



November 11, 2021

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 20210138-PU – Proposed adoption of Rule 25-18.020, F.A.C., Pole Inspection and Maintenance Plan.

Dear Mr. Teitzman:

Attached for electronic filing, please find FPL's Responses to Staff's First Data Requests in the above-referenced docket.

Thank you for your assistance with this filing. As always, please don't hesitate to contact me if you have any questions or concerns.

Respectfully submitted,

FLORIDA POWER & LIGHT COMPANY

By: s/ Maria Jose Moncada
Maria Jose Moncada
Senior Attorney
Florida Bar No. 0773301
maria.moncada@fpl.com
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 691-7101
(561) 691-7135 (fax)

KAW

Cc:// PSC Staff (A. Harper)

QUESTION:

Is your company obligated to conduct vegetation management, maintain, or inspect any poles that are owned by a communications services provider to which your company has overhead facilities attached? If so, please explain the nature of the obligation.

RESPONSE:

FPL conducts vegetation management for all its distribution overhead facilities regardless of pole ownership. The obligation is part of the company's vegetation management program as outlined in FPL's 2020-2029 Storm Protection Plan approved in Docket No. 20200071-EI pursuant to Rule 25-6.030 F.A.C.

FPL conducts pole inspection on FPL-owned poles, including FPL-owned joint-use poles as a part of our distribution pole inspection program. The obligation is part of the company's distribution pole inspection program outlined in FPL's 2020-2029 Storm Protection Plan approved in Docket No. 20200071-EI pursuant to Rule 25-6.030 F.A.C.

FPL does not have a program to inspect or maintain non-FPL owned poles. However, in the normal course of business, FPL will notify pole owners of issues discovered in the field, and in emergency cases, FPL may repair or replace non-FPL owned poles (with attached FPL distribution overhead facilities), per agreements, to ensure safe and reliable operation of the electric grid.

Under the FPL joint use agreements (Incumbent Local Exchange Carriers), each party shall be responsible for its own circuits, regardless of pole ownership, where tree trimming or cutting is required. An example of this can be found in Section 7.3 of the joint use agreement with the communication services provider which is provided as a part of the response to Staff's Data Request No. 2.

QUESTION:

Please file at least two of your company's attachment agreements with a communications services provider that demonstrate the standard or general terms that are contained in these types of agreements.

RESPONSE:

Please see attachments 1 through 4 of this response. Please note, three files responsive to this request are confidential.

The documents responsive to Staff's First Data Request No. 2,
Bates Nos. 000001-000033 are confidential in their entirety.

The documents responsive to Staff's First Data Request No. 2,
Bates Nos. 000034-000037 are confidential in their entirety.

The documents responsive to Staff's First Data Request No. 2,
Bates Nos. 000038-000067 are confidential in their entirety.

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

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>SUBJECT</u>	<u>PAGE</u>
I	Definitions	1
II	Scope of Agreement	4
III	Placing, Transferring or Rearranging Attachments and Bonding Attachments	5
IV	Erecting, Replacing or Relocating Poles	7
V	Permission of Joint Use	10
VI	Specifications	10
VII	Right-of-Way for Licensee's Attachments	11
VIII	Maintenance of Poles and Attachments	11
IX	Abandonment of Jointly Used Poles	12
X	Rental and Procedures for Payments	12
XI	Periodic Revision of Adjustment Payment Rate	15
XII	Defaults	15
XIII	Liability and Damages	16
XIV	Assignment of Rights and Existing Rights of Other Parties	17
XV	Service of Notices	19
XVI	Term of Agreement	19
XVII	Waiver of Terms and Conditions	19
XVIII	Existing Contracts	19
XIX	Supplemental Routines and Practices	20

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

WITNESSETH

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

- (A) In and along public streets, alleys, or roads, a 40-foot class 5 wood pole, complete with pole ground of #6 copper or equivalent ~~copperweld~~ conductor.
- (B) In all other areas, a 35-foot class 5 wood pole, complete with pole ground of #6 copper or equivalent ~~copperweld~~ conductor.
- (C) Strength requirements of Code Grade B construction will be used as minimum design criteria for overhead lines. As a consequence, minimum pole strength shall be calculated using a 9 pound per square foot wind load on the projected area of cylindrical surfaces, with a 1.6 multiplier used for the wind load on the area of flat surfaces. For new construction, pole strength shall have a safety factor of four based on their ultimate strength.

