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

VERIZON FLORIDA LLC, Complainant, v. FLORIDA POWER & LIGHT COMPANY, Respondent.	*	Docket No. 15-73 File No.: EB-15-MD-002

RESPONDENT FLORIDA POWER & LIGHT COMPANY'S
SUPPLEMENTAL BRIEF REGARDING IMPACT OF STATE COURT JUDGMENT

Maria Jose Moncada
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5795
Maria.Moncada@fpl.com

Alvin B. Davis
Squire Patton Boggs (US) LLP
200 South Biscayne Boulevard, Suite 300
Miami, FL 33131
(305) 577-2835
Alvin.Davis@squirepb.com

Charles A. Zdebski
Gerit F. Hull
Robert J. Gastner
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Suite 1200
Washington, D.C. 20006
(202) 659-6605
czdebski@eckertseamans.com
ghull@eckertseamans.com
rgastner@eckertseamans.com

Counsel to Florida Power & Light Company

Dated: February 29, 2016

SUMMARY

Florida Power & Light Company ("FPL") filed a state court breach of contract action against Verizon Florida LLC ("Verizon") on April 13, 2013, in the Circuit Court for Miami-Dade County, Florida (the "Florida Court"), seeking payment under the parties' joint use agreement of the full amount of pole attachment rental due FPL for calendar years 2011 and 2012. On March 13, 2015, Verizon filed the pending Pole Attachment Complaint against FPL seeking, *inter alia*, to have the Commission set the pole attachment rates to be paid by Verizon to FPL that Verizon claims would apply beginning July 12, 2011.[1] On October 16, 2015, the Florida Court entered summary judgment in favor of FPL on all issues, ordering Verizon to pay FPL approximately $2.9 million in unpaid principal and interest in connection with FPL's invoices to Verizon covering pole attachment rental due for 2011 and 2012 pursuant to the parties' joint use agreement. A final judgment, incorporating the findings in the summary judgment order, was entered on October 26, 2015 (the "Final Judgment").

FPL's Response and additional filings have presented compelling arguments showing that the Commission should recognize that the rate in the parties' joint use agreement is just and reasonable and that it need not substitute a new rate for the parties' agreed-upon rate. However, assuming *arguendo* that the Commission finds that some degree of action is required to provide a just and reasonable rate, Article IV, Section 1 of the United States Constitution (the "Full Faith and Credit Clause") limits the extent of the action the Commission may take.

This is a case of first impression. And it has been forced upon the Commission because of Verizon's unlawful and unilateral choice to engage in self-help contrary to Commission policy

[1] Pole Attachment Complaint at 44, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002, Related to Docket No. 14-216, File No. EB-14-MD-003 (Mar. 13, 2015); Response to Pole Attachment Complaint at 50, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002, Related to Docket No. 14-216, File No. EB-14-MD-003 (June 29, 2015) ("FPL Response").

and precedent. Had Verizon simply paid its bills for joint use services, just as Verizon demands from its customers if they want continued service, there would have been no parallel proceedings and no need to navigate the uncharted course between the Full Faith and Credit Clause and the *2011 Pole Attachment Order*.[2]

There simply are no reported decisions by the Commission or courts deciding a complaint under 47 U.S.C. § 224 after a state court has entered final judgment in an overlapping parallel proceeding between the same parties. What is clear, however, is that the Full Faith and Credit Clause dictates that the Commission fully honor the Florida Court's determinations in the Final Judgment, unless to do so "would restrain the exercise of sovereign power of the United States by imposing requirements that are contrary to important and established federal policy . . . ."[3]

The exception does not apply here. The *2011 Pole Attachment Order* established an important federal policy; *i.e.*, that the rates, terms and conditions of voluntary access for ILECs would be subject to the Commission's *ad hoc* regulatory review for justness and reasonableness. However, the order established no federal policy requiring that such regulatory review must be implemented retroactively to the effective date of the *Pole Attachment Order*, the earliest date in a rate dispute or any other period of time. Indeed, on that point, the *2011 Pole Attachment Order* left a gap, observing that the Commission was unlikely to second-guess historical infrastructure partnerships.[4]

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[2] *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5334-5335, ¶ 214 (2011) (*"2011 Pole Attachment Order"*), *aff'd sub. nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

[3] *Midgett*, 603 F.2d at 845.

[4] *Id.*, ¶ 216.

