

POLE & MIDSPAN MEASUREMENT WORKSHEET

PUBLIC VERSION

MAKE READY REQ'D? <input checked="" type="checkbox"/>		GUYING REQUIRED? <input checked="" type="checkbox"/>		FPL SIDE GUY? <input checked="" type="checkbox"/>		RWA <input checked="" type="checkbox"/> RD											
2 LANE <input checked="" type="checkbox"/> 4 LANE <input type="checkbox"/> ROAD		MS DIR		QTY		SIZE		N P S		ATT HEIGHT		RWA <input checked="" type="checkbox"/> RD					
NOT ACCESSIBLE TO FPL VEHICLES <input type="checkbox"/>												RWI CN RR					
POLE SPAN LENGTH														MS HEIGHT			
PREVIOUS <u>235'</u>		NEXT <u>325'</u>															
										1		1/OT		30'0"		17'10"	
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			21'4"			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG	1/0		21'2"		13'0"	
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG	25		20'2"		TXB 22'0"	
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			19'3"			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG						
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG		1"		17'1"		11'6"	
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG						
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG						
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG						
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG							

OWNER FPL TYPE WOOD HT-CL 35-5 TLN 3 - 6 5 2 3 - 5 2 2 7 - 0 - 8
 POLE# 1 CATV MAP# 12-03 FPL MAP# P36623
 ADDRESS 82 ZEPHYR LILY TR. PERMIT# 7 2 - 0 5 - 0 0 3
 INSPECTED BY JIM SMITH DATE 1-1-05 JUNCTION POLE SEE ADD'L SHEET

COMMENTS / MAKE READY REQUESTED PICTURE 72-05-003P1a,b,c
MR = CATV to lower 14"

PUBLIC VERSION



72-05-003p1a.jpg





PUBLIC VERSION

72-05-003p1c



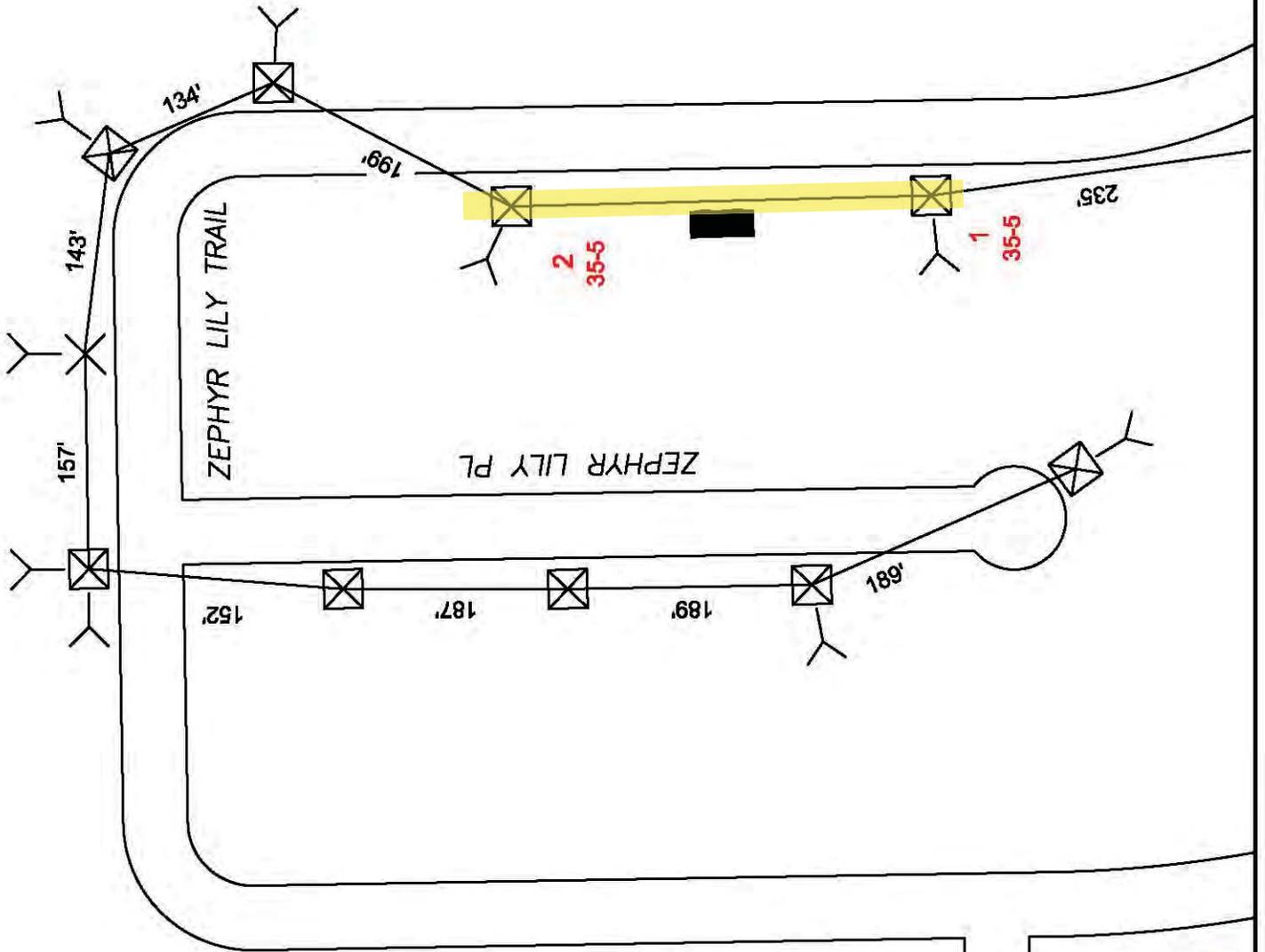
72-05-003p2a.jpg

74



72-05-003p2b.jpg





ABC CABLE
PALM COAST
FLAGLER COUNTY

DRAWN BY: BOB JONES

DATE: 1-23-05

MAP # 12-03

NOT TO SCALE

72-05-003

SECTION III. C. 8. SERVICE POLE PERMITS

WHEN IS A SERVICE DROP PERMIT REQUIRED?

A service drop permit is required after making first-time drop attachments to FPL drop poles when no FPL construction is required to adjust FPL facilities (Non-Make Ready) to accommodate the attachments (If FPL Make-Ready is required see Section III.C.7).

A SERVICE DROP PERMIT APPLICATION CONSISTS OF TWO COMPLETE PACKAGES IN THE FOLLOWING ORDER:

PACKAGE 1

- 1) Payment for permit
- 2) Original signed Exhibit “A” (front and back)
- 3) Original signed Exhibit “B”
- 4) FPL Drop Pole Worksheet for each pole applied for

Because service poles are not reflected on design maps for CATV companies, and are permitted after the attachment of the service drop, these attachments are frequently not reported.

Failure to track attachment of service drops may lead to substantial under reporting of CATV attachments, and may result in back billing and associated fees, back to the date of the last physical survey for any such attachments.

FPL and Alpine have developed the “DROP POLE WORKSHEET” to facilitate the reporting of these service installations so that they may be properly tracked, posted to the PJU maps, and post inspected. See Exhibit “B” (Example # 3) in Section III. F. The utilization of the Drop Pole Worksheet, Exhibit “A” and Exhibit “B” to report your service pole attachments is the single most effective way to minimize the possibility of unexpected fees as a result of the FPL audit.

ABC CABLE	1237
	DATE <u>3/12/2005</u>
PAY TO THE ORDER OF <u>Alpine Communication Corp.</u>	\$ <u>39.75</u>
	<u>Thirty-nine dollars and 75/100</u>
	<u><i>Bob Jones</i></u>

ABC CABLE	Check Date <u>3/12/2005</u>	Check No. <u>1237</u>
Invoice Number	Invoice Date	Amount
72-05-005		39.75

EXHIBIT B NOTIFICATION OF ATTACHMENT/REMOVAL

ABC CABLE

CATV Corporation / Partnership

Attachment
Removal

In accordance with the terms of CATV Agreement dated 2-17, 1996 please (add to) or (delete from) your records the following poles to which (attachments) or (removals) were made during this calendar month.

Location

City Daytona Beach, County Volusia, Florida

Pole Numbers	Date Added	Date Deleted	Permit Number	Pole Locations (Number of Poles)
1-5	3-10-05		72-05-005	See Attached Permit Package (5)

Total Attachment this Notice:

Added 5
Removed _____
Total Previous Attachments 1232
Total Attachments to Date 1237

Licensee: ABC CABLE

By: BOB JONES
Name (Print)

Bob Jones
Signature

CONSTRUCTION MANAGER
Title

123-456-7890 Ext. 123
Phone

123-456-7891
Fax

B.JONES@ABCCABLE.COM
E-Mail

Florida Power & Light Company

By: _____

Title: _____

Date Received _____

Notice Number: 05-003

CABLE SERVICE ATTACHMENT APPLICATION AND PERMIT

ABC Cable

CATV Corporation / Partnership

TYPE OF APPLICATION

(Check One)

Make-Ready

Non Make-Ready

New 5 Foreign _____

Existing _____ Removal _____

15 Mar, 2005
Date submitted by CATV Co.

Date received by FPL

I. APPLICATION

In accordance with the terms of Agreement dated 2/17, 1996 application is hereby made for permit to make attachment to the following poles.

Location City: Daytona Beach County: Volusia Florida

Pole Numbers _____ Pole Locations (Indicate which poles require Make-Ready work) _____
1-5 **VARIOUS -- SEE DROP POLE PAGES**

I certify that the attachments shall be in compliance with the latest edition of the National Electric Safety Code and FPL requirements.

Licensee: ABC CABLE

By: BOB JONES
NAME (PRINT)
Bob Jones
SIGNATURE
CONSTRUCTION MANAGER
TITLE

123-456-7890 Ext. 123
PHONE
123-456-7891
FAX
B.JONES@ABCCABLE.COM
E-MAIL

II. PERMIT

Permit Granted _____ , _____
(Subject to your approval of Make-Ready Cost)
Permit Denied _____ , _____

FLORIDA POWER & LIGHT COMPANY

By: _____
Title: _____

Estimated Make-Ready Cost

\$_____ payable in advance.

Permit Number 72-05-005
Total Previous Poles _____
Poles this Permit 5
New Total Poles _____

Corresponding Permits N/A

III. GENERAL CONDITIONS

1. A "Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after notification in writing to Licensee by FPL that Make-Ready work has been completed.
2. A "Non Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after date of approval and is subject to field conditions and facilities on each pole at the time attachment is made. Licensee shall be required to bear any and all "Make-Ready" cost necessitated by previous attachments.
3. If permit is granted under Section II above, this permit automatically expires, as to the affected poles 30 days after written notice to Licensee that FPL intends to abandon a particular pole line. Within 30 days after such notice, Licensee shall either remove its attachments from those poles or obtain all necessary permits and easements, at the discretion of FPL, arrange to purchase such poles from FPL.

(OVER)

Attachment Criteria

NON JOINT USE POLE
(no telephone)

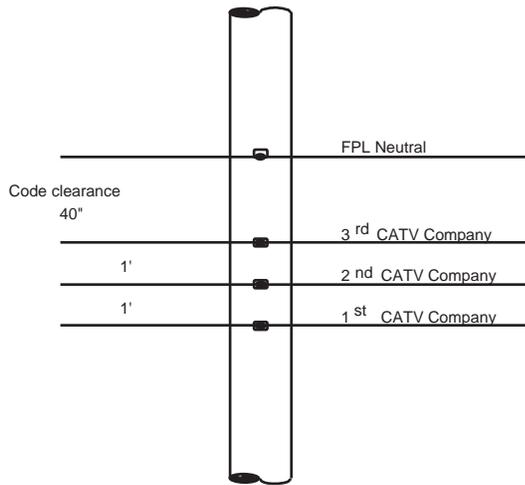


Fig. 1

1. The 1st cable attachment will be located at a height providing minimum clearance over roads, obstacles, etc.
2. All additional cable attachments will be located 1' above the highest existing CATV cable

JOINT USE POLE
(power & telephone)

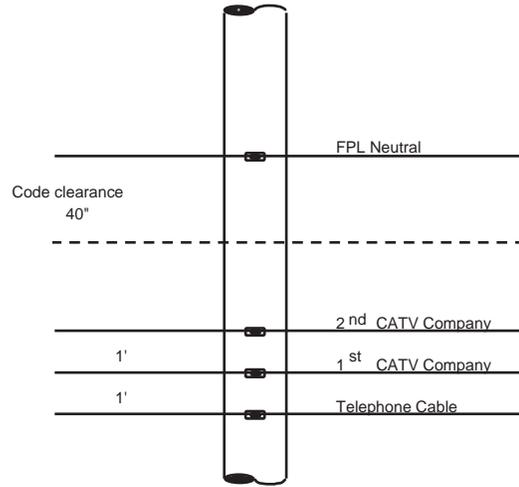


Fig. 2

1. The 1st cable attachment will be located 1' above Telephone's highest cable Attachment
2. The 2nd cable attachment will be located 1' above the existing CATV cable

NOTE: No CATV cable or attachment will intrude on the 40" NESC code clearance space.

CATV Space Allocation

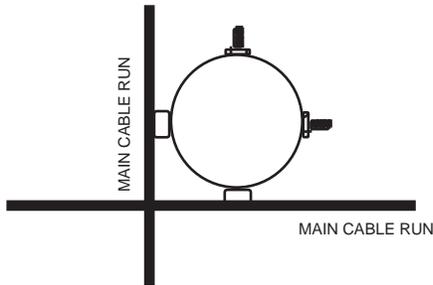


Fig. 3

POLE ATTACHMENT LOCATION

1. All main cable attachments shall be located either on the same side of the pole as FPL's neutral or on one adjacent side.
2. No main line cable attachments shall be located on the side of the pole opposite FPL's neutral.
3. Only 2 sides of the pole, FPL's neutral and one adjacent side, shall be occupied On any given pole.

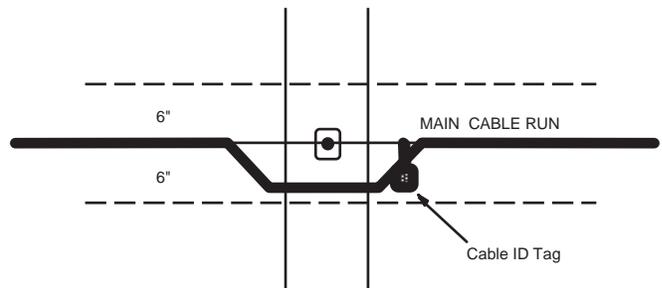


Fig. 4

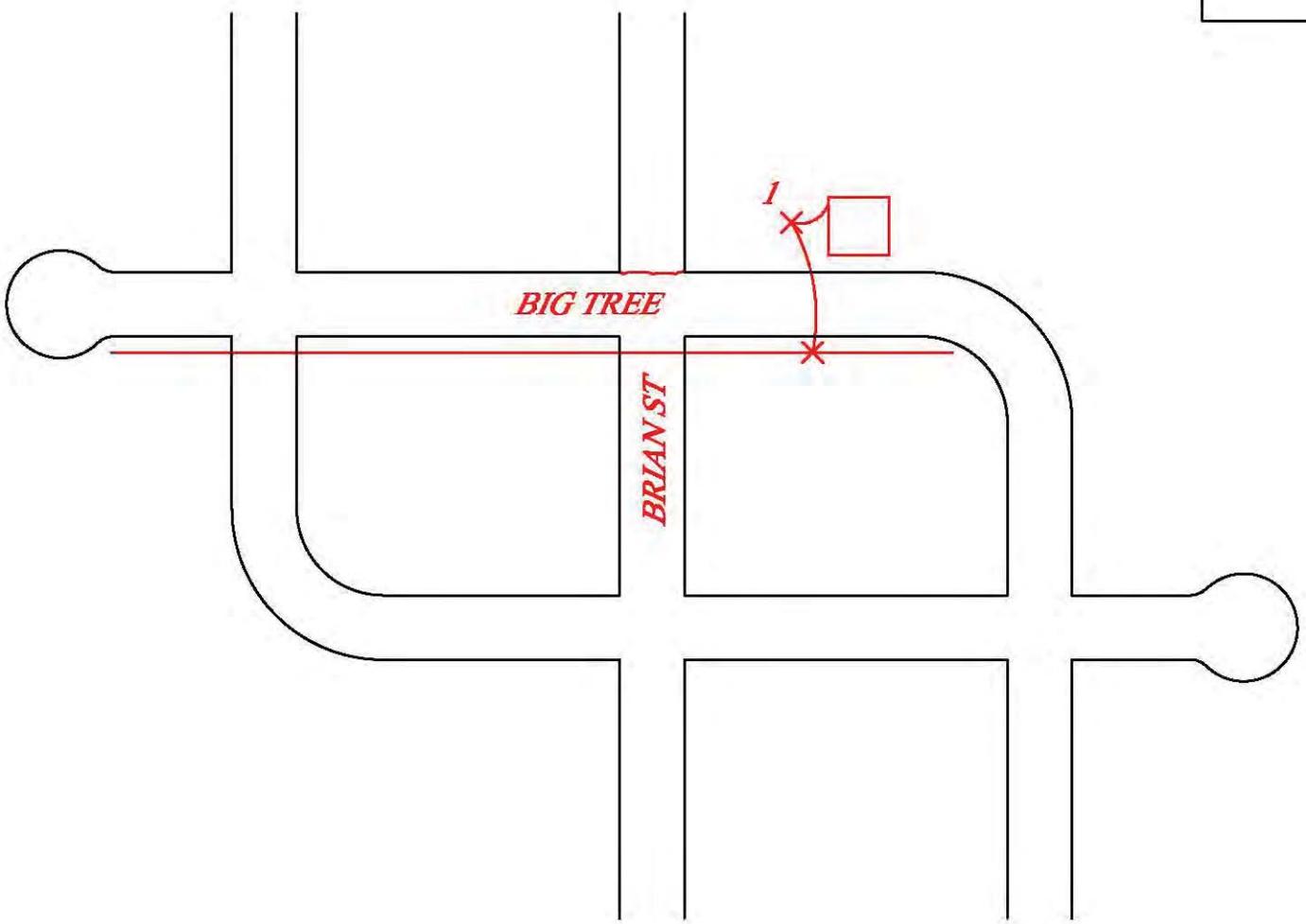
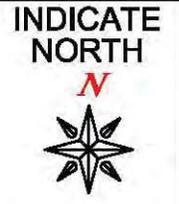
CABLE IDENTIFICATION TAG

1. Each separate CATV cable attachment shall be identified in accordance with the FUCC's Foreign Attachment Guidelines specifications.
2. Each CATV company shall register their unique Cable ID tag with the FUCC's Joint Use Subcommittee.
3. A Cable ID Tag will be installed at every 1st, 5th, and last mainline pole attachment.
4. Cable ID Tag can be attached either to the cable or the attachment hardware.