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

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

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

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

- (A) For Electric Company, the uppermost 6 feet.
- (B) For Telephone Company a space of 4 feet at sufficient distance below the space of Electric Company to provide at all times the minimum clearance required by the specifications referred to in Article VI, and at sufficient height above the ground to provide proper vertical clearance for the lowest horizontally run wires or cables attached in such space.
- ~~A~~ (C) It is the intention of the parties that any pole space in excess of the aforementioned reservations and clearance requirements shall be between the standard space allocations of the parties. This excess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachments of the other party.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

SCOPE OF AGREEMENT

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

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

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

ARTICLE III

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS AND BONDING ATTACHMENTS

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

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

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

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

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

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

- (A) The absence of a multiple grounded Electric Company neutral line conductor.
- (B) Voltage in excess of 15,000 volts phase to ground.

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

- (A) The parties hereto shall determine what circuits shall be removed from the joint poles involved, and the net cost of establishing in a new location such circuits or lines as may be necessary to furnish the same business facilities existing at the time such change was decided upon.
- (B) The costs of moving such circuits to the new location shall be equitably apportioned between the parties hereto.
- (C) In the event of disagreement as to which party's circuits shall be removed from such joint poles, the circuits whose moving shall involve the least total cost shall be moved to the new location.
- (D) The net cost of establishing service in the new location shall be exclusive of any increased cost due to substituting for the existing facilities other facilities of a substantially new or improved type or increased capacity, but shall include the cost of the new pole line including rights of way, the cost of relocating attachments from the old poles to the new location and the cost of placing the attachments on the poles in the new location.
- (E) In the event of disagreement as to what constitutes an equitable apportionment of such costs, the said costs shall be borne by the Licensee.

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

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

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

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

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

ARTICLE IV

ERECTING, REPLACING OR RELOCATING POLES

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

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

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

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

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

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

- (A) If the extra height and/or strength is due wholly to the Owner's requirements, the entire cost of the pole shall be borne by the Owner.
- (B) If the extra height and/or strength is due wholly to the Licensee's requirements, the Licensee shall pay the Owner a sum equal to the difference between the installed cost of the required pole and the installed cost of a normal joint use pole. Notwithstanding the foregoing, where pole line economy resulting from the use of fewer poles can be effected by the Owner increasing the strength of poles, billing will be based only on the extra height.
- (C) Where the extra height and/or strength is due to the requirements of both parties herein to provide Code clearances or meet the requirements of public authority or property owners, the Licensee shall pay the Owner a sum equal to one-half ($\frac{1}{2}$) the difference between the installed cost of the required pole and the installed cost of a normal joint use pole.

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

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

- (A) The pole is of benefit to both parties, a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required, the obligation of the parties for such extra cost shall be in accordance with Section 4.4.1. Each party shall bear its own cost of attaching.
- (B) The pole is of benefit only to the Licensee, the Licensee shall pay the Owner a sum equal to the installed cost of the required pole plus the cost of attaching the Owner's facilities to said pole.
- (C) The pole is of benefit only to the Owner, the Owner shall pay the Licensee a sum equal to the cost of attaching the Licensee's facilities to said pole.