Here, the Commission has a clear path to honoring the Final Judgment and the Full Faith and Credit Clause while furthering its own policies supporting just and reasonable rates but disfavoring self-help. Quite simply, should the Commission decide to establish any rates in this matter, at a minimum it should not do so with regard to any time period covered by any orders of the Florida Court.

In sum, this brief will show that the Full Faith and Credit Clause, Commission precedent, Section 224 and Section 414 of the Communications Act and Commission policy all support the conclusion that any relief granted Verizon in the instant matter must apply only after the time period covered by any orders of the Florida Court. Indeed, that is the only principled way to harmonize the legal and policy interests at issue.

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I. Factual and Procedural Background

1. On September 22, 2015, the Commission issued a letter order[5] holding the present proceeding in abeyance pending the resolution of the parties' Florida Court proceeding as to the correct contractual rates owed by Verizon under the parties' joint use agreement.

2. On October 15, 2015, the Florida Court held a summary judgment hearing to decide the parties' civil litigation. Following this hearing, the Florida Court entered a Summary Judgment Order and the Final Judgment, finding in favor of FPL and against Verizon on all counts and reaching conclusions on numerous issues of fact and law. A copy of the Florida Court's Summary Judgment Order and Final Judgment is attached as Exhibit A.

3. The Commission lifted its stay in this matter on October 20, 2015, after being informed by the parties of the Florida Court's grant of summary judgment in FPL's favor.

4. On November 6, 2015, without the need for a hearing, the Florida Court denied Verizon's Motion for Reconsideration and Rehearing.

5. On December 4, 2015, Verizon filed a Notice of Appeal with the Florida Third District Court of Appeal.

6. On December 8, 2015, FPL filed with the Commission a Motion for Leave and an accompanying Motion to Hold Proceeding in Abeyance pending the resolution of the issues in the Florida state court appellate proceeding.

7. Both Verizon's Florida Court appeal and FPL's Motion to Hold Proceeding in Abeyance remain pending.

8. On February 29, 2016, FPL filed its Motion for Leave to File Supplemental Brief, the subject of which is the instant Supplemental Brief Regarding State Court Judgment.

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[5] *See* Letter from Christopher Killion, Chief, MDRD, Enforcement Bureau (Sep. 22, 2015) ("Order Entering Stay").

II. The Full Faith and Credit Clause Dictates that the Commission Must Honor the Florida Court Judgment

FPL's filings in this proceeding have shown that the Commission should recognize that the rate in the parties' joint use agreement is just and reasonable and that it need not substitute a new rate for the parties' agreed-upon rate. However, should the Commission nonetheless reach the issue of whether a different rate may be just and reasonable for a certain period of time, the Full Faith and Credit Clause applies. As implemented by 28 U.S.C. § 1738, and as interpreted in multiple federal court proceedings, the Full Faith and Credit Clause dictates that the Commission must honor the Florida Court's Summary Judgment Order for the time period it covers. As a result, at a minimum, the Commission is precluded from disturbing the contractually-determined amounts that the Final Judgment requires Verizon to pay FPL with respect to FPL's invoices to Verizon for 2011 and 2012. Any other approach would violate constitutional principles.

The Full Faith and Credit Clause states:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.[6]

Congress prescribed such laws by enacting 28 U.S.C. § 1738. In doing so, Congress has required that federal courts honor state court judgments. The statute states in relevant part: "The records and judicial proceedings of any court of any . . . State . . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."[7] Federal courts have interpreted 28 U.S.C. § 1738

[6] U.S. Const. Art. IV, § 1.
[7] 28 U.S.C. § 1738.

to apply to federal agencies acting in an adjudicative capacity and require those agencies to honor state court judgments in the same way a federal court would be bound.[8]

Only one exception to the Full Faith and Credit Clause is recognized. It is made in the case where a state court judgment "would restrain the exercise of sovereign power of the United States by imposing requirements that are contrary to important and established federal policy . . . ."[9]

The Commission, therefore, must honor the Final Judgment unless doing so would impose requirements contrary to "important and established federal policy." It would not. This is a case of first impression which requires careful harmonizing of multiple legal and policy issues. As shown below, by honoring the Florida Court's Final Judgment, the Commission would be acting consistent with important federal policies that it established. In addition, the Commission would be following both federal statutes and Commission precedent that provide for resolution of contractual disputes involving pole attachments in state courts as well as prompt payment by attachers of contractually owed fees. Accordingly, at the least, the Commission should honor the Final Judgment for all periods which it covers.

