

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

BELLSOUTH)
TELECOMMUNICATIONS, LLC d/b/a)
AT&T Florida,)
)
Complainant,)
)
v.)
)
DUKE ENERGY FLORIDA, LLC,)
)
Defendant.)
)
)
)

**Proceeding No.: 20-276
Bureau ID No.: EB-20-MD-003**

**DUKE ENERGY FLORIDA, LLC’S RESPONSES TO
AT&T’S FIRST SET OF INTERROGATORIES**

Defendant Duke Energy Florida, LLC (“DEF”), pursuant to Rule 1.730 and in accordance with the Enforcement Bureau’s September 17, 2020 Notice of Complaint, responds as follows to the “First Set of Interrogatories” served by Complainant BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T”).

General Response

DEF adopts and incorporates, as if fully set forth herein, its September 22, 2020 Opposition and Objections to AT&T’s First Set of Interrogatories. All responses set forth herein are subject to the September 22, 2020 Opposition and Objections to AT&T’s First Set of Interrogatories.

The responses set forth herein are based on information presently known and available to DEF. DEF reserves the right to supplement these responses as additional information becomes known or available through the discovery process or otherwise.

Responses to Individual Interrogatories

INTERROGATORY NO. 1: Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Florida contends is “just and reasonable” for AT&T’s use of Duke Energy Florida’s poles under 47 U.S.C. § 224(b). Include in your response all facts on which you rely for your contention that the annual pole attachment rental rates are “just and reasonable” under 47 U.S.C. § 224(b), the formula, calculations, inputs, assumptions, and source data used to calculate each annual pole attachment rental rate, and the corresponding pole attachment rental rate that would apply to Duke Energy Florida’s use of AT&T’s poles.

RESPONSE: This response is subject to and made without waiving the objections stated in the September 22, 2020 Opposition and Objections to AT&T’s First Set of Interrogatories.

As an initial matter, AT&T does not pay “pole attachment rental rates” in the same way that DEF’s CATV and CLEC pole licensees pay “pole attachment rental rates.” Instead, AT&T pays for a share of the jointly used network costs through a cost sharing methodology that the parties first established in Article X of the June 1, 1969 Joint Use Agreement (the “Joint Use Agreement”), which was later revised pursuant to the parties’ October 16, 1980 Amendment and January 2, 1990 Amendment (the “1990 Amendment”). Under the 1990 Amendment, each party pays an annual rate to the other for poles occupied as a joint user. The annual rate is keyed to an “objective percentage” of joint use pole ownership for each party (■% for AT&T and ■% for DEF), such that if each party owned its “objective percentage” of poles, neither party would pay any net annual rentals to the other. In this way, the annual rate only becomes relevant when the parties are not at or near their “objective percentage” of joint use pole ownership. In a jointly used network of poles, as one party’s ownership percentage declines, so does its share of annual ownership costs. As the other party’s ownership percentage increases, so does its share of annual

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ownership costs. The annual rental payments are designed to offset the additional annual ownership costs being carried by the party owning more than its targeted share of the jointly used network. The “objective percentage” of pole ownership has been the same since the Joint Use Agreement was initially executed in 1969.

The actual annual rate paid by AT&T includes █ feet of allocated space (see Joint Use Agreement, Article I, Section 1.1.6(B)). This allocated space under the joint use agreement does not include the communication worker safety zone (a/k/a “safety space”) which is typically 40” (3.33 feet) because the cost of that space throughout the jointly used network is shared between the parties. If AT&T were a mere licensee (like a CATV or CLEC) without a joint use agreement, AT&T would be assigned the cost of all space it occupies or causes, which would include the 3.33 feet of safety space on DEF’s poles. DEF does not need safety space on its own poles and would not have built safety space on its distribution poles but for the Joint Use Agreement, as this space serves no purpose in the provision of electric service. In addition to being allocated the lowermost █ feet of usable space, DEF’s data indicates that the average height of AT&T’s highest attachment is █. When combined with the Commission’s presumption that 18 feet is the lowest point of attachment on a pole, this means AT&T is occupying at least █ feet (and possibly █ given that no entity can make an attachment lower than █ on average given the clearance requirements between attachments). When this space is combined with the 3.33 feet of safety space, this allocation of space would yield per pole rates that are roughly the same as what is required by the Joint Use Agreement. For example, AT&T’s per pole rate paid for the 2019 billing year was \$█. During this same period, based on DEF’s then current CATV rates, a CATV occupying and/or allocated similar space would have paid \$█, even for a conservatively expressed █ feet of assigned space (█ x \$█/foot).

