5 Curve cited on page 337.1 of FP&L's 2017 FERC 1 was used to compute the invoiced Adjustment Rate, and would like to understand, if it was not, what Curve was used and why. Whatever Curve was used, we would like to see its full formula.

The invoiced Adjustment Rate was computed using an Iowa curve that estimates the percentage of surviving poles based on a [redacted] life and is not the same R2.5 cited in the FERC Form 1. Since FPL treats its poles as mass property consistent with standard industry practice, this use of the Iowa Curve is appropriate to determine surviving poles percentages. The requested vintage information is contained in the attached files referenced above. FPL also points you to all payments made by AT&T through 2017. FPL annually provides its calculation documents prior to the due date for payment. These documents should be in AT&T's possession.

Special Poles: Section 10.6 states that FP&L cannot use special poles when calculating the Adjustment Rate. We would like to understand what actions FP&L has taken to ensure that the cost of special poles is excluded. For example, are the costs for the special poles listed in the JU – ATT BY CNTY inventory excluded from the cost calculation and how? What materials are special poles made of? Are any wood poles? What inventory methods or procedures does FP&L follow to ensure compliance with this requirement Procedures: We think that it would accelerate our evaluation if FP&L would provide us copies of any methods and procedures that are used when FP&L develops the Carrying Charge Rate and the Adjustment Rate.

Only AT&T has the ability to identify poles that meet criteria in Section 10.4 (C). Therefore, FPL is reliant on AT&T to identify poles that should be excluded. Special poles are solely made up of concrete poles, which are identified in surveys (which AT&T verifies as being accurate). AT&T is provided the number of joint use poles (including special poles), by company in the file JU – ATT BY CNTY), which FPL provides AT&T - usually a month or so in advance of the annual billing. The advance notice provides AT&T the opportunity to advise FPL of any changes that need to be made to the joint use numbers/forecast prior to the annual billing. To date, FPL is not aware that AT&T has ever requested an adjustment to the count of special poles. See attached procedures.

As mentioned at our meeting, it is very troubling that AT&T has waited over nine months after the FPL invoice was submitted for payment for the ***2017 calendar year*** to ask FPL for this information. As we have repeatedly informed AT&T, and as AT&T knows, FPL has not changed its billing practices that have been accepted by the parties for decades. These billing practices are not inconsistent with the terms of the Agreement.

Before FPL makes the effort to respond to the information requested in this section, please provide the internal audit that was alluded to at the meeting that led to AT&T's decision to not pay the FPL invoice. We want to fully understand the issues preventing AT&T from releasing payment before we start the process of gathering this information. This will better assure that we can fully respond to any issues that AT&T contends are holding up the release of payment to FPL.

Rate Development Under Article VI

AT&T has asked on several occasions, including August 21, September 13, October 4, and December 3, for documents that show what actions FP&L has taken to ensure compliance with Article VI's requirement that the invoiced rates comply with all applicable law, including federal law. We again request insight into FP&L's analysis and the following documents:

As stated at the December 7 meeting, it is FPL's view that Article VI (Specifications) has nothing to do with the rate but rather concerns compliance of the poles , e.g., with the National Electrical Safety Code. Nothing in Article VI suggests otherwise.

Executed License Agreements: FP&L must have considered the terms and conditions of the license agreements it has with our competitors when deciding whether the rate charged AT&T is just and reasonable. Please provide copies of FP&L's executed license agreements (the name of the other entity may be redacted) and a copy of the draft license agreement that FP&L offers to new licensees.

New Telecom Rate Calculations: FP&L must also have considered the new telecom rates charged our competitors when deciding whether the rate charged AT&T is just and reasonable. Please provide us, at a minimum, FP&L's 2017 new telecom rate calculation and all of its inputs so that we can compare the new telecom rate to the 2017 rates that FP&L invoiced AT&T.

FPL has previously responded to these requests. FPL does not believe that the requested documents and information contained therein are relevant in the calculation of the agreed upon contract rate. There is nothing in the Agreement that remotely suggests such requested information should be considered in calculating the rate. *See* Section 10.6 of the Agreement for the relevant factors in calculating the rate.