FPL DROP POLE WORKSHEET

PUBLIC VERSION

PLEASE SHOW DROP POLE(S) AND ASSOCIATED LINE POLE(S) **FPL POLES ONLY**
 PLEASE LABEL ALL INTERSECTING STREETS



CLEARANCE CHECKLIST (CHECK IF OK OR REFER TO SUPERVISOR)	DROP POLE #				
	1	2	3	4	
40" BELOW FPL SERVICE DROP?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>730 BIG TREE</i>
AND/OR FPL SERVICE RISER?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	STREET ADDRESS
12" BELOW ST. LT. DRIP LOOP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>S. DAYTONA, FL 32119</i>
4" BELOW ST. LT. BRACKET?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CITY, STATE, ZIP
OWNER <u>FPL</u> TYPE <u>WOOD</u> HT-CL <u>30-6</u> POLE#(S) <u>1</u> CATV MAP# <u>59-06</u>					
NEAREST TLN TO DROP POLE <u>3</u> - <u>7901</u> - <u>1656</u> - <u>0</u> - <u>1</u> FPL MAP# <u>P38002</u>					
PREPARED BY <u>JIM SMITH</u> DATE <u>3-10-05</u> PERMIT# <u>72</u> - <u>05</u> - <u>005</u>					

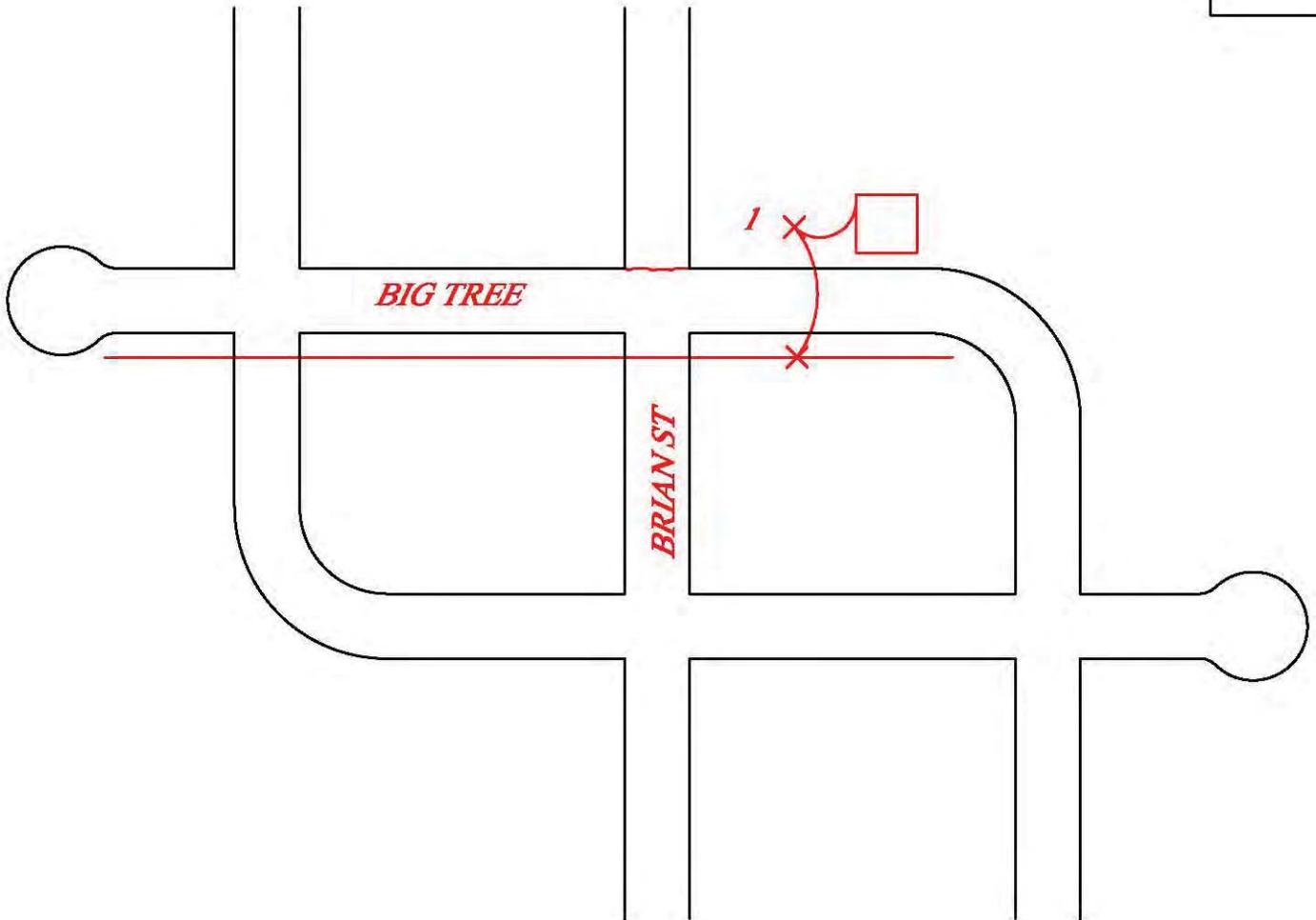
COMMENTS _____

FPL DROP POLE WORKSHEET

PUBLIC VERSION

PLEASE SHOW DROP POLE(S) AND ASSOCIATED LINE POLE(S) **FPL POLES ONLY**
 PLEASE LABEL ALL INTERSECTING STREETS

INDICATE NORTH



CLEARANCE CHECKLIST (CHECK IF OK OR REFER TO SUPERVISOR)	DROP POLE #				
	1	2	3	4	
40" BELOW FPL SERVICE DROP?	✓	—	—	—	<i>745 BIG TREE</i>
AND/OR FPL SERVICE RISER?	—	—	—	—	STREET ADDRESS
12" BELOW ST. LT. DRIP LOOP?	✓	—	—	—	<i>S. DAYTONA, FL 32119</i>
4" BELOW ST. LT. BRACKET?	✓	—	—	—	CITY, STATE, ZIP
OWNER <u>FPL</u> TYPE <u>WOOD</u> HT-CL <u>30-6</u> POLE#(S) <u>1</u> CATV MAP# <u>59-06</u>					
NEAREST TLN TO DROP POLE <u>3</u> - <u>7901</u> - <u>1355</u> - <u>0</u> - <u>7</u> FPL MAP# <u>P38002</u>					
PREPARED BY <u>JIM SMITH</u> DATE <u>3-10-05</u> PERMIT# <u>72</u> - <u>05</u> - <u>005</u>					

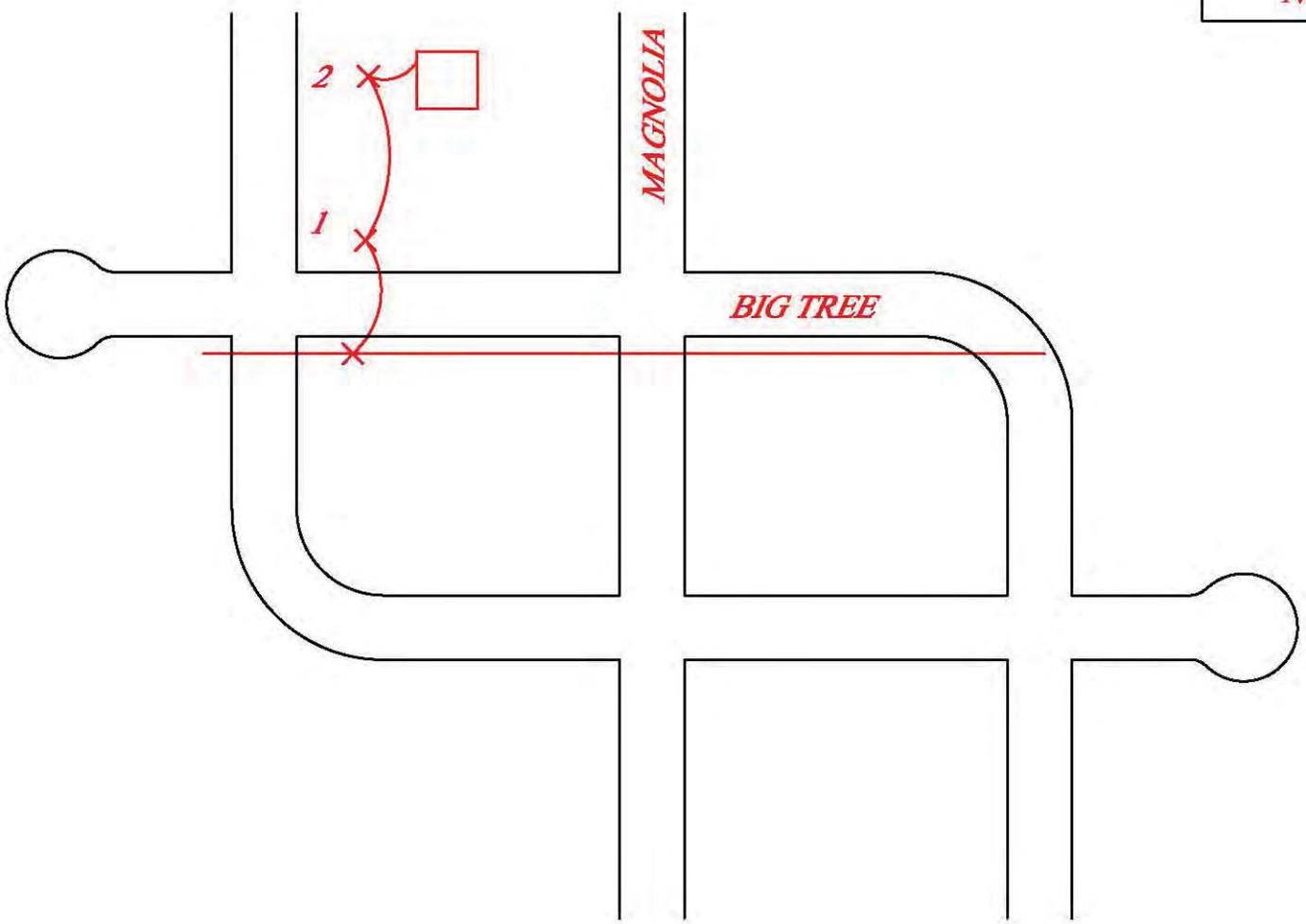
COMMENTS _____

FPL DROP POLE WORKSHEET

PUBLIC VERSION

PLEASE SHOW DROP POLE(S) AND ASSOCIATED LINE POLE(S) **FPL POLES ONLY**
 PLEASE LABEL ALL INTERSECTING STREETS

INDICATE NORTH



CLEARANCE CHECKLIST (CHECK IF OK OR REFER TO SUPERVISOR)	DROP POLE #				
	1	2	3	4	
40" BELOW FPL SERVICE DROP?	✓	✓	—	—	<i>825 BIG TREE</i>
AND/OR FPL SERVICE RISER?	—	✓	—	—	STREET ADDRESS
12" BELOW ST. LT. DRIP LOOP?	✓	—	—	—	<i>S. DAYTONA, FL 32119</i>
4" BELOW ST. LT. BRACKET?	✓	—	—	—	CITY, STATE, ZIP

OWNER FPL TYPE WOOD HT-CL 30-6 POLE#(S) 1,2 CATV MAP# 59-06
 NEAREST TLN TO DROP POLE 3 - 7801 - 8944 - 0 - 0 FPL MAP# P38002
 PREPARED BY JIM SMITH DATE 3-10-05 PERMIT# 72 - 05 - 005

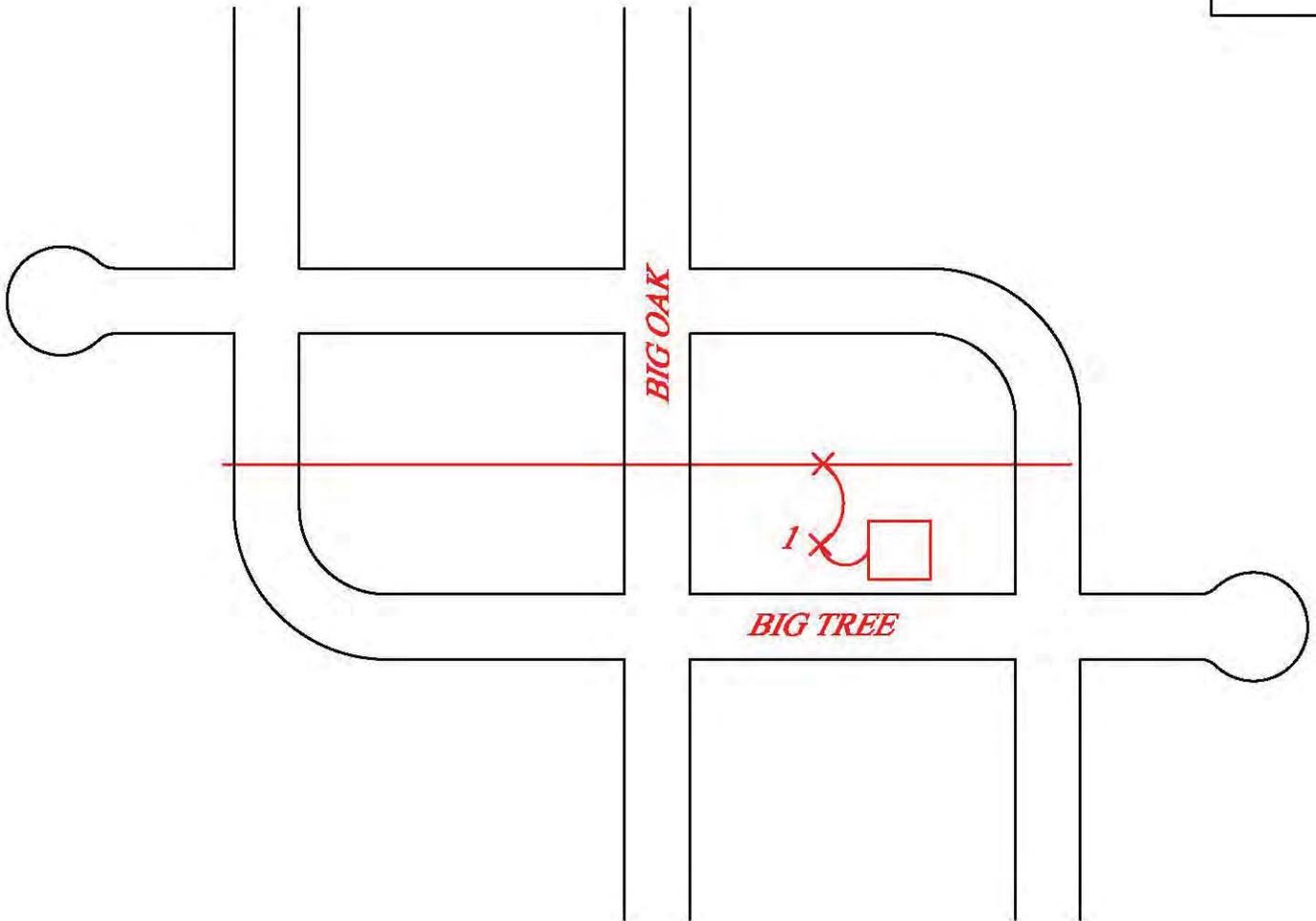
COMMENTS _____

FPL DROP POLE WORKSHEET

PUBLIC VERSION

PLEASE SHOW DROP POLE(S) AND ASSOCIATED LINE POLE(S) **FPL POLES ONLY**
 PLEASE LABEL ALL INTERSECTING STREETS

INDICATE NORTH



CLEARANCE CHECKLIST (CHECK IF OK OR REFER TO SUPERVISOR)	DROP POLE #			
	1	2	3	4
40" BELOW FPL SERVICE DROP?	✓	—	—	—
AND/OR FPL SERVICE RISER?	✓	—	—	—
12" BELOW ST. LT. DRIP LOOP?	—	—	—	—
4" BELOW ST. LT. BRACKET?	—	—	—	—

910 BIG TREE
 STREET ADDRESS
S. DAYTONA, FL 32119
 CITY, STATE, ZIP

OWNER FPL TYPE WOOD HT-CL 30-6 POLE#(S) 1 CATV MAP# 59-06
 NEAREST TLN TO DROP POLE 3 - 7801 - 9848 - 0 - 8 FPL MAP# P38002
 PREPARED BY JIM SMITH DATE 3-10-05 PERMIT# 72 - 05 - 005

COMMENTS _____

SECTION III. C. 9. MAJOR REBUILD OR UPGRADE PERMITS

- DEFINITION:

- MAJOR REBUILD OR UPGRADE: Rebuild which impacts 300 or more total pole attachments or 50% or more of CATV company's existing attachments.

- PLANNING:

- A significant amount of advance engineering is required to safely, accurately and efficiently perform the extensive amount of field engineering necessary to properly prepare your major rebuild permit applications. Funds must be budgeted for design, applications and make ready construction.

- PROCESS:

- Notice and pre-construction meeting for major Rebuild: It is the responsibility of the CATV company to comply with the guidelines provided herein, to notify Alpine Communication Corp. of its intention to perform a major rebuild, and to invite Alpine Communication Corp. and the appropriate FPL service planner(s) to a pre-construction meeting to fully explain the rebuild and to advise FPL service planner(s) of any services to power supplies that will require energizing/de-energizing.

- PERMIT REQUIREMENTS:

PERMITS REQUIRED (When rebuilding with larger diameter cable than existing (or over lashing existing) one or more of the following is required.)

- **Non-Make Ready Permit**
[New and Existing attachments] For any FPL poles not requiring Make Ready. (See section III. C. 6 for details.)
- **Major Rebuild Permit**
[For Existing Non-make ready attachments only] These permits must contain a minimum of 300 poles, and have a 180 day permit life. (Package requirements same as for non-make ready permits, see section III. C. 6 for details.)
- **Make Ready Permit**
[For New, Existing or Foreign attachments] Any poles (FPL or other owners) that require FPL Make Ready. (See section III. C. 7 for details.)

NO PERMIT REQUIRED (When rebuilding with smaller diameter cable than existing; or when rebuilding with the same diameter cable as existing. All FPL, NESC requirements for space allocation, clearance, and wind loading must be adhered to; certification of compliance required; see next page)

- **Upon completion of each permitted section, Exhibit B's must be submitted to provide for a smooth flow of post-inspection.**

**FPL CERTIFICATION OF COMPLIANCE
FOR MAJOR REBUILDS OF CATV FACILITIES**
(To be executed and provided to FPL prior to start of construction)

(CATV COMPANY)

(DESCRIPTION OF AREA IN WHICH REBUILD IS TO TAKE PLACE)

DATE (S) OF MAJOR REBUILD

This is to certify that during the course of the above described major rebuild of our company's CATV facilities, all FPL requirements, as well as all NESC clearance and wind loading requirements will be complied with.