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In addition to its space utilization advantages (as compared to DEF’s CATV and CLEC licensees), AT&T also enjoys, among other things: (1) a built-to-suit network of poles that allowed AT&T to avoid significant make-ready costs (see Joint Use Agreement, Article I, Section 1.1.5 and 1.1.6), unlike CATV and CLEC licensees; (2) the contractual right to remain attached to joint use poles even in the event of termination of the Joint Use Agreement (see Joint Use Agreement, Article XI at Section 11.2, Article XII at Section 12.1, and Article XVI at Section 16.1); and (3) the right to submit applications without application fees or the engineering costs paid by DEF’s CATV and CLEC licensees.

In light of the foregoing, AT&T’s just and reasonable share of the joint use network costs since 2015 is no less than the amount calculated in accordance with the cost sharing methodology in the 1990 Amendment to the Joint Use Agreement. DEF’s just and reasonable share of the joint use network costs since 2015 is no more than the amount calculated in accordance with the cost sharing methodology in the 1990 Amendment to the Joint Use Agreement. For 2015 through 2020, those annual rates were (or, in the case of 2020, will be) as follows:

	AT&T on DEF Poles	DEF on AT&T Poles
2015		
2016		
2017		
2018		
2019		
2020		

For the data and calculations underlying the annual rates outlined above, please see Exhibit 4 of AT&T’s Complaint, which contains DEF’s rate calculation worksheets for billing years 2015 through 2019. For the data and calculations underlying AT&T’s annual rate for billing year 2020, please see the rate calculation worksheets provided in response to this interrogatory as **Exhibit 1**. The formula for determining these rates is set forth in Article X, Section 10.4 of the Joint Use

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Agreement, as revised by the 1990 Amendment. The formula requires DEF, as licensee, to pay AT&T a rate that is equivalent to █% of █ annual pole cost (as opposed to █ annual pole cost). The formula requires AT&T, as licensee, to pay DEF a rate that is equivalent to █% of █ annual pole cost. DEF's annual pole cost was determined, in all years referenced above, according to the Commission's methodology for calculating annual pole cost.

Finally, as set forth in the September 22, 2020 Opposition and Objections, DEF will be submitting additional information responsive to this interrogatory with its answer to the complaint, and DEF may further supplement this response as additional facts are revealed through the course of discovery.

INTERROGATORY NO. 2: Beginning with the 2015 rental year, identify all entities that have had a Joint Use Agreement or License Agreement with Duke Energy Florida and state whether the entity is an incumbent local exchange carrier, CLEC, cable company, or wireless provider.

RESPONSE: DEF is identifying all ILECs, CLECs and cable companies responsive to this request, as well as those entities with whom DEF has a Wireless Telecommunication Pole Attachment License Agreement. Please see the charts for 2015 through 2020, which are attached to these Responses as **Exhibit 2**. DEF does not know whether any entity with a Wireless Telecommunication Pole Attachment License Agreement is actually a "wireless provider," as that term is used in the interrogatory.

INTERROGATORY NO. 3: State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with Duke Energy Florida that were in effect at any time

PUBLIC VERSION

from the 2015 rental year forward. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with Duke Energy Florida and the dates on which the Joint Use Agreement or License Agreement with Duke Energy Florida was in effect. In lieu of quoting each rate, term, and condition from each Joint Use Agreement and License Agreement, Duke Energy Florida may produce a copy of each Joint Use Agreement and License Agreement.