Also, as we have previously communicated, there is nothing in the 2011 FCC Order that affirmatively requires the parties to modify an existing agreed upon contract rate. If you disagree, please explain.

As stated in prior emails and at the meeting, if AT&T wants to re-negotiate the contract rate with FPL, the Agreement requires 6 months written notice. To date, FPL has not received such written notice and AT&T indicated at the December 7 meeting that AT&T had not and was not initiating re-negotiation of the rate. If AT&T does not want to re-negotiate the rate, FPL must continue to rely upon the terms of the Agreement for calculating the rate. FPL has done nothing different in calculating the rate this year as

compared to the calculation performed over the past several decades without objection from AT&T.

As FPL previously provided to AT&T, FPL cannot provide copies of executed license agreements with other attachers and there is nothing within the FPL/AT&T Joint Use Agreement (JUA) that makes the requested telecom rates calculations relevant to the rate FPL charged AT&T in 2017.

Gross Rent Billing

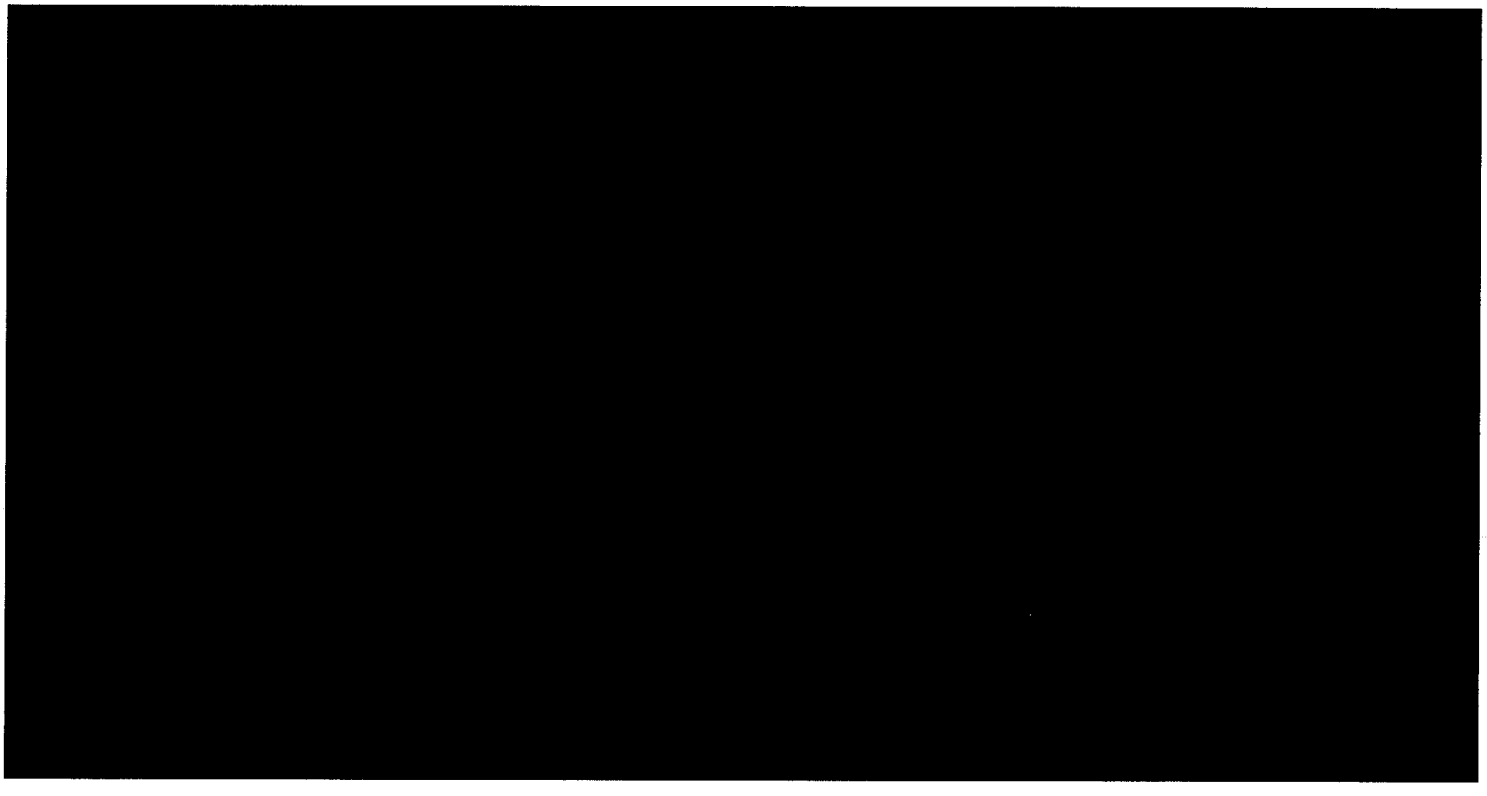
On May 8, Tom Kennedy informed us that the FPSC ordered FP&L to shift from the "Deficiency Billing" approach required by the Joint Use Agreement to one where the company books gross revenue and gross expense. We would still like to see supporting documents for this change, including the FPSC's Order and any documentation showing that AT&T was notified about the change and agreed to it.