III. Honoring the Florida Court's Final Judgment Would Serve the Commission's Policies, Not Contravene Them

A. Setting Rates For Periods After Those Covered by Any Florida Court Order Is Consistent with the *2011 Pole Attachment Order's* Approach to Joint Use Disputes

Honoring the Florida Court's Summary Judgment Order would, to be clear, in no way eviscerate or abdicate the Commission's authority or responsibility. Quite the opposite, it would

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[8] *E.g., Midgett v. United States*, 603 F.2d 835, 845 (Ct. Cl. 1979) ("Section 1738 of 28 U.S.C. imposes on a federal court presented with a state court judgment the same force and conclusive effect as it has in the state in which it is rendered. Administrative bodies of the United States as well as courts are required to adhere to this requirement." (citing 50 C.J.S. Judgments § 900a (1947), at 519; *Torres v. Gardner*, 270 F.Supp. 1 (D.P.R.1967))); *Wilder v. Environmental Protection Agency,* 854 F.2d 605 (2d Cir. 1988).

[9] *Midgett*, 603 F.2d at 845.

allow the Commission to set the joint use rates between FPL and Verizon for periods after those addressed by the Florida Court in a manner wholly consistent with important policies announced in the *2011 Pole Attachment Order.*

It is true that the *2011 Pole Attachment Order* established an important federal policy; *i.e.*, that the rates, terms and conditions of voluntary access for ILECs would be subject to the Commission's *ad hoc* regulatory review for justness and reasonableness.[10] However, the order emphatically did not establish a federal policy requiring that such regulatory review must be implemented retroactively to the effective date of the *2011 Pole Attachment Order*, the earliest date in a rate dispute or any other period of time.

Instead, the Commission left the policy flexible and with some adaptable gaps. It stated: "We therefore decline at this time to adopt comprehensive rules governing incumbent LECs' pole attachments, finding it more appropriate to proceed on a case-by-case basis."[11] To this *ad hoc* approach, the Commission added that it was unlikely to second-guess historical infrastructure partnerships.[12] The *2011 Pole Attachment Order* was silent regarding the timing of any adjustments deemed necessary, also leaving that discretionary determination to be made *ad hoc* based on the particular facts and circumstances presented.

The Commission therefore took great care to explain that it was not establishing a definitive and overarching federal policy requiring that it must reach all the way back in time to adjudicate joint use rates retroactively to the effective date of the *2011 Pole Attachment Order* or

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[10] *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5334-5335, ¶ 214 (2011) (*"2011 Pole Attachment Order"*), *aff'd sub. nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

[11] *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5334-5335, ¶ 214 (2011) (*"2011 Pole Attachment Order"*), *aff'd sub. nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

[12] *Id.*, ¶ 216.

any other period of time. It follows that no well-established federal policy exists that could justify the Commission accepting the State Court's determination of the parties' contractual dispute while simultaneously ignoring the State Court's determination that FPL is entitled to be made whole through calendar year 2012. The *2011 Pole Attachment Order* does not set forth a policy that mandates, or even implies, that the Commission must reach back and undo the Final Judgment. To the contrary, well-established federal policy, including the Commission's own policy, dictates that the Commission should honor the entire judgment entered by the Florida Court. If the Commission sets any rates, in no event should it do so for the time period covered by any Florida Court judgment.

B. Verizon Should Not Have Engaged in Self Help, but Instead Exercised the Option to "Sign and Sue"

The choice to which the Commission is now put – how to give full faith and credit to the Final Judgment while fulfilling its duties under the Communications Act and the *2011 Pole Attachment Order* – has been completely thrust upon it by Verizon's unlawful self-help. Honoring the Florida Court's Final Judgment while potentially setting joint use rates for periods not covered therein will thus also serve the Commission's policy of encouraging attachers to "sign and sue," rather than engage in self-help.