RESPONSE: See DEF's September 22, 2020 Opposition and Objections. Subject to and without waiving these objections, please see the charts provided as **Exhibit 2** in response to interrogatory number 2 above and interrogatory number 4 below, as well as the exemplar pole license agreements provided in response to this interrogatory as **Exhibit 3**.

INTERROGATORY NO. 4: Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Florida charged each entity identified in response to Interrogatory 2, the number of poles or attachments for which the pole attachment rental rate was charged, and whether the entity uses Duke Energy Florida's poles pursuant to a License Agreement or a Joint Use Agreement. Include in your response the formula, calculations, inputs, assumptions, and source data used to calculate each pole attachment rental rate charged and state whether the rate was charged on a per-pole, per-attachment, or other basis and whether the rate was paid.

RESPONSE: This response is subject to and made without waiving the objections stated in the September 22, 2020 Opposition and Objections to AT&T First Set of Interrogatories. Please see the charts provided as **Exhibit 2** in response to interrogatory number 2 and 3, which provide information about DEF's annual pole attachment rental rates, the number of non-ILEC attachments made on DEF's poles, and DEF's joint use relationships with AT&T and other ILECs operating

PUBLIC VERSION

within DEF's service territory. The entities identified on the chart as either CATV or CLEC use pole license agreements, and their rates were invoiced on a per attachment basis.

DEF calculates annual pole attachment rental rates for CATVs and CLECs with the same data that it uses to calculate the cost sharing obligations under the Joint Use Agreement. Therefore, please refer to Exhibit 4 of AT&T's complaint for the data underlying DEF's rate calculations for billing years 2015 through 2019. For the data underlying DEF's rate calculations for billing year 2020, please see the rate calculation worksheets provided as **Exhibit 1** in response to interrogatory number 1.

INTERROGATORY NO. 5: With respect to each License Agreement identified in response to Interrogatory 3, identify any advantage or benefit that Duke Energy Florida contends AT&T receives over and above those provided to the attaching entity. Include in your response, beginning with the 2015 rental year, a quantification of the annual monetary value of each such claimed advantage or benefit expressed on a per-pole basis, the language from each License Agreement that establishes or supports the claimed advantage or benefit, and all data, formulas, calculations, inputs, assumptions, and source data used to quantify the monetary value of each claimed advantage or benefit.

RESPONSE: See DEF's September 22, 2020 Opposition and Objections. Subject to and without waiving these objections, DEF intends to identify and quantify the advantages to AT&T under its Joint Use Agreement, as compared to DEF's CATV and CLEC licensees, in the answer DEF files on or before October 30, 2020.

PUBLIC VERSION

INTERROGATORY NO. 6: Beginning with the 2015 rental year, for each claimed advantage or benefit identified in response to Interrogatory 5, state by year the amount of money that Duke Energy Florida collected from each entity identified in response to Interrogatory 2 concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

RESPONSE: See DEF's September 22, 2020 Opposition and Objections. To the extent the advantage or benefit involves an amount paid by a CATV or CLEC licensee during the requested time period (as opposed to something of value that AT&T receives, but a CATV or CLEC licensee does not receive), this information will be provided with the answer DEF filed on or before October 30, 2020.

INTERROGATORY NO. 7: Beginning with the 2015 rental year, state the rate of return used by Duke Energy Florida in the calculation of rates under 47 C.F.R. § 1.1406(d), including the cost of debt, cost of equity, and capital structure, and, if different, Duke Energy Florida's state-authorized weighted average cost of capital and/or weighted cost of equity, including, as appropriate, the cost of debt, cost of equity, and capital structure. Include in your response the formula, calculations, inputs, assumptions, and source data used.