As provided in Mr. Kennedy's May 8, 2019 email to Mr. Simmons, it was demonstrated that FPL's "gross revenue and gross expense" methodology produces the same result as the "Deficiency Billing" methodology. In other words, you get the same result regardless of what approach you use. If you still think this document will somehow bring some value, we will look for this document once the internal audit is produced by AT&T.

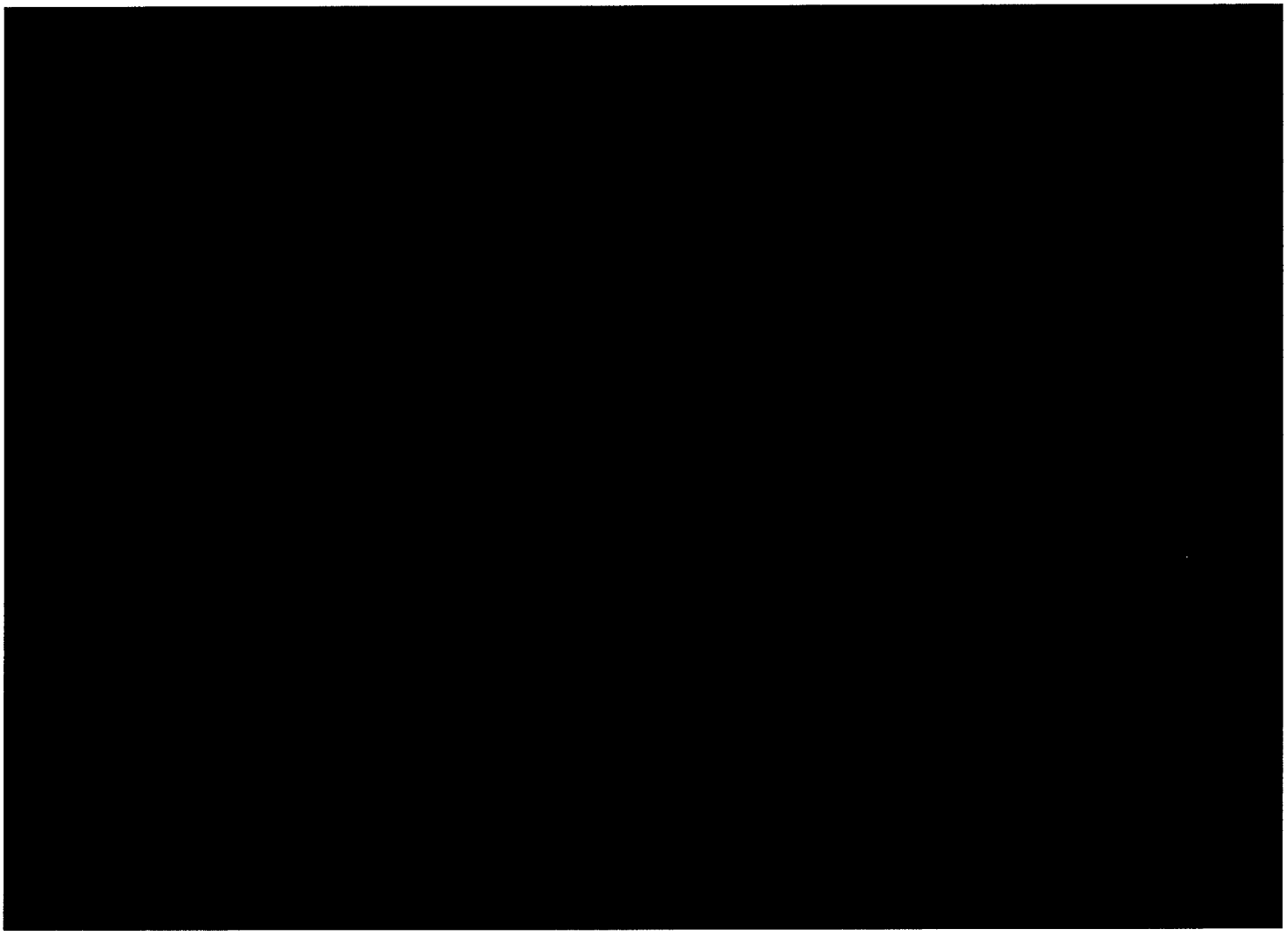
FPL is unable to locate the specific FPSC order/directive that required FPL to record joint use revenues and expenses gross vs. net or any specific documentation that directly shows that AT&T was notified/agreed to this "change". However, the practice to record joint use revenues gross vs. net has been in place for decades, without any objection from AT&T and, as provided in Tom Kennedy's May 8, 2018 memo to Phillip Simmons, this methodology was not really a "change" as it produces the same result as the Deficiency Billing" method.

