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August 18, 2006

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code; Docket No. 060173-EU

Dear Ms. Bayo:

Enclosed for filing in the above referenced are the original and fifteen (15) copies of the Joint Reply Comments by Florida Power and Light Company, Progress Energy Florida, Tampa Electric Company and Gulf Power Company. We will also submit this filing today in electronic format.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

Lee L. Willis

LLW/bjd
Enclosures

cc: All Parties of Record (w/encl.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electrical Safety Code.	))))))	DOCKET NO. 060173-EU FILED: August 18, 2006

JOINT REPLY COMMENTS

Pursuant to Order No. PSC-06-0610-PCO-EU, issued July 18, 2006 in the above-referenced docket, Florida Power and Light Company ("FPL"), Progress Energy Florida ("PEF"), Tampa Electric Company ("Tampa Electric") and Gulf Power Company ("Gulf Power") (sometimes collectively referred to as the "investor-owned utilities" or "IOUs") file these Joint Reply Comments in support of the Florida Public Service Commission's ("PSC's" or "Commission's") adoption of proposed rules 25-6.0341 and 25-6.0342, Florida Administrative Code (the "Proposed Rules") in their current form.

Introduction

As a result of the extraordinary storm seasons of 2004 and 2005, the Commission has undertaken a multi-pronged approach to improve the electric infrastructure of this state in order to minimize future storm damage and customer outages.

This rulemaking together with the eight-year Pole Inspection Order No. PSC-06-0144-PAA-EI and the Storm Plan Order No. PSC-06-0351-PAA-EI have specified initiatives that the Commission has determined to be reasonable and necessary to storm harden the system. In each of these proceedings, the Commission has specifically determined that pole attachments affect the safety and reliability of the system and that action is necessary to reduce that effect. Staff

and this Commission have worked to develop and propose fair and balanced proposed infrastructure hardening rules, taking into consideration the comments made by various interested parties.

Verizon Florida, Inc. ("Verizon"), BellSouth Telecommunications, Inc. ("BellSouth"), Embarq Florida, Inc. ("Embarq"), the Florida Cable Telecommunications Association, Inc. ("FCTA") and Time Warner Telecom ("Time Warner") (sometimes collectively referred to as the "Third-Party Attachers" or the "Attachers")[1] filed comments and/or testimony that aim to undermine the Commission's storm hardening objectives. The objections of the Third-Party Attachers fall generally into six categories: 1) the Commission lacks legal authority and jurisdiction to adopt the Proposed Rules and/or the Commission is exceeding its authority or jurisdiction; 2) the IOUs should bear the costs associated with implementing the Proposed Rules; 3) the Proposed Rules lack the necessary evidentiary foundation; 4) Rule 25-6.0341 is too costly and, if adopted, should include specific advance notice and input requirements; 5) if adopted, Rule 25-6.0342 should not authorize attachment standards that exceed the current version of the National Electrical Safety Code ("NESC"); and 6) the Proposed Rules are premature.[2] For the reasons discussed below, the arguments of the Third-Party Attachers should be rejected. The

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[1] It should be noted at the outset that Verizon, BellSouth and Embarq are not on the same legal footing as FCTA and Time Warner. Pole-owning telephone companies have traditionally entered into voluntary "joint use" agreements with pole-owning electric utilities as the means by which the pole infrastructure has been shared between them. As will be developed more fully in Section I.C., below, incumbent local exchange carriers do not enjoy the pole attachment rights granted by the Pole Attachments Act (47 U.S.C. § 224) to cable television companies and other telecommunications carriers. It is telling that these companies would be aligned together in this proceeding in order to advance their interests at the expense of electric utilities.

[2] To the extent the comments and/or testimony submitted by the Attachers specifically address Rules 25-6.034, 25-6.0345, 25-6.064, 25-6.078, and 25-6.115, the IOUs will generally reply to those comments on the schedule established in ORDER NO. PSC-06-0646-PCO-EU, issued August 2, 2006 in Docket Nos. 060172-EU and 060173-EU.

However, on some points were similar arguments are advanced by attachers with respect to Rules 25-6.034 and 25-6.0342. A reply to those arguments is provided in these comments.

Proposed Rules are an important additional step in exercising the Commission's safety and reliability jurisdiction to protect the critical distribution infrastructure for the provision of electric and communication services. The IOUs urge Staff and this Commission to move forward in adopting the Proposed Rules to ensure safe and reliable electric service taking into consideration the increased risk of hurricane activity that we currently face.

I. The Proposed Rules are a valid exercise of the Commission's safety and reliability jurisdiction.

The Attachers' arguments that the Commission's Proposed Rules either lack adequate legislative authority or exceed the Commission's delegated authority fall primarily into three categories: 1) the Commission's Proposed Rules exceed the state's jurisdiction over safety and reliability and unlawfully encroach on the jurisdiction of the Federal Communications Commission ("FCC"); 2) the Commission's Proposed Rules unlawfully sub-delegate the Commission's jurisdiction to electric utilities; and 3) the Proposed Rules are an unlawful impairment of contract in that they effectively void existing licensing and attachment agreements. As addressed below, each of these arguments is without merit.

A. This Commission has jurisdiction over safety and reliability issues

The FCTA and other Attachers continue to obfuscate the broad jurisdiction this Commission has over the safety and reliability of Florida electric distribution facilities. This jurisdiction was not in any way diminished by the Pole Attachments Act. With the Pole Attachments Act, Congress did not preempt the entire field of pole attachments issues. Rather, the Act clearly makes room for state regulation by distinguishing between two types of pole attachment issues: (1) contract issues, including the rates, terms and conditions applicable to the attachment, which *are* within the province of the FCC, unless a state reverse preempts the federal

agency;[3] and (2) safety, reliability, capacity and engineering issues raised by a request for attachment to a pole, which remain within the province of the states, which traditionally have regulated in this area, and which are not required to reverse preempt the FCC to exercise this jurisdiction.[4] In other words, unlike jurisdiction over contract issues, which rests initially with the FCC, jurisdiction over safety and reliability issues does not rest with the FCC unless a state

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[3] In its original form, the Federal Act regulated only the contract issues arising from cable attachments to utility poles. Congress captured the contract issues by a single phrase: "rates, terms and conditions." 47 U.S.C. § 224. Access to utility poles was voluntary and outside the scope of the Act. As such, access was not a "rate, term or condition" of attachment. *See Arthur Young & Co. v. Mariner Corp.*, 630 So. 2d 1199, 1202 (Fla. 4th DCA 1994) (statutes must be given plain and obvious meaning). Additionally Congress recognized the local nature of pole attachment issues.[3] As such, Congress put in place a reverse preemption provision that allowed states to certify jurisdiction over pole attachment contract issues:

> Each State which regulates the rates, terms, and conditions for pole attachment shall certify to the Commission that – (A) it regulates such rates, terms, and conditions; and (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via the attachments, as well as the interests of the consumers of the utility services.
>
> 47 U.S.C. § 224(c)(2) (1978)

[4] Specifically, 47 U.S.C. § 224(c)(1) provides, "Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State." (emphasis added). The dichotomy, set forth in the disjunctive "or" in 47 U.S.C. § 224(c)(1), is continued into the certification requirements where jurisdiction over each type of issue is handled differently under the federal law. Jurisdiction over "rates, terms and conditions" is vested in the FCC unless a state elects to preempt FCC jurisdiction by filing a certification to that effect. Thus, 47 U.S.C. § 224(c)(2) provides that "Each State which regulates the *rates, terms, and conditions* for pole attachments shall certify to the Commission that— (A) it regulates such *rates, terms, and conditions;* and (B) in so regulating such *rates, terms, and conditions,* the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services." The Act provides no similar certification requirement for a state to certify that it regulates issues of safety and reliability. Rather, jurisdiction over safety, reliability, capacity and engineering issues rests entirely with the states to the extent they in fact regulate such issues. *See* 47 U.S.C. § 224(c)(1).

does not exercise such jurisdiction by, for example, having regulations related to safety and engineering of utility infrastructure. See 47 U.S.C. § 224(c)(1).[5]

In 1996, Congress expanded the Act to mandate *access* for cable and telecommunications companies. Congress did not change, however, the jurisdiction of states to regulate matters relating to safety, reliability, capacity or generally accepted engineering practices. When, for example, third-party attachers sought to bring questions of capacity under federal pole attachment jurisdiction, the Eleventh Circuit Court of Appeals would not permit such alteration of Congress's regulatory design.[6]

Recognizing Congress's express words, the FCC has acknowledged generally that certification is not required for state regulation of access issues:

> In the *Local Competition Order*, we noted that the authority of a state is clear under section 224(c)(1) to preempt federal regulation for access requests arising solely under section 224(f)(1) . . . The *Local Competition Order* noted that Congress did not amend section 224(c)(2) to prescribe a certification procedure with respect to access (as distinct from the rates, terms, and conditions of access).

114 FCC Rcd 18049 (1999) at ¶ 114.

The FCC has expressly recognized that the parties to any such action have an obligation to flesh out the appropriate state jurisdiction and if appropriate, the FCC will stand down:

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[5] Even the FCC does not claim that Congress preempted the field of pole attachments and provided the FCC exclusive jurisdiction unless a state certified to the contrary. In fact, as to state and local regulations regarding safety and reliability issues, the Commission has consistently stated that "state and local requirements affecting attachments are entitled to deference even if the state has not sought to preempt federal regulations under section 224(c)." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report & Order,* 11 FCC Rcd 15499, ¶¶ 1154, 1158 (1996). The state therefore need not certify that it regulates such issues in order to have jurisdiction over them In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Order on Reconsideration,* 14 FCC Rcd 18049, ¶¶ 114, 116 (1999).

[6] *Southern Company v. F.C.C.*, 293 F.3d 1338 (11th Cir., 2002).

> We reiterate that, upon the filing of an access complaint with this Commission, the defending party or the state itself should come forward to apprise us whether the state is regulating such matters. If so, pursuant to the *Local Competition Order,* we shall dismiss the complaint without prejudice to it being brought in the appropriate state forum. We require any party seeking to demonstrate that a state regulates access issues to cite to the state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. We continue to believe that these procedures are consistent with the language and intent of the statute, and unduly burden neither the parties to an access complaint, nor the state entities responsible for pole attachment regulations.

114 FCC Rcd 18049 (1999) at ¶ 116.

Given Congress' express mandate, and the FCC's statements, the preemption analysis under the Act obviously depends upon the nature of the issue. Jurisdiction over the historical contract issues ("rates, terms and conditions") is vested in the FCC unless a state elects to preempt FCC jurisdiction by filing a specific certificate to that effect. 47 U.S.C. § 224(c)(2). This is the jurisdictional issue the Florida Supreme Court addressed in *Teleprompter v. Hawkins*, 384 So. 2d 648 (Fla. 1980) ("*Hawkins*"). Jurisdiction over safety, reliability, capacity and engineering issues, on the other hand, rests entirely with the states to the extent they in fact regulate such issues. 47 U.S.C. § 224(c)(1). The *Hawkins* decision pre-dated Congress' pronouncements in the 1996 Act and, therefore, did not address (and could not have addressed) this Commission's jurisdiction over safety and reliability issues in any respect. Additionally, following the *Hawkins* decision, the Florida Legislature expanded this Commission's jurisdiction over the safety and reliability of electric distribution poles. *See* pg. 8, *infra.* As such, the attacher's reliance on the *Hawkins* decision is misplaced.

In summary, unlike jurisdiction over contract issues, which rests initially with the FCC, jurisdiction over safety and reliability issues rests with the state unless the state fails to exercise

(not certify) such jurisdiction themselves.[7] Significantly, the FCTA's representative, Mr. Michael Gross, has admitted this Commission's jurisdiction:

> "[W]e agree this morning that this Commission does have authority to set safety and reliability standards, and I think that has been recognized by the FCC."
> "The FCTA acknowledges that the State of Florida through this Commission has authority to set safety and reliability standards."

See Tr. 6/20/06 Agenda Conference, pp. 15-16.

B. This Commission thoroughly regulates issues of safety and reliability

Florida thoroughly regulates issues of safety and reliability. For example, Section 366.04(6), Florida Statutes, delegates to the Commission "exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities." Section 366.04(6) directs the Commission to adopt the 1984 edition and any new editions of the National Electrical Safety Code. With respect to reliability and engineering, Section 366.04(2)(c) grants the Commission authority over electric utilities for the purpose of requiring electric power conservation and reliability within a coordinated grid. Section 366.04(5) provides that the Commission has jurisdiction over the "planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy." In addition, section 366.05(1), Florida Statutes, grants the Commission the "power to . .

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[7] The analysis of the Commission's safety and reliability jurisdiction is similar to the concept that state law determines the meaning of the phrase "owned or controlled" in the Act. *See, e.g., UCA, LLC v. Lansdowne Comm. Dvlp. LLC*, 215 F. Supp. 742, 749 (E.D. Va. 2002) (noting that the FCC itself had determined that "[t]he scope of a utility's ownership or control of an easement or right-of-way is a matter of state law,' meaning that 'the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right of way to the extent necessary to permit such access.'") (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 F.C.C.R. 15,499, 16,082 ¶ 1179 (Aug. 8, 1996)). Applying state law, the judge ruled that the utility did not "own or control" the easement, rendering moot and thus not reaching the question of a third-party attacher's federal attachment rights thereto.

. adopt construction standards that exceed the National Electrical Safety Code, for purpose of ensuring the reliable provision of service."