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

- (A) If such party is the Owner of both the existing and replacement pole, that party shall bear the cost of the pole and the cost of transferring the Licensee's attachments.
- (B) If such party is the Licensee of both the existing and replacement pole, that party shall pay the Owner a sum equal to (a) the difference between the installed cost of the required pole and the installed cost of the removed pole, plus (b) the then value in place of the removed pole, plus (c) the removal cost of the pole removed, plus (d) the Owner's transfer cost, less (e) the salvage value of the removed pole.
- (C) If such party is the Owner of the existing pole and the Licensee of the replacement pole, such party shall pay the new Owner's transfer cost plus any cost for a pole taller and/or stronger than a normal joint use pole in accordance with Section 4.4.1, and shall remove the existing pole.
- (D) If such party is the Licensee of the existing pole and the Owner of the replacement pole, such party shall bear the cost of the pole and pay the former Owner a sum equal to (a) the then value in place of the removed pole, plus (b) the removal cost of the pole removed, plus (c) the former Owner's transfer cost, less (d) the salvage value of the removed pole.

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

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

Section 4.6 When replacing a joint use pole carrying terminals of aerial cable, underground connections or transformer equipment, the replacement pole shall be set in such a location that existing facilities may be transferred at a minimum of cost and inconvenience.

Section 4.7 Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all reasonable costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

Section 4.8 Telephone Company will be permitted to drill its own holes in special poles if this is done in a manner acceptable to Electric Company's local Division Transmission & Distribution Manager. Holes for Telephone Company's attachments on special poles will be provided by Electric Company for the following costs:

- (A) \$.50 when the location is specified to Electric Company before Electric Company orders the pole.
- (B) Electric Company's cost for drilling when the pole is drilled after delivery.

ARTICLE V

PERMISSION OF JOINT USE

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

ARTICLE VI

SPECIFICATIONS

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

ARTICLE VII

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

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

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

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

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

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

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

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

ARTICLE IX

ABANDONMENT OF JOINTLY USED POLES

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

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

ARTICLE X

RENTAL AND PROCEDURE FOR PAYMENTS

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

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

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

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

- (A) Intermediate poles set in an existing joint use wood pole line.
- (B) Junction poles where Telephone Company aerial facilities cross an Electric Company line of special poles.
- (C) Poles supporting any of the following:
 - (1) Telephone Company terminal with riser cable of 100 pairs or less in size.
 - (2) Telephone Company aerial drops only on field side.
 - (3) Only one Telephone Company cable of 100 pairs or less from pole to pole. A 2-wire service drop between two poles will be considered a cable.
 - (4) An emergency telephone.
- (D) Poles set to replace Telephone Company poles in a Telephone Company route.
- (E) Poles set before the date of this Agreement. A special pole with a manufacturer's brand date of 1974 or earlier will be considered set before the date of this Agreement unless a "PERMIT FOR ATTACHMENT TO F.P.&L. CO. POLES OF SPECIAL MATERIALS" has been made for this pole subsequent to the date of this Agreement.

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

Section 10.6 Adjustment rate to be used for normal joint use poles for the 1975 calendar year is \$~~14.49~~13.18.

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

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

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

Section 10.8 Special poles will be included when determining the percentage of ownership.

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

Section 10.10 Upon the execution of this Agreement and every five (5) years thereafter, or as may be mutually agreed upon, the parties hereto shall make a joint field check to verify the accuracy of the joint use records hereunder. If the parties mutually agreed to postpone the first joint field check hereunder, the parties shall use their existing records as changed from time-to-time to determine the number of jointly used poles owned by each party until the first joint field check is made hereunder. The said joint inventory shall be a one hundred (100) percent field inventory unless the parties voluntarily and mutually agreed to some other method. Upon completion of such inventories the office records will be adjusted accordingly and subsequent billing will be based on the adjusted number of attachments. The adjustment and the number of attachments shall be deemed to have been made equally over the years elapsed since the preceding inventory. Unless otherwise agreed upon, retroactive billing for the prorated adjustment will be added to the normal billing for the year following completion of the field inventory.

Section 10.11 Rental or other charges paid to the Owner by a third party will in no way affect the rental or charges paid between the parties of this Agreement.

Section 10.12 Payment of all other amounts, provision for which is made in this Agreement, shall be made currently or as mutually agreed thereto.