I/we understand that FPL will not be responsible for any costs incurred by FPL due to failure of a CATV company to adhere to requirements listed above.

Authorized Representative

Title

**SECTION III. D.
RECEIVE APPROVED PERMIT**

It is our goal to process Non-make ready permit applications within a time span of about two weeks.

Permit applications which require Make ready work will take longer. Our goal is to grant or deny make ready applications within 45 days after submission of a correct and complete application. Make ready applications involving very large numbers of poles may take longer and may be approved or denied in groups of poles as the review work progresses. Additional time will be required for CATV approval of the make ready cost, CATV payment of the make ready cost, scheduling of FPL construction work and performance of FPL construction work.

Upon approval of your permit application, Alpine will fax a copy of the approved Exhibit "A". This copy will be signed by Alpine's representative.

Your permit will automatically expire if:

- 1) Non-Make Ready permits: attachments are not made and completed within 60 days of the date of permit approval;
- 2) Make Ready permits: attachments are not made and completed within 60 days of notification of make ready work complete, or FPL invoice not paid within 120 days of invoice date;
- 3) Major Rebuild permits: notice that the permitted area is "ready for inspection" is not received within 180 days of permit approval.

It is your responsibility to ensure that copies of the signed Exhibit "A" are maintained in your company's files and in the possession of your company or contract construction personnel during the field installation of the attachments.

SECTION III. E. CONSTRUCT/QC ATTACHMENTS

- Remember that in order to construct your attachments, you must also secure any necessary permit, consent, or certification from state, county or municipal authorities or from owners of property.
- Construction personnel must be properly trained, including familiarization with this page and p.24 of this manual, "Clearances of Foreign Communication Cables to FPL & Other Foreign Utilities".
- You must have an approved permit (Exhibit "A").
- A copy of the approved permit (Exhibit "A" and highlighted CATV and FPL Primary maps) must be available for inspection on the job site during construction of the attachments.
- You must complete construction within 60 days of permit approval, or permit will automatically expire, and you will need to re-apply.
- **Build your facilities as designed in approved permit package.**
- Install down guys and anchors prior to placement of strand.
- Conform to FPL requirements (clearances, tagging, bonding, down guys, anchors, guy guards, proper brackets for attachments per reverse side of the Exhibit "A", **NO** stand off or extension arms, etc.) and NESC standards, during installation of strand and cable. These requirements apply to all FPL poles including service poles.
- Lightning protection – grounding and bonding: On wood poles only, licensee is not required to have messengers or neutral bonded to FPL neutral unless the pole has a ground station. On concrete poles, licensee is required to have messengers or neutral bonded to FPL neutral.
- **Upon completion of construction, perform quality control review of facilities for compliance and make adjustments if necessary.**
- Where possible, withhold payment to contractors/construction crews until it can be determined that their construction conforms to NESC and FPL requirements.
- Proper care must be taken to sag strand during installation. Excessive tension in the strand may result in clearance violations and/or damage to FPL and CATV equipment at mid-span or may result in pulling poles inward and causing FPL conductors to sag into CATV cable, resulting in FPL conductors arcing and burning to the ground.

**SECTION III. F.
NOTIFY OF CONSTRUCTION COMPLETION
- EXHIBIT “B” PREPARATION**

The final and very important step in the permit process is the submittal of an EXHIBIT “B” NOTIFICATION OF ATTACHMENT/REMOVAL. (Use of FPL’s Exhibit “B” word doc e-mailed by the person authorized to sign permits for your company is acceptable.)

- Send the notice monthly (provided there have been attachments/removals during the month)
- Notice (EXHIBIT “B”) must be sent to Alpine Communication Corp., FPL’s permit process contractor
- Notice (EXHIBIT “B”) must be sent within thirty days after construction of the attachments is complete

Upon receipt of the Exhibit “B” Alpine will schedule a post inspection of the attachments reported.

FAILURE TO FILE AN EXHIBIT “B” WILL DELAY THE POST INSPECTION AND RECORDING OF YOUR ATTACHMENTS AND WILL PREJUDICE OTHER ENTITIES DESIRING TO ATTACH TO FPL POLES. FAILURE TO TIMELY FILE AN EXHIBIT “B”, THEREFORE, WILL RESULT IN A REQUIREMENT FOR YOUR PAYMENT FOR A FIELD INSPECTION OF ALL POLES ON THE EXPIRED EXHIBIT “A”, AND MAY RESULT IN TERMINATION OF THE POLE ATTACHMENT AGREEMENT IN WHOLE OR PART. IT MAY ALSO LEAD TO POST AUDIT BACKBILLINGS AND ADMINISTRATIVE FEES. THE LICENSEE APPLICANT AND COMPANY MANAGEMENT WILL BE NOTIFIED IN WRITING OF ANY FAILURE TO COMPLY.

EXHIBIT B NOTIFICATION OF ATTACHMENT/REMOVAL

CATV Corporation / Partnership

2

Attachment
Removal

3

In accordance with the terms of CATV Agreement dated _____, please (add to) or (delete from) your records the following poles to which (attachments) or (removals) were made during this calendar month.

4

Location

City _____, County _____, Florida

Pole Numbers	Date Added	Date Deleted	Permit Number	Pole Locations (Number of Poles)
5	6	6	7	8

Total Attachment this Notice:

Added _____ 9

Removed _____ 10

Total Previous Attachments _____ 11

Total Attachments to Date _____ 12

Licensee: _____

By: _____ **Ext.** _____

Name (Print) _____ Phone _____

Signature _____ Fax _____

Title _____ E-Mail _____

Florida Power & Light Company

By: _____

Title: _____

Date Received _____

Notice Number: _____

14

15

STEPS TO COMPLETE EXHIBIT “B”

- 1) List the company as it appears on your FPL CATV attachment agreement
- 2) You may combine attachments and removal on the same Exhibit “B”, please check if one or both applies
- 3) Date of the FPL CATV attachment agreement
- 4) Location –this must be the service area in which the Exhibit “B” applies
- 5) Pole numbers – should correspond to pole numbers on the approved Exhibit “A”, for deletions please submit a CATV map and reference FPL map. Deleted poles should be numbered on CATV map.
- 6) Date added or deleted – company should list the day, month, year and the number of attachments or deletions
- 7) Permit # -you must list the permit number on all additions. If you are adding service poles that were not previously permitted, you must include an Exhibit “A” package.
- 8) Pole locations – please list locations as they originally appeared on the Exhibit “A”.
- 9) New attachments added this notice
- 10) Attachments deleted this notice
- 11) Total previous attachments – this total is from company’s previous month’s Exhibit “B” or FPL attachment audit, if applicable.
- 12) Total attachments to date – equals poles added, less poles deleted plus previous attachments (line 9 minus line 10 plus line 11)
- 13) Licensee – the company name as it appears on the FPL CATV attachments
Name/Title - of the person authorized to submit permits for your company
Phone, Fax, and E-Mail address of the person submitting the permit
Signature – must be an original signature on the Exhibit “B”
- 14) Filled out by Alpine Communication Corp.
- 15) Notice Number – please assign a notice number comprised of the last two digits of the current year followed by a sequence number (The first Exhibit “B” of 2005 would be number as 05-001)

Exhibit “B” (Example #1)

The following is an example of an Exhibit “B” package, properly submitted within thirty days of construction completion, and based upon the permit application examples shown in the sections III C. 6 and III C. 7 of this manual.

EXHIBIT B NOTIFICATION OF ATTACHMENT/REMOVAL

ABC CABLE
CATV Corporation / Partnership

Attachment
Removal

In accordance with the terms of CATV Agreement dated 2-17, 1996 please (add to) or (delete from) your records the following poles to which (attachments) or (removals) were made during this calendar month.

Location

City Daytona Beach, County Volusia, Florida

Pole Numbers	Date Added	Date Deleted	Permit Number	Pole Locations (Number of Poles)
1,2,5 3,4	3-5-05 3-5-05		72-05-002 72-05-001	FPL MAP P38002, CATV MAP 57-09 FPL MAP P38002, CATV MAP 57-09

Total Attachment this Notice:

Added 5
Removed _____
Total Previous Attachments 1231
Total Attachments to Date 1236

Licensee: ABC CABLE
By: BOB JONES
Name (Print)

123-456-7890 Ext. 123
Phone

Bob Jones
Signature

123-456-7891
Fax

CONSTRUCTION MANAGER
Title

B.JONES@ABCCABLE.COM
E-Mail

Florida Power & Light Company

By: _____
Title: _____

Date Received _____

Notice Number: 05-001

Exhibit “B” (Example #2)

The second example of an Exhibit “B” illustrates the use of the form to report the removal of attachments. In this case, an Exhibit “A” and corresponding maps are required to accompany the Exhibit “B”.

WHEN IS AN EXHIBIT “A” REQUIRED TO ACCOMPANY AN EXHIBIT “B”?

An Exhibit “A” is required to accompany any Exhibit “B” that reports removals from FPL poles. This Exhibit “A” and the corresponding maps will allow Alpine to not only reduce the number of attachments on FPL billing records, but to also delete the attachments from the overall FPL mapping system of attachments. While the Exhibit “B” provides the answer to “how many attachments were removed?” the Exhibit “A” and corresponding maps provide the answer to “where were the attachments located?”

THE REPORTING OF REMOVALS CONSISTS OF TWO COMPLETE PACKAGES IN THE FOLLOWING ORDER:

PACKAGE 1

- 1) Original signed Exhibit “A” (front and back)
Include the reason for the removal (removal, ownership change etc...)
- 2) Original signed Exhibit “B”
- 3) No larger than 11” x 17” Licensee maps with route highlighted, affected pole(s) numbered in sequence, and with span footages shown.
- 4) Copy of 11” x 17” FPL primary map with the affected area highlighted

PACKAGE 2

- 1) Original signed Exhibit “A” (front and back)
Include the reason for the removal (removal, ownership change etc...)
- 2) Original signed Exhibit “B”
- 3) No larger than 11” x 17” Licensee maps with route highlighted, affected pole(s) numbered in sequence, and with span footages shown.
- 4) Copy of 11” x 17” FPL primary map with the affected area highlighted

EXHIBIT B NOTIFICATION OF ATTACHMENT/REMOVAL

ABC CABLE
CATV Corporation / Partnership

Attachment
Removal

In accordance with the terms of CATV Agreement dated 2-17, 1996 please (add to) or (delete from) your records the following poles to which (attachments) or (removals) were made during this calendar month.

Location

City Palm Coast , County Flagler , Florida

Pole Numbers	Date Added	Date Deleted	Permit Number	Pole Locations (Number of Poles)
1-4		3/11/2005	72-05-004	FPL MAP P36623, CATV MAP 12-03

Total Attachment this Notice:

Added 0
Removed 4
Total Previous Attachments 1236
Total Attachments to Date 1232

Licensee: ABC CABLE
By: BOB JONES
Name (Print)

Bob Jones
Signature

CONSTRUCTION MANAGER
Title

123-456-7890 Ext. 123
Phone

123-456-7891
Fax

B.JONES@ABCCABLE.COM
E-Mail

Florida Power & Light Company

By: _____
Title: _____

Date Received _____

Notice Number: 05-002

EXHIBIT A PUBLIC VERSION
CABLE SERVICE ATTACHMENT APPLICATION AND PERMIT

ABC Cable

CATV Corporation / Partnership

TYPE OF APPLICATION

(Check One)

Make-Ready

Non Make-Ready

New _____ Foreign _____

Existing _____ Removal 4 _____

15 Mar, 2005
Date submitted by CATV Co.

Date received by FPL

I. APPLICATION

In accordance with the terms of Agreement dated 2/17, 1996 application is hereby made for permit to make attachment to the following poles.

Location City: Palm Coast County: Flagler Florida

Pole Numbers _____ Pole Locations (Include FPL Map #'s & Licensee Map #'s) _____
1-4 FPL MAP P36623, CATV MAP 12-03(Pole ownership changed)

I certify that the attachments shall be in compliance with the latest edition of the National Electric Safety Code and FPL requirements.

Licensee: ABC CABLE

By: BOB JONES
NAME (PRINT)
Bob Jones
SIGNATURE
CONSTRUCTION MANAGER
TITLE

123-456-7890 Ext. 123
PHONE
123-456-7891
FAX
B.JONES@ABCCABLE.COM
E-MAIL

II. PERMIT

Permit Granted _____ , _____
(Subject to your approval of Make-Ready Cost)
Permit Denied _____ , _____

Estimated Make-Ready Cost
\$_____ payable in advance.

FLORIDA POWER & LIGHT COMPANY

Permit Number 72-05-004
Total Previous Poles _____
Poles this Permit _____
New Total Poles _____

By: _____
Title: _____

Corresponding Permits N/A

III. GENERAL CONDITIONS

1. A "Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after notification in writing to Licensee by FPL that Make-Ready work has been completed.
2. A "Non Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after date of approval and is subject to field conditions and facilities on each pole at the time attachment is made. Licensee shall be required to bear any and all "Make-Ready" cost necessitated by previous attachments.
3. If permit is granted under Section II above, this permit automatically expires, as to the affected poles 30 days after written notice to Licensee that FPL intends to abandon a particular pole line. Within 30 days after such notice, Licensee shall either remove its attachments from those poles or obtain all necessary permits and easements, at the discretion of FPL, arrange to purchase such poles from FPL.

(OVER)

Attachment Criteria

NON JOINT USE POLE
(no telephone)

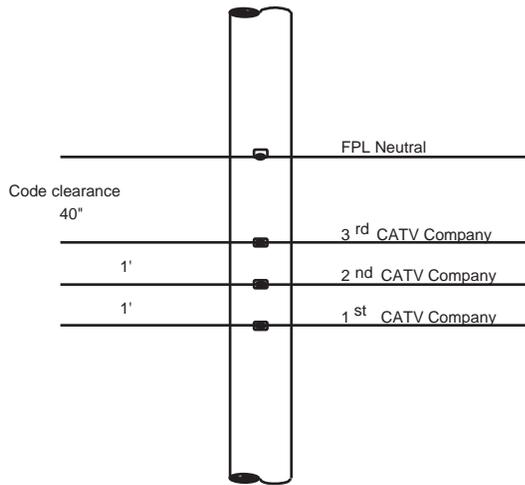


Fig. 1

1. The 1st cable attachment will be located at a height providing minimum clearance over roads, obstacles, etc.
2. All additional cable attachments will be located 1' above the highest existing CATV cable

JOINT USE POLE
(power & telephone)

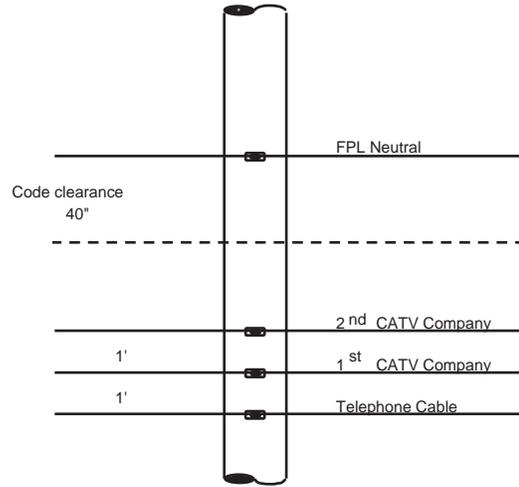


Fig. 2

1. The 1st cable attachment will be located 1' above Telephone's highest cable Attachment
2. The 2nd cable attachment will be located 1' above the existing CATV cable

NOTE: No CATV cable or attachment will intrude on the 40" NESC code clearance space.

CATV Space Allocation

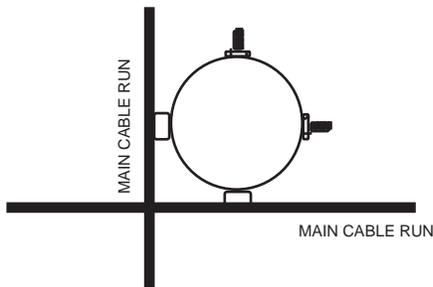


Fig. 3

POLE ATTACHMENT LOCATION

1. All main cable attachments shall be located either on the same side of the pole as FPL's neutral or on one adjacent side.
2. No main line cable attachments shall be located on the side of the pole opposite FPL's neutral.
3. Only 2 sides of the pole, FPL's neutral and one adjacent side, shall be occupied On any given pole.