Pursuant to these statutory provisions, the Commission has promulgated numerous regulations addressing system safety and reliability. *See, e.g.,* Rules 25-6.019, 25-6.034, 25-6.0345, 25-6.037, 25.6039, 25-6.044, 25-6.0455, Florida Administrative Code (2006).[8]

The *Hawkins* case decided in 1980 held that the Commission's jurisdiction does not extend to rates, terms and conditions of pole attachments. There was no discussion in that case concerning the Commission's Grid Bill and safety jurisdiction which is the basis for the Proposed Rules. Indeed, subsection 366.04(6) conferring the Commission's safety jurisdiction was not enacted until 1986. See Chapter 86-173, Laws of Florida, 1986. The *Hawkins* decision is simply inapplicable to this rulemaking that arises from the Commission's reliability and safety jurisdiction.

Because jurisdiction over safety and reliability is clearly reserved to the states, and because Florida in fact has significant laws regulating those issues, and because this Commission has exercised this jurisdiction in the past, this Commission has jurisdiction to determine issues of safety and reliability regarding the state's electric distribution facilities as they relate to pole attachments.

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[8] Attachers generally acknowledge the obligation to meet state safety requirements in the attachment agreements. *See, e.g.,* Exhibit 1 (Gulf Power Cable Television Attachment Agreement with Comcast Cablevision of Panama City, Inc.), ¶ 3(A) ("CATV Company shall at no time make or maintain an attachment to Gulf's pole or substitute pole if the spacing on the pole, the ground clearance, or other characteristics of the attachment are not in strict conformity with the [NESC] or any other applicable codes, rules or regulations of any governing body having jurisdiction.").

C. FCC pole attachment rate jurisdiction does not cover charges between ILECs and electric utilities

BellSouth argues that by causing the utilities to buy more expensive poles, which in turn raises pole rental rates under its negotiated contracts with electric utilities encroaches on the FCC jurisdiction. This is totally incorrect. It is impossible to encroach on jurisdiction the FCC does not have at all.[9]

BellSouth first asserts that the Proposed Rules will require electric utilities to install more reliable but more expensive electric infrastructure which will increase pole attachment rental rates. While this may be true in some circumstances, the rules do not affect the FCC's jurisdiction.

The rates paid by Incumbent Local Exchange Carriers ("ILECs") to electric utilities are established by negotiated contract and are specifically excluded from the Federal Pole Attachment Act. The FCC has no jurisdiction over adjustment rates charged between ILECs and electric utilities.

BellSouth also asserts that it is not the cost causer. While that point may be subject to some debate, it is of no significance here. First, the Commission has no role in assigning costs. Second, the cause of a cost increase is heightened storm activity and governmental action taken in response to this activity in order to improve the safety and reliability of the system. Finally, the adjustment rates in contracts are a product of negotiation and are not under the jurisdiction of the FCC.

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[9] 47 USC § 224 (a)(1) defines the term "utility" to mean "a local exchange carrier or an electric, gas, water, steam or other public utility which owns or controls poles." "Pole Attachment" is defined by § 224 (a)(4) as ". . . any attachment by a cable television system or provider of telecommunication service to a pole . . . owned or controlled by a utility." The term "telecommunications carrier" ". . . does not include any incumbent local exchange carrier . . ." See 47 USC § 224 (a)(5).

In all events, the FCC's jurisdiction has never extended to establishing the capital, operating and maintenance costs of utility poles; it extends only to the methodology under which such costs will be included in pole attachment rates.

D. FCTA's suggested revisions to proposed rule 25-6.0342(3) are at odds with this Commission's jurisdiction.

The FCTA's suggested revisions to proposed rule 25-6.0342(3) would require that the parties "agree" to a denial of access for reasons of insufficient capacity, safety, reliability, and generally applicable engineering purposes, and if no agreement can be reached, take the dispute to the FCC "as the agency possessing jurisdiction to adjudicate an attacher's rights and obligations in a manner consistent with section 224 . . ." (FCTA August 4, 2006 Comments, Exhibit 3). There are a number of problems with this proposal.

First, any requirement that the attacher "agree" to denial for the reasons of insufficient capacity, safety, reliability, and generally applicable engineering principles would hold hostage the implementation of the Attachment Standards and Procedures. The FCTA itself already has taken the position in an FCC rate proceeding that there is no such thing as a "full capacity" pole, so long as the pole can be rearranged, strengthened or changed-out to accommodate a request for access. As such, from FCTA's perspective, the only "enforcement" of Attachment Standards and Procedures would be to determine when rearrangement, strengthening or make-ready must occur. Such a position would undermine the very purpose of Commission-approved Attachment Standards and Procedures, and interference with a utility's unequivocal right to deny access under § 224(f)(2).

Second, the FCC is *not* (as FCTA suggests) "the agency possessing jurisdiction" to adjudicate issues of capacity, safety, reliability, and generally applicable engineering purposes. This jurisdiction lies squarely with this Commission. To suggest otherwise would entirely

negate the safety and reliability jurisdiction conferred by Sections 366.04 and 366.05. Third, FCTA's proposed revisions prematurely attempt to "set" the jurisdiction over access disputes in the FCC. The FCC has *never* said that it is the sole arbiter of access disputes, and Congress did not intend it that way. FCTA even acknowledged this when its representative described this Commission's jurisdiction over access as "concurrent jurisdiction . . . between the FCC and the states." *See* Tr. 5/19/06 Rule Development Workshop, p. 97. In short, FCTA's proposed 25-6.0342(3) would unnecessarily strip this commission of its safety and reliability jurisdiction, result in a quagmire of inefficiencies, and otherwise be a total disaster.

E. Rules 25-6.034 and 25-6.0342 do not unlawfully delegate the Commission's regulatory authority to electric utilities

The proposed amendments to Rule 25-6.034, Construction Standards, and proposed new Rule 25-6.0342 should be read together. The proposed amendments to Rule 25-6.034 require each investor-owned electric utility to establish within 180 days of the effective date of the rule construction standards for overhead and underground electrical transmission and distribution facilities. New Rule 25-6.0342, Third Party Attachments, requires utilities, as a part of its construction standards adopted pursuant to Rule 25-6.034, to adopt standards and procedures for third-party attachments to utility facilities. Read together these rules require:

> (1) Each utility must establish construction standards which include pole attachment standards and procedures within 180 days of the effective date of the rule.
>
> (2) In establishing attachment standards, the utility shall seek input from other entities with existing agreements to share the use of its electric facilities.
>
> (3) Copies of the standards must be maintained at its corporate headquarters and each district office and must be produced within two working days in Tallahassee for staff review in the companies' Tallahassee office.

(4) Any dispute arising from the implementation of this rule shall be resolved by the Commission.

Contrary to the assertions of the Attachers, the Proposed Rules do not effect an unlawful delegation of Commission authority to the utilities. Instead the proposed amendment to Rule 25-6.034 and proposed new Rule 25-6.0342 simply direct utilities to adopt construction and attachment standards that meet certain minimum safety and reliability criteria. Proposed Rule 25-6.034 provides in pertinent part:

(1) Application and Scope. This rule is intended to define construction standards for all overhead and underground electrical transmission and distribution facilities to ensure the provision of adequate and reliable electric service for operational as well as emergency purposes. . .

* * *

(3) The facilities of each utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.

(4) Each utility shall, at a minimum, comply with the applicable edition of the National Electrical Safety Code. . .

(a) The Commission adopts and incorporates by reference the 2002 edition of the NESC, published August 1, 200. . .

(b) Electrical facilities constructed prior to the effective date of the 2002 edition of the NESC shall be governed by the applicable edition of the NESC in effect at the time of the initial construction.

(5) For the construction of distribution facilities, each utility shall, to the extent reasonably practical, feasible, and cost-effective, be guided by the extreme wind loading standards specified by Figure 250 2(d) of the 2002 edition of the NESC. As part of its construction standards, each utility shall establish guidelines and procedures governing the applicability and use of the extreme wind loading standards to enhance reliability and reduce restoration costs and outage times for each of the following types of construction:

(a) new construction:

(b) major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and

(c) targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

(6) For the construction of underground distribution facilities and their supporting overhead facilities, each utility shall, to the extent reasonably practical, feasible, and cost effective, establish guidelines and procedures to deter damage resulting from flooding and storm surges. (emphasis supplied)

Proposed Rule 25-6.0342 provides:

> The attachment standards shall meet or exceed the [NESC] . . . and other applicable standards imposed by state or federal law so as to assure, as far as reasonably possible that third party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy or reliability; do not exceed pole loading capacity, and are constructed, installed and maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." (Emphasis supplied.)

These provisions provide a clear statement of standards the utilities must meet in developing the construction and attachment standards required by the rules.

As noted above, the Public Service Commission has very broad and exclusive jurisdiction over the safety and reliability of electric utility distribution facilities. Indeed, in 2006, the Florida Legislature supplemented the Commission's existing safety and reliability jurisdiction by amending Section 366.05 to provide the Commission "the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring reliable provision of service." *See* Section 17, Ch. 2006-230, *Laws of Florida* (2006 Senate Bill 888).

Implementing its safety and reliability jurisdiction under the new statutory provision, as well as existing grants of authority, the Commission has proposed infrastructure hardening rules,

including the proposed amendments to Rule 25-6.034 and proposed Rule 25-6.0342 related to third-party attachment standards and procedures.

The amendments to Rule 25-6.034 adopts the 2002 edition of the NESC and requires each utility to adopt construction standards that comply at a minimum with the NESC and assure that "the facilities shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices. . ." (*See* proposed Rule 25-6.034(3)) The utilities are directed to be guided by the extreme wind loading standards . . . of the 2002 edition of the NESC to the extent reasonably practical, feasible and cost-effective for specifically identified types of construction. (*See* proposed Rule 25-6.034(4) and (5)) The construction standards must also consider practical, feasible and cost-effective guidelines and procedures to deter damage to underground and supporting overhead facilities due to flooding and storm surges. (*See* proposed Rule 25-6.034(6))

Proposed Rule 25-6.0342 requires each utility to "establish and maintain written safety, reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles [that] ... meet or exceed the applicable edition of the National Electrical Safety Code ... and other applicable standards imposed by state and federal law so as to assure, as far as is reasonably possible, that third-party facilities attached to electric transmission and distribution poles do not impair electric safety, adequacy, or reliability; do not exceed pole loading capacity; and are constructed, installed, maintained, and operated in accordance with generally accepted engineering practices for the utility's service territory." *See* Proposed Rule 25-6.0432(1). According to proposed Rule 25-6.0432, no attachment to a utility's electric transmission or distribution poles shall be made except in compliance with the utility's Attachment Standards and Procedures. *See* Proposed Rule 25-6.0432(2). Disputes arising from implementation of the rules would be resolved by the

Commission. *See* Proposed new subsection (7) to Rule 25-6.034 and Proposed Rule 25-6.0432(3).

The argument that the Commission is "sub-delegating" its regulatory authority to electric utilities is a red herring designed to distract the Commission from its goal of ensuring standards are in place to harden electric utility infrastructure in the wake of an increased threat of hurricane activity and to delay or derail the rulemaking process. The proposed rules do not delegate regulatory authority to electric utilities. Consistent with its legislative grant of authority, the Commission retains power to decide whether the construction and attachment standards established by electric utilities under the rule satisfy the parameters for construction and attachment standards laid out in the statute and rule – i.e., that they are written for purposes of ensuring reliable provision of service and meet the criteria articulated in subsection (1) of the proposed rule. It is the Commission that: (1) has made the fundamental policy decision as to the guidelines that the standards must meet; (2) retains discretion to determine whether the utilities' construction and attachment standards comply with the rules; and (3) will resolve complaints regarding the rule's implementation. Because the proposed rules would not delegate regulatory authority to electric utilities, there is no merit to an argument that the Commission lacks legislative authority to subdelegate powers to a private entity. *See, e.g., St. Johns County v. Northeast Florida Builders Assoc. Inc.,* 583 So. 2d 635, 642 (Fla. 1991) (finding ordinance did not create an unlawful delegation of power because the fundamental policy decisions were made by the county, and the discretion of the school board was sufficiently limited); *County Collection Services, Inc. v. Charnock,* 789 So. 2d 1109, 1112 (Fla. 4th DCA 2001) (finding there was no improper delegation of authority by a county that entered into a contract assigning code enforcement and lot clearing liens to a contractor where the county retained the power to decide which liens to assign; the power to decide what collection techniques are permissible and to

prohibit the use of any technique it finds objectionable; the power to take back any assigned debt or lien; and the power to terminate the contract for any or no reason), *compare Florida Nutrition Counselors Assoc. v. Dept. of Business & Prof. Reg.*, 667 So. 2d 218, 221 (Fla. 1st DCA 1995) (holding, in part, that a proposed rule constituted an invalid delegation of authority to private individuals where no restrictions were imposed on the types of practices or standards such individuals may create); *City of Belleview v. Belleview Fire Fighters, Inc.*, 367 So. 2d 1086, 1088 (Fla. 1st DCA 1976) (finding improper delegation where, under the contract between the city and a private entity, the city was powerless to direct the exercise of police power in the fire fighting area). [10]

The utilities are the entities that must design, construct and maintain their systems – not the Commission or the Attachers. Consequently, the Commission rules, of necessity, must be a general statement of Commission policy with the specific implementation left to each utility, based on the particular facts and circumstances that each utility faces. As the Commission observed in Re: Aloha Utilities, Order No. PSC-04-0712-PAA-WS, issued in Docket Nos. 020896-WS and 010503-WU, on July 20, 2004:

> Commission practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal. In keeping with this established practice, we decline to prescribe the specific treatment process to be used in this case. (Emphasis supplied.)