ARTICLE XI

PERIODIC REVISION OF ADJUSTMENT PAYMENT RATE

Section 11.1 Article X of this Agreement covering Rental and Procedures for Payment shall remain in effect for a minimum term of five (5) years. The adjustment rate shall then become subject to renegotiation at the request of either party annually thereafter upon not less than six (6) months' prior notice.

Section 11.2 In the event the parties cannot, within six (6) months after a request under Section 11.1 is made, agree upon rental payments, this Agreement shall terminate and be of no further force and effect insofar as the making of attachments to additional poles. All other terms and provisions of this Agreement shall remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties herein with respect to existing joint use poles; except that upon termination under this Article the party owning less than its objective percentage of joint use poles shall pay an adjustment rental rate equal to the adjustment rate in effect at the time notice is given.

ARTICLE XII

DEFAULTS

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

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

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

ARTICLE XIII

LIABILITY AND DAMAGES

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

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

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

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

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

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

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

ARTICLE XIV

ASSIGNMENT OF RIGHTS

AND

EXISTING RIGHTS OF OTHER PARTIES

Section 14.1 Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation, or individual, without written notification to the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or

to enter into any merger or consolidation; and, in the case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the leasee, transferee, merging or consolidating company, as the case may be.

Section 14.2 If either of the parties hereto has, as Owner, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that for the purposes of this Agreement all attachments of any such third party shall be treated as attachments belonging to the Owner, and except as modified by Section 14.3, the rights, obligations and liabilities hereunder of said Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

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

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

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

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

ARTICLE XV

SERVICE OF NOTICES

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

ARTICLE XVI

TERM OF AGREEMENT

Subject to the provisions of Articles XI and XII herein, the provisions of this Agreement, insofar as the same may relate to the further granting of joint use of poles hereunder, may be terminated by either party, after the first day of January, 1980, upon six (6) months notice in writing to the other party; provided, however, that, if such provisions shall not be so terminated, said Agreement in its entirety shall continue in force thereafter until partially terminated as above provided in this Article by either party at any time upon six (6) months notice in writing to the other party as aforesaid; and provided, further, that notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

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

ARTICLE XVIII

EXISTING CONTRACTS

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

ARTICLE XIX

SUPPLEMENTAL ROUTINES AND PRACTICES

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

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

FLORIDA POWER & LIGHT COMPANY

Witnesses:

D. R. Eyzman

Gene Gause

By: [Signature]
Senior Vice president

Attest: [Signature]
Secretary

Seal

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Witnesses:

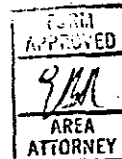
[Signature]

[Signature]

By: [Signature]
Vice President - Florida

Attest: _____
Secretary

EST 20



Seal

"EXHIBIT "A"

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

Date _____

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

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

Current wood pole rental rate for _____ poles located at:

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

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

\$ _____

Total cost for holes in poles at locations:

\$ _____

Total Billing

\$ _____

_____ Company

FLORIDA POWER & LIGHT COMPANY

BY _____

BY _____

TITLE _____

TITLE _____

"Exhibit "A"

1. Special Poles Billed at Current Wood Pole Rental Cost

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

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

All those not conforming to 1. above.

3. Costs for Extra Height and Strength

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

4. Costs for Holes in Concrete Poles

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

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

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

EXHIBIT "B"

Florida Power & Light Company
Docket No. 20210138-PU
Staff's First Data Request
Request No. 2
Attachment 4 of 4

FP&L Co. Page 24 of 26
Permit No. _____

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

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

Location of poles: _____

ATTACHMENTS

	<u>Estimated</u>		<u>Actual</u>	
	<u>Install</u>	<u>Remove</u>	<u>Install</u>	<u>Remove</u>

Rental Attachments _____

Estimated by _____ Date _____

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

Completed by _____ Date _____

SUMMARY

(To be completed by Engr. Dept)

Rental Attachments

Previous Total _____

Added this report _____

Removed this report _____

New Total _____

Approved for FP&L Co.