The FCC's jurisprudence proscribing self-help[13] and its office of Office of General Counsel direct companies in Verizon's situation first to pay their bills: "in the absence of an FCC adjudication, a cable [or telecommunications] company seeking pole access must pay the

[13] The FCC has a longstanding policy in support of following agreed-upon dispute resolution procedures and against self-help as noted in the 2011 *Connect America Fund Order*: "As the Commission has previously stated, '[w]e do not endorse such withholding of payment outside the context of any applicable tariffed dispute resolution provisions.'" *In the Matter of Connect Am. Fund,* WC Docket No. 10-90, 26 F.C.C. Rcd. 17663, 17890, ¶ 700 (2011) ("2011 *Connect America Fund Order*") (quoting *All American Telephone Co., et al. v. AT&T Corp.*, File EB-10-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 723, 728 (2011)).

rate that the utility demands."[14] Verizon knows this. Indeed, Verizon's service contracts specifically advise its customers that Verizon can and will terminate communications services to those who refuse to pay.[15]

The *2011 Pole Attachment Order* supports this approach as well. It kept intact and unchanged the Commission's so-called "sign and sue" rule, which allows an attacher to execute an attachment contract but then challenge the rates terms and conditions as being unjust and unreasonable.[16] An attacher thus can enter a contract, obtain the benefits of access, pay its fees and then have full access to regulatory relief at the Commission.

And that is precisely what Verizon should have done. By doing one simple thing – paying its joint use bills to FPL - Verizon could have avoided the jurisdictional and procedural issues created by parallel proceedings here and in the Florida state court and avoided thrusting this issue of first impression under the Full Faith and Credit Clause upon the Commission. The Commission can both further its own policy regarding the proper way for attachers to handle such matters and refrain from rewarding Verizon by honoring the Final Judgment and, to the extent it sets any joint use rates, at most doing so for periods not covered by the Final Judgment.

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[14] Letter Brief of United States Department of Justice at 2, Gulf Power Co. v. United States, No. 98-2403 (11th Cir. March 29, 1999).

[15] See Disconnected Service, VERIZON.COM, available at https://www.verizon.com/support/residential/phone/homephone/general+support/phone+troubleshooting/calling+problems/95311.htm (last visited Dec. 15, 2015)("Telephone service can be disconnected if you do not pay your telephone bill."); Verizon FiOS® Digital Voice Terms of Service, VERIZON.COM, available at http://www.verizon.com/about/sites/default/files/documents/terms/fdv_tos_07_09_14.pdf (last visited Dec. 15, 2015)("Verizon can, without notice, limit, suspend or terminate your Service if: (1) you are in breach of any of the terms of this Agreement or any payment obligations with respect to the Service, or if charges owed by you to any Verizon affiliate are past due for service(s) provided to you..."); Regional Value Plan Terms, VERIZON.COM, available at http://www.verizon.com/about/sites/default/files/documents/terms/regional_essentials_value.pdf (last visited Dec. 15, 2015)("Failure to pay your Regional Value plan charges in full may result in a loss of some/all of your plan services.").

[16] *2011 Pole Attachment Order*, ¶¶ 119-25.

IV. Section 414 of the Communications Act Preserves State Law Remedies

FPL's pursuit of remedies in the Florida Court – and the Commission's honoring of the Final Judgment – are wholly consistent with 47 U.S.C. § 414, which states: "Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." FPL properly exercised its rights under state law in bringing its action in the Florida Court.

"[W]here the scheme established by the 1996 Telecommunications Act does not answer a particular question, and if state law remedies would complement, and not frustrate, the federal scheme, section 414 of Title 47 applies." *In re UPH Holdings*, 2014 WL 4296696 at *18 (W.D. Tex Bankr. 2014). *In re UPH Holdings* concluded that state law on quantum meruit and unjust enrichment filled a gap left by the FCC on intercarrier compensation issues because the FCC regulations stated that there "is a right to reasonable compensation" but did not "set the amount of compensation owed." *Id.* at *19. Similarly, here the *2011 Pole Attachment Order* leaves a gap as to whether and to what extent the Commission may retroactively apply a regulatory rate decision to a contract dispute. That gap is filled by Florida contract law which, when properly honored under 47 U.S.C. § 414, still allows the Commission to set, if it chooses to reach the issue, rates that apply after the time period covered by the Final Judgment.[17]

Because 47 U.S.C. § 414 dictates that remedies at common law and under the Communications Act must coexist, honoring the Florida Court judgment as to the time period it covers is the one way to harmonize the statutory approach under the Communications Act, the regulatory approach under the *2011 Pole Attachment Order* and Florida state law. On the

[17] *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5334-5335, ¶ 214 (2011) (*"2011 Pole Attachment Order"*), *aff'd sub. nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

contrary, disregarding the Final Judgment would abridge and alter the remedies available to FPL in a manner inconsistent with 47 U.S.C. § 414.