What is reasonably sufficient, adequate and efficient service may depend upon the facts and circumstances of that particular customer or territory or portion of a territory. Attempting to

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[10] The proposed rule is also consistent with the Attorney General Opinion, 078-53, cited by Embarq (pp. 2-3), in which the Attorney General determined that the submission of rates by to the Commission by private parties did not mean that the Commission had unlawfully delegated its ratemaking authority because the Commission made the final determination regarding the appropriate rates. Here, the Commission makes the final determination regarding whether the attachment standards comply with the proposed rule.

define what is reasonably sufficient, adequate and efficient service for every potential set of circumstances statewide could dictate endless volumes of administrative rules and would require extensive Staff resources. Rather than doing this, the Proposed Rules rely upon the principle of management by exception whereby the Commission would entertain and resolve complaints of any interested party who believes that a particular utility has acted unreasonably in defining and adopting a particular construction standard.

The Commission properly relies on the principle of management by exception in numerous ways. Indeed, the IOUs are not aware of another instance where the Commission has pre-approved any type of construction standards as opposed to providing guidelines and enforcement mechanisms. Similarly, the Commission does not pre-approve every contract entered into by a public utility but instead addresses and resolves any contention by a substantially affected person that a utility acted imprudently in entering into a particular contract. The Commission has often stated that its role is to regulate utilities through continuing oversight as opposed to micromanaging day-to-day utility operations and decision making.

Here, in charging the utilities with the development of construction and attachment standards, the Commission has recognized that the development of those standards requires expertise and flexibility of the utility to deal with complex and fluid conditions. The Commission has appropriately reasoned that some areas may have higher risk of damage and that stronger facilities are required in those areas.

Construction standards are not uniform today.

Uniform standards among all utilities would not be practicable or cost beneficial for customers. Because of the diverse nature of Florida's geography, utilities need the flexibility to address unique infrastructure needs within and among respective service areas. The Commission's proposed rules are sensitive to this need for flexibility.

It would be difficult, if not impossible, for the Commission to incorporate all of the construction standards for the various utilities in the rule per se.[11] That the Commission's proposed rule 25-6.0432 does not do so does not render it invalid.

F. Proposed rule 25-6.0342 would not void existing licensing agreements or constitute an impairment of private contracts

The attachers make vague references to the potential for Attachment Standards and Procedures to "conflict" with existing agreements.[12] Their suggestions are misplaced for two reasons: (1) Attachers enter into attachment agreements knowing that those agreements may be subject to future regulatory change, and (2) the Commission has a legitimate justification for implementing the Proposed Rules.

1. Expectations of attachers

When attachers enter into agreements, they know the codes, standards and specifications may change during the term of the agreement. The NESC, for example, is revised from time-to-time. A utility's specifications are updated from time to time through experience, technology

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[11] Similarly, the Florida Supreme Court has repeatedly held that the "sufficiency of adequate standards depends on the complexity of the subject matter and the 'degree of difficulty involved in articulating finite standards'." *See, e.g., Avatar Dev. Corp. v. State*, 723 So. 2d 199, 207 (Fla. 1998) *quoting Askew v. Cross Key Waterways*, 372 So. 2d 913, 918 (Fla. 1978) and *Brown v. Apalachee Regional Planning Council*, 560 So. 2d 782 (Fla. 1990). The *Avatar* court found that "environmental protection requires highly technical, scientific regulatory schemes to ensure proper compliance with legislative policy" and determined that requiring the Legislature to "enact such rules, regulations and procedures capable of addressing the myriad of problems and situations that may arise implicating pollution control and prevention in Florida's varied environment" would be "difficult, if not impossible." As stated above, it would be difficult, if not impossible, to adopt uniform construction and attachment standards for the electric utilities given the diverse geographic nature of the utilities' service areas and the unique needs associated with each. Therefore, the Commission has established appropriate guidelines and conditions for the utilities to follow that reflect the Legislature's interest in ensuring that construction standards are designed to ensure the reliable provision of service.

[12] *See*, Verizon Florida Inc's Request for Hearing, at 2; Initial Comments of Verizon Florida, Inc. Concerning Proposed Rules 25-6.0341 and 25-6.-342, at 2-3; BellSouth Telecommunications, Inc. Direct Testimony of Kirk Smith, at 7, 21; Comments of Embarq Florida, Inc. Regarding Proposed Rules 25-6.034, 25-6.0341 and 25-6.0342, at 4.

and innovation. Further, many attachment agreements specifically reserve the right to alter or amend standards and specifications, and specifically note that certain requirements of the contract may change depending on regulatory requirements. Attachers know they are dealing with a heavily regulated industry.

2. Justification for implementation

The contracts clause in the United States Constitution does not preclude implementation of the Proposed Rules.

The primary inquiry into whether a state regulation has violated the Contracts Clause[13] requires courts to determine whether the regulation "operates as a substantial impairment of a contractual relationship." *See United States Fidelity & Guaranty Co. v. Department of Ins.*, 453 So. 2d 1355, 1360 (Fla. 1984)[14]; *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410-13 (1983); *Allied Structural Steel v. Spannaus*, 438 U.S. 234, 244 (1978). In determining whether a state regulation operates as a substantial impairment, courts place special emphasis on whether the industry of question is heavily regulated. *See Energy Reserves Group*, 459 U.S. at 413 (denying the plaintiff's impairment of contracts argument and emphasizing that the parties were operating in a heavily regulated industry); *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (same). The electric utility industry is a heavily regulated industry and the Attachers know of the heavy regulation when they sign attachment agreements. *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 38 (U.S. 1940) ("When he purchased into an enterprise

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[13] Article I of the U.S. Constitution states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." United States Const. art I, § 10, cl. 1. Although the text of the Contracts Clause is "facially absolute," the Supreme Court consistently holds that the absolute prohibition must be balanced against "the inherent police power of the State to safeguard the vital interests of its people." *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410 (1983); *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434 (1934).

[14] In *United States Fidelity & Guaranty Co.*, the Florida Supreme Court adopted the U.S. Supreme Court's method of analysis for Contracts Clause inquiries. *See United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360.

already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic."); *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 ("One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them.") (citations omitted).

Further, in reviewing a state regulation under the Contracts Clause, courts give deference to: (1) legislative judgment on the reasonableness of a particular measure; and (2) the inherent police power of the State to safeguard the vital interests of its people. *See United States Fidelity & Guaranty Co.,* 453 So. 2d at 1360; *Energy Reserves Group,* 459 U.S. at 412-13. Here, the Commission has a more than reasonable justification for implementing the Proposed Rules.

II. Regulation is not a reason to shift costs to electric utilities and their customers

By ensuring that all attachments meet the required standards, the Proposed Rules will help ensure that pole owners, Attachers and their customers will experience improved reliability. The appreciable benefits of the Proposed Rules – benefits to all electric customers, as well as the attaching entities and their customers – do not come without a cost.

The attaching entities have presented no valid reason why they should enjoy the benefits of the Proposed Rules without sharing in the costs that are necessary to achieve these benefits, and there is no reason.

Nonetheless, the Attachers assert that the costs of implementing the Proposed Rules should be shifted to the electric utilities because the electric utilities are rate-of-return regulated. This argument must be rejected.

First, the rules and standards will apply to all Attachers in a fair and non-discriminatory manner. Increased costs to attaching entities will not be any greater than to any other user of the poles.

Second, the ILECs, Embarq, BellSouth and Verizon, each argue that they should not be forced to bear increased costs because they are price regulated. Their comments ignore or overlook the fact that they have each elected price cap regulation under Section 364.051, Florida Statutes. These ILECs could have chosen to remain subject to rate-of-return regulation had they desired to do so, and costs should not be shifted to IOUs and their customers simply because of a choice the ILECs made.

In addition, the price caps are not absolute. The ILECs' price caps may be eliminated if it is determined that the level of competition justifies their elimination or if circumstances have changed to justify an increase in the rates for basic local telecommunications services. *See* § 364.051(3), (4)(a), Fla. Stat. (2006).

The argument that the ILECs and other Attachers will be competitively disadvantaged if they are forced to bear some of the costs associated with implementation of the Proposed Rules is simply irrelevant to whether the Proposed Rules merit adoption as a reasonable and appropriate exercise of the Commission's safety and reliability jurisdiction.

III. The Commission has ample evidentiary support for its Proposed Rules

The Attachers also argue that there is no factual basis for the Proposed Rules. They allege that the Attachers are not "cost-causers" and that the rules "presuppose" that third party attachments on poles cause safety or reliability problems (BellSouth Smith, pp. 17-18). The Attachers' arguments miss the mark as the purpose of the Proposed Rules is to strengthen utilities' infrastructure. Therefore, the appropriate question is not who or what is causing problems or pole failures, but rather, what can be done to further ensure storm readiness on a going forward basis.

The Commission has reasonably determined that nothing should be attached to a pole that is not engineered to be there in advance. It reached this conclusion after finding that pole

attachments can have significant wind loading and stress effect on a pole and can cause overloading and that some attachments are made without notice or prior engineering. The Commission consequently concluded that steps should be taken to assess the pole attachment effect on poles to prevent overloading.

Comments at the July 13, 2006, workshop made by the FCTA's consulting engineer confirmed the Commission's wind loading and stress concerns by presenting a photograph of an overloaded pole and observing:

> Multiple cables which are attached lower than the power facilities on the poles do account for more wind load than the very basic power lines. . . . So there are poles out there where the cables are a very big factor of the wind loading but that normally is not the case. (Tr. 87) (Emphasis supplied.)

The IOUs agree that the wind loading effect of pole attachments creates stress on utility poles.[15]

Pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Indeed up to 40% of the pole loading on a typical pole line can be caused by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed.

As illustrated in FIGURE III-1 below, the larger the surface area of the attachments and the span length, the larger the forces that act on the pole. Of the many forces that act on a pole, wind loading is the design criterion that most often determines how the design strength of a pole line is determined.[16] The illustration below shows two tangent poles[17] exposed to the forces of wind.

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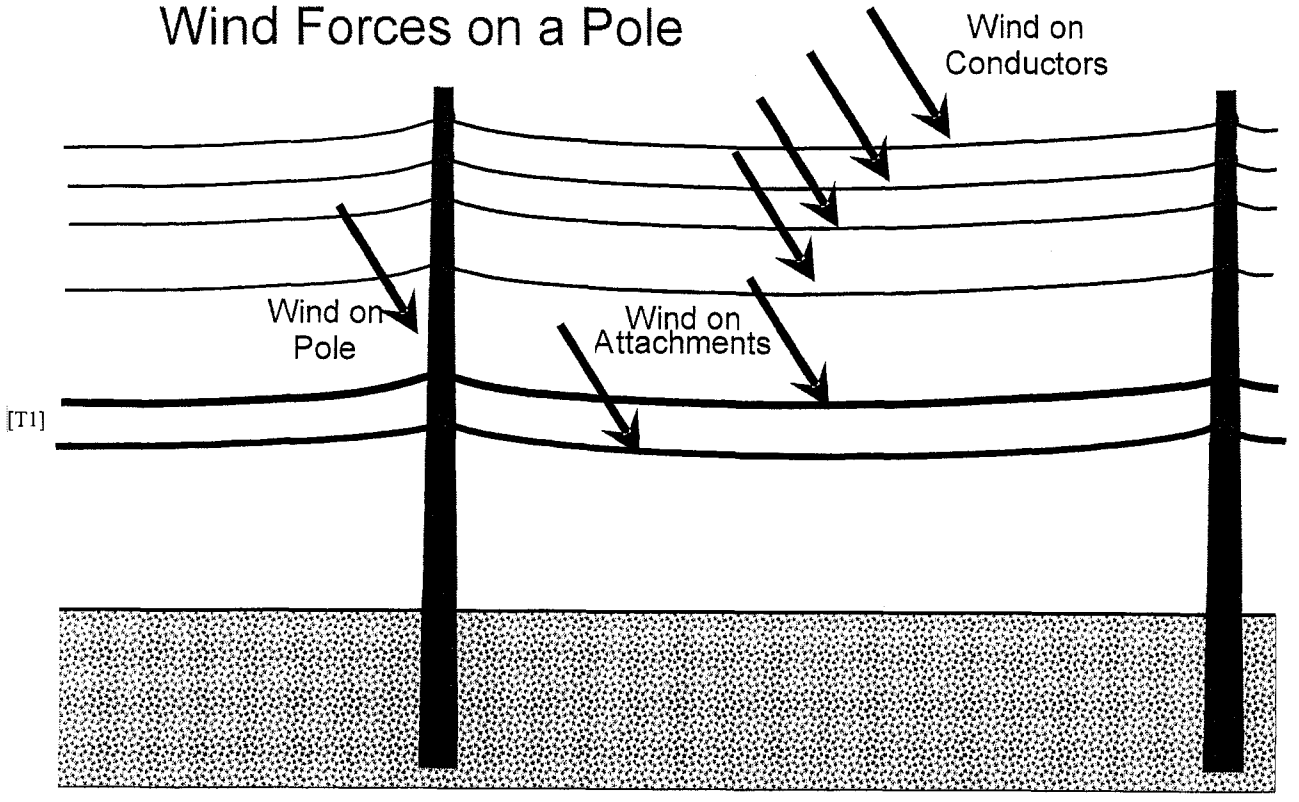
[15] Please see Composite Exhibit 2 which contains affidavits of representatives of investor-owned utilities in support of these Joint Reply Comments.

[16] Other forces to be considered for pole design include axial (compression caused by the weight of facilities on a pole), shearing, and torsion stresses.