Approved for Telephone Co.

Name Title

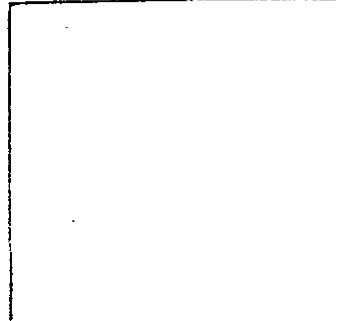
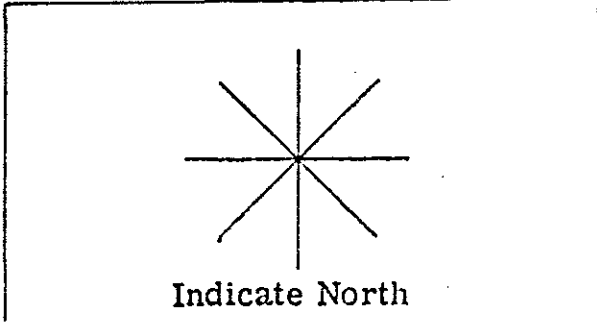
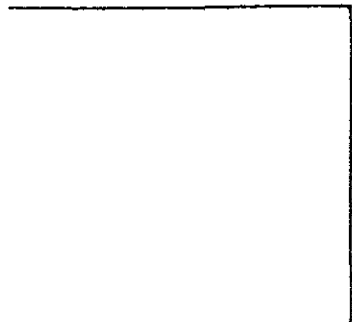
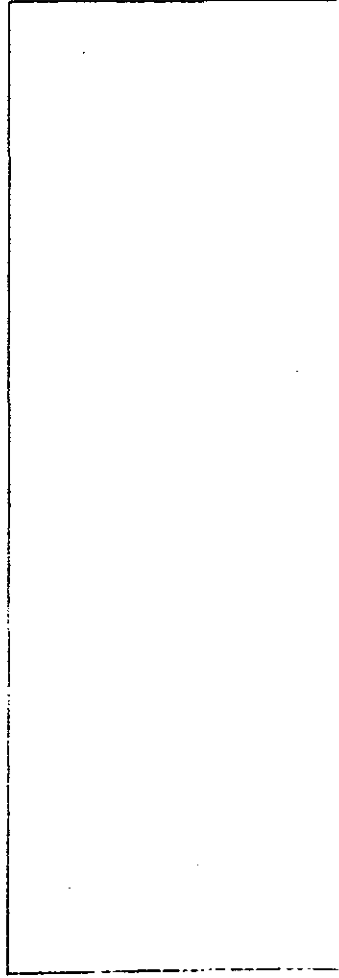