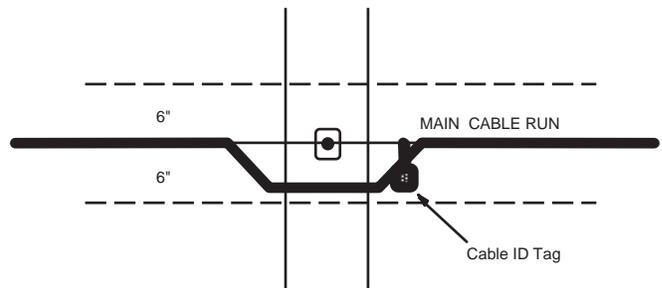
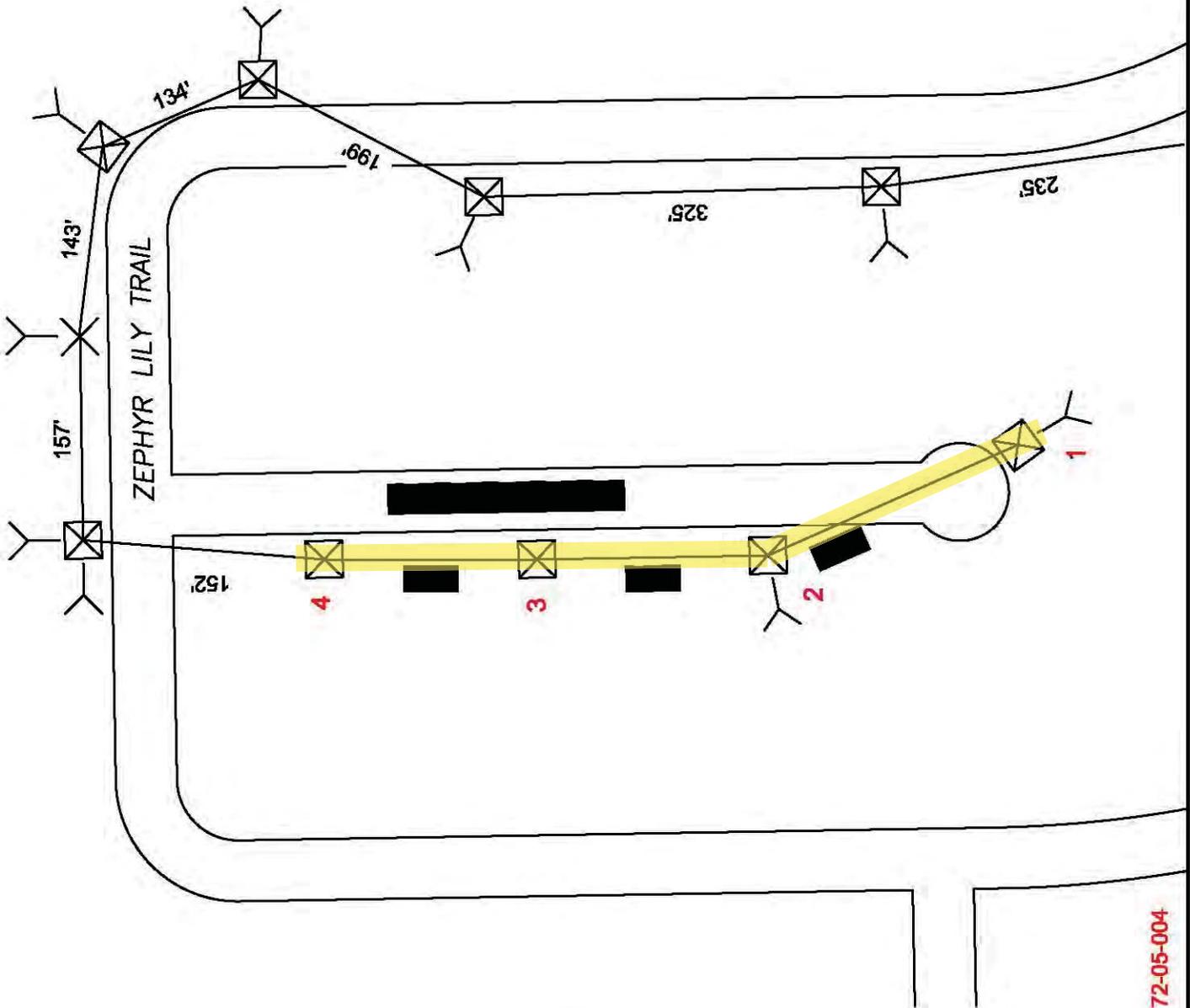


Fig. 4

CABLE IDENTIFICATION TAG

1. Each separate CATV cable attachment shall be identified in accordance with the FUCC's Foreign Attachment Guidelines specifications.
2. Each CATV company shall register their unique Cable ID tag with the FUCC's Joint Use Subcommittee.
3. A Cable ID Tag will be installed at every 1st, 5th, and last mainline pole attachment.
4. Cable ID Tag can be attached either to the cable or the attachment hardware.



ABC CABLE
PALM COAST
FLAGLER COUNTY

DRAWN BY: BOB JONES

DATE: 1-23-05

MAP # 12-03

NOT TO SCALE

72-05-004

Exhibit “B” (Example #3)

The third example of an Exhibit “B” illustrates the use of the form to report attachments to service drop poles.

This example is shown in Section III.C.8.

**SECTION III. G.
EXPIRED EXHIBIT “A”**

An expired Exhibit “A” is an Exhibit “A” that has not been cancelled or for which no timely Exhibit “B” was filed, or an Exhibit “A” for Make ready, where the FPL invoice was cancelled for non-payment.

Licensee will be required to make payment for field inspection of all poles on an expired Exhibit “A”.

This requirement can be avoided by the timely filing of Exhibit B’s.

SECTION III. H. FPL POST INSPECTION OF CABLE ATTACHMENTS

Based on the guidelines in sections III.C.3 and III.C.4 a post inspection will follow upon receipt of the licensee Exhibit “B”. The results of the post inspection will cause Alpine to take the following actions.

Alpine will post the attachments to the licensee total for pole rental billing by FPL. If non-standard attachments are found, the licensee will receive a “NOTICE OF NON-STANDARD ATTACHMENT” form, along with an invoice for a processing fee for each non-standard attachment and a re-inspection fee for each non-standard attachment.

The licensee will be required to respond within fifteen days of this notice with a statement of the corrective actions to be taken. The licensee will be given an additional 15 days to make such corrections or file an FPL make-ready permit application, with old permit # and pole #'s referenced on the “Corresponding Permits” line i.e.72-05-001 p2. Upon receipt of the notice that the licensee corrections have been completed, Alpine will re-inspect to verify compliance with FPL and N.E.S.C. requirements.

If Alpine does not receive a response to the above notice within the fifteen day period, a “SECOND NOTICE OF NON-STANDARD ATTACHMENT” form will be sent to the licensee applicant and general manager, with response required in seven days.

If Alpine does not receive a response to the above notices within 30 days from the date of the first notice, a “FINAL NOTICE OF NON-STANDARD ATTACHMENT” will be sent to the licensee applicant and general manager by E-Mail, advising of future suspension of new permit approval until all non-standard attachments have been corrected.

Each of the above notices will include the following:

LICENSEE HAS SIGNED FPL’S EXHIBIT A, “CABLE SERVICE ATTACHMENT APPLICATION AND PERMIT”, CERTIFYING THAT “THE ATTACHMENTS SHALL BE IN COMPLIANCE WITH THE LATEST EDITION OF THE NATIONAL ELECTRIC SAFETY CODE AND FPL REQUIREMENTS”. THIS CERTIFICATION MUST BE ADHERED TO. USEFUL REFERENCES ARE PROVIDED TO THE LICENSEE IN “FPL DIRECTORY AND PERMIT APPLICATION PROCESS MANUAL FOR USE BY CATV COMPANIES AND NON-LEC TELECOM COMPANIES”, SECTION III.C.3. “CLEARANCES” AND SECTION III.E. “CONSTRUCT ATTACHMENTS”. FAILURE TO CONSTRUCT ATTACHMENTS IN ACCORDANCE WITH THESE CRITERIA WILL RESULT IN SUSPENSION OF APPROVAL OF FUTURE PERMITS AND MAY RESULT IN TERMINATION OF THE POLE ATTACHMENT AGREEMENT IN WHOLE OR PART. THE LICENSEE APPLICANT AND COMPANY MANAGEMENT WILL BE NOTIFIED OF ANY FAILURE TO COMPLY.

SECTION IV.

**PERMIT APPLICATION PROCESS FOR FPL
TRANSMISSION POLES (AND TRANSMISSION
GUY STUBS)**

REVISED 3-11-04

[NOTE: PERMIT APPROVAL IS BY FPL – TRANSMISSION PROJECTS DEPARTMENT ONLY
AND REQUIRES ADDITIONAL TIME TO GAIN APPROVAL]

Application Requirements

All applications for attachment to transmission poles require complete structural calculations. Applicant shall demonstrate that the poles can withstand the additional proposed mechanical and environmental loads. Calculations shall be provided with GT-STRUDL output forms, with non-linear analysis results, signed and sealed by a Professional Engineer – Structural, licensed in the State of Florida.

Application Costs

The cost associated with reviewing the application calculations will be the responsibility of the applicant. Review of calculations for approval is performed by FPL Transmission at a cost of \$96 per manhour (regardless of final approval or disapproval of the request). A deposit of \$2,000 dollars, payable to FPL, is required for quantities of up to 50 poles.

Application Process

Submit completed application to FPL Representative (same as for distribution attachments). Your representative will review the application for completeness. Completed applications will be forwarded to FPL’s Transmission Projects Group for review.

1.0 DESIGN CRITERIA

When more than one code applies, the more stringent criteria shall govern.

1.1 CLEARANCES

Any overhead cable installation shall comply with FPL 2002 NESC Basic Clearances for Overhead Transmission Lines, the National Electric Safety Code (NESC)-2002 or other governmental agency codes.

1.2 DESIGN LOADS

1.2.1 POLE DESIGN

Design loads shall meet the specifications defined in the National Electric Safety Code (NESC)-2002, the American Society of Civil Engineer (ASCE) latest edition “Minimum Design Loads for Buildings and Other Structures” and ASCE Manuals #74, “Guidelines for Electrical Transmission Line Structural Loading”.

STEEL TRANSMISSION STRUCTURES

Designs shall meet the specifications defined in the ASCE Manuals #72 “Design of Steel Transmission Pole Structures” latest edition, and ASCE Standard latest edition, “Design of Latticed Steel Transmission Structures”.

CONCRETE TRANSMISSION POLES

Designs shall meet the specification defined in the ASCE-PCI “Guide for the Design of Prestressed Concrete Pole”.

WOOD TRANSMISSION POLES

Designs shall meet the specification defined in the IEEE Standard 751 “Trial-Use Design Guide for Wood Transmission Structures”.

PUBLIC VERSION

1.2.2 WEATHER RELATED LOADS

Transmission poles are required to resist the weather-related loads (Extreme Wind and Ice/Wind). The applied wind load cases that need to be considered for transmission structures from ALL angles are defined as follows:

Under Combined Ice/Wind loads (NESC Section 250 B)

FPL service territory is classified as the "Light Loading District".

Under Extreme Wind Loads (NESC Section 250 C)

ASCE **latest edition** "Minimum Design Loads for buildings and Other Structures" and ASCE Manuals #74, "Guidelines for Electrical Transmission Line Structural Loading" are the basis of this control criteria.

Under Serviceability Requirements (FPL Policy for Concrete Pole)

45 mph wind load is considered as the minimum wind load applied for this zero-tension condition, which is only applied to prestressed concrete poles. The calculation of the wind pressure also follows the requirements of ASCE **latest edition** "Minimum Design Loads for Buildings and Other Structures" and ASCE **latest edition** Manuals #74, "Guidelines for Electrical Transmission Line Structural Loading".

Basic Wind Speeds (ANS/ASCE latest edition).

Refer to enclosed drawings showing Basic Wind Speeds (within FPL Service Territory. Map file name: wind_cont_FL-1.g12 created 10-22-02 attached.

1.2.3 OSHA REQUIREMENTS

This project shall be designed to meet all Occupations Safety and Health Administration (OSHA) rules and regulations.

2.0 PERMIT PACKAGE

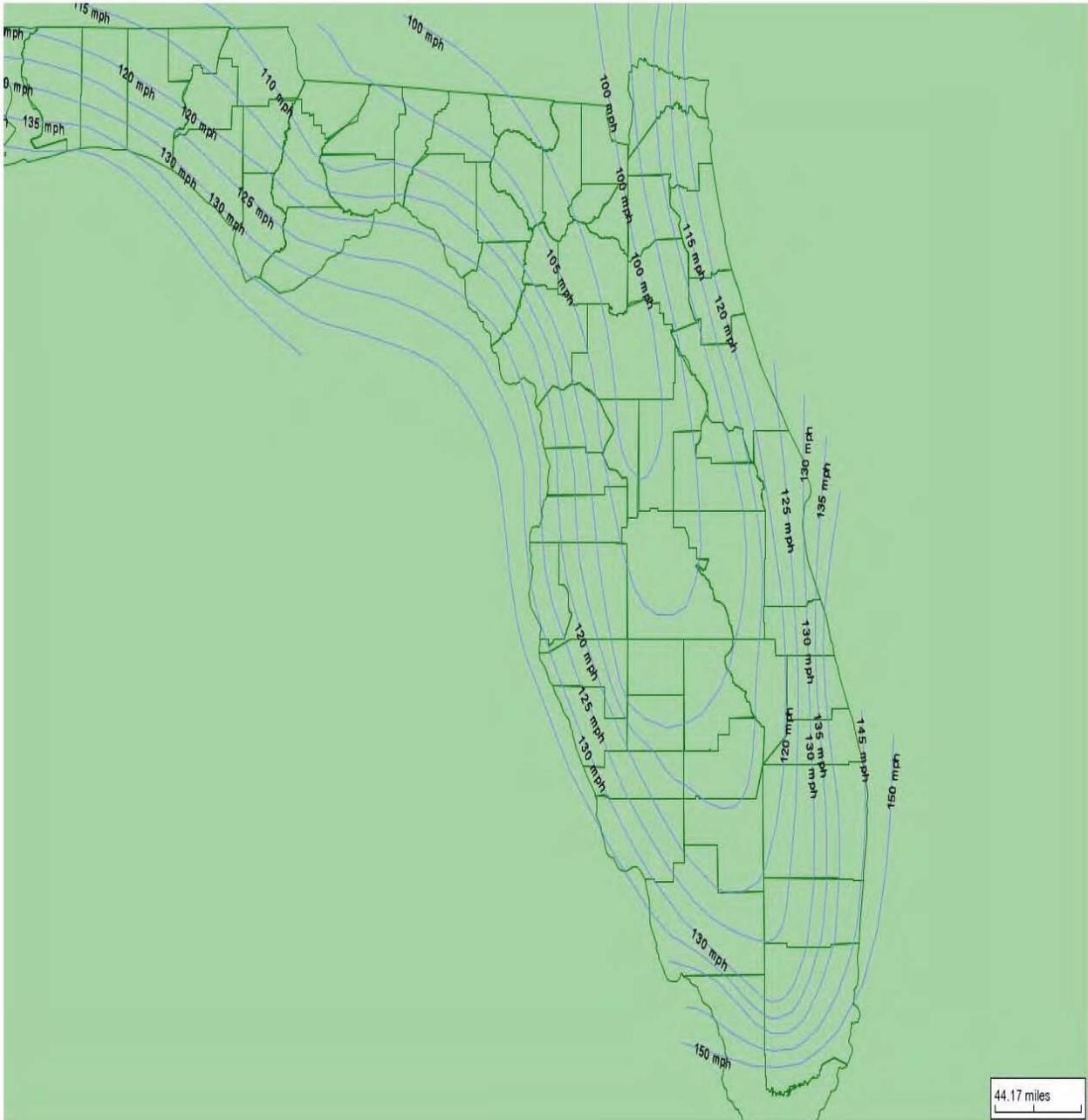
A permit application shall consist of two (2) complete packages in the following order:

- 1) Payment for Permit (payable to FPL)
- 2) Original, signed Exhibit "A" (front and back)
- 3) Calculations (signed and sealed)
- 4) Field Notes
- 5) Pictures of all affected poles, with corresponding pole identification numbers (photographs or jpeg files)
- 6) Licensee maps (plan/profile) showing route, spans, pole heights, and the Licensee facilities proposed for installation
- 7) Copy of the FPL Primary Map, with the affected area highlighted

3.0 APPROVAL / DISAPPROVAL

Upon review of the permit application, a response stating approval or disapproval will be communicated by the FPL – Transmission Projects Department.

FLORIDA WIND ZONES-2002



SECTION V.
PERMIT APPLICATION FORMS

EXHIBIT A

CABLE SERVICE ATTACHMENT APPLICATION AND PERMIT

CATV Corporation / Partnership

TYPE OF APPLICATION

(Check One)

Make-Ready

Non Make-Ready

New _____ Foreign _____

Existing _____ Removal _____

_____, _____
Date submitted by CATV Co.

_____, _____
Date received by FPL

I. APPLICATION

In accordance with the terms of Agreement dated _____, _____ application is hereby made for permit to make attachment to the following poles.

Location City: _____ County: _____ Florida

Pole Numbers _____ Pole Locations (Include FPL Map #'s & Licensee Map #'s) _____

I certify that the attachments shall be in compliance with the latest edition of the National Electric Safety Code and FPL requirements.

Licensee: _____

By: _____

NAME (PRINT)

Ext. _____

PHONE

SIGNATURE

FAX

TITLE

E-MAIL

II. PERMIT

Permit Granted _____, _____
(Subject to your approval of Make-Ready Cost)
Permit Denied _____, _____

Estimated Make-Ready Cost

\$_____ payable in advance.

FLORIDA POWER & LIGHT COMPANY

Permit Number _____

Total Previous Poles _____

Poles this Permit _____

New Total Poles _____

By: _____

Title: _____

Corresponding Permits _____

III. GENERAL CONDITIONS

1. A "Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after notification in writing to Licensee by FPL that Make-Ready work has been completed.
2. A "Non Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after date of approval and is subject to field conditions and facilities on each pole at the time attachment is made. Licensee shall be required to bear any and all "Make-Ready" cost necessitated by previous attachments.
3. If permit is granted under Section II above, this permit automatically expires, as to the affected poles 30 days after written notice to Licensee that FPL intends to abandon a particular pole line. Within 30 days after such notice, Licensee shall either remove its attachments from those poles or obtain all necessary permits and easements, at the discretion of FPL, arrange to purchase such poles from FPL.

(OVER)

Attachment Criteria

NON JOINT USE POLE
(no telephone)

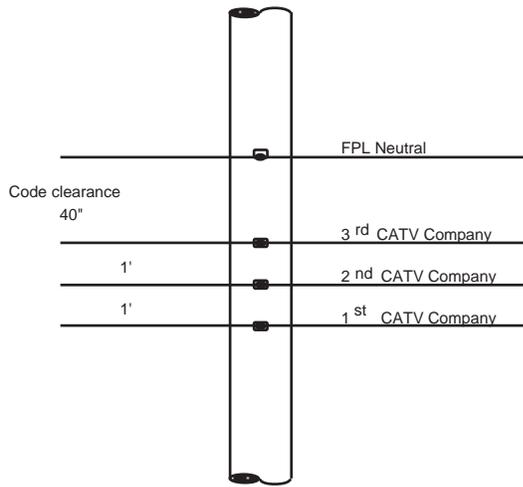


Fig. 1

JOINT USE POLE
(power & telephone)

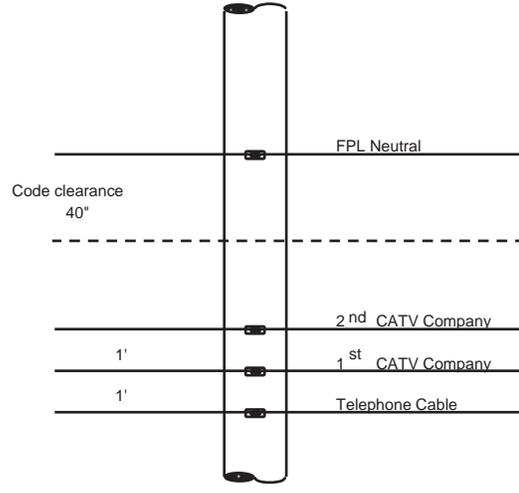


Fig. 2

1. The 1st cable attachment will be located at a height providing minimum clearance over roads, obstacles, etc.
2. All additional cable attachments will be located 1' above the highest existing CATV cable

1. The 1st cable attachment will be located 1' above Telephone's highest cable Attachment
2. The 2nd cable attachment will be located 1' above the existing CATV cable

NOTE: No CATV cable or attachment will intrude on the 40" NESC code clearance space.