V. The Commission has Directed Parties to Adjudicate Contractual Disputes in State Court

The Commission determined more than three decades ago that the Commission's jurisdiction "does not extend to adjudication of the legal impact of the failure of a party to fulfill its contractual obligations . . . ."[18] In arriving at this conclusion, the Commission stated that, "[A]s we read both the legislative history and the statute itself, Congress has nowhere expressed its intent that this Commission be accorded the authority to preempt local jurisdiction in such matters."[19] Yet that is exactly what the effect of disregarding the State Court decision would be -- preemption of local jurisdiction over Verizon's failure to perform its contractual obligations to FPL.

The Commission, at a minimum, should honor the Florida Court's Final Judgment with respect to amounts due FPL under the Joint Use Agreement for 2011 and 2012. Indeed, the Commission has a well-established policy of recognizing local jurisdiction over contract disputes. The Commission stayed this proceeding in order to allow the Florida Court action to proceed, expressly expecting the Florida Court to determine the applicable rate under the Joint Use Agreement. FPL had expressly requested that the Florida Court award FPL damages based upon Verizon's failure to pay the contract rate in 2011 and 2012.[20] Under these circumstances, it would be inconsistent with the Commission's well-established policy for the Commission to disregard the State Court judgment. Such disregard would violate 28 U.S.C. § 1738, but honoring the Final Judgment would be fully consistent with 47 U.S.C. § 414.

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[18] *Appalachian Power Co. v. Capitol Cablevision Corp.*, 49 RR 2d 574 at para. 7 (1981).
[19] *Id.* citing S. Rep. No. 580, 95th Cong. 1st Sess. 14–15 (1977).
[20] FPL Response at 4-5.

WHEREFORE, FPL respectfully requests that the Commission fully consider the law presented in this Supplemental Brief and conclude in this proceeding, among other things, that the Final Judgment and the State Court's conclusions therein cannot be set aside and the Commission will give Full Faith and Credit to Florida Court's determinations as to 2011 and 2012 pole rental fees and any other determinations made by the Court.

Respectfully submitted,

Charles A. Zdebski
Gerit F. Hull
Robert J. Gastner
ECKERT SEAMANS CHERIN & MELLOTT, LLC
1717 Pennsylvania Avenue, N.W.
Suite 1200
Washington, D.C. 20006
Phone: (202) 659-6605
Fax: (202) 659-6699
czdebski@eckertseamans.com
ghull@eckertseamans.com
rgastner@eckertseamans.com
Counsel to Florida Power & Light Company

Maria Jose Moncada
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5795
Maria.Moncada@fpl.com

Alvin B. Davis
Squire Patton Boggs (US) LLP
200 South Biscayne Boulevard, Suite 300
Miami, FL 33131
(305) 577-2835
Alvin.Davis@squirepb.com

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2016, I caused a copy of the foregoing Respondent's Supplemental Brief to be served on the following by hand delivery, U.S. mail or electronic mail (as indicated):

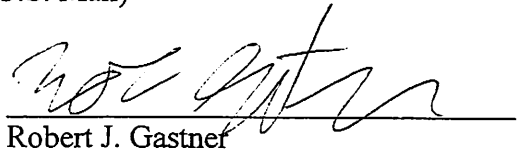
Christopher S. Huther, Esq.
Claire J. Evans, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
chuther@wileyrein.com
(Via e-mail)
Attorneys for Verizon Florida LLC

William H. Johnson
Katharine R. Saunders
VERIZON
1320 N. Courthouse Road, 9th Floor
Arlington, VA 22201
katharine.saunders@verizon.com
(Via e-mail)

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(Via Hand Delivery)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(Via Hand Delivery)

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
(Via U.S. Mail)



Robert J. Gastner

Exhibit A

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

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation

Plaintiff,

v.

VERIZON FLORIDA LLC,
a Florida Corporation

Defendant.

_____/

Complex Business Litigation Section (40)

Case No. 13-14808

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter having come before the Court on Plaintiff Florida Power & Light Company's ("FPL") Motion for Summary Judgment and the Court having reviewed the Motion and the Memoranda in support of and opposing the Motion, and having heard argument of Counsel, makes the following:

FINDINGS OF FACT

1. FPL and Verizon Florida LLC's ("Verizon") predecessor in interest entered into a Joint Use Agreement ("JUA") in 1975, as amended in 1978.

2. Pursuant to the terms of the JUA, employing the payment formula contained in the JUA, and consistent with the Parties' practices since 1978, FPL

invoiced Verizon for Verizon's attachments to FPL's poles in 2011 in the amount of $2,097,293.70 (the "2011 Invoice").