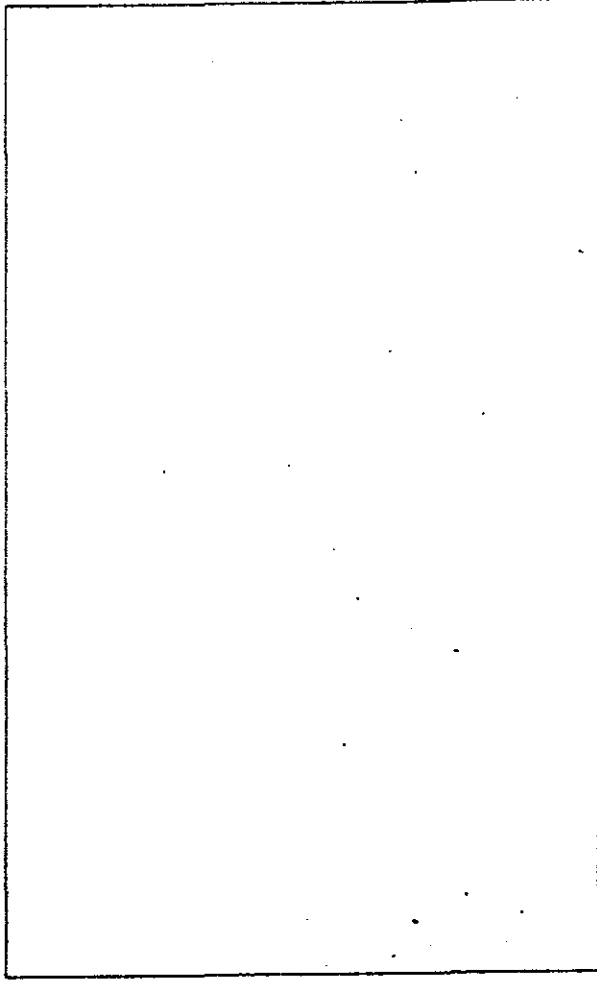
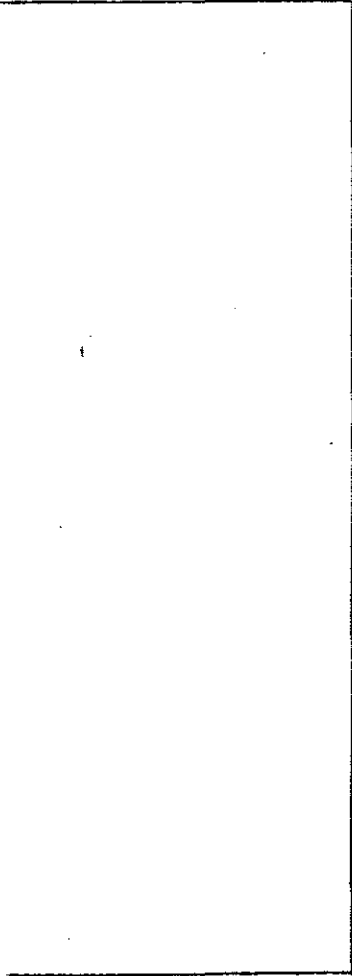
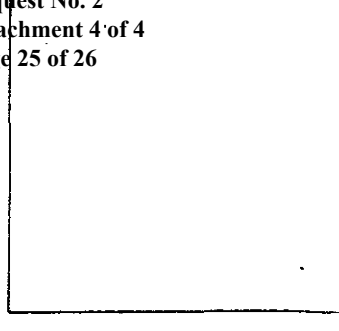
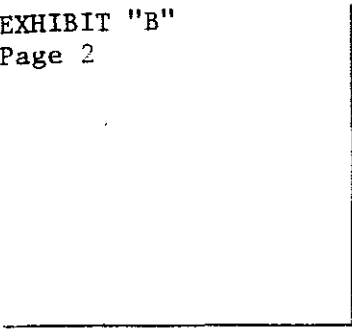
Name Title