CATV Space Allocation

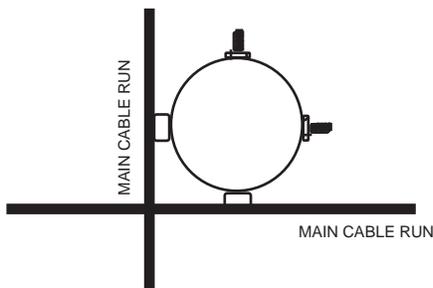


Fig. 3

POLE ATTACHMENT LOCATION

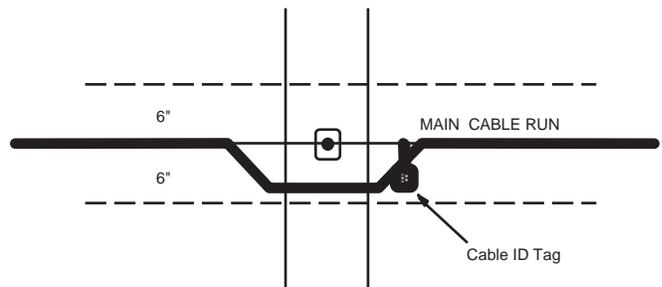


Fig. 4

CABLE IDENTIFICATION TAG

1. All main cable attachments shall be located either on the same side of the pole as FPL's neutral or on one adjacent side.
2. No main line cable attachments shall be located on the side of the pole opposite FPL's neutral.
3. Only 2 sides of the pole, FPL's neutral and one adjacent side, shall be occupied On any given pole.

1. Each separate CATV cable attachment shall be identified in accordance with the FUCC's Foreign Attachment Guidelines specifications.
2. Each CATV company shall register their unique Cable ID tag with the FUCC's Joint Use Subcommittee.
3. A Cable ID Tag will be installed at every 1st, 5th, and last mainline pole attachment.
4. Cable ID Tag can be attached either to the cable or the attachment hardware.

PUBLIC VERSION

WIND LOAD CALCULATIONS										Date: _____				
Pole # _____ Pole Type (wood/concrete) _____ Pole Class _____ Pole Length _____ Setting Depth _____ Span length 1 _____ Span length 2 _____ AVG SPAN _____	WINDLOADING MOMENT					ALLOWABLE _____ CALCULATED _____	Permit No. _____ _____ (YES/NO)							
Grade B Const.										Wind Loading OK?				

										(YES/NO)				
CONDUCTORS														
Primary	SIZE	Number of Conductors	x	Wind Load Per Ft. (Table I)	x	Avg. Span Length	x	Height Above Ground	+	Setting Depth 3	=	MOMENT (ft.-lb.)		
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
NEU,SEC										SIZE				
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
FOREIGN UTILITIES										SIZE				
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
TELEPHONE										SIZE				
		x		x		x			+			=		
		x		x		x			+			=		
		x		x		x			+			=		
PROPOSED ATT										SIZE				
		x		x		x			+			=		
TOTAL MOMENT DUE TO CONDUCTORS												=		
EQUIPMENT														
		Wind Load Force in lbs				Height Above Ground	+	Setting Depth 3				=	MOMENT (ft.-lb.)	
TRANSFORMERS										KVA				
1 Phase						x		+			=			
2 Phase						x		+			=			
3 Phase						x		+			=			
CAPACITORS										Enter #1				
Switched		x	112	x		+				=				
Fixed		x	95	x		+				=				
REGULATORS										Enter #1				
76.2 kVA		x	104	x		+				=				
167 kVA		x	153	x		+				=				
RECLOSERS										Enter #1				
1 phase		x	36	x		+				=				
3 phase		x	95	x		+				=				
AUTOMATED SWITCH										Enter #1				
Joslyn		x	80	x		+				=				
Coopers		x	95	x		+				=				
RISER CONDUITS														
		Riser Height above Grnd			Wind Load Force in lbs per ft.			Riser Height above Ground	+	Setting Depth 3			=	MOMENT (ft.-lb.)
		2"	x	1.7	x		+					=		
		4"	x	3.2	x		+					=		
		5"	x	3.9	x		+					=		
		6"	x	4.7	x		+					=		
RISER SHIELDS														
		2"	x	2	x		+					=		
		4"	x	4	x		+					=		
		5"	x	7	x		+					=		
TOTAL MOMENT DUE TO EQUIPMENT												=	ft.-lb.	
TOTAL ALL MOMENTS												=	ft.-lb.	

POLE & MIDSPAN MEASUREMENT WORKSHEET

PUBLIC VERSION

MAKE READY REQ'D? <input type="checkbox"/>		GUYING REQUIRED? <input type="checkbox"/>		FPL SIDE GUY? <input type="checkbox"/>		RWA DW RD RWI CN RR								
2 LANE <input type="checkbox"/> 4 LANE <input type="checkbox"/> ROAD				MS DIR 		QTY	SIZE	N P S	ATT HEIGHT	MS HEIGHT				
NOT ACCESSIBLE TO FPL VEHICLES <input type="checkbox"/>														
POLE SPAN LENGTH														
PREVIOUS _____				NEXT _____										
PRI														
VERTICAL		MODIFIED VERTICAL		TRIANGULAR		MODIFIED TRIANGULAR		CROSSARM						
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
NEU	SEC	SCBL	QPX	TPX	DPX	SA	SDL	CAP	TX	REC	SG			
PR	CSR	SR	SL	SLDL	TS	CATV	TELC	TEL	DP	REG				
OWNER _____ TYPE _____ HT-CL _____ TLN _____														
POLE# _____				CATV MAP# _____				FPL MAP# _____						
ADDRESS _____								PERMIT# _____						
INSPECTED BY _____						DATE _____		JUNCTION POLE SEE ADD'L SHEET <input type="checkbox"/>						

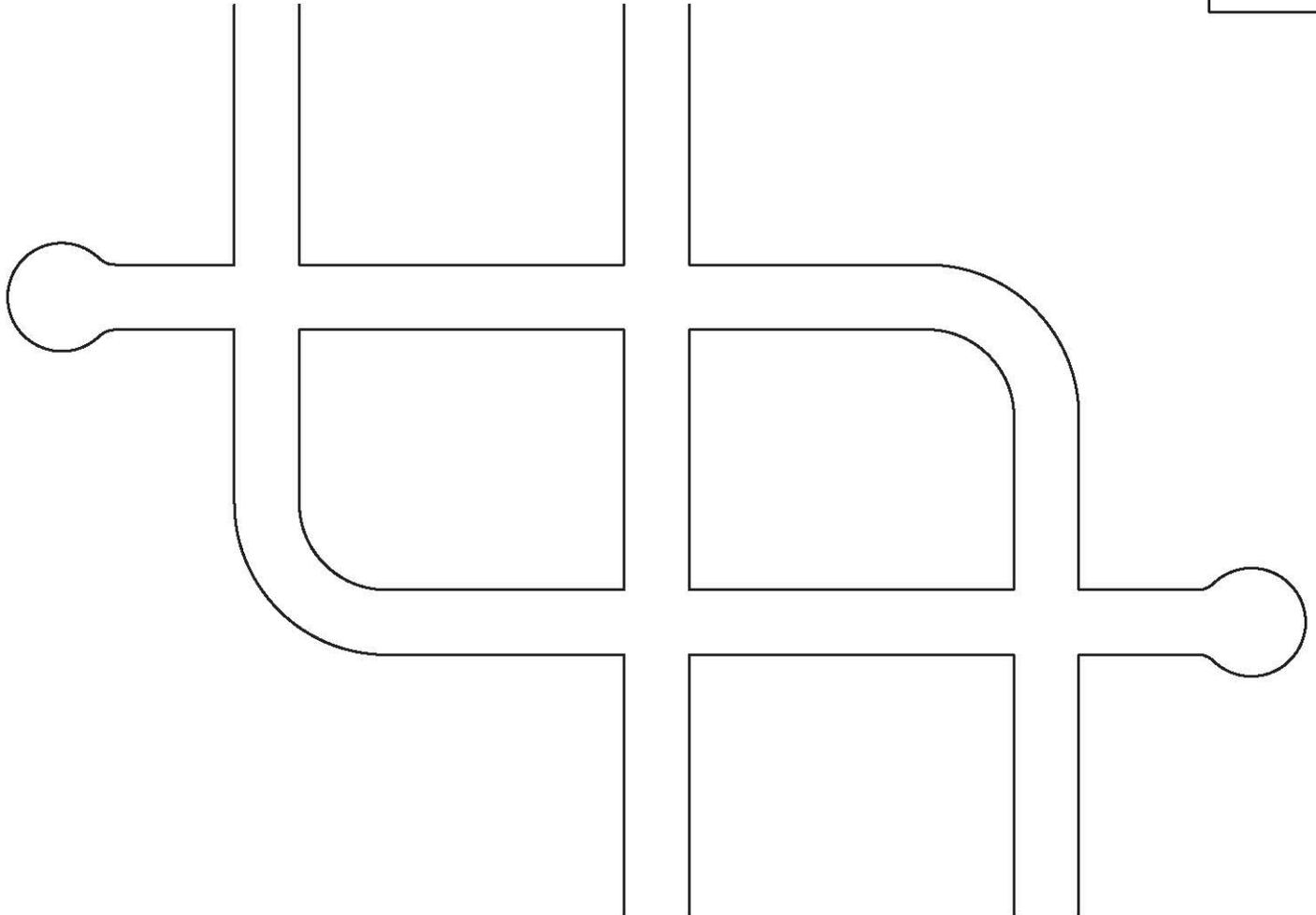
COMMENTS / MAKE READY REQUESTED _____

FPL DROP POLE WORKSHEET

PUBLIC VERSION

PLEASE SHOW DROP POLE(S) AND ASSOCIATED LINE POLE(S) FPL POLES ONLY
PLEASE LABEL ALL INTERSECTING STREETS

**INDICATE
NORTH**



CLEARANCE CHECKLIST <small>(CHECK IF OK OR REFER TO SUPERVISOR)</small>	DROP POLE #				
	1	2	3	4	
40" BELOW FPL SERVICE DROP?					STREET ADDRESS
AND/OR FPL SERVICE RISER?					
12" BELOW ST. LT. DRIP LOOP?					
4" BELOW ST. LT. BRACKET?					CITY, STATE, ZIP
OWNER _____ TYPE _____ HT-CL _____ POLE#(S) _____ CATV MAP# _____					
NEAREST TLN TO DROP POLE _ _ - _ _ _ _ _ - _ _ _ _ _ FPL MAP# _____					
PREPARED BY _____ DATE _____ PERMIT# _ _ _ - _ _ _ - _ _ _ _					

COMMENTS _____

DESIGNER FIELD ENVIRONMENTAL IMPACT EVALUATION SHEET

(To be included in all job packages)

SITE ADDRESS

WR#

(include town/city)

This form is designed to assist you in making "Wetlands and Wildlife" decisions that may impact the planning for each job. If the job you are planning affects a wetlands area or has wildlife or protected species issues, permits may be required before the job can be worked. Some permits/easements may take up to 18 months to obtain. If a job is worked without the required permits, regulatory agencies can stop the job and impose very large monetary fines on FPL.

If you answer "YES" to any of these questions you should contact your Area Environmental Coordinator (AEC) for assistance before continuing with your planning process. To assist you, here are some places you **don't** need to look for "WETLANDS": in developed residential, commercial or industrial urban (city) areas, or in unincorporated developed sub-divisions, commercial, and industrial areas developed after 1983. However, this may not apply to vacant land in any of the areas above. All other locations need to be reviewed using this form.

JOB PLANNING:

1. Check for presence of a wetland.

Impacting wetlands without a permit is an environmental violation punishable by fine and/or imprisonment. If yes, the permit filing may add 90-120 days to the job-planning horizon. This time indicated DOES NOT include the time it may take to prepare and submit documents required for the permit or the time to fill out and file the permit.

If you meet the criteria above for places you don't need to look for wetlands, go to item #2 below

- **Is the job site free of palmetto's and lower than the surrounding land?**

(Water is not a good indicator as it may not always be present above grade, but the area may still be a wetland)

 YES NO

- **Is the soil dark gray, black, or muck/clay?**

(You could have a wetland)

 YES NO

- **Will job cross under, enter, or impact a ditch?**

(In Florida, ditches are regulated as wetlands)

 YES NO

2. Conservation easements that may be in your proposed route.

Only while the developer is in negotiations for approval of his plan, can he negotiate for FPL to go through the area.

Before you begin, review the developer's plan that has been approved by a Water Management District. Once a developer has an approved plan, the conservation areas are set in stone. You cannot cross over, on or under a conservation easement, you must reroute around them.

- **Does the developer's approved plan for the conservation easement affect your job?**

 YES NO

- **Does your job plan impact the conservation easement?**

 YES NO

3. Public easements from the State of Florida that may be required for your proposed route.

Allow 12-18 months to apply for and receive the easement. This time indicated DOES NOT include the time it may take to prepare and submit documents required for the permit or the time to fill out and file the permit.

- **Will a river, bay, or any state lands (parks, preserves, etc.) be crossed by your job?** If "YES", a public easement is required before starting work.

 YES NO

- **Are you crossing within a Florida Department of Transportation (FDOT) bridge/causeway right of way?**

If "YES", a "use agreement" from Fla. Dept of Environmental Protection (FDEP) is required; timeframe 12-18 months.

 YES NO

DESIGNER FIELD ENVIRONMENTAL IMPACT EVALUATION SHEET (continued)

(To be included in all job packages)

JOB PLANNING (continued):

4. WILDLIFE IMPACTS.

(Additional information for the listings below can be found in the online Power Systems Environmental Website under Environmental Guidelines Section.)

- EAGLE: Is your job within 1500 ft of an active eagle's nest?
(If yes, reroute or wait until nest is inactive. DO NOT REMOVE NEST!)
Contact AEC.
SCRUB JAY: Will your job impact scrub jay habitat? (loss of scrub oaks or myrtle"s is an impact to habitat)
(If yes, establish another means to cross-area. Contact AEC for alternate construction technology) DO NOT DISTURB!
GOPHER TORTOISE: Are Gopher tortoise burrows present?
(If yes, Contact AEC to make determination. DO NOT DISTURB !)
BURROWING OWL: Are burrowing owls nesting in trench route?
(If yes, delay jobs until fledglings are off the nest or reroute your job. Contact AEC.)
WOODPECKER: Is there a woodpecker nest in the pole?
(If yes, cut pole section containing nest and reattach to new pole. Contact AEC.)
OSPREY: Is there an osprey nest present on our poles?
(If yes, and it is inactive, contact AEC to move it under permit)
(If yes and the nest is active, reroute your job or wait until the nest is inactive. DO NOT REMOVE NEST !)

5. AVIAN PROTECTION:

State and Federal laws prohibit the "take" of any protected species. A "take" is defined as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct."

Power Systems Environmental (PSE) is working with Product Engineering and Construction Services to develop avian friendly design standards.

- Is your facility route within 2 miles of an eagle nest?
(If yes, avian friendly design standards are to be implemented on a case by case basis. Contact AEC.)
Is your facility route near a water body?
(If yes, there could be a potential for feeding or nesting area - implement avian friendly design standard. Contact AEC.)

(CPM/Designer Signature)

Work Location & Ph #

DATE

Send copy to your Area Environmental Coordinator (AEC)

*** Form completed to the best of my ability ***

Exhibit 12

Work Request No. 4082272

PUBLIC VERSION
EASEMENT

This Instrument Prepared By

Name: Kristy Salman
Co. Name: Florida Power & Light Company
Address: 5657 McIntosh Rd.
Sarasota, FL 34233
pg ___ of ___

Parcel I.D.:
(Maintained by County Appraiser)
Form 3722-A (Stocked) Rev. 7/94

The undersigned, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grant and give to Florida Power & Light Company, its licensees, agents, successors, and assigns, an easement forever for the construction, operation and maintenance of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them within an easement 10 feet in width described as follows:

SEE ATTACHED EXHIBIT A.

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communications purposes; the right of ingress and egress to said premises at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the easement area; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the easement area which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument on May 25, 2011.

Signed, sealed and delivered
in the presence of:



By: _____
(Grantor's signature)

Print Name: _____

Print Address: _____

STATE OF Florida AND COUNTY OF Sarasota The foregoing instrument was acknowledged before me this 25 day of May, 2011, by _____, and N-A who is(are) personally known to me or has(have) produced N-A as identification, and who did (did not) take an oath.
(Type of Identification)

My Commission Expires:



LESTER J. GINGERICH
MY COMMISSION # DD 730959
EXPIRES: February 8, 2012
Bonded Thru Budget Notary Services

Lester Gingerich
Notary Public, Signature

Print Name: Lester Gingerich

RECORDED IN DEEDS RECORDS
RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2011064220 3 PGS
INSTRUMENT # 2011064220 3 PGS
2011 JUN 03 09:25 AM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
DCOURSEY Receipt#1392910
Doc Stamp-Deed: 0.70



Reserved for Circuit Court

LEGAL DESCRIPTION

THIS IS NOT A BOUNDARY SURVEY

A 10 FOOT WIDE EASEMENT FOR FLORIDA POWER & LIGHT, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MONUMENT, MARKING THE SOUTHEAST CORNER OF SECTION 18, TOWNSHIP 36 SOUTH, RANGE 18 EAST; THENCE N 00°05'29" E, ALONG THE EAST LINE OF SAID SECTION 18, A DISTANCE OF 639.57'; TO A POINT ON THE SOUTHERLY MONUMENTED AND OCCUPIED RIGHT-OF-WAY LINE OF RICHARDSON ROAD; SAID POINT LYING, S 00°05'29" W AND 58.54' FROM A CONCRETE MONUMENT RLS #1797; THENCE N 89°13'05" W A, ALONG SAID RIGHT-OF-WAY LINE, DISTANCE OF 171.32'; FOR A POINT OF BEGINNING; THENCE ALONG THE CENTERLINE OF SAID EASEMENT THE FOLLOWING 7 COURSES; S 00°02'25" E A DISTANCE OF 289.70'; S 13°07'52" W A DISTANCE OF 23.75'; S 05°36'07" W A DISTANCE OF 13.77'; S 20°56'34" W A DISTANCE OF 17.12'; S 47°13'27" W A DISTANCE OF 18.38'; S 76°23'55" W A DISTANCE OF 20.94'; S 88° 58'33" W A DISTANCE OF 19.22'; TO THE POINT OF TERMINUS.