FIGURE III-1



Wind loading creates a stress called "bending moment" on the pole. The force applied by the wind increases with the cross sectional area of items placed on the pole, not the weight.

A comparison would be to consider the sail on a sailboat. When the sail is down, the boat is not moving and the force on the mast is limited to the small amount of wind force applied to it. However, when you raise the sail, the wind catches the sail, the force on the mast increases and the boat moves. Since poles are not supposed to move, they must be strong enough to withstand the wind force applied to the sails (attachments) placed on it. The larger the sail or the more attachments (by exposed area) placed on the pole, the stronger the pole must be.

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[17] A tangent pole can be defined as a pole between the two end points of the pole line (the dead end poles). The simplest form of a tangent pole has a span of conductor reaching in opposite directions as displayed.

Given a desired wind band and equipment loads, several options are considered to optimize the pole line design. The most significant factors that are considered for the calculation of wind loading of wood poles are: 1) pole type/class (pole length and strength of pole); and 2) pole span length (distance between poles).

Regarding pole types, treated wood poles are the most common type of pole used, and are chosen for their durability, availability and cost effectiveness. Wood poles are available in different standard heights and classes. The class of pole determines its strength. If additional strength is required, other types of poles such as static-cast concrete or spun concrete may be used.

The second significant factor in the wind loading calculation is span length. Span length is a trade off of the strength of poles used versus how far apart they are installed. Span length is limited by property line limitations and the optimum number of poles that can be practically used given the desired wind load design.

Third-party pole attachments affect a pole's wind rating and play a significant role in pole line design. The addition of attachments may force a design to use larger and more expensive poles or to use shorter spans, increasing the total number of poles in a line, therefore, affecting the overall cost. Figure III-2 below illustrates the effects of attachments on a 50/2 wood pole line with 141 ft. spans.

FIGURE III-2:

Effects of Various Attachments on Wind Loading

De-Rating Caused By Additional Attachments

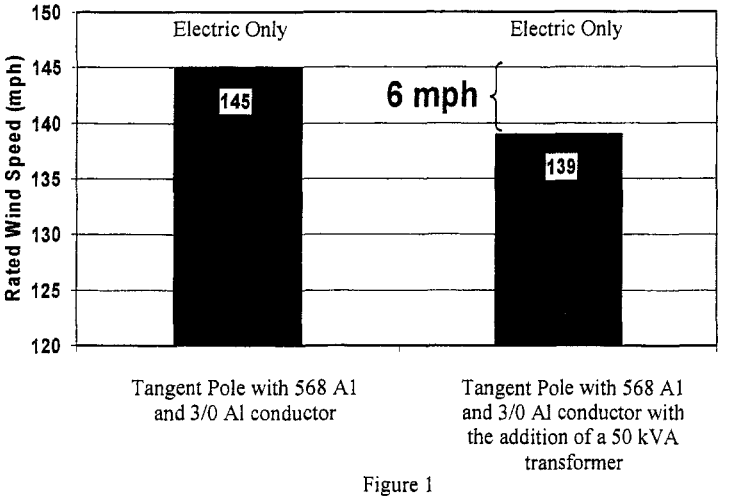

Figure 1

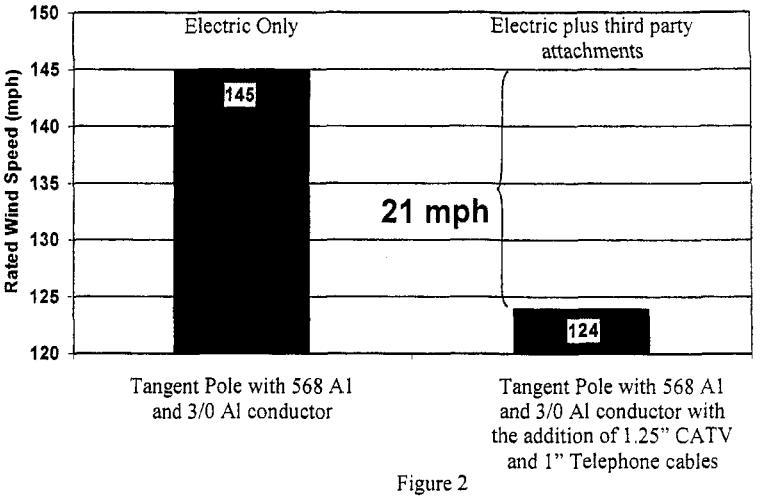

Figure 2

Figure 1 (on the left above) shows how a pole, the same pole, will be de-rated (decrease in the amount of wind force it should be able to withstand) by 6 mph when a 50 kVA electric transformer is added. Figure 2 (on the right above) shows how a pole – the same pole – will be de-rated 21 mph when two third party attachments are placed on that same pole. While the de-rating from the transformer would require a single larger pole to be installed, the de-rating caused by the third party attachments would require even larger poles for an entire pole line.[18]

As shown in the examples given, attachments can have a significant effect on wind loading. Although both electrical power equipment and telecommunications line attachments

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[18] Note that FCTA has suggested storm guys as a means of hardening the infrastructure. While storm guys are a formidable method of hardening an infrastructure and should always be considered in a hardening solution, they may not necessarily provide the answer. As Florida becomes more and more urbanized, locations to place these guys are difficult to find and along a front easement require additional stub poles (almost doubling the number of poles required) and span guys to cross streets causing more congestion along the road right-of-way. The ability to acquire easements has become very difficult and in some cases financially unfeasible. Additionally storm guys require at least an extra foot of pole space which reduces the amount of space and may reduce the number of attachments that can be made by third parties on the pole.

play a role in overall pole loading, telecommunications equipment can also have a significant effect on overall pole wind loading as shown, contributing as much as 40% of the overall wind loading of a typical pole line. In addition, once the basic power circuit is accounted for, additional power equipment can be addressed on a pole by pole basis. Conversely, communications circuit changes must be applied to the entire pole line that they are installed on.

In sum, third-party pole attachments significantly affect wind ratings and pole line design. The Commission has ample evidentiary support for addressing third-party attachments as part of its endeavor to strengthen utilities' infrastructure and further ensure storm readiness on a going forward basis.

IV. The Attachers' proposed revisions to Rule 25-6.0341 should be rejected

A. Requiring extensive mandatory notice to coordinate construction, installation and migration projects would be unworkable and ineffective

FCTA urges the Commission to amend proposed rule 25-6.0341 to require utilities to provide "notice and an opportunity to participate" where an expansion, rebuild, or relocation of electric distribution facilities affects existing third-party attachments and to "take into account the needs and requirements of third-party attachers in coordinating" the construction of its facilities with the attacher (FCTA, Exhibit 4). Further, FCTA suggests that the utility shall be required to provide "reasonable and sufficient advance notice of its construction plans to permit third-party attachers to evaluate their construction alternatives and to make necessary budgetary plans." *Id.* Verizon also suggests a requirement of mandatory advance notice of "at least 12 months" (Verizon, p. 4). These suggestions should be rejected.

The current language of the proposed rule, which requires the utility to "seek input from" and "to the extent practical, coordinate" with attachers where distribution projects affect existing attachments, strikes the appropriate balance between the third-party attacher's desire for

appropriate notice and the electric utilities' need for flexibility to address its specific system needs as they arise. To require utilities to provide substantial advance notice and consider the needs and requirements of third-party attachers whenever an attacher is affected by a project would undermine the reliability objectives of the Proposed Rules and elevate the Third-Party Attachers to the role of managing the utilities poles and projects.

Mandating 12-months advance notice or allowing for substantial delay by the attachers while the utility tries to get sign-off from the attacher (as suggested by FCTA in its Exhibit 3), will only impede the reliability of utility service to Florida customers that this rule is designed to encourage. In some cases, municipal, state and other critical relocation projects will need to be done with notice of six months or less in emergencies. The utilities need the flexibility to respond to the customers' needs. As the IOUs have consistently done, we will seek input and, to the extent practical, coordinate with third-party attachers where the projects affect existing attachments.

Contrary to FCTA's suggestions, proposed rule 25-6.0341 need not be modified. The Proposed Rules in no way conflict with requirements of the FCC or existing pole attachment agreements regarding advance notice, and there is no reason to believe that the IOUs will violate these guidelines.

B. The cost calculations supplied by the Attachers are overstated and unreliable

The benefits of improved reliability do not come without a cost. However, the Attachers allegations of cost impact related to conversions appear to be exaggerated. For example, BellSouth witness Smith argues that there are two primary drivers for cost increases: 1) electric utilities abandoning poles due to relocations; and 2) electric utilities replacing existing poles with taller, stronger poles requiring BellSouth to transfer its facilities.

Among other reasons, electric utilities may "abandon" poles that have attachments where communities decide to convert facilities from overhead to underground. BellSouth presents cost calculations that assume that electric companies will abandon between 10% and 40% of poles that have BellSouth attachments (BellSouth Smith, p. 13). Even with an emphasis on promoting conversions to underground facilities, a 10% conversion rate is greatly exaggerated.

BellSouth's cost impacts based on its assertion that proposed rule 25-6.0341 calls for electric utilities to "as a general rule" place facilities in front of the customer's premises are also inflated. (BellSouth Smith p. 13). Proposed rule 25-6.0431 calls for electric utilities to place facilities adjacent to a public road "to the extent practical, feasible and cost-effective." The rule does not call for a broad brush approach to relocations. Rather, relocations would occur in a practical, feasible and cost-effective manner. Again, BellSouth's assumption that 10 to 40% of the poles to which it is attached will be affected appears to be significantly inflated.

Regarding the replacement of existing poles with taller, stronger poles, BellSouth's assertion that 40% of poles will be impacted in the near term is high, as is its range of cost per transfer of $95 to $470. (BellSouth Smith p. 15). The stronger poles that are being set are current industry standard poles and, therefore, BellSouth already has experience in attaching to these poles. Also, it is inappropriate to assume that all existing poles must be replaced as part of the hardening effort. These and other factors lead to inflated assumptions that render the cost calculations supplied by BellSouth and others unreliable.

Further, the impact on pole attachment rates in the near term is expected to be minimal and increases in rental rates will not be disproportionately borne by attachers. Because of third-party attachments, it will cost the IOUs more money to meet wind-loading requirements. The IOUs and their customers should not be forced to subsidize the costs of the more fortified system

that is needed to meet the needs of Attachers. Rather, the Attachers should bear their share of the costs.

C. The suggestion that the proposed rule apply only to new construction should be rejected

Limiting this rule to new construction would undermine one of the primary objectives of the Proposed Rules, which is to enhance the reliability of existing infrastructure.

D. There is no demonstration that the proposed rule would interfere with the ILECs' ability to fulfill its statutory obligations

Verizon asserts that the proposed rule may interfere with its ability to fulfill its carrier-of-last resort obligations under Florida law. (Verizon, p. 5). Verizon provides no support for this assertion. Unsupported speculation about potential (and unlikely) unintended consequences of the Proposed Rules afford no basis for delaying their implementation.

V. The Attachers' proposed revisions to Rule 25-6.0342 should be rejected

A. It is appropriate and consistent with Chapter 366 for the proposed rule to authorize standards that exceed those of the NESC

BellSouth, Embarq, Time Warner and others suggest that the rules should incorporate only the NESC standards and not authorize standards that exceed those of the NESC. This should be rejected. As addressed above, the 2006 Legislature amended Section 366.05 to clearly provide the Commission "the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring reliable provision of service." *See* Section 17, Ch. 2006-230, *Laws of Florida* (2006 Senate Bill 888). Therefore, it is clearly within the Commission's authority to authorize standards that exceed the minimum NESC standards.

Even before 2006, the Commission had authority to, and did, authorize construction standards for electric utilities. In many cases the utilities' current construction standards already

exceed those of the NESC. The assertion by BellSouth and others that the Proposed Rules upset the status quo of using the NESC as the uniform national standard by which power and telephone companies operate is simply not correct.

Embarq also suggests that any standards that exceed the NESC should be adopted by the Commission by rule. For the same reasons the utilities must establish their respective construction and attachment standards, it would be difficult, if not impossible, for the Commission to adopt uniform standards that exceed the NESC. The proposed rule recognizes the need for flexibility in addressing differing circumstances within and among the utilities' respective service areas.

The investor-owned utilities oppose the proposals of Embarq, Time Warner and FCTA that would strike "at a minimum" from subsection (4) of Rule 25-6.034 and "meet or exceed" from subsection 1 of Rule 25-6.0342. A requirement that utilities could not exceed the provisions of the NESC would degregate the reliability and safety of utility infrastructure and would essentially undermine the intent of the rules.

B. Suggestions that the standards should be adopted by mutual agreement should be rejected as unworkable and inappropriate

Several Attachers urged a more collaborative process in developing the construction and attachment standards. For example, the FCTA argues that the Attachment Standards and Procedures should be "jointly developed" with third-party attachers and submitted to the Commission for approval, including the opportunity for an evidentiary hearing. Similar arguments are advanced with respect to construction standards. (FCTA, Exhibit 3). See FCTA Composite Exhibit MAG-1. Similarly, Time Warner suggests that the Commission review the standards for consistency in implementing the NESC. (Time Warner, Attachment 1). These suggestions should be rejected as unworkable and inappropriate.

The rules appropriately balance a requirement of obtaining input without creating a situation where one party could effectively stall the process of finalization of the standards. As called for by the proposed rule, the electric utilities will seek input from the attaching entities in the development of the attachment standards and will coordinate the construction of a hardened infrastructure with all attaching entities. For the Proposed Rules to go further and give the attaching entities the ability to manage or veto the utility standards would undermine the objective of the Commission's proposed infrastructure hardening rules.