Again, thank you for meeting with us last Friday. We look forward to receiving this information soon, so that we can review the steps that FP&L took to validate the rental invoice.

PUBLIC VERSION



PUBLIC VERSION



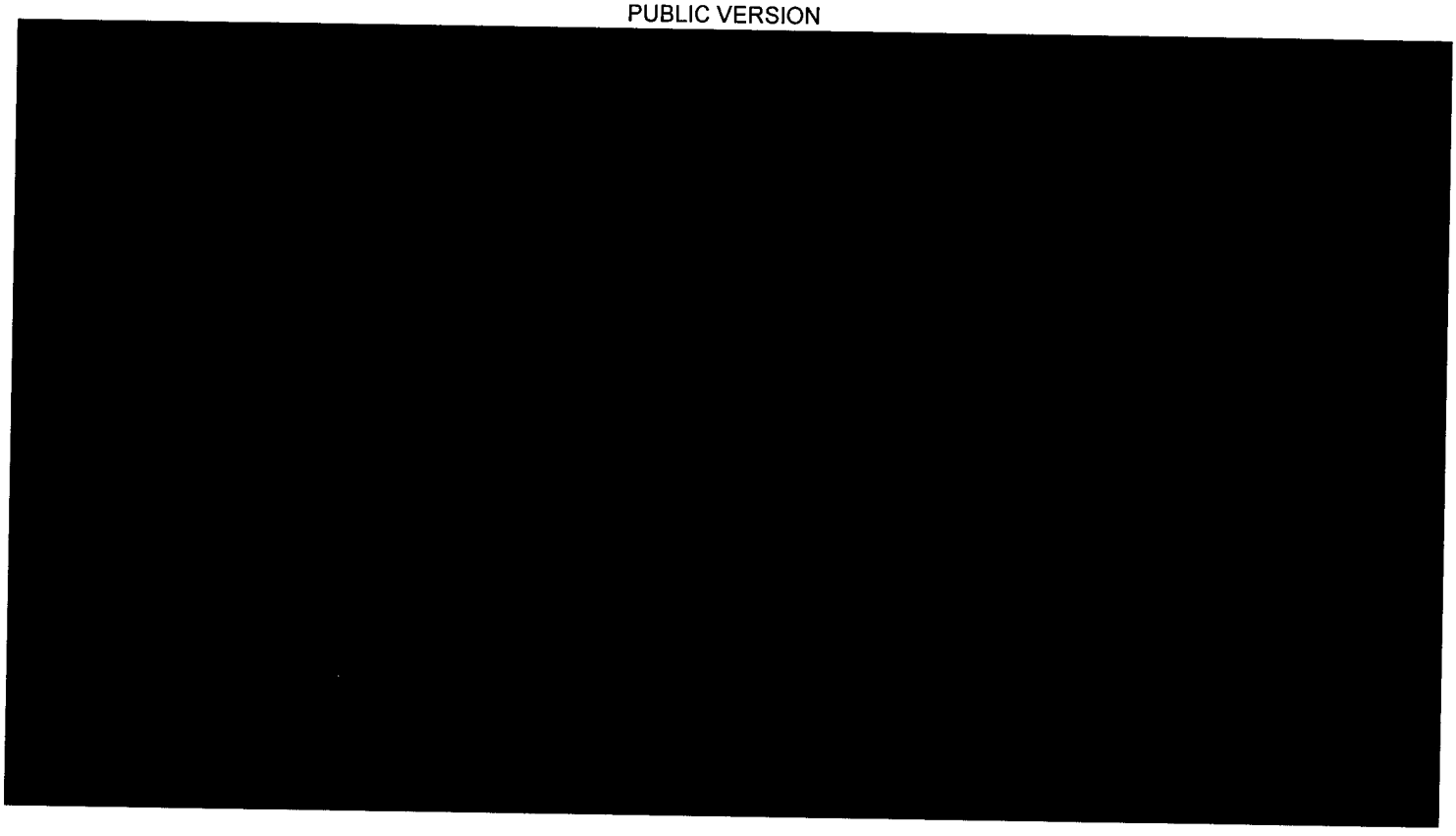


Exhibit 27

PUBLIC VERSION

Eric E. Silagy
President and
Chief Executive Officer

May 21, 2019

Via Overnight Delivery or Email where designated

AT&T Florida
Attention: General Counsel – Florida
150 W. Flagler Street, Suite 1910
Miami, FL 33130

AT&T South Legal Department
Attention: Chief Rights-of-Way Counsel
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375-0001

Subject: Florida Power & Light Company ("FPL") /AT&T Joint Use Agreement

Dianne Miller,

[redacted] I was disappointed to learn that [redacted] AT&T still has not paid the more than [redacted] million outstanding balance due on the 2017 and 2018 joint use invoices. For nearly fifteen months, AT&T has remained attached to FPL's poles, in effect for free, wholly subsidized by FPL customers. And, while your cash disbursements have decreased by at least [redacted] million, this same body of FPL customers recently experienced an increase in their monthly AT&T phone bills. We are not willing to allow AT&T to take advantage of our customers in this manner.

[redacted] we provide you this notice that mediation is at an impasse.

We await AT&T's written plan to expeditiously remove its attachments from all FPL poles, as required in our March 25 notice of termination.

Sincerely,

Eric E. Silagy

cc via email:

Randall Stephenson (rs2982@att.com)
Joe York (jy0365@att.com)
Phil Simmons (ps2831@us.att.com)
Omar T. Fraser (of2172@att.com)
Jonathan Ellzey (je3403@att.com)
Barbara J. Ball (bb2448@att.com)
Mark Peters (mp2586@att.com; PS2831@att.com)
Isaac Rodriguez (IR8307@att.com)
Michael Jarro (FPL)