CERTIFICATION :

I CERTIFY THAT THIS SKETCH & LEGAL WERE PREPARED UNDER MY DIRECTION AND THAT IT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS AND MAPPERS IN CHAPTER 61G1.7-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

BY : C. Drew Branch DATE : 05/31/2011

C. DREW BRANCH, PSM #5542

NOT A CERTIFICATION OF TITLE, ZONING, EASEMENTS OR FREEDOM OF ENCUMBRANCES. NOT VALID WITHOUT SURVEYOR'S SIGNATURE AND EMBOSSED SEAL

DREW BRANCH SURVEYING & MAPPING, INC.
LICENSED BUSINESS #7011

4570 SAWYER ROAD
SARASOTA, FL. 34233
941-925-3402 FAX 941-925-3970

REVISIONS

PROJECT NO:
1010081

DRAWN BY: DB CHECKED BY: CDB

SKETCH OF LEGAL DESCRIPTION

THIS IS NOT A BOUNDARY SURVEY



4" CONC MONUMENT
RLS 1797



SCALE 1" = 30'

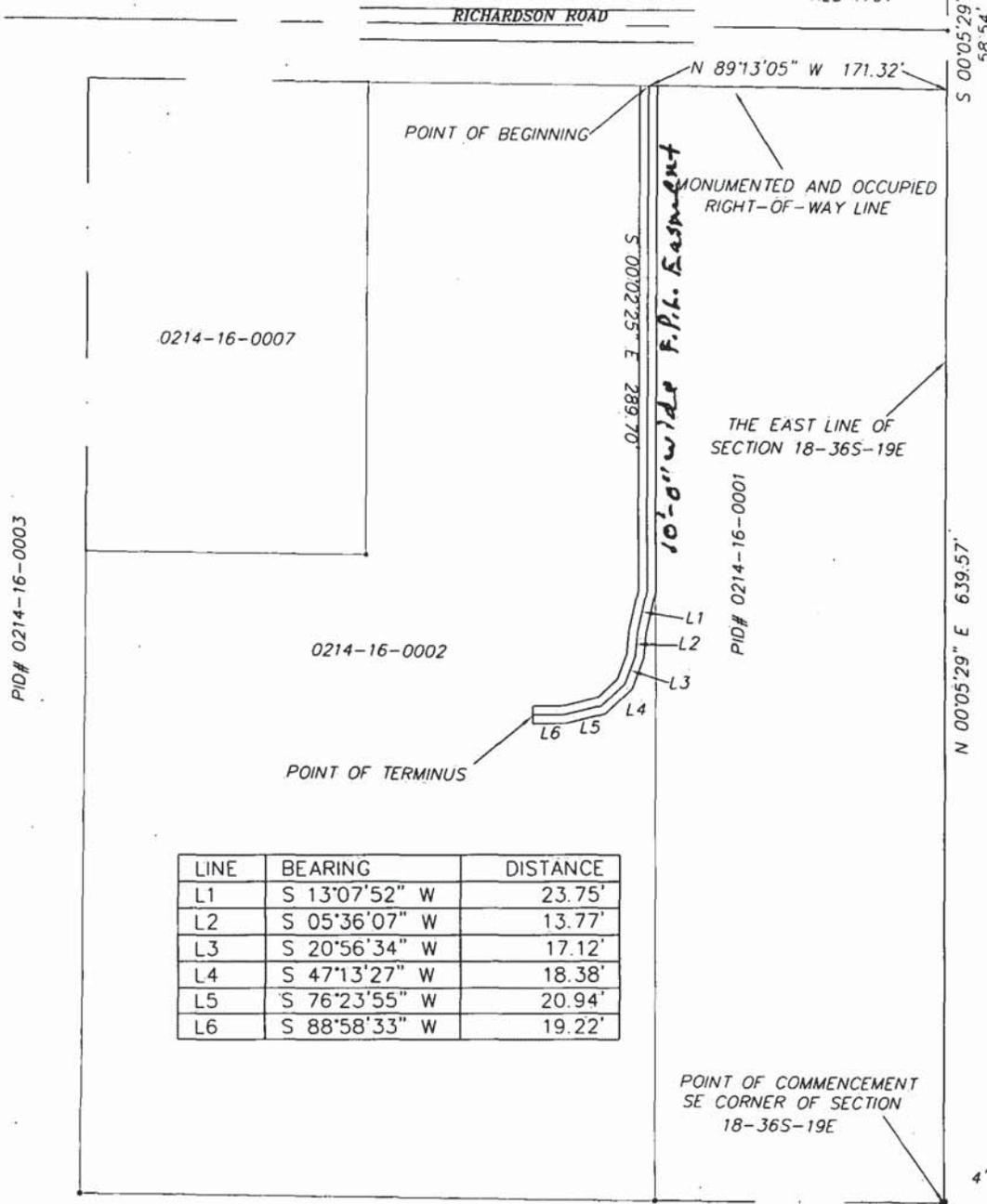


Exhibit
A

LINE	BEARING	DISTANCE
L1	S 13°07'52" W	23.75'
L2	S 05°36'07" W	13.77'
L3	S 20°56'34" W	17.12'
L4	S 47°13'27" W	18.38'
L5	S 76°23'55" W	20.94'
L6	S 88°58'33" W	19.22'

DREW BRANCH SURVEYING & MAPPING, INC.
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SARASOTA, FL. 34233
941-925-3402 FAX 941-925-3970

REVISIONS
PROJECT NO:
1010081

DRAWN BY: DB CHECKED BY: CDB

Exhibit 13

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

FLORIDA POWER & LIGHT CO.,

Plaintiff,

Complex Business Litigation Section (40)

Case No. 13-14808

v.

VERIZON FLORIDA LLC,

Defendant.

_____/

**Florida Power & Light Company's
Memorandum in Opposition to Verizon Florida LLC's Motion to Stay**

INTRODUCTION

A brief question and answer analysis to assist the Court:

1. Q. Will Florida Power and Light Company ("FPL") be harmed if a stay is granted?

A. Yes. Substantially. Verizon Florida LLC ("Verizon") will continue to pay FPL at approximately one-quarter of the contract rate for as long as it takes for the Federal Communications Commission ("FCC") to resolve Verizon's Complaint. This artificially extended period of underpayment is, of course, the sole purpose of the Motion to Stay.

2. Q. Will Verizon be harmed if the case proceeds as scheduled and FPL is awarded its damages at the contract rate?

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A. No. If the FCC determines at some later date that Verizon is entitled to pay less than the contract rate for any relevant time period, it can order FPL to reimburse Verizon for any overpayment resulting from this Court's ruling.

3. Q. Can FPL receive similar relief from the FCC?

A. No. Only this Court can award contract damages. No provision in the Pole Attachment Order¹ ("PAO") requires Verizon to pay any additional amounts to FPL if the FCC determines that Verizon's extremely discounted, self-determined rate was not fair and reasonable to FPL.

4. Q. Will the FCC resolve the contract issues currently pending before this Court?

A. No.

5. Q. If the FCC proceeding were really the panacea for this dispute that Verizon now claims it to be, wouldn't Verizon have filed its FCC Complaint long ago, without having to be ordered to do so by this Court.

A. Of course.

6. Q. When will the FCC resolve the Verizon Complaint?

A. Impossible to predict. Eighteen months to three years is not out of the question. This is one of the first such complaints filed.

7. Q. Can any FCC resolution be appealed?

A. Yes. To the United States Court of Appeals for the District of Columbia Circuit.

8. Q. When will the appeal be resolved?

¹ See Report and Order and Order on Reconsideration, *In the Matter of Implementation of Section 224 of the Act*, 26 FCC Rcd 5240 (2011).

A. Impossible to predict.

9. Q. To be clear, Verizon is seeking to postpone for an indefinite period of time resolution by this Court of contract issues that the FCC can't resolve, while Verizon continues to pay one-quarter of the contractual pole attachment rate to which it agreed?

A. Precisely. That indefinite period of continued underpayment is the sole purpose of Verizon's motion.

ARGUMENT

A. The FCC Will Not Resolve Contract Issues

This is a breach of contract case. The FCC does not adjudicate breach of contract cases. It makes no sense for this Court to essentially refer matters to the FCC which the FCC will not decide. It would be a referral to nowhere, with pointless delay being the only evident result and the obvious intent.

The FCC has consistently enunciated the understandable position that it does not have jurisdiction to adjudicate contract claims such as the claims at issue here. See *Texarkana TV Cable Co., Inc. v. Southwestern Electric Power Co.*, 49 Rad. Reg. 2d (P & F) 1043 ¶ 14 (1981) (where the FCC dismissed the counterclaims "request[ing] that Texarkana TV be ordered to pay the balance due" from the pole attachment rentals explaining that the Commission's jurisdiction did not extend to the contract claims).

The FCC's lack of jurisdiction over contract claims was most clearly articulated in *Appalachian Power Co., v. Capitol Cablevision Corp.*, where the FCC elaborated that:

Although the Commission's jurisdiction encompasses certain practices growing out of a contractual relationship between a utility and a cable operator, it does not extend to adjudication of the legal impact of the failure of a party to fulfil its contractual obligations, nor to the determination of what contract rights exist once a party has unilaterally moved to

terminate an agreement. In other words, as we read both the legislative history and the statute itself, Congress has nowhere expressed its intent that the Commission be accorded the authority to preempt local jurisdiction in such matters. Rather, such matters are left to the existing state law governing breach of contract, whether express or implied, and questions of unjust enrichment. For these reasons, Appalachian must pursue in state courts any complaint that Capitol has continued to use its poles without paying for these services.

Appalachian Power Co., v. Capitol Cablevision Corp., 49 Rad. Reg. 2d 574, 578 (1981).

Based on this immutable precedent, it is clear that the FCC proceeding will not resolve the contract claims between FPL and Verizon. Nor will it simplify the issues before this Court. This Court has to determine whether a breach of contract took place. The FCC's decision will have no impact on that determination, nor will its 'expertise' help resolve the issues before this Court:

None of the matters at issue in this case - whether a promise was made and broken, whether it was supported by consideration...the extent of damages, if any -- seems peculiarly within the specialized expertise of the Commissioner. Indeed, one might justifiably take the position that they lie within the specialized expertise of courts, straightforward breach of contract claims being part of a court's daily routine.

Lapierre v. Maryland Casualty Co., 14 Mass. App. Ct. 248, 250 (Mass. App. Ct. 1982).

Perhaps most significantly, staying this case will not streamline or shorten the overall process. Keeping the current trial date will. If this Court confirms FPL's right to its contractual payments now, the FCC proceeding will end this litigation. If it is determined that there were overpayments by Verizon in some amount, the FCC can order reimbursement by FPL of any such overpayments.²

² 47 C.F.R. § 1.1410; see e.g. *Cable Television Ass'n of Georgia, et al., v. BellSouth Telecommunications, Inc.*, 17 FCC Rcd 13807, ¶1 (2002); *In re Matter of Cable Texas, Inc., v. Entergy Services Inc.*, 14 FCC Rcd 6647, ¶1 (1999).

Conversely, the stay requested by Verizon merely commences a long, uncertain, complicated process that concludes with the case back in front of this very Court. It is not uncommon for FCC proceedings of this nature to reside, unaddressed, in the FCC's administrative machinery for years.³ Moreover, the only result of an FCC proceeding initiated at this stage of the litigation would be a remand to state court for resolution of the contract issues, with the possibility of returning yet again to the FCC thereafter.⁴ Verizon's proposed route to resolution is arduous, time-consuming, necessarily redundant and ultimately wholly unproductive.

A stay pending an administrative proceeding makes sense when it will shorten or simplify the process or when the agency's expertise is necessary. This is not the case here. There is no reason for this Court to leave for later what it can purposefully and easily do now.

B. FPL Will Be Unduly Prejudiced By a Stay

Having abandoned its payment obligations to FPL for more than two years, Verizon asserts, apparently with a straight face, that it "does not seek to avoid its payment obligations to FPL."⁵ It has already systematically "avoided" those obligations. For years. Verizon's legal payment "obligation" to FPL is found in the Joint Use

³ With no factual basis whatsoever, Verizon suggests that the FCC will somehow have resolved its complaint in a matter of months. In fact, similar attachment related complaints have taken years to resolve. See e.g. *Comcast Cable Communications Mgmt., LLC, v. Georgia Power Co.*, 26 FCC Rcd 5158, ¶1 (2011) (dismissing pole attachment complaint after almost five years because the parties settled); *Cable Television Ass'n of Georgia, et al.*, 17 FCC Rcd 13807 at ¶6 (complaint filed in 1998 and decision not issued until almost 4 years later); *In re Matter of Cable Texas, Inc.*, 14 FCC Rcd 6647 at ¶2 (taking almost 2 years to resolve).

⁴ See e.g. *Tele-Ception of Winchester, Inc. v. Kentucky Utilities Co.*, 49 Rad. Reg. 2d (P & F) 1572 (1981); *Cablecom-General, Inc. v. Central Power and Light Co.*, 50 Rad. Reg. 2d (P & F) 473 (1981); *Texarkana TV Cable Co., Inc.*, 49 Rad. Reg. 2d 1043 (In all of these cases the Commission set a "just and reasonable rate" and then dismissed the breach of contract counterclaims to be decided by the state court. None of these cases was fully resolved by the FCC because the FCC cannot rule on breach of contract claims and will not order reimbursement when there are pending claims between the parties).

⁵ Verizon Mem. in Support of Mot. to Stay at p. 4. (filed Feb. 28, 2014).

Agreement (“JUA”). Verizon has not been excused from that obligation by FPL or the FCC. Accordingly, by paying its own homespun rate of one-quarter of the contract rate, Verizon has, in fact, been “avoiding” this obligation for two years. The sole effective purpose of the stay is to allow Verizon to continue this avoidance for an additional indeterminate period of time.

This case is set for trial in September. Verizon has essentially admitted on multiple occasions that it has breached the JUA by admitting that it has failed to pay the agreed contractual amount. Verizon’s recently-minted, transparently tactical counterclaims notwithstanding, this Court will be able to enter judgment for FPL in the amount of Verizon’s seven figure underpayment.⁶ In that manner and only in that manner, will Verizon be required once again to meet its payment obligations. The FCC cannot and will not provide relief of this nature.

It is, of course, not certain that the FCC will grant Verizon any rate relief. If it does grant relief there is nothing to suggest that it will adopt the \$8.52 rate plucked from the air by Verizon. See Section D. To the extent that the FCC should find \$16 or \$20 or any rate above Verizon’s self-styled rate to be the fair and reasonable rate, the PAO provides no mechanism to require Verizon to reimburse FPL for that underpayment. Verizon may have a new rate. FPL will receive no payment. Thus, if a stay is granted here, to the millions already calculatedly underpaid by Verizon will be added millions more, by the simple device of this cynical and ill-suited manipulation of the stay process.

C. Verizon Will Not Be Prejudiced If a Stay is Not Granted

Conversely, proceeding to trial as scheduled will not result in any prejudice to Verizon. A judgment by this Court simply requiring Verizon to pay what it agreed to pay

⁶ Those legally insufficient counterclaims are the subject of a motion to dismiss being separately filed.

– and has refused to pay - under the JUA can hardly be characterized as prejudicial. Fair and just perhaps. But never prejudicial.

Should the FCC, at the end of the FCC Complaint proceeding, arrive at a different attachment rate, lower than the contract rate, Verizon will still not be prejudiced. FCC regulations, enacted based on the PAO, provide specific relief to Verizon under these circumstances. The applicable regulation states, in pertinent part:

(a) If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may...(3) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, plus interest, consistent with the applicable statute of limitations...

47 C.F.R. § 1.1410.

Under this scenario, it will not be necessary to return to this Court for any further adjudication. The rate will have been set, the reimbursement required and the parties and the Court will have completed their judicial labors.

D. Unlike Verizon, The FCC Respects Existing Contracts

The dispute between Verizon and FPL stems from a JUA dating back nearly four decades. The FCC was quite explicit in its PAO that it had no intention of interfering with the contractual terms of agreements such as this one, entered into long before the effective date of the PAO in 2011.

Although some incumbent LECs express concerns about existing joint use agreements, these long-standing agreements generally were entered into at a time when incumbent LECs concede they were in a more balanced negotiating position with electric utilities, at least based on relative pole ownership. As explained above, we question the need to second guess the negotiated resolution of arrangements entered into by parties with relatively equivalent bargaining power. Consistent with the foregoing, the

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Commission is unlikely to find the rates, terms and conditions in existing joint use agreements unjust or unreasonable.

PAO ¶ 216.

It is a perfectly sensible position for the FCC to take. Contracts such as the JUA were based on conditions and relationships existing at the time the agreement was negotiated. The contract clearly was intended and designed to operate for as long as the parties attached to one another's poles, with the rates and the facilities themselves to be adjusted when the parties mutually agreed that the circumstances so dictate.

Implicit in this arrangement is the fact that the parties will be required to make numerous accommodations/adjustments to their facilities over the years to ensure adequate space and clearance for the joint user. This can include pole size, pole location, pole strength, pole attachments and other physical characteristics that require expenditures that would not have otherwise been made, but for the needs of the attachers, such as Verizon. See, for example, Exhibit A, an email from FPL's Tom Kennedy to Verizon's Steve Lindsay, identifying just some of the continuous accommodations/adjustments required in the long-term life of the JUA. The rate established in the JUA must necessarily take all of these factors into account. It would be extremely difficult, not to say entirely inappropriate, for the FCC to adjust one term of the JUA – the rate to be paid – without taking all of these historical, embedded economic factors into account.

The FCC is unlikely to find Verizon's self-imposed rate to be a "just and reasonable rate" simply because Verizon asserts, with no support, that it is based on what is charged to other attachers. Clearly, Verizon is not just another attacher. The FCC in the PAO expressly stated that it was "reject[ing] arguments that rates for pole

attachments by incumbent LECs should always be identical to those of telecommunications carriers or cable operators.” PAO ¶ 216 n. 654. It explained that in setting a rate under those circumstances it would have to “weigh, and account for, the different rights and responsibilities in joint use agreements” because “joint use agreements [can] give incumbent LECs advantages that offset any increased rates they might pay for pole access in certain circumstances.” *Id.* The advantages it would consider, similar to items referenced in Exhibit A, included:

“Paying significantly lower make-ready costs; No advance approval to make attachments; No post-attachment inspection costs; Rights-of-way often obtained by electric company; Guaranteed space on the pole; Preferential location on pole; No relocation and rearrangement costs; and Numerous additional rights such as approving and denying pole access, collecting attachment rents and input on where new poles are placed.” ...“existing joint use arrangements--in contrast to cable or telecommunications carrier pole lease agreements--reflect a decades-old contractual responsibility of incumbent LECs to share in infrastructure costs....”

PAO ¶ 216 n. 654.

These are precisely the advantages that Verizon has enjoyed for four decades and now wishes the FCC and this Court to simply ignore. The FCC is unlikely to do so. It understands the negotiating process and understands the need to allow the parties' bargain to remain in effect.