The rules provide full due process by allowing any affected party to file a complaint challenging the reasonableness of the standards developed by the utility after receiving input from the Attachers.

Conclusion

The Proposed Rules are an important part of the Commission's objective of ensuring facilities are storm ready in light of the increased threat of hurricane activity that we currently face. The Proposed Rules provide a critical means for dealing with this threat to electric distribution facilities in a fair and reasonable way and the Commission should move forward with adoption of the rules as currently proposed in a timely manner.

Respectfully submitted this 18th day of August, 2006.

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ON BEHALF OF TAMPA ELECTRIC COMPANY

By: _____
Lee L. Willis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Tampa Electric Company has been furnished by Hand Delivery* or U. S. Mail this 18th day of August, 2006 to the following:

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Attorney

EXHIBIT 1

DOCKET NO. 060173-EU

CABLE TELEVISION ATTACHMENT AGREEMENT WITH GULF POWER COMPANY

CABLE TELEVISION ATTACHMENT AGREEMENT

This Agreement is made and entered into the 17th day of March, 1995, by and between Gulf Power Company, a Maine corporation, hereinafter called "Gulf," and Comcast Cablevision of Panama City, Inc., hereinafter called "CATV Company."

WITNESSETH:

WHEREAS, CATV Company desires to furnish cable television service in the area described in Exhibit A, attached hereto, which service will require the installation and maintenance of cables, wires and appliances; and

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

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

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

1. Term of Agreement. The term of this Agreement shall commence on the 1st day of March, 1995 and subject to all of the provisions of this Agreement, shall continue in full force and effect thereafter until the 29th day of February, 2000 unless earlier terminated according to the provisions of this Agreement. The parties may agree to extend this Agreement for an additional five (5) year period and for consecutive five (5) year periods upon

agreement as to terms, including fees and charges, for each additional extension period.

2. Conditions Precedent. As conditions to Gulf accepting a permit application from the CATV Company or granting a permit to the CATV Company, CATV Company shall submit evidence satisfactory to Gulf of the following:

A. CATV Company's authority to erect and maintain its facilities within public streets, highways and other thoroughfares, and any necessary consent or franchise from state or municipal authorities or from the owners of the property upon which the poles are located to construct and maintain its facilities on them;

B. CATV Company's financial stability;

C. Certificate of Insurance required under Paragraph 20; and

D. CATV Company's operational expertise.

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

3. Application and Permits.

A. Before attaching to any of Gulf's poles, CATV Company shall submit to Gulf an Application for CATV Attachment Permit. Gulf will acknowledge to CATV Company, in writing, its acceptance or rejection of each application within thirty (30) days after such receipt. The only exception shall be as provided in Section 3.B. The application and permit form is set forth in Exhibit B, attached hereto. The application shall be accompanied by two (2) detailed copies of CATV Company's construction drawings which clearly identify the poles to which the CATV Company will attach if a permit is granted. If the proposed attachment is satisfactory to Gulf, a permit will be granted upon payment of a one time permit fee of $1.00 per attachment plus Make Ready costs as described in Section 12.A.. Prior to commencement of construction by the CATV Company, Gulf may

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

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

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

4. Payment and Billing. CATV Company shall pay Gulf a semi-annual rent of $2.825 per pole. Bills for rent shall be rendered by Gulf on or before January 15th and July 15th of each year. All attachments permitted and those which exist on Gulf's poles on December 31st and June 30th of

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

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

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

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

6. Attachment and Maintenance. As used herein, an attachment is defined as the material or apparatus which is used by CATV Company in the construction, operation, or maintenance of its plant and which is attached to Gulf's poles. CATV Company shall erect and maintain at its own expense cables, wires and appliances in safe condition and in thorough repair. It shall be the sole obligation of CATV Company to ensure compliance with the applicable requirements and specifications of the National Electrical Safety Code and amendments thereto, including clearance requirements between power and cable lines, safe work practices, and any other applicable codes, rules or regulations now in effect or which hereafter may be issued of any governing body having jurisdiction. Upon CATV Company's knowledge of any violation of any code, rule, or regulation, CATV Company shall promptly institute corrective action, at its own expense. In the event CATV Company fails to correct any violation within a reasonable time, Gulf may correct the non-compliance and charge the reasonable costs thereof to CATV Company. Recognizing that strict compliance with the terms of this agreement is essential to the fair and equitable allocation of limited pole space among competing CATV companies, and as a deterrent to such non-compliance in order to preserve the public welfare, CATV Company shall pay Gulf its actual costs for such corrective action plus fifteen (15%) percent. CATV Company further agrees to indemnify and

hold Gulf harmless for any injury or damages, including but not limited to actual damage awards, fines, settlements, attorney's fees and court or administrative costs, resulting from CATV Company's noncompliance with any applicable code, rule or regulation as described above.

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

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

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

8. Gulf's Service Requirements. Gulf reserves the right to maintain its poles and to operate its facilities on them in the manner best suited to fulfill its own service requirements, including considerations of economy and safety. Use of Gulf's poles under this Agreement will create or vest in CATV Company no ownership or property rights in Gulf's poles, notwithstanding the length of use. Gulf is in no way required to keep in place any of its poles or other facilities for a period longer than is necessary to meet its own service requirements. Gulf reserves the right to refuse to grant an attachment permit if Gulf determines that such pole is required for its exclusive use or that the pole may not be reasonably rearranged or replaced. Gulf will exercise due care to avoid interfering with CATV Company facilities. However, Gulf will in no way be liable to CATV Company for interruption of CATV Company's service or for interference with the operation of CATV Company's cables, wires and appliances, except for Gulf's negligence.

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

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

11. Order on the Pole.

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

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

12. Make Ready, Substitutions, Changes and Rearrangements.

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

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

B. Substitutions, Changes, and Rearrangements. CATV Company shall, at its own expense, install the attachments and maintain them in safe condition in a manner satisfactory to Gulf. CATV Company shall, at its own expense, at any time requested by Gulf for good cause remove, relocate, replace, and repair its facilities on the poles, transfer them to substituted poles or perform any other work in connection with the facilities that Gulf

may require. CATV Company shall notify Gulf immediately after completing the requested work. If the CATV Company fails to comply with Gulf's request within thirty (30) days of receipt of such request, Gulf may perform or have performed such work at CATV Company's expense with no liability therefor. CATV Company shall pay Gulf its cost for such work plus fifteen (15%) percent.

In any case deemed by Gulf to be an emergency, Gulf may, at the expense of CATV Company, arrange to remove, relocate, replace or renew the facilities of CATV Company, transfer them to substituted poles or perform any other work in connection with the facilities that may be required in the maintenance, replacement, removal or relocation of the poles or the facilities on them. Gulf will invoice CATV Company for actual expenses incurred in performing these emergency measures.

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

14. Damage to Facilities. CATV Company shall exercise caution to avoid damage to facilities of Gulf and of others on Gulf's poles. CATV Company assumes responsibility for any and all loss or expense arising out of such damage caused by it and shall reimburse Gulf or others occupying

Gulf's poles for such loss or expense. CATV Company shall immediately report damage caused by it to Gulf and to others occupying Gulf's poles which are in any way affected by such damage.

15. Inspections and Surveys.

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

B. Field Surveys. Gulf reserves the right to make field surveys of its poles in the area described in Exhibit A as it may be amended from time to time pursuant to subparagraph C hereof, at intervals not more often than once every five (5) years, for the purpose of determining the actual number of CATV Company attachments. CATV Company agrees to pay a violation fee of $25.00 per attachment for any unpermitted attachments in excess of ten (10) or two percent (2%) of the last verified reported total, whichever is greater. Gulf shall bear the cost of such field surveys, unless the number of attachments counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued. In the event the number counted exceeds by five percent (5%) or more the number of attachments for which permits have been issued, CATV Company shall pay, in addition to the violation fee, the cost of field surveys attributable to the area described in Exhibit A as amended, pursuant to Section 4 of this Agreement. Gulf shall notify CATV Company at least thirty (30) days in advance of the field survey and shall specify the method to be used in

performing the survey. CATV Company will be given the opportunity to accompany Gulf or its contractor and to participate in the field survey. Should CATV Company disagree with results of the survey, a new survey may be performed by Gulf and CATV Company at CATV's sole expense.

C. Expansion of Service Area. Should at any time following execution of this Agreement the CATV Company desire to expand or modify the area described in Exhibit A, CATV Company shall provide Gulf in writing an amended Exhibit A which shall include such areas, and shall receive Gulf's written approval prior to such expansion or modification becoming a part of this agreement. Gulf shall approve or reject CATV Company's request within sixty (60) days of receipt of such request. No new attachments shall be made in the amended area before the amended Exhibit A is approved.

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

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

18. Pole Abandonment. If Gulf desires at any time to abandon any pole, it shall give CATV Company notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. CATV Company may then purchase the pole from Gulf at fair market value;

however, if at the expiration of such period CATV Company has not removed all of its attachments therefrom or purchased the pole, Gulf may proceed to remove such attachments at the expense of CATV Company with no liability therefor. CATV Company shall pay Gulf for its cost of removal plus fifteen (15%) percent.

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

20. Insurance. CATV Company shall procure and maintain insurance to protect it and Gulf against claims for damage to property or injury to or death to persons, as described but not limited by Section 19, in the amount

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

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

22. Types of Service. CATV Company is authorized to attach its cable plant to Gulf's poles for the purpose of delivering cable communications service to CATV Company's commercial and residential subscribers and for such other purposes as are or may be permitted pursuant to the cable television franchises granted by the governmental entities served by the CATV Company. In the event that federal or state law should permit

separate pole attachment rates be made for pole attachments other than for uses set forth above, Gulf and CATV Company agree to negotiate in good faith in order to derive a rental rate for such attachments which is mutually acceptable to both parties.

23. Termination and Cancellation.

A. Default. If CATV Company fails to comply with any of the provisions of this Agreement and fails within thirty (30) days after written notice from Gulf to cure a default, Gulf may terminate this Agreement or cancel the permits covering the poles as to which such default has occurred and CATV Company shall immediately remove all affected attachments. Should CATV Company fail to remove its attachments after such termination or cancellation within the (30) day period after Gulf's written notice to cure a default, Gulf may proceed to do so at the expense of CATV Company with no liability to Gulf therefor. CATV Company shall pay Gulf its cost for such removal plus fifteen (15%) percent. If CATV Company fails to perform work required to cure a default, Gulf may elect to perform such work at the expense of CATV Company with no liability therefor. CATV Company shall pay Gulf its costs for performing such work plus fifteen (15%) percent.

B. Termination Due to Nonattachment. If CATV Company has made no attachments to any of Gulf's poles within the area covered by an attachment agreement within one (1) year after the date of the agreement, Gulf may terminate the agreement immediately and shall provide notice to the CATV Company of such termination thereafter. Likewise, if CATV Company under an existing attachment agreement enters into an amendment to that agreement to include a new area but does not attach to any Gulf's poles within the new area within one (1) year after the date of the amendment, Gulf may terminate the amendment in the same manner as it would be able to terminate the agreement. Termination of any such

amendment shall not affect the original agreement nor the area covered by the original agreement, if attachments are made under the original agreement within the applicable one (1) year period. If CATV Company makes attachments to Gulf's poles under an agreement or amendment of agreement but removes all such attachments and fails to make any new attachment for a period of one (1) year after the removal of the last attachment, Gulf may terminate the agreement or amendment of agreement as provided above.

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

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

E. Temporary Extension of Agreement Beyond Expiration or Termination. Upon expiration or termination, all rights and obligations conferred hereunder shall remain in full force and effect, including the right to apply for and make new attachments, so long as Gulf reasonably determines that the parties are actively and in good faith negotiating a new agreement. If, however, Gulf reasonably determines that negotiations have reached an impasse or that CATV Company is not proceeding in good faith, then Gulf may terminate this Agreement upon written notice of termination to CATV Company. CATV Company shall remove its attachments from

Gulf's poles within one hundred and twenty (120) days after such notice, unless before the end of the one hundred and twenty (120) days a new agreement is reached between Gulf and CATV Company or CATV Company otherwise obtains equitable relief from any court or governmental agency of competent jurisdiction. Nothing contained in this Agreement or otherwise shall be deemed to constitute a waiver by CATV Company of (i) any privilege or right of CATV Company, whether pursuant to law, by contract or otherwise, to any equitable or other judicial or administrative relief or (ii) any term or provision of applicable federal, state or local law, including, without limitation, the Pole Attachment Act (47 U.S.C. §224), 47 C.F.R. §1.1409(c) and related regulations. During the one hundred and twenty-day period following the notice of termination, no new attachments shall be permitted or made; all other rights and obligations conferred hereunder shall remain in full force and effect until such time that CATV Company's attachments have been removed from Gulf's poles. If not so removed, Gulf may remove such attachments at CATV Company's expense with no liability therefor. CATV Company shall pay Gulf its cost for such removal plus fifteen (15%) percent.

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

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

26. Notice. All notices under this Agreement must be given in writing by registered or certified mail, return receipt requested, and mailed with sufficient postage prepaid to the party to be given such notice. Notice to Gulf shall be addressed to:

Project Services Administrator
Gulf Power Company
Post Office Box 1151
Pensacola, FL 32520-1151

Notice to CATV Company shall be addressed to:

Comcast Cablevision of Panama City
Attn: General Manager
1316 Harrison Avenue
Panama City, FL 32401

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

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

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

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

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

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

ATTEST:

By: _____

Comcast Cablevision of Panama City, Inc.