Exhibit 28

15430 Endeavor Drive, Jupiter FL 33478

PUBLIC VERSION

May 23, 2019

Via Overnight Delivery or Email where designated
AT&T Services, Inc.
ATTN: Dianne Miller,
Director – National Joint Utility Team
754 Peachtree St. Room C-1263
Atlanta, GA 30308

Subject: Notice of Termination / Transfer of AT&T Attachments to FPL Poles

Re: Joint Use Agreement dated January 1, 1975, between Florida Power & Light Company ("**FPL**") and BellSouth Telecommunications, LLC dba AT&T Florida ("**AT&T**"); Amendment to Joint Use Agreement effective June 1, 2007 (hereinafter collectively referred to as the "**Agreement**")

Ms. Miller:

As previously communicated, on March 25, 2019, pursuant to Section 12.3 of the Agreement, FPL terminated AT&T's rights to attach to FPL-owned poles. FPL took this action only after repeated requests for payment and patiently waiting over a year for payment from AT&T concerning attachments for the 2017 calendar year. Also, at the time of termination, AT&T likewise was, and continues to be, in default on its payment for the 2018 calendar year, leaving an outstanding balance due FPL that currently exceeds [redacted] million. AT&T has neither made payments to FPL for the arrearage nor given any indication that payment would be forthcoming – despite having occupied FPL poles for the full two years for which payments are long past due and despite AT&T continuing to utilize FPL poles for AT&T's business.

As a result of the termination of rights to attach to FPL poles, AT&T's status has changed from that of a joint user to that of a trespasser on FPL poles. We continue to wait for AT&T's proposed plan and schedule for the removal of AT&T attachments from FPL owned poles. We note also that as a result of the termination of AT&T's rights to attach to FPL poles due to non-payment, AT&T no longer has the right to make transfers of its existing attachments to new FPL poles. If AT&T chooses to make those transfers, it will be doing so as a trespasser and at AT&T's own risk.

Sincerely,

Michael Jarro
Vice President,
Transmission and Substations

cc via email:

Phil Simmons (ps2831@us.att.com)
Omar T. Fraser (of2172@att.com)
Jonathan Ellzey (je3403@att.com)
Barbara J. Ball (bb2448@att.com)
Mark Peters (mp2586@att.com; PS2831@att.com)
Isaac Rodriguez (IR8307@att.com)

Exhibit 29

AT&T

Dianne W. Miller
Director, Construction & Engineering

PUBLIC VERSION

AT&T Services, Inc.
754 Peachtree Street, NE
C-1263
Atlanta, GA 30308

May 30, 2019

Michael Jarro, Vice President, Transmission and Substation
Florida Power & Light Company
15430 Endeavor Drive
Jupiter, FL 33478
Michael.Jarro@fpl.com

Re: Response to May 23, 2019 Notice of Termination

Dear Michael:

It is unfortunate that FPL unilaterally declared an impasse in our mediation [redacted] we received yet another letter claiming that FPL terminated AT&T's right to attach to FPL's poles under Section 12.3 of the Joint Use Agreement, as amended ("JUA"). But, as AT&T has explained repeatedly, FPL has not, and cannot, terminate AT&T's rights to attach to FPL's poles under Section 12.3 because AT&T is not in default of a money payment obligation under the JUA. Indeed, FPL has essentially admitted that it cannot show AT&T is obligated by the JUA to pay the amounts FPL invoiced. AT&T, as a result, cannot be "a trespasser on FPL's poles" as you allege. The JUA remains in full force and effect because FPL does not have the right to immediately terminate it under Section 12.3 or otherwise.

Moreover, under the JUA's alternate dispute resolution provision, FPL must maintain the status quo and therefore cannot require removal of AT&T facilities or take other actions against AT&T operationally until this dispute is finally resolved. *See* Section 13A.4. AT&T thus urges FPL to cease making unfounded operational threats, which seem designed solely to coerce AT&T into abandoning its effort to ensure that FPL charges rental rates that comply with the JUA and federal law.

Sincerely,

Dianne Miller

Dianne Miller
AT&T
Director – Construction & Engineering, National Joint Utility Team