E. The Balance of the Equities Weighs Heavily In FPL's Favor

It is essential for the Court to view this current motion in the context of Verizon's unfortunate, persistent tactical conduct in this litigation. FPL filed suit because Verizon had stopped paying the agreed contract attachment rate. Verizon moved to dismiss the Complaint on the grounds that the FCC had jurisdiction over this contract claim and had the exclusive expertise to resolve it. To be sure, Verizon had never invoked the FCC's complaint procedure, and success on its motion to dismiss would accordingly have left FPL's claims in a hopeless limbo. No activity in either the Court or the FCC, with underpayments continuing unabated. Verizon's position regarding this Court's inadequacies was fatally undercut by the fact that Verizon was litigating identical claims in another circuit court in Florida at the same time it filed its motion telling this Court it should not hear such claims. Thus, the motion to dismiss was not filed in good faith, but was filed solely for delay; to allow Verizon to continue paying a cut-rate fee. The motion was properly denied.

Verizon also moved to transfer the case to another venue, although venue has nothing whatsoever to do with these claims, which were being defended by Verizon's Washington, D.C. counsel in any event. This motion was filed for delay. It was denied.

Verizon then appealed the venue ruling, without being able to demonstrate any prejudice whatsoever. The appeal was filed for delay. As proof of this unseemly purpose, Verizon moved to stay this case pending that pointless appeal. Hoping to add further delay. This Court denied that motion. Verizon sought the same stay in the District Court of Appeal. Still seeking delay. That Court denied the motion as well. This Court's ruling on the venue motion was then affirmed, *per curiam*.

Verizon continued this disingenuous campaign with its filing of a counterclaim, advising this Court that it could, after all and despite its earlier representations to the contrary, perform the same function as the FCC. As of the time of the filing of this first counterclaim, Verizon had yet to go to the FCC itself and could provide no support for its suggestion that this Court could replace the formerly irreplaceable FCC in this fashion. It obviously took time to brief FPL's motion to dismiss the counterclaim, which was the purpose behind its filing. The counterclaim was properly dismissed. The Court advised Verizon that it was required to pursue its available administrative remedy, which was apparent since the outset of this litigation, and which Verizon had calculatedly avoided until then.

Verizon's relentless delays continue. It has now filed an Amended Counterclaim containing "mandatory" counterclaims that were somehow overlooked at the time it filed its initial counterclaim four months earlier. It has never explained this inexplicable delay. The unfortunate rationale is now clear. Having belatedly and calculatedly filed further counterclaims with superficial similarities to its FCC Complaint, Verizon points to those clearly contrived new claims to justify another wholly inappropriate delay in this case. The timing of the two filings was not coincidental. They bear Verizon's manipulative hallmark.

The new counterclaims are the subject of a motion to dismiss. They need not be addressed here except to note that the unjust enrichment claim is directly rebutted by the express language of the JUA, almost word for word. As to the counterclaims' invocation of the JUA's requirement for renegotiation at the request of either party, it would appear to be impossible for FPL to have breached Article 11.1 or 11.2 of the JUA

establishing this requirement. Verizon never invoked those provisions. See Exhibit B, in which Verizon's Mr. Lindsay advised FPL's Mr. Kennedy that Verizon "is not requesting renegotiation of the rental rates according to Article 11.1 and 11.2 of the agreement." But then, the amended counterclaims were never intended to have substance. They were simply a ploy to provide some rationale, however ineffectual, for the current motion.

Which brings the Court to the present motion to stay. Nearly a year after this case was filed, with a September trial date looming, Verizon now seeks an indefinite stay of the litigation. To permit it to continue paying one-quarter of the agreed rate indefinitely. Verizon touted the availability of the FCC complaint procedure from the very beginning of this case. However, it never pursued that remedy and it never explained its failure to do so. It is obvious, however, that it wanted no potential termination of its improper, unauthorized "discounts." Had this Court not forced its hand, it is highly unlikely that Verizon would ever have filed a complaint with the FCC.

It might be argued that Verizon has had an epiphany of sorts, recognizing for the very first time, the manifest alleged benefits of the FCC complaint procedure that has been in place for years. Except for the fact, obvious in this record, that Verizon has been extolling those so-called benefits – from the sideline to be sure – since the case began. If there actually were benefits it would have sought them. Under the facts of this case, there are none, as Verizon's persistent failure to invoke the process tacitly but demonstrably recognizes.

It would be unfair and highly prejudicial to FPL, to reward Verizon's deplorably dilatory practices, by now putting this case on the shelf for an unpredictable – but

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certainly lengthy – hiatus, while the *de minimis* payments continue. The case should proceed to trial in September. The contract issues should be resolved. If and when an FCC determination is reached, that result can be superimposed, if appropriate, on whatever decision this Court has reached. This will be fair to FPL, fair to Verizon and fair to this Court, which should not be subjected to Verizon's manipulation of the process.

WHEREFORE, Florida Power & Light Company, respectfully requests that Verizon Florida LLC's Motion to Stay be denied.

Dated: March 27, 2014

Respectfully submitted,

SQUIRE SANDERS (US) LLP
Suite 4100
200 South Biscayne Boulevard
Miami, Florida 33131-2398
Telephone: 305-577-2835
Fax: 305-577-7001

Florida Power & Light Company
Maria J. Moncada
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Florida Bar No. 0773301
Telephone: (561) 304-5795
maria.moncada@fpl.com

By: s/ Alvin B. Davis
Alvin B. Davis
Florida Bar No. 218073
alvin.davis@squiresanders.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via e-mail to Lewis F. Collins, Jr., (lcollins@butlerpappas.com), Butler Pappas Weihmuller Katz Craig, LLP, Suite 500, 777 S. Harbour Island Boulevard, Tampa, Florida 33602 and Christopher Huther (chuther@wileyrein.com), Wiley Rein LLP, 1776 K. Street NW, Washington, D.C. 20006, on this 27th day of March 2014.

s/ Alvin B. Davis

Alvin B. Davis

Exhibit 14

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

FLORIDA POWER & LIGHT CO.,

Plaintiff,

Complex Business Litigation Section (40)

Case No. 13-14808

v.

VERIZON FLORIDA LLC,

Defendant.

FLORIDA POWER & LIGHT COMPANY'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This is a contract action. Nothing more. Nothing less. The cascade of motions to dismiss, to transfer, to stay and the pointless counterclaims, intended solely to obscure this basic fact has, finally, come to rest. What remains is a breach of contract action. Nothing more. Nothing less.

The breach is undisputed. The damages are acknowledged in the pleadings.

There was a Joint Use Agreement ("JUA"). Verizon Florida LLC ("Verizon") was billed in accordance with the JUA. Verizon paid millions less than the contractually required amount. There is agreement as to these facts.

Florida Power & Light Company ("FPL") did not agree to accept less than the contract required. The Federal Communications Commission ("FCC") did not require FPL to accept less than the contract required. There is agreement as to these facts.

Nothing remains but entry of judgment in FPL's favor for the underpaid amount, with interest.

II. APPLICABLE SUMMARY JUDGMENT STANDARD

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 1.510(c), Fla.R. Civ.P.

A party moving for summary judgment must show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Allstate Ins. Co. v. Powell et al.*, 420 So. 2d 113, 114 (Fla. 4th DCA 1982). While the Court must draw every possible inference in favor of the non-moving party, where the material facts are not in dispute and the moving party is entitled to judgment as a matter of law, it is the court's duty to enter summary judgment. *Castellano v. Raynor*, 725 So. 2d 1197, 1199 (Fla. 5th DCA 1999).

To preclude the entry of summary judgment, there must be some fact essential to a resolution of the legal questions raised by the case which is *genuinely* controverted. *Wells et al v. Wilkerson*, 391 So. 2d 266, 267 (Fla. 4th DCA 1980) (emphasis added); *Continental Concrete, Inc. v. Lakes at La Paz III Ltd. Partnership*, 758 So. 2d 1214, 1217 (Fla. 4th DCA 2000). It is not enough for the opposing party merely to assert that an issue does exist. *Fisel v. Wynns*, 667 So. 2d 761, 764 (Fla. 1996) (citing *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979)).

III. STATEMENT OF UNDISPUTED FACTS

The undisputed facts will be familiar to the Court. They have been presented by both parties in numerous submissions and arguments. For decades, Verizon (or its predecessors in

interest) and FPL, have attached their facilities to one another's utility poles pursuant to the JUA¹ Verizon and FPL executed their most recent joint use agreement in 1975, and subsequently agreed to an amendment in 1978.² The JUA contains the method and formula for calculating the joint use rent that Verizon agreed would be invoiced and paid annually.³ Stated succinctly, the number of joint use poles owned by each party is multiplied by a formula-based adjustment rate.⁴ The smaller product is subtracted from the larger, and the resulting net amount is invoiced by the party that is owed the greater amount.⁵

Every year, for nearly thirty-seven years, FPL calculated the rent due in the agreed upon manner, issued invoices and received payments in the full amount invoiced. Bromley (FPL) Aff. ¶ 7. During 2011, Verizon's facilities were attached to 65,545 FPL-owned poles.⁶ FPL was attached to 6,857 Verizon-owned poles.⁷ As required by the JUA, FPL calculated the adjustment rate pursuant to the contract formula and invoiced Verizon \$2,097,293.70 (the "2011 Invoice), due to be paid by March 29, 2012.⁸ Verizon made no timely payment.⁹ Instead, on July 23, 2012 – 117 days after the due date – Verizon remitted \$1,179,307.43, significantly less than the amount required by the JUA.¹⁰

¹ Verizon's Ans. to Compl. ¶¶ 1, 11; Verizon's Am. Countercl. ¶ 6; Joint Use Agreement (attached to FPL's Statement of Undisputed Facts as Exhibit "A").

² Verizon's Ans. to Compl. ¶¶ 1, 11; Verizon's Am. Countercl. ¶ 6; Joint Use Agreement (attached to FPL's Statement of Undisputed Facts as Exhibits "A" and "B").

³ Verizon's Am. Countercl. ¶ 8; JUA, Art. X and 1978 Supplemental Agreement ¶ 1.

⁴ Verizon's Am. Countercl. ¶ 8; JUA, Art. X and 1978 Supplemental Agreement ¶ 1.

⁵ Verizon's Am. Countercl. ¶ 8; JUA, Art. X.

⁶ Bromley (FPL) Aff. ¶ 9 (attached to FPL's Statement of Undisputed Facts as Exhibit "C"); Lindsay (Verizon) 6/17/2013 Aff. ¶¶ 4, 5 (attached to FPL's Statement of Undisputed Facts as Exhibit "D").

⁷ Bromley (FPL) Aff. ¶ 9.

⁸ See 2011 Invoice (attached to FPL's Statement of Undisputed Facts as Exhibit "E"); Verizon's Ans. to Compl. ¶ 30; Lindsay (Verizon) 6/17/2013 Aff. ¶ 4; Bromley (FPL) Aff. ¶ 10.

⁹ Verizon's Ans. to Compl. ¶ 33; Bromley (FPL) Aff. ¶ 11.

¹⁰ Verizon Ans. to Compl. ¶ 33; Lindsay (Verizon) 6/17/2013 Aff. ¶ 5; Bromley (FPL) Aff. ¶ 11.

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Verizon terminated the JUA effective June 9, 2012.¹¹ Verizon's facilities nevertheless remained attached to FPL-owned poles.¹² The JUA provides that, while no new attachments are authorized following termination, all attachments in existence at the time of the termination continue to be governed by the JUA, unless and until the parties agree otherwise.¹³ The parties did not agree otherwise. Thus, on April 15, 2013, FPL calculated the adjustment rate pursuant to the contract formula and invoiced Verizon \$2,319,985.02 (the "2012 Invoice"), due to be paid by May 15, 2013.¹⁴ Verizon again made no timely payment.¹⁵ Rather, on July 9, 2013, FPL received from Verizon a check dated July 5, 2013 in the amount of \$638,413.55 for the 2012 Invoice, again, significantly below the required amount.¹⁶

Verizon has acknowledged under oath that, rather than pay the contract-based adjustment rate, it paid \$8.52 per pole toward the 2012 Invoice and the June-December portion of the 2011 Invoice.¹⁷ Verizon admits that the rate it applied¹⁷ was pursuant to a calculation of its own creation, based on what Verizon suspected the FCC might require, if the FCC were asked to address the parties' rate. The FCC had not been asked. Verizon concedes, as it must, that there is no FCC rule or order requiring that FPL must charge – or that Verizon is entitled to pay – \$8.52 per pole rather than the contractually agreed rate.¹⁸

¹¹ Verizon's Ans. to Compl. ¶ 23.

¹² Verizon Ans. to Compl. ¶ 20; 2012 Invoice (attached to FPL's Statement of Undisputed Facts as Exhibit "F"); Lindsay (Verizon) 6/17/2013 Aff. ¶ 7; Bromley (FPL) Aff. ¶ 12.

¹³ JUA, Art. XVI; Bromley (FPL) Aff. ¶ 5; Verizon's FCC Compl. ¶ 7 (attached to FPL's Statement of Undisputed Facts as Exhibit "G"), verified by Lindsay (Verizon) 1/31/2014 Aff. ¶ 5 (attached to FPL's Statement of Undisputed Facts as Exhibit "H").

¹⁴ Bromley (FPL) Aff. ¶ 13; 2012 Invoice ; Verizon's Ans. to Compl. ¶ 49.

¹⁵ Verizon's Ans. to Compl. ¶¶ 49, 50; Bromley (FPL) Aff. ¶ 14.

¹⁶ Lindsay (Verizon) 6/17/2013 Aff. ¶ 7; Bromley (FPL) Aff. ¶ 14.

¹⁷ Lindsay (Verizon) 6/17/2013 Aff. ¶ 5; and Lindsay (Verizon) 1/31/2014 Aff. ¶¶ 18, 19.

¹⁸ Verizon's FCC Compl. ¶¶ 60-61 and Lindsay (Verizon) 1/31/2014 Aff. ¶ 5.

IV. ARGUMENT

Verizon agrees that it failed to pay the amounts due under the JUA. Moreover, as a result of this Court's prior rulings on the myriad of Verizon's motions and counterclaims, Verizon's affirmative defenses are not legally viable, if they ever were. Nothing remains to be decided by the trier of fact. FPL is entitled to summary judgment as a matter of law.

A. Verizon Breached the Joint Use Agreement

FPL's Complaint asserts that Verizon breached the JUA by failing and refusing to pay the full joint use rent due. Counts I and III¹⁹ allege that Verizon underpaid on the 2011 and 2012 joint use invoices, respectively.

The pleadings and affidavits on file conclusively establish each element of FPL's breach of contract action: (1) a valid contract; (2) a material breach; and (3) damages. *Abbott Labs., Inc. v. General Elec. Capital*, 765 So. 2d 737, 740 (Fla. 5th DCA 2000). Verizon has never denied that it failed to abide by the terms to which it agreed. Summary judgment in FPL's favor is required.

Valid contract. Verizon admits to the existence of the JUA. *See* Verizon's Am. Countercl. ¶ 6 ("FPL and General Telephone Company of Florida, Verizon's predecessor, entered into an agreement dated January 1, 1975 for the joint use of their respective poles ('Joint Use Agreement') and a Supplemental Agreement dated March 29, 1978 ('Supplemental Agreement') which amended the Joint Use Agreement.").

Verizon's termination of the JUA effective June 9, 2012 has no bearing on FPL's breach of contract claims. The JUA states that, notwithstanding termination, the provisions of the JUA "shall remain in full force and effect with respect to all poles jointly used by the parties at the time

¹⁹ FPL has voluntarily dismissed Count II, without prejudice.

of such termination.” JUA, Art. XVI. Thus, while neither party has the right to make new attachments on the other’s pole after June 9, 2012, all attachments made prior to that date are governed by the JUA unless and until the parties reach a different agreement. Verizon has expressly acknowledged the import of this provision. *See* Verizon’s FCC Compl. ¶ 7 (“The [JUA] contains a so-called “evergreen” provision. That provision contemplates that the rates reflected in the [JUA] will continue to apply to pre-existing attachments in the event the Agreement is terminated until the parties agree upon a new rate.”).

Material breach. Verizon admits that the JUA sets forth a methodology for determining the rental amounts due, if any, to be paid for joint use of one another’s poles. Verizon’s Am. Countercl. ¶ 8. Verizon admits that it did not pay the amounts invoiced pursuant to the JUA. Its reasoning, which provides no defense to the contract claim, was its preference for a more favorable methodology, regardless of Verizon’s acknowledged contract obligations. Verizon’s Ans. to Compl. ¶¶ 33, 50; Lindsay (Verizon) 6/17/2013 Aff. ¶¶ 4-7. For purposes of this Motion, its explanation for the breach is irrelevant. It is a breach.

Without pursuing an available complaint process at the FCC, Verizon instead conveniently adopted a per-pole rate calculated according to its view of an FCC formula that even Verizon concedes has no application to carriers such as Verizon. Lindsay (Verizon) 6/17/2013 Aff. ¶ 5; Lindsay 1/31/2014 Affid. ¶ 2; Verizon’s Am. Countercl. ¶¶ 11-12. Forced by the rulings of this Court to finally seek rate relief, if any, from the FCC, Verizon still remains without any legal justification for its arrogant self-help device. The FCC has not concluded that Verizon is entitled to the rate it unilaterally applied, or, for that matter, any rate other than the contract rate. *See* Verizon’s FCC Complaint ¶¶ 59-61 (Verizon requests in January 2014, years after breaching the JUA, that the FCC terminate the applicable contract rate and “prescribe the rate that is

calculated in accordance with the Commission's telecommunications formula"). If irony has any place in a summary judgment motion, it is worth recalling that Verizon, which has for years been pocketing three quarters of the money that it agreed to pay FPL, had the temerity to attempt to counterclaim against FPL for unjust enrichment. Adding a disregard for logic to its disregard for contractual obligations.

Damages. FPL calculated the joint use rental amounts due for 2011 and 2012 pursuant to the contractual methodology and billed Verizon accordingly. Bromley (FPL) Aff. ¶¶ 10, 13. Under the 2011 Invoice, Verizon owed \$2,097,293.70 but belatedly paid only \$1,179,307.43. *See* 2011 Invoice; Lindsay (Verizon) 6/17/2013 Aff. ¶ 5; Bromley (FPL) Aff. ¶¶ 10-11. Thus, FPL suffered damages in the amount of \$917,986.27, plus prejudgment interest. Bromley (FPL) Aff. ¶ 11. Under the 2012 Invoice, Verizon owed \$2,319,985.02 but paid, again belatedly, only \$638,413.55. *See* 2012 Invoice; Lindsay (Verizon) 6/17/2013 Aff. ¶ 7; Bromley (FPL) Aff. ¶¶ 13-14. Thus, FPL suffered damages in the amount of \$1,681,571.47, plus prejudgment interest. Bromley (FPL) Aff. ¶ 14. In total, Verizon's breach of the Joint Use Agreement has damaged FPL in the amount of \$2,599,557.74, plus prejudgment interest. Bromley (FPL) Aff. ¶ 16.