By: _____
Title: SVP

ATTEST:

By: _____
ASSISTANT SECRETARY

Gulf Power Company

By: _____
Vice President - Customer Operations

EXHIBIT A

DESCRIPTION OF CATV SERVICE AREA

Name of Company Comcast Cablevision of Panama City

For Agreement Dated March 17, 1995

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

That part of Bay County, Florida lying Southerly of North Bay; Easterly of West Bay and St. Andrews Bluff; Northerly of East Bay; and lying South and West of a line which begins at a point where the North boundary of Section 1, Township 3 South, Range 14 West intersects North Bay, thence North along the West boundary of Section 31, Township 2 South, Range 13 West, and an extension thereof to the Northwest corner of Section 7, Township 2 South, Range 13 West, then East along the North boundary of said Section 7 and an extension thereof to the Northeast corner of Section 9, Township 2 South, Range 12 West; thence South along the East boundary of said Section 9 and an extension thereof to the Southeast corner of Section 33, Township 4 South, Range 12 West; then West along the South boundary of said Section 33 to a point where said line intersects East Bay, and,

Also, Woodlawn Subdivision, being a part of Section 28, Township 3 South, Range 15 West, and,

Also, U.S. Naval Reservation located in Section 33, Township 3 South, Range 15 West and in Section 4 South, Range 15 West, all in Bay County, Florida.

ATTEST:

By: _____

Comcast Cablevision of Panama City, Inc.

By: _____

Title: SVP

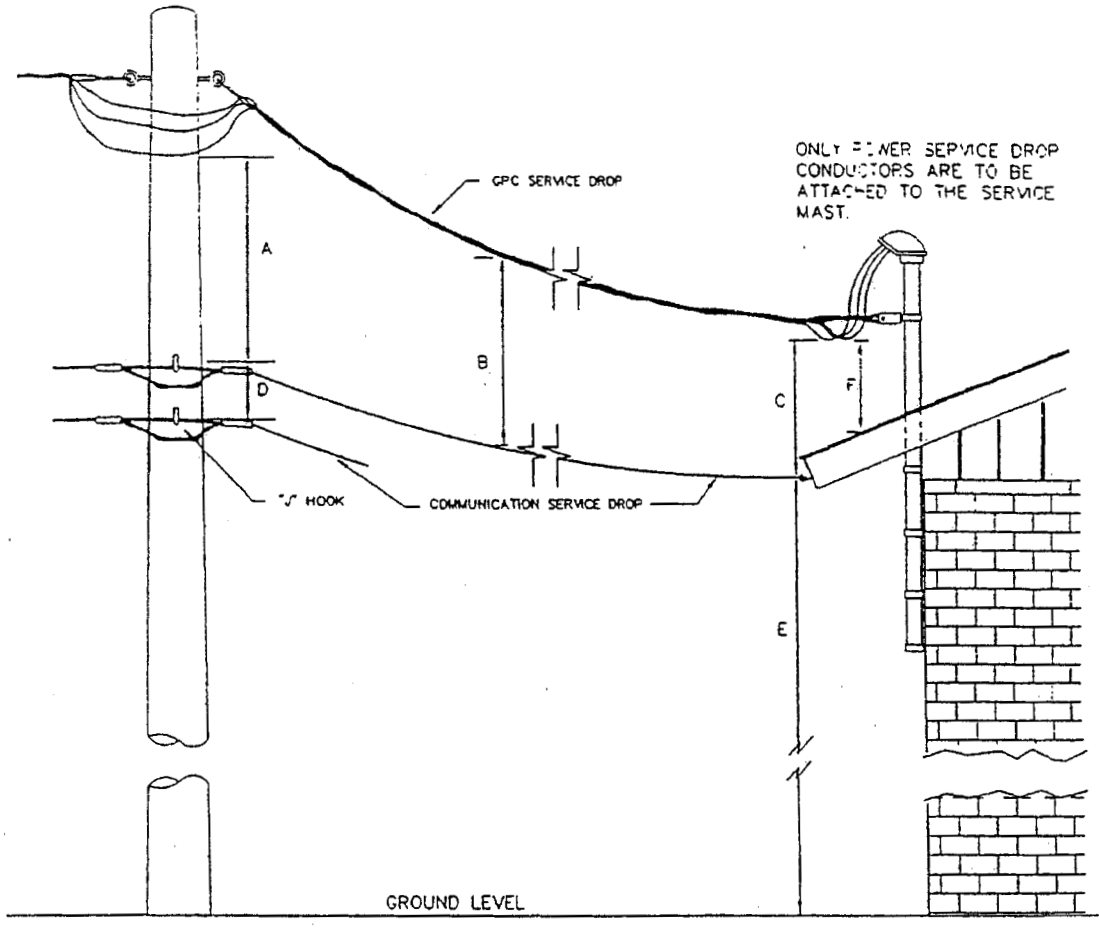
ATTEST:

By: _____
ASSISTANT SECRETARY

Gulf Power Company

By: _____
Vice President - Customer Operations

SEPARATION OF SERVICE DROPS



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

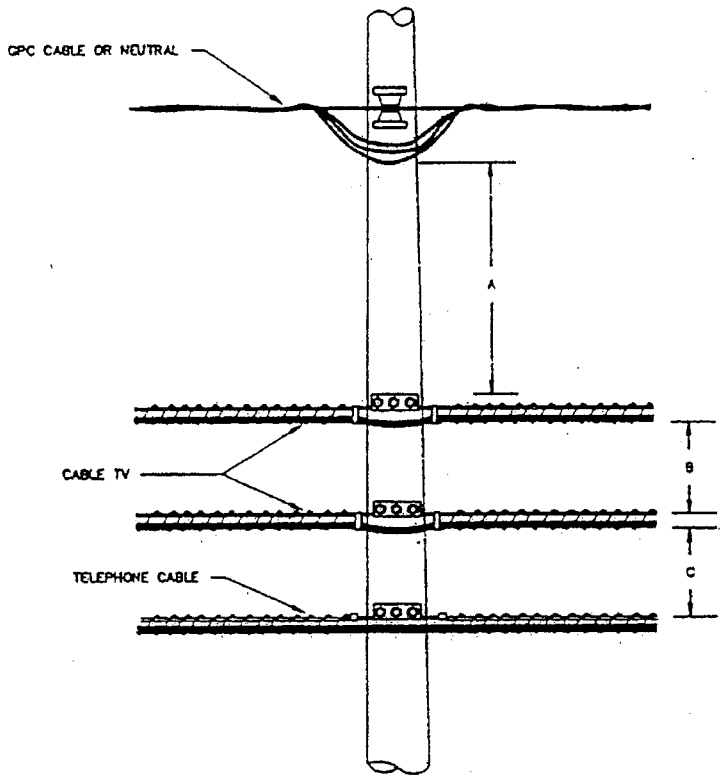
NOTE: 1. CLEARANCE IS THE CLEAR DISTANCE BETWEEN TWO OBJECTS MEASURED SUFACE-TO-SURFACE

Confidential-Business Proprietary
Information FCC EB Docket No. 04-381

002328 COM

DATE 5/29/92	GULF POWER COMPANY	PLATE C-1
ENG R.B. DRN E. L. W.	11/18/94	
APPROVED		

SEPARATION AT POLE
PARALLEL FACILITIES



DIMENSION (LETTER)	REQUIRED CLEARANCE	NESC APPLICABLE REFERENCE SECTION
A	40 INCHES	TABLE 238-1, 238-8
B	12 INCHES	GPC REQUIREMENT
C	12 INCHES	GPC REQUIREMENT

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

Confidential-Business Proprietary Information FCC EB Docket No. 04-381

DATE 5/26/92
ENG R.B. DRN E. L. W.
APPROVED

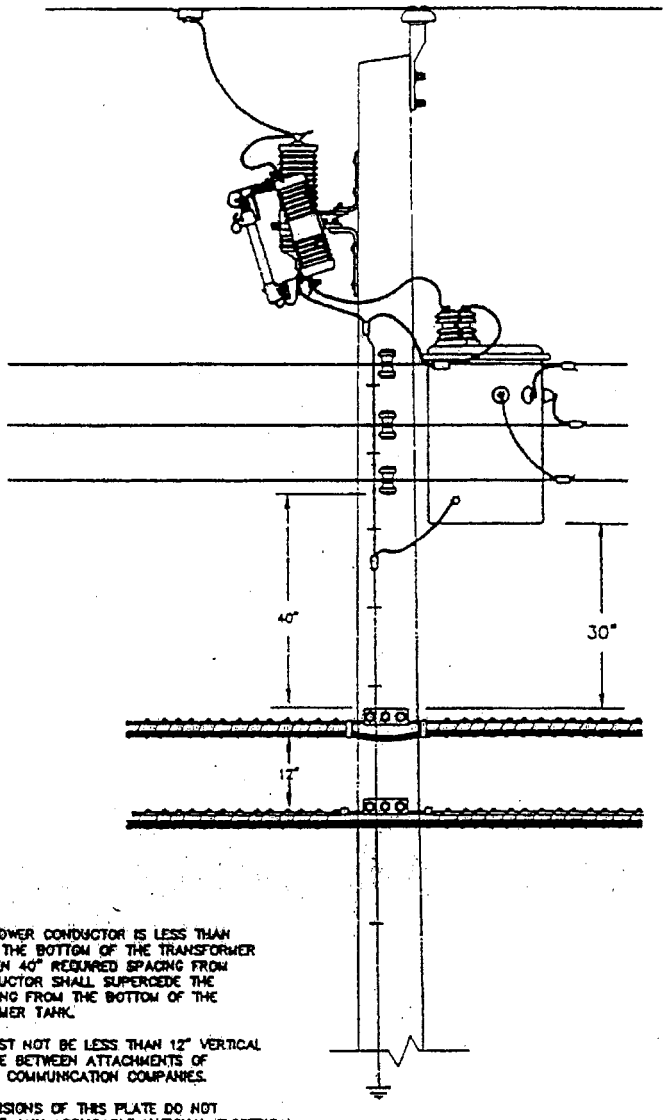
GULF POWER COMPANY

PLATE
C-2

002329 COM

JOINT USE CONSTRUCTION

TYPICAL SINGLE TRANSFORMER INSTALLATION
7.2 KV CONSTRUCTION

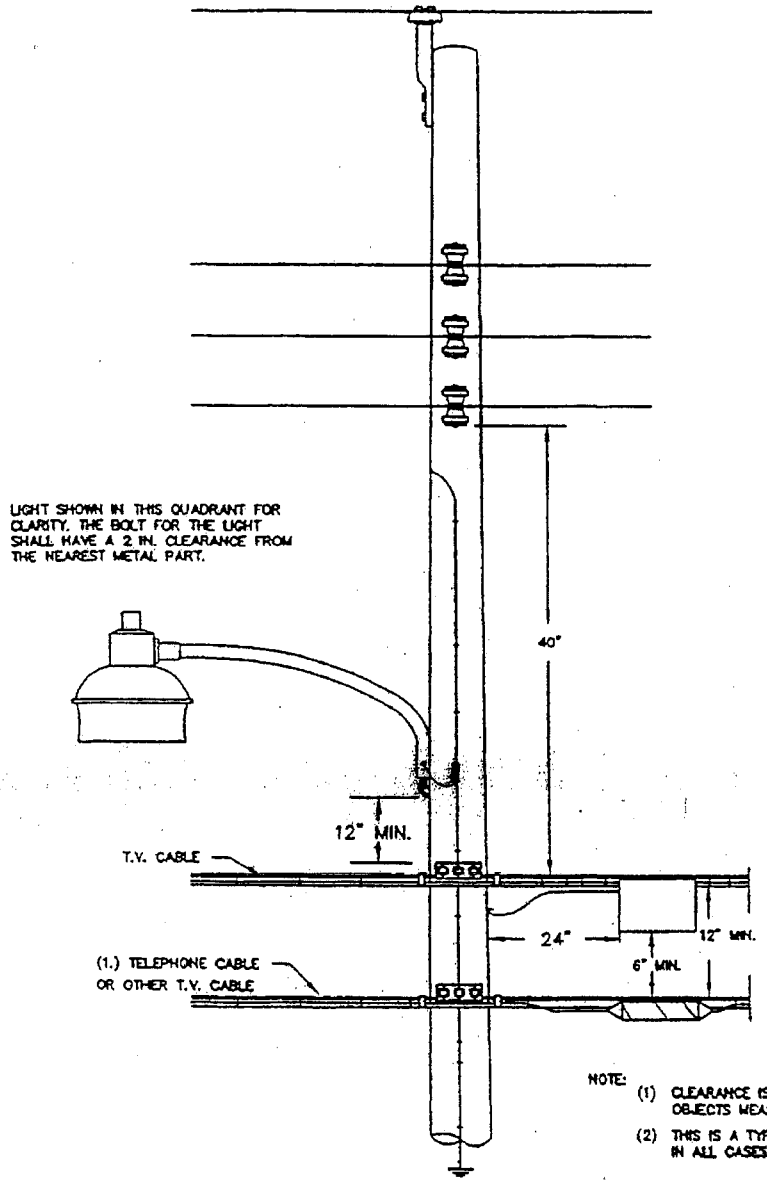


1. IF GULF POWER CONDUCTOR IS LESS THAN 10" FROM THE BOTTOM OF THE TRANSFORMER TANK, THEN 40" REQUIRED SPACING FROM THE CONDUCTOR SHALL SUPERCEDE THE 30" SPACING FROM THE BOTTOM OF THE TRANSFORMER TANK.
2. THERE MUST NOT BE LESS THAN 12" VERTICAL CLEARANCE BETWEEN ATTACHMENTS OF DIFFERENT COMMUNICATION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