RESPONSE: DEF uses the rates of return that it reports to the Florida Public Service Commission in its December Earnings Surveillance Reports ("ESRs"). Please refer to Exhibit 19 of AT&T's complaint for the rates of return (and their underlying calculations) that DEF used to calculate annual pole attachment rental rates for billing years 2015 through 2019. Please see DEF's December 2019 ESR, which is attached to this Response as **Exhibit 4**, for the rate of return (and

PUBLIC VERSION

its underlying calculation) that DEF used to calculate annual pole attachment rental rates for billing year 2020. The relevant rates of return are provided in the chart below:

Billing Year	Rate of Return
2015 (Based on Dec. 2014 ESR)	7.02%
2016 (Based on Dec. 2015 ESR)	6.90%
2017 (Based on Dec. 2016 ESR)	6.65%
2018 (Based on Dec. 2017 ESR)	6.68%
2019 (Based on Dec. 2018 ESR)	6.54%*
2020 (Based on Dec. 2019 ESR)	6.27%

* The difference between this figure and the December 2018 ESR (6.53%) is due to rounding.

The Florida Public Service Commission has previously authorized a higher rate of return for DEF—7.88%. *See In re: Petition for Increase in Rates by Progress Energy Florida*, Order No. PSC-10-0131, at p. 172 (Mar. 5, 2010). However, DEF has chosen to use the lower rates of return that it reports in its December ESRs because the December ESRs capture investment and cost data that are more temporally relevant to the cost data used in the rate formulas.

INTERROGATORY NO. 8: Identify all data regarding poles jointly used by Duke Energy Florida and AT&T, including all survey, audit or sampling data concerning pole height, the average number of attaching entities, the space occupied by Duke Energy Florida, AT&T, and any other entity. Include in your response when the data was compiled or collected, the entity or entities that compiled (sic) or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, guidelines, upon which the data was collected.

RESPONSE: The average number of attaching entities (including DEF) on DEF poles occupied by AT&T is [REDACTED]. This data comes from an inventory of DEF's poles performed by VentureSum (a DEF contractor) in 2017. After field data is collected, a manager inspects a sample of the poles in the field within each area inventoried and verifies that the data was captured correctly. VentureSum also provides inventory data to all companies attached, including AT&T,

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many of which perform their own quality assurance check to validate inventory results. DEF also conducts a quality assurance review of the results, which typically involves a review of current inventory results for a particular geographic area and comparing that to results of the prior inventory.

The average height of AT&T's highest attachment on DEF's poles is [REDACTED]. The average midspan sag of AT&T's lowest attachment on DEF's poles is [REDACTED]. This data is derived from make-ready surveys of 941 DEF poles to which AT&T is attached. These surveys were performed by DEF's contractor, TRC (or TRC's predecessor), as part of the attachment process for pole attachment applications submitted by third parties.

Dated: October 7, 2020

Respectfully submitted,

/s/ Eric B. Langley

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020, a true and correct copy of Duke Energy Florida, LLC's Responses to AT&T's First Set of Interrogatories was filed with the Commission via ECFS and was served on the following (service method indicated):

Robert Vitanza Gary Phillips David Lawson AT&T SERVICES, INC. 1120 20th Street NW, Suite 1000 Washington, DC 20036 (by U.S. Mail)	Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 (by ECFS only)
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Gary F. Clark, Chairman Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 (by U.S. Mail)	

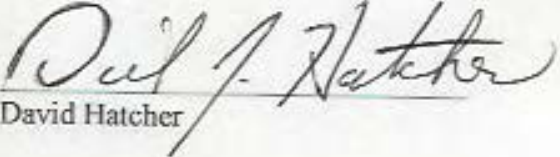
/s/ Eric B. Langley _____
OF COUNSEL

AFFIRMATION

I, David Hatcher, do affirm as follows:

1. My name is David Hatcher. I am currently the Managing Director, Smart City Solutions for Duke Energy. My responsibilities include oversight of the joint use organization for Duke Energy Florida, LLC.
2. I make this affirmation based upon my own personal knowledge, information supplied by other employees of Duke Energy; and a review of the business records maintained by Duke Energy in the regular course of business; and
3. I affirm that the information included in Duke Energy Florida, LLC's Response to AT&T's First Set of Interrogatories is true and correct to the best of my knowledge.

Executed on October 7, 2020.


David Hatcher