Date _____

Date _____

or the last attachment removed from, or one pole

EXHIBIT "B"
Page 2



(Over)

EXHIBIT "C"

NOTICE OF ABANDONMENT

, 19__

TO:

Attention:

Title _____

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

TELEPHONE COMPANY SERVICE AREA _____

POWER COMPANY DISTRICT _____

<u>MAP REF.</u>	<u>POLE NO.</u>	<u>LOCATION</u>	<u>TYPE ATTACH.</u>
-----------------	-----------------	-----------------	---------------------

INVOLVES
DEPRECIATED VALUE

Yes _____ No _____

SIGNED _____

TITLE _____

QUESTION:

Do your company's attachment agreements with communications service providers reference any standards, codes, or requirements in regard to vegetation management, pole maintenance, or pole inspection. If yes, please provide an example of the standards, codes, or requirements included in the agreement.

RESPONSE:

FPL's agreements with communication service providers state that pole owners will maintain their joint use poles in a safe manner that meets all applicable laws and the National Electric Safety Code. In addition, the agreements contain language that states each party is responsible for tree trimming of its own circuits. Please see FPL's response to Staff's Data Request No. 1. Please see the attachments to FPL's response to Staff's Data Request No. 2 for specific examples of language included in the agreements.

It should be noted, the National Electric Safety Code (NESC) is often cited in contracts, rules, and other codes. The 2017 NESC Handbook can be "used in whole or in part as the standard of safe practice for public and private utilities in the United States", but as stated the "Code is not intended as a design specification" and therefore often sets minimum standards, but does not establish specific constructions standards, vegetation management cycles, or inspections parameters.

QUESTION:

Order No. PSC-06-0351-PAA-EI, issued on April 25, 2006, in Docket No. 060198-EI, Page 4, states that each IOU's joint-use audit plan shall include pole strength assessments for both poles owned by the electric utility to which other utility attachments are made and poles not owned by the electric utility to which the electric utility has attached its electric equipment. Please confirm that your company's current joint-use audit procedures are consistent with Order No. PSC-06-0351-PAA-EI. Please identify and explain the basis for the standards for the strength assessment for your existing poles and explain whether or not the standards are consistent with Order No. PSC-06-0351-PAA-EI.

RESPONSE:

Load analysis for all FPL owned poles, including joint-use poles owned by FPL are a part of the Distribution Pole Inspection Program included in FPL's 2020-2029 Storm Protection Plan approved in Docket No. 20200071-EI, pursuant to Rule 25-6.030 F.A.C.

FPL's strength and loading calculations for its distribution poles and pole inspections are based on the National Electrical Safety Code's ("NESC") Grade B construction standard, as outlined by Table 261-1A section 26 of the NESC. Osmose utilizes mobile computing technology to record inspection data and to calculate strength and loading. The loading calculation, span lengths, attachment heights, and wire sizes are recorded in the mobile computer to determine whether the remaining pole strength capacity meets or exceeds NESC requirements. This is consistent with Order No. PSC-06-0144-PPA-EI and Order No. PSC-14-0594-PPA-EI.

As included in FPSC Order No. PSC-06-0778-PAA-EU issued on September 18, 2006, in Docket No. 060531-EU, page 6, each electric utility included in its plan a procedure to ensure the inspection of collocated poles. Current agreements with FPL and joint use pole owners addresses the general maintenance of poles and attachments, with each party being responsible for the poles it owns. As a result, FPL expects the joint use pole owning companies to perform the appropriate pole inspections. Please also see FPL's responses to Staff Data Request Nos. 1-3.

Despite these contractual obligations and orders from the FPSC, FPL's experience has been that some non-electric joint use pole owners have failed to timely maintain and replace poles with electric company attachments. This includes but is not limited to disregarding the obligation to replace poles that fail inspection.

QUESTION:

Please provide a description of your company's emergency response and storm restoration procedures and protocols with respect to poles owned by a communications services provider to which your company has overhead facilities attached.

RESPONSE:

As a part of FPL's emergency response and storm restoration procedures, any pole with FPL facilities attached that is damaged, broken or rendered inoperable will be replaced or repaired as necessary maintenance to return the pole to a safe operating condition with the goal of restoring electric service in an expeditious manner. FPL will perform the replacement or repair irrespective of who owns the pole (if the ILEC didn't replace the pole). Following a storm or other emergency event, FPL will invoice the pole owners for the work performed during the restoration process. During the restoration process, FPL maintains open communications with all pole owners and attachers to facilitate an efficient restoration process for all services. In addition, as a part of FPL's emergency response plan and preparations, resources and inventory, including poles, are increased to prepare for the storm season; annual dry-run storm events are held to prepare employees and to test plans and procedures, and communication channels are established with all restoration partners in case the company's service area is impacted.

FPL is not aware of other pole owners' storm procedures and policies. Often other pole owners rely on and benefit from FPL replacement of damaged poles in an impacted area as part of the restoration of electric service. FPL's agreements state that each company should replace their own poles when there is a failure, but the non-owner can replace the owner's pole(s) in an emergency situation, which occasionally happens during the course of normal business and often following extreme weather events such as hurricanes. FPL chooses to restore service to our customers as expeditiously and safely as possible and therefore is not dependent on other pole owners in these type situations.