002330 COM

DATE 3/28/84	GULF POWER COMPANY	PLATE
ENG R.B. DRN E. L. W.	5/28/92	C-3
APPROVED		

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



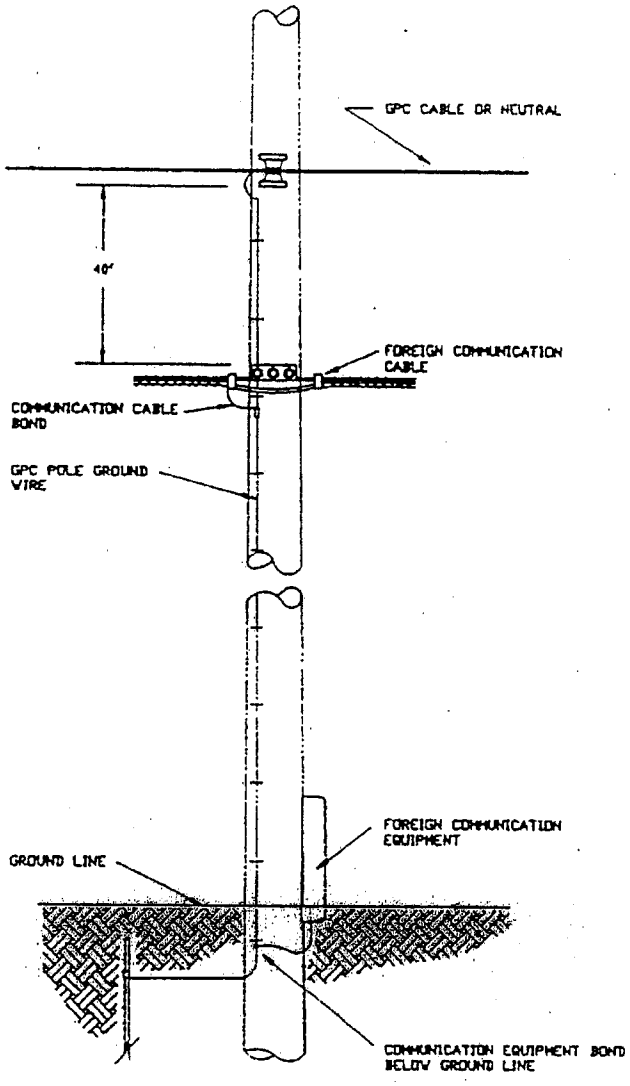
Confidential-Business Proprietary Information FCC EB Docket No. 04-381

002331 COM

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

DATE 11/24/81	GULF POWER COMPANY			PLATE
ENG J. M. CORM E. L. W.	8/30/86	5/25/88	5/11/92	C-4
APPROVED	3/28/84	10/6/88	9/23/94	

GROUNDING CONNECTIONS



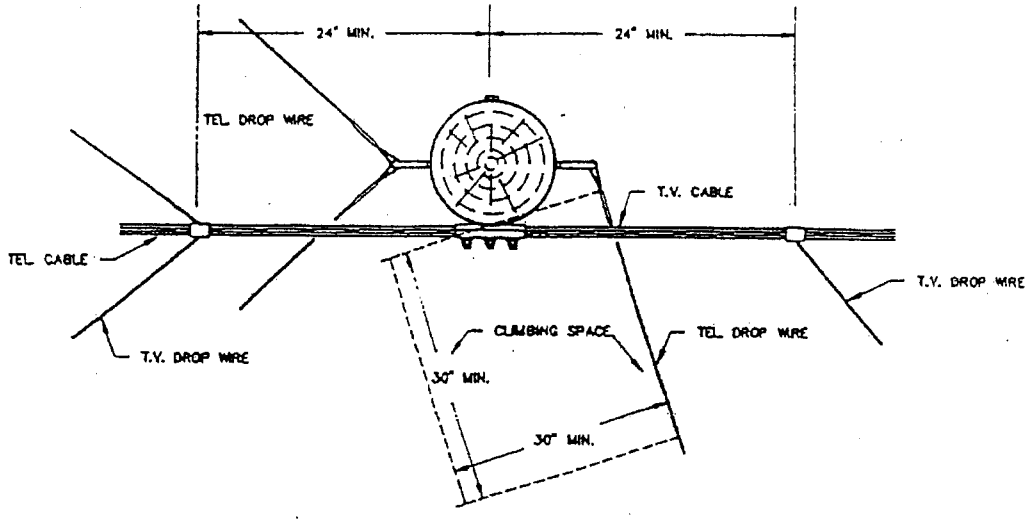
Confidential-Business Proprietary
Information FCC EB Docket No. 04-381

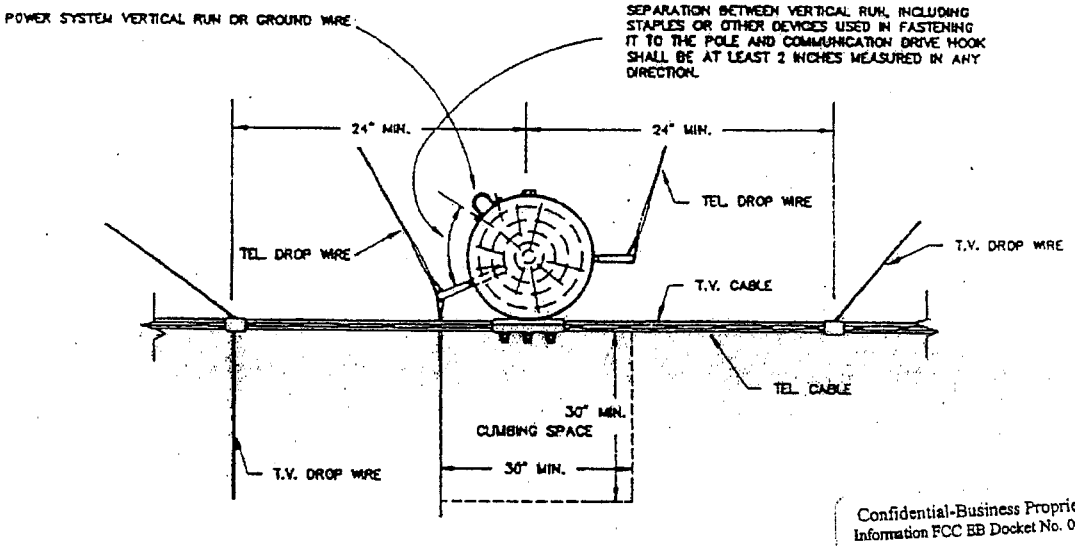
002332 COM

DATE 06/16/82 ENG R.B. DRN E. L. W. APPROVED	GULF POWER COMPANY	PLATE C-5

JOINT USE CONSTRUCTION

MINIMUM CLIMBING SPACE THROUGH COMMUNICATION CIRCUITS





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

Confidential-Business Proprietary Information FCC EB Docket No. 04-381

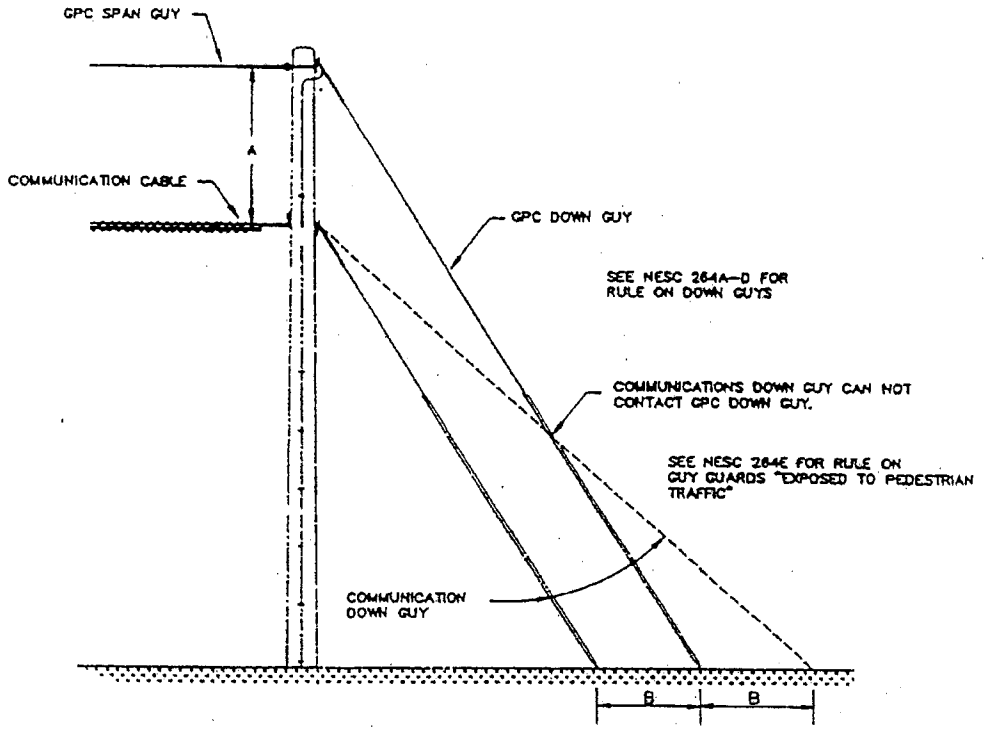
002333 COM

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

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

DATE 03/28/84	GULF POWER COMPANY	PLATE
ENG J.W. DRN H.W.T.	11/24/81	C-6
APPROVED	06/17/92	

SEPARATION OF DOWN GUYS



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

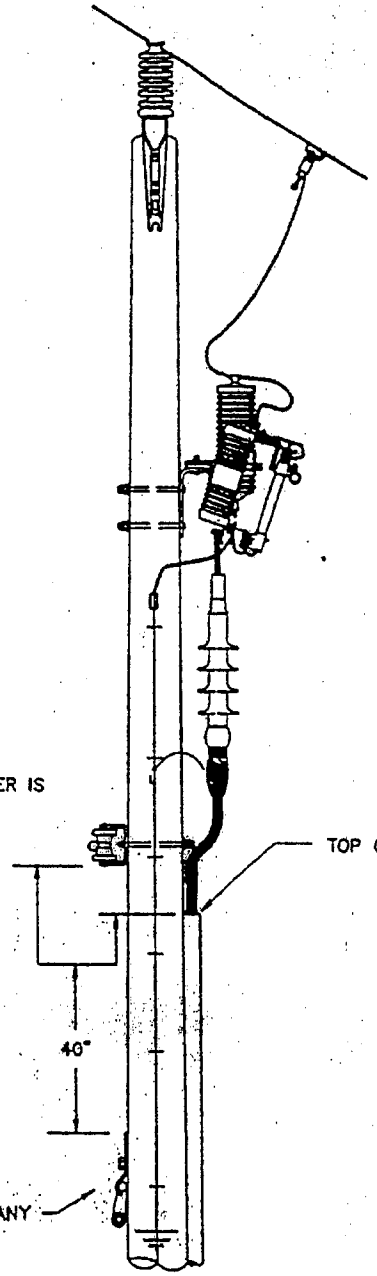
DIMENSION B BASED ON ANCHOR HOLDING POWER AND CONE OF INFLUENCE OF ADJACENT ANCHORS.

Confidential-Business Proprietary
Information FCC EB Docket No. 04-381

002334 COM

DATE 6/3/92 ENG R.B. DRN E. L. W. APPROVED	GULF POWER COMPANY	PLATE C-7

SEPARATION AT POLE
UNDERGROUND RISERS



NOTE:
COMMUNICATION CLEARANCE TO BE 40" FROM TOP OF RISER SHIELD AND GPC CONDUCTOR BRACKET, WHICHEVER IS LOWEST.