3. Verizon did not object to the manner in which FPL applied the contractual formula, but, instead, advised FPL that the JUA's payment formula was "no longer operative."

4. Verizon calculated a rate of its own, based on what it believed the Federal Communications Commission ("FCC") might require under the provisions of the FCC's Pole Attachment Order. Pursuant to this unilateral calculation, Verizon paid only $1,179,307.43 toward the 2011 Invoice.

5. FPL did not agree to Verizon's rate calculation or payment.

6. The FCC has never approved Verizon's rate calculation. The Pole Attachment Order does not establish any rate for entities such as Verizon.

7. Pursuant to the terms of the JUA, employing the payment formula contained in the JUA, and consistent with the Parties' practices since 1978, FPL invoiced Verizon for Verizon's attachments to FPL's poles in 2012 in the amount of $2,319,985.02 (the "2012 Invoice").

8. Verizon did not object to the manner in which FPL applied the contractual formula. Persisting in the view that the payment formula in the JUA was no longer operative, Verizon paid only $638,413.55 toward the 2012 Invoice,

based on its own unilateral calculation of what the FCC might require under the Pole Attachment Order.

9. Verizon terminated the JUA effective June 9, 2012. The payment provisions of the JUA, nonetheless, remain in effect for all poles to which Verizon remains attached, even after termination.

10. Section 11.1 of the JUA provides that the contract rate (the "adjustment rate") is subject to renegotiation at the request of either party. Verizon did not invoke Section 11.1.

11. The Parties, nonetheless, engaged in extensive, periodic good faith negotiations and met on numerous occasions regarding a new contract over an extended period of time prior to initiation of this lawsuit. No agreement was reached.

12. The amount of space to be allocated to the Parties on the Parties' poles was expressly established in the JUA. The contractual space allocation was never amended and remains in effect.

13. Three years after the original JUA was entered into, the Parties revised the payment provision of the JUA. That revised formula was the basis for the Invoices at issue here. The 1978 Amendment left in place the space allocations in the original JUA. Accordingly the payment formula at issue here reflected the

equitable sharing of the costs and economics of joint use as contemplated by the Parties.

14. Verizon has identified no provision of federal law with which the JUA does not comply. The FCC has not determined that the JUA or the joint use rate does not comply with federal law.

15. Verizon has identified no material provision of the JUA with which FPL has failed to comply.

16. Since the inception of the JUA and prior to the issuance of the 2011 Invoice, Verizon paid all invoices as calculated and submitted by FPL in the amount invoiced. It neither objected to the manner in which the invoices were calculated nor the JUA formula applied by FPL.

17. The 2011 and 2012 Invoices were calculated and prepared by FPL in the same manner and employing the same methodology as all previous invoices issued to Verizon.

18. The JUA expressly provides that other attachers may attach their facilities to the joint use poles, FPL's or Verizon's.

19. The JUA expressly provides that revenues received by the Parties from other attachers have no impact on the rates to be paid by FPL or Verizon to each other under the JUA.

Based on these Findings of Fact, the Court has reached the following:

CONCLUSIONS OF LAW

A. There was a valid contract between the Parties - the JUA.

B. FPL complied with all material terms of the JUA.

C. FPL issued invoices for 2011 and 2012 pursuant to the provisions of and consistent with the JUA.

D. Verizon failed to pay the invoices as required by the JUA, paying only a portion of the invoiced amount.

E. The payment rate upon which Verizon based its payment was not agreed to by FPL nor established by the Pole Attachment Agreement or the FCC.

F. By paying less than the amount required pursuant to the JUA, Verizon has breached its obligations under the JUA.

G. FPL has been damaged by Verizon's underpayment in the principal amount of $2,599,557.74.

H. FPL is entitled to pre-judgment interest at the statutory rate on the 2011 Invoice amount of $140,910.96, which is calculated from the date of Verizon's partial payment through October 15, 2015.

I. FPL is entitled to pre-judgment interest at the statutory rate on the 2012 Invoice in the amount of $181,418.36, which is calculated from the date of Verizon's partial payment through October 15, 2015.

J. ACCORDINGLY, JUDGMENT IS ENTERED ON BEHALF OF FPL AND AGAINST VERIZON IN THE PRINCIPAL AMOUNT OF $2,599,557.74, plus prejudgment interest in the sum of $322,329.32.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 10/15/15.

JOHN W. THORNTON
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

Copy to all Counsel of Record