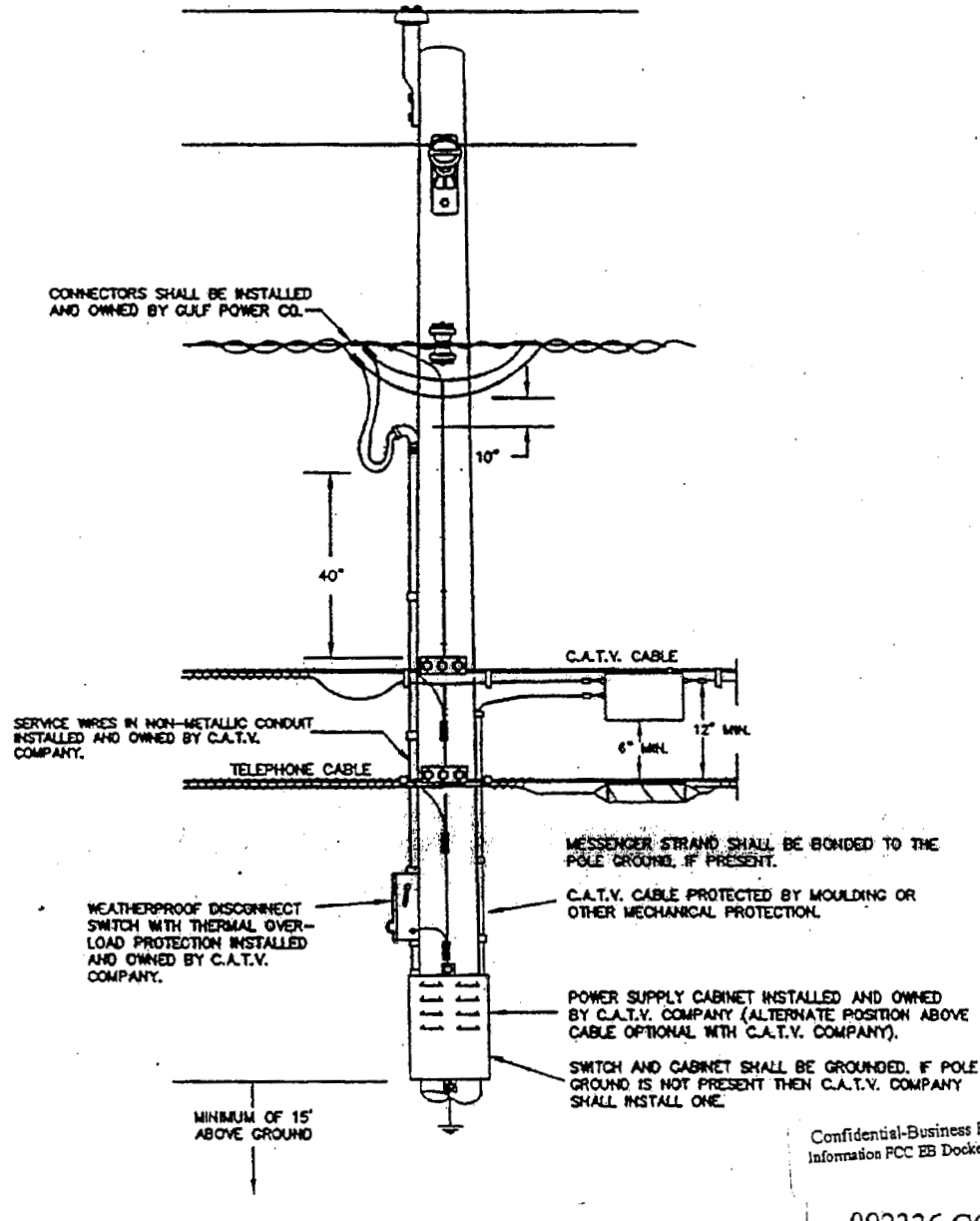
Confidential-Business Proprietary
Information FCC EB Docket No. 04-381

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

002335 COM

DATE 5/11/92 ENG R.B. DRWN E. L. W. APPROVED	GULF POWER COMPANY	PLATE C-8

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

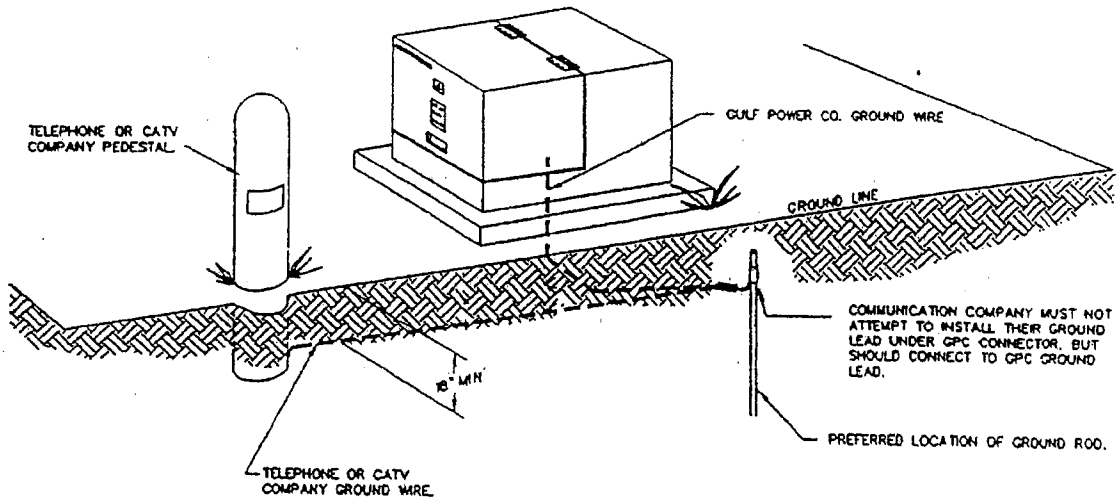


Confidential-Business Proprietary
Information FCC EB Docket No. 04-381

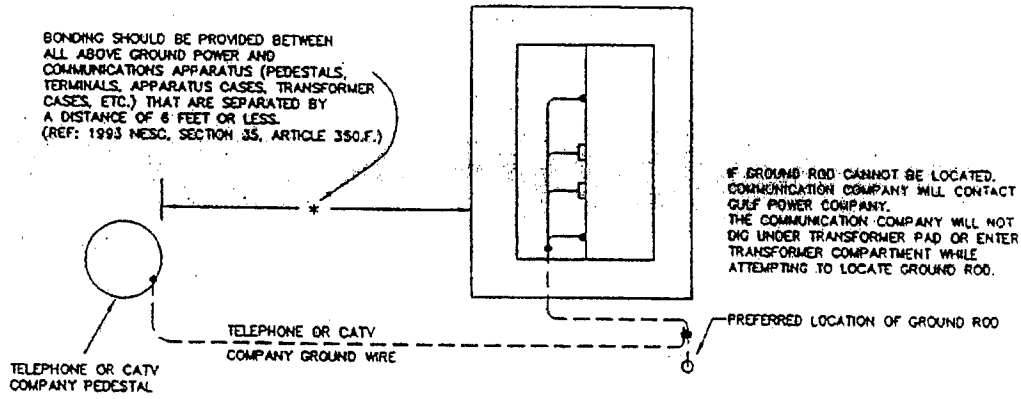
002336 COM

DATE 5/19/92	GULF POWER COMPANY	PLATE-
ENG R.B. DRN E. L. W.	9/23/94	C-9
APPROVED		

BONDING OF PADMOUNT TRANSFORMER TO COMMUNICATION COMPANY FACILITIES



ISOMETRIC VIEW OF TRANSFORMER PAD SHOWING GROUNDING DETAIL



Confidential-Business Proprietary Information FCC EB Docket No. 04-381

TOP VIEW OF TRANSFORMER PAD SHOWING GROUNDING DETAIL

002337 COM

DATE 4/19/93 ENG R.B. DRN E. L. W. APPROVED	GULF POWER COMPANY REVISED 11-23-94	PLATE C-10

JOINT USE CONSTRUCTION

SEPARATION OF COMMUNICATION CABLES
AND
GULF POWER CO. FACILITIES

NOTE

DO NOT ATTACH
COMMUNICATION CABLES
ABOVE THIS LABEL

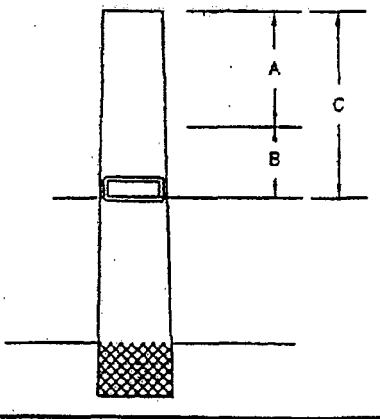
STORE CODE # 09-5550-4

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

NOTE 1. BOTTOM LINE OF POLE MARKING LABEL SHOULD BE ON THE 40" MARK AND SHOULD BE INSTALLED WHERE IT WILL BE VISIBLE FROM THE STREET.

2. SEE ENGINEER CONCERNING ANY REQUEST OF ADDITIONAL POLE HEIGHT ON 45' AND ABOVE POLES.

002338 COM



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

DATE 4/5/93
ENG J.D.M. DSN E. L. W.

GULF POWER COMPANY

PLATE C-11

EXHIBIT 2

DOCKET NO. 060173-EU

AFFIDAVITS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.	)	DOCKET NO. 060173-EU FILED: August 18, 2006

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

AFFIDAVIT OF Robert A. Shireling III

BEFORE ME, the undersigned authority, personally appeared Robert A. Shireling III who, being first duly sworn, deposes and says:

1. My name is Robert A. Shireling III. I am currently employed by Tampa Electric Company ("TECO") as Manager, Distribution Engineering & Standards. My business address is 702 N. Franklin St, Tampa, Fl., 33602. My responsibilities include Distribution Engineering and Standards. I have personal knowledge of the matters stated in this affidavit.

2. I received a Bachelor of Science degree in Engineering from the University of South Florida in 1981. I am a registered professional engineer in the State of Florida (license no. 41207). I have been employed by TECO in positions of increasing responsibility for the past 25 years. I have experience in all aspects of TECO's distribution system including distribution engineering and design, operations and management, and staff support.

3. TECO owns approximately 300,000 distribution poles, approximately 202,000 of which bear third-party attachments. With respect to the Joint Reply Comments of the Investor-Owned Utilities ("Joint Reply Comments"), I have reviewed the information and graphs included in Section III of the Joint Reply Comments and attest that the analysis presented therein is true and correct. The wind loading effect of third-party pole attachments creates stress on utility poles. Third-party pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Up to 40% of the pole loading on a typical pole line can be caused by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed and not just extra space that may happen to be available on a pole.

4. Affiant says nothing further.

Robert A Shireling III

Robert A. Shireling III

SWORN TO AND SUBSCRIBED before me this 17th day of August 2006, by Robert A. Shireling III, who is personally known to me or who has produced _____ (type of identification) as identification and who did take an oath.

Tania Pinto
Notary Public, State of Florida

My Commission Expires:

Notary Public State of Florida
Tania Pinto
My Commission DD489680
Expires 11/13/2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.	)	DOCKET NO. 060173-EU FILED: August 18, 2006

STATE OF FLORIDA)
)
COUNTY OF Palm Beach)

AFFIDAVIT OF MICHAEL G. SPOOR

BEFORE ME, the undersigned authority, personally appeared Michael G. Spoor who, being first duly sworn, deposes and says:

1. My name is Michael G. Spoor. I am currently employed by Florida Power & Light Company ("FPL") as Director, Distribution System Performance. My business address is 9250 W. Flagler Street, Miami, Florida 33174. My responsibilities include Product Engineering, Distribution Standards, and Reliability Engineering. I have personal knowledge of the matters stated in this affidavit.

2. I received a Bachelor of Industrial Engineering degree from Auburn University in 1989. Additionally, I received a Master of Business Administration degree from Nova Southeastern University in 1998. I am a registered professional engineer in the State of Florida (license no. 51547). I have been employed by FPL in positions of increasing responsibility for the past 17 years. I have experience in all aspects of FPL's distribution system including distribution engineering and design, operations and management, and staff support.

3. FPL owns approximately 1.1 million distribution poles, approximately 750,000 of which bear third-party attachments. With respect to the Joint Reply Comments of the Investor-Owned Utilities ("Joint Reply Comments"), I have reviewed the information and graphs included in Section III of the Joint Reply Comments and attest that the analysis presented therein is true and correct and was prepared under my supervision and control. The wind loading effect of third-party pole attachments creates stress on utility poles. Third-party pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Up to 40% of the pole loading on a typical pole line can be caused by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed and not just extra space that may happen to be available on a pole.

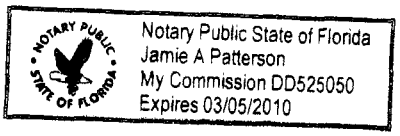
4. Affiant says nothing further.

Michael G. Spoor

SWORN TO AND SUBSCRIBED before me this 17 day of August 2006, by Michael G. Spoor, who is personally known to me or who has produced _____ (type of identification) as identification and who did take an oath.

Jamie A Patterson
Notary Public, State of Florida

My Commission Expires:



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to rules regarding overhead electric facilities to allow more stringent construction standards than required by National Electric Safety Code.	)	DOCKET NO. 060173-EU FILED: August 18, 2006

STATE OF FLORIDA)
)
COUNTY OF ESCAMBIA)

AFFIDAVIT OF ALAN G. MCDANIEL

BEFORE ME, the undersigned authority, personally appeared Alan G. McDaniel who, being first duly sworn, deposes and says:

1. My name is Alan McDaniel. I am currently employed by Gulf Power Company as Project Services Manager. My business address is One Energy Place; Pensacola, FL 32520-0302. My responsibilities include the Corporate Emergency Management Center, distribution, engineering and construction skills development, and joint use matters. I have personal knowledge of the matters stated in this affidavit.

2. I received an Electrical Engineering degree from the University of Florida in 1981. Additionally, I received a Masters in Business Administration degree from Colorado State University in 2006. I have been employed by Gulf Power Company in positions of increasing responsibility for the past 26 years. I have experience in all aspects of Gulf's distribution system including distribution engineering and design, operations and management, and staff support.

3. Gulf Power owns approximately 250,000 distribution poles, approximately 170,000 of which bear attachments owned by entities other than Gulf Power. With respect to the Joint Reply Comments of the Investor-Owned Utilities ("Joint Reply Comments"), the wind loading effect of third-party pole attachments creates stress on utility poles. Third-party pole attachments play a significant role in pole line design due to the wind loading that they cause on the pole line. Pole loading on a typical pole line is contributed to by third-party attachments. In order to accommodate these attachments, the Commission has reasonably and appropriately determined that a strengthened infrastructure is needed and not just extra space that may happen to be available on a pole.

4. Affiant says nothing further.

Alan G. McDaniel

SWORN TO AND SUBSCRIBED before me this 18th day of August 2006, by Alan G. McDaniel, who is personally known to me or who has produced GULF POWER ID BADGE (type of identification) as identification and who did take an oath.

Notary Public, State of Florida

My Commission Expires: 04/10/2009

DIANE NYE HOLSINGER
COMMISSION # DD 401210
EXPIRES: April 10, 2009
Bonded Thru Notary Public Underwriters