B. Verizon's Affirmative Defenses are Legally Insufficient and Factually Unsupported

Affirmative defenses will not defeat summary judgment if the defenses are refuted by the facts or are legally insufficient. *Frost v. Regions Bank*, 15 So. 3d 905, 906 (Fla. 4th DCA 2009). Here, Verizon's transparently boilerplate affirmative defenses are supported by neither.

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1. Verizon's first affirmative defense (failure to state a claim), second affirmative defense (estoppel, laches, release and/or unclean hands), fifth affirmative defense (breach of contract) and sixth affirmative defense (breach of implied covenant of good faith and fair dealing)

Verizon's first, second, fifth and sixth affirmative defenses are legally insufficient. Verizon refers vaguely to its counterclaims, but fails to demonstrate the existence of any ultimate fact supporting these affirmative defenses. Under Florida law, "certainty is required when pleading defenses and claims alike . . . and pleading conclusions of law unsupported by allegations of ultimate fact is legally insufficient." *Cady v. Chevy Chase Savings and Loan*, 528 So. 2d 136-38 (Fla. 4th DCA 1988); *Bliss v. Carmona*, 418 So. 2d 1017, 1019 (Fla. 3d DCA 1982).

Additionally, to the extent that these affirmative defenses depend on Verizon's ability to establish its counterclaims, this Court has already determined that those legal and equitable theories will not be considered. *See* Court's Order on Motion To Dismiss Amended Counterclaim (dated May 31, 2014).

2. Verizon's second affirmative defense (estoppel, laches, release and/or unclean hands)

Since Verizon's second affirmative defense appears to be based essentially on the same allegations underlying its counterclaim for unjust enrichment, it is barred by the express terms of the JUA. Verizon complains that FPL allowed third parties to attach to FPL poles in the space reserved for Verizon without crediting the amounts collected against Verizon's rate payments, disregarding the "credit" Verizon was taking for itself by underpaying its contractual obligation by 75 percent. In the JUA, Verizon expressly agreed that rentals collected from third parties would "in no way affect the rental or charges paid between the parties of [the Joint Use] Agreement." JUA, Art. X, § 10.10. The JUA also unambiguously permits FPL to allow third parties to use unoccupied space so long as FPL makes adequate provisions for the Verizon's

subsequent occupation. JUA, Art. XIV, §§ 14.2, 14.3, 14.4 and 14.5. FPL has not denied any request to provide space for Verizon's facilities. Bromley (FPL) Aff. ¶ 17.

3. Verizon's third affirmative defense (jurisdiction and ripeness).

Verizon's assertion that this matter should be determined in the first instance by the FCC has already been considered and disposed of by this Court. Verizon sought that very relief in its Motion To Dismiss (dated July 29, 2013). By order dated September 26, 2013, the Court denied Verizon's Motion To Dismiss. Five months after this Court's denial, Verizon again sought a stay of this matter on the same grounds. By order dated May 31, 2014, the Court denied Verizon's Motion To Stay.

4. Verizon's fourth affirmative defense (venue).

Verizon has previously alleged that venue is improper in this Court. By order dated September 26, 2013, the Court denied Verizon's motion to transfer venue. On March 5, 2014, the Third District Court of Appeal affirmed this Court's order denying Verizon's motion to transfer venue. *Verizon Florida, LLC v. Florida Power & Light Co.*, 134 So. 3d 468 (Table) (Fla. 3d DCA 2014).

5. Verizon's fifth affirmative defense (breach of contract) and sixth affirmative defense (breach of implied covenant of good faith and fair dealing)

Verizon's affirmative defenses of breach of contract and breach of implied covenant of good faith and fair dealing are unsupported by the facts. In its counterclaims with the same descriptions, Verizon alleged that Verizon sought renegotiation of the rental rate pursuant to Section 11.1 of the JUA and that FPL refused to agree to the terms Verizon demanded. *See* Verizon's Am. Countercl. ¶¶ 10, 16. The facts reveal, however, that Verizon *never invoked* Section 11.1 of the JUA. Bromley (FPL) Aff. ¶ 18 and attachment "1" thereto. In fact, in response to FPL's query regarding whether Verizon sought renegotiations pursuant to Section

11.1, Verizon affirmatively declined to invoke the provision. Bromley (FPL) Aff. ¶ 18 and attachment “1” thereto. Verizon cannot now allege that FPL breached a contractual provision that Verizon refused to invoke.

Verizon’s fifth and sixth affirmative defenses also fail as legally insufficient to the extent that they depend upon Verizon’s ability to establish its counterclaims for breach of contract and breach of implied covenant of good faith and fair dealing. Those counterclaims have been dismissed. Furthermore, even if Verizon had invoked Section 11.1 of the JUA, Verizon’s breach of contract and breach of implied covenant of good faith affirmative defenses fail on the additional ground that Florida law does not recognize recoverable damages for dissonant negotiations. Here, had Verizon invoked Section 11.1, which it did not, the only benefit for which Verizon bargained was a rate renegotiation. JUA, Art. XI, § 11.1. No contractual provision entitles Verizon to a rate certain that would result from renegotiation. Nor can the Court dictate what terms would ultimately result from the negotiations or enforce any term other than the contract rate. *Beach Resort Hotel Corp. v. Wieder*, 79 So. 2d 659, 663 (Fla.1955). Thus, Verizon cannot establish damages, and its breach of contract affirmative defenses fail as a matter of law. *Abbott Labs., Inc.*, 765 So. 2d at 740 (recognizing that damages are necessary to establish a breach of contract claim).

V. CONCLUSION

The purpose of a motion for summary judgment is to determine whether any genuine issues of material fact exist for resolution by the trier of fact. No factual questions exist here. Verizon has never denied that it failed to pay the rate required by the Joint Use Agreement. In fact, Verizon readily admits that it applied a different, extra-contractual rate and maintains that it is no longer satisfied with the terms to which it agreed. FPL, by contrast, adhered to the terms of

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the contract, invoiced Verizon accordingly, and is due the \$2,599,557.74 outstanding balance that Verizon has refused to pay, plus prejudgment interest.

Wherefore, for the forgoing reasons, FPL requests that the Court enter final summary judgment in favor of FPL on Counts I and III of the Complaint.

Dated: July 15, 2014

Respectfully submitted,

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By: s/ Alvin B. Davis
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via e-mail to Lewis F. Collins, Jr., (lcollins@butlerpappas.com), Butler Pappas Weihmuller Katz Craig, LLP, Suite 500, 777 S. Harbour Island Boulevard, Tampa, Florida 33602 and Christopher Huther (chuther@wileyrein.com), Wiley Rein LLP, 1776 K. Street NW, Washington, D.C. 20006, on this 15th day of July 2014.

s/ Alvin B. Davis

Alvin B. Davis

Exhibit 15

FLORIDA POWER & LIGHT CO., PUBLIC VERSION THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA
PLAINTIFF (S), GENERAL JURISDICTION DIVISION

vs.
VERIZON FLORIDA LLC

CASE NO.: 13-14808

DEFENDANT (S),

MEDIATOR'S REPORT
NO AGREEMENT IMPASSE
FLORIDA BAR NO.: 354929

Pursuant to F.S. 44.1011-201, this matter came before the undersigned Mediator of the ELEVENTH JUDICIAL COURT of FLORIDA on the 27th day of August, 2014.

The Court is respectively advised that no settlement agreement was reached between the parties at the mediation.

Plaintiff and counsel agree to pay outstanding mediation fees of \$1,440.00 less \$720.00 paid = \$720.00 balanced owed.

Defendant and counsel agree to pay outstanding mediation fees of \$1,440.00 less \$720.00 paid = \$720.00 balanced owed.

I hereby certify that a copy of this notice has been mailed and emailed on the 28th day of August 2014 to: **Alvin B. Davis, Esq.** (Alvin.davis@squirepb.com), Squire Patton Boggs, Suite 4100 200 South Biscayne Boulevard, Miami, Florida 33131; **Maria J. Moncada, Esq.** (maria.moncada@fpl.com), Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408; **Scott Frank, Esq.** (sfrank@butlerpappas.com) and **Lewis F. Collins, Jr., Esq.** (lcollins@butlerpappas.com), Butler Pappas Weihmuller Katz Craig, LLP, Suite 500, 777 S. Harbour Island Boulevard, Tampa, Florida 33602 and **Christopher Huther, Esq.** (chuther@wileyrein.com), Wiley Rein LLP, 1776 K. Street NW, Washington, D.C. 20006.

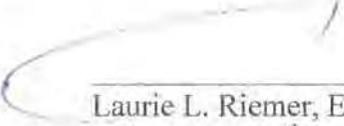

Laurie L. Riemer, Esq., Mediator/Arbitrator
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Exhibit 16

PUBLIC VERSION

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

FLORIDA POWER & LIGHT CO.

Complex Business Litigation Division
Case No.13-14808 CA-40

Plaintiffs,

vs.

ORDER DEFERRING AND STAYING
MATTER; REMOVING FROM TRIAL
CALENDAR

VERIZON FLORIDA, LLC

Defendants

_____ /

THIS MATTER came before the Court, sua sponte, and the Court having reviewed the file, the pending motion for summary judgment, materials in preparation for the December 1, 2014 trial period, and being otherwise fully advised in the premises, it is

ORDERED and **ADJUDGED** as follows:

The Court defers hearing and ruling on the Plaintiff's Motion for Summary Judgment pending resolution of Verizon's pending matter before the FCC.

The December 1, 2014 trial setting in this cause is continued pending resolution of Verizon's pending matter before the FCC.

The parties shall schedule a status conference on the Court's motion calendar, approximately ninety (90) days from the date hereof, to advise the status of the FCC proceeding.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 11/03/14.



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.

cc: Counsel / Parties of record

adavis@ssd.com; lcollins@butlerpappas.com; wschoel@butlerpappas.com

Exhibit 17

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

FLORIDA POWER & LIGHT CO.,

Plaintiff,

Complex Business Litigation Section (40)

Case No. 13-14808

v.

VERIZON FLORIDA LLC,

Defendant.

**FLORIDA POWER & LIGHT COMPANY'S MOTION FOR RECONSIDERATION AND
FOR REINSTATEMENT ON THE DECEMBER TRIAL CALENDAR**

Florida Power & Light Company ("FPL") asks this Court to reconsider its November 3, 2014 Order deferring and staying this matter and removing this matter from the trial calendar.

Introduction

These are the unvarnished facts:

1. This is a plain vanilla breach of contract case.
2. The Federal Communications Commission ("FCC") does not decide breach of contract cases.
3. The FCC's Pole Attachment Order emphasizes the FCC's reluctance to interfere with existing contracts.
4. Verizon Florida, LLC ("Verizon") intentionally delayed filing a complaint with the FCC.
5. At least three similar complaints were filed with the FCC by other companies before Verizon's filing.
6. None of the prior complaints has yet been addressed by the FCC.
7. The FCC can take as long as 4 years – if not longer - to decide matters before it.

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8. There is no timetable for the FCC to reach, let alone decide, the Verizon complaint.
9. There is no reasonable expectation of an FCC decision in the Verizon filing in the next three months or even an indication of when there will be a decision.
10. Verizon underpays Florida Power & Light Company (“FPL”) at the rate of \$145,000 a month. In total is has underpaid FPL \$4.3 million. By March of next year, that amount will grow to approximately \$6 million, assuming Verizon makes any payment at all.
11. Whatever and whenever the outcome of the Verizon complaint, the FCC does not have jurisdiction to compel Verizon to make good on its underpayments.
12. Only this Court can do so.
13. The parties are ready to try this case.
14. Any delay is demonstrably beneficial to Verizon and manifestly prejudicial to FPL.

ARGUMENT

A. This Is A Breach Of Contract Case

The FCC does not adjudicate breach of contract cases. *See Texarkana TV Cable Co., Inc. v. Southwestern Electric Power Co.*, 49 Rad. Reg. 2d (P & F) 1043 ¶ 14 (1981) (where the FCC dismissed the counterclaims “request[ing] that Texarkana TV be ordered to pay the balance due” from the pole attachment rentals explaining that the Commission’s jurisdiction did not extend to the contract claims). In April 2013, FPL instituted this action and sought relief in the only forum available to it. Nothing has changed.

Commission precedent is clear that it will defer to local courts for resolution of disputes involving breach of contract and non-payment of pole attachment fees:

Although the Commission’s jurisdiction encompasses certain practices growing out of a contractual relationship between a utility and a cable operator, it does not extend to adjudication of the legal impact of the failure of a party to fulfill its contractual obligations, nor to the determination of what contract rights exist once a party has unilaterally moved to terminate an agreement. In other words, as 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

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jurisdiction in such matters. Rather, such matters are left to the existing state law governing breach of contract, whether express or implied, and questions of unjust enrichment. For these reasons, Appalachian must pursue in state courts any complaint that Capitol has continued to use its poles without paying for these services.

Appalachian Power Co. v. Capitol Cablevision Corp., 49 RR 2d 574, 578 (1981); see also *Kansas City Cable Partners v. Kansas City Power & Light Co.*, 14 FCC Red 11599, ¶ 5 (1999) (Commission “will not assert its jurisdiction merely to enforce the terms of a pole attachment agreement. The Commission’s authority under Section 224 does not supplant that of the local jurisdiction when the issue between the parties is a breach of contract not involving unjust or unreasonable contractual terms, rates, or conditions.”) *Marcus Cable Assocs., L.P. v. Tex. Utilities Elec. Co.*, 12 FCC Red 10362 ¶ 10 (1997) (“The authority conferred by Section 224, however, does not supplant that of the local jurisdiction when the issue between the parties is a breach of contract not involving unjust or unreasonable contractual rates, terms, or conditions”); *Cable Texas, Inc. v. Entergy Servs., Inc.*, 14 FCC Recd. 6647, n. 44 (1999); *Cablecom-general, Inc. v. Cent. Power & Light Co.*, 50 Rad, Reg. 2d (P&F) 473 (1981); *Tele-Ception of Winchester, Inc. v. Ky Utilities Co.*, 49 Rad. Reg. 2d (P&F) 1572 (1981); *Texarkana TV Cable Co. v. Elec. Power Co.*, 49 Rad. Reg. 2d (P&F) 1042 (1981).

Moreover, the FCC does not have jurisdiction to award the breach of contract damages FPL requests. FPL’s Complaint seeks payment of damages in an amount equal to the difference between the pole attachment fees invoiced by FPL and the partial payments made by Verizon. The remedies available in Verizon’s FCC action, however, are limited, and do not include compensatory damages for contract breaches. 47 C.F.R. § 1.1410. Indeed, the FCC has explicitly stated that compensatory damages are not permitted in actions such as the one filed by Verizon. See FCC Order, 26 F.C.C. Red. At 5288 (declining to amend rule 1.1410 to allow

compensatory damages). Thus, it would be extremely unfair to FPL to allow Verizon to avoid its contractual obligations by filing its FCC action seeking the FCC to set a new rental rate.

B. Verizon's Underpayments Continue To Mount

Verizon's breach cannot be characterized as a one-time occurrence. It is a systematic, unauthorized – unprecedented – underpayment of an established obligation. The breach continues daily. Verizon is attached to more than 65,000 FPL-owned poles, but only covers the attachment fee for approximately 15,000 of those attachments. Verizon underpaid for the charges incurred during the second half of 2011 by more than \$917,000. Verizon then underpaid again for all charges incurred in 2012 and true-up charges for the second half of 2011 by nearly \$1.7 million. Verizon again underpaid for all charges incurred in 2013 by more than \$1.7 million. To date, Verizon has withheld more than \$4.3 million. As this pattern continues through the early part of next year – and Verizon certainly lacks any motivation to amend its behavior – FPL will have suffered \$6 million in damages as a result of Verizon's continual, serial breaches. That figure will continue to grow indefinitely.

C. The Pole Attachment Order Requires Verizon To Pay the Contract Rate Pending a Ruling by the FCC

While hiding behind its untimely FCC Complaint, Verizon refuses to comply with well-established precedent for situations such as this and with the FCC's own express interpretation of the very Order Verizon intentionally misconstrues. Verizon's litigation positions rest entirely on its own tortured interpretation of the FCC's *Pole Attachment Order*. Verizon has never identified – or even attempted to identify – any language in the FCC Order that justifies even remotely its payment of a rate other than the one set forth in the contract.

In fact, there is absolutely no language in the FCC Order that would invalidate existing pole attachment agreements with ILECs, such as Verizon. Instead, the Order acknowledges that

ILECs frequently are parties to existing joint use agreements and that the FCC will generally defer to such negotiated agreements. (FCC Order, at ¶¶ 215 and 216). The Order continues by reinforcing that it is unlikely to second guess those agreements. (*Id.*, at ¶ 216). The FCC Order states, in part, that:

Although the incumbent LECs express concerns about existing joint use agreements, these long-standing agreements generally were entered into at a time when incumbent LECs concede they were in a more balanced negotiating position with electric utilities, at least based on relative pole ownership. As explained above, we question the need to second guess the negotiated resolution of arrangements entered into by parties with relatively equivalent bargaining power. Consistent with the foregoing, the Commission is unlikely to find the rates, terms and conditions in existing joint use agreement unjust or unreasonable.

(*Id.*, at ¶ 216). The FCC’s indication that it will not second guess existing joint use agreements entirely contradicts Verizon’s unsupported premise that the FCC Order somehow abrogates the terms of an existing agreement.¹

More to the point, the Pole Attachment Order does not authorize Verizon to unilaterally underpay express obligations pending resolution of its complaint. To the contrary, the proper remedy for an ILEC that believes it is paying unreasonable rates is to continue paying the disputed contract rates while simultaneously challenging them. The FCC provided precisely this interpretation of the Pole Attachment Act to the United States Court of Appeals for the Eleventh Circuit: “[I]n the absence of an FCC adjudication, a cable company seeking pole access must pay the rate that the utility demands.” Letter Brief of United States Department of Justice at 2, March 29, 1999, *Gulf Power Co. v. United States*, No. 98-2403 (11th Cir.), attached as **Exhibit “1.”** (emphasis supplied) *See also Fiber Technologies Networks, LLC v. Duquesne Light Co.*, 18 FCC Rcd. 10628 (2003) (holding that complainant attacher would not suffer irreparable harm by

¹ The Order clearly draws a distinction between existing and new agreements, and makes clear that the FCC defers to existing contracts like the ones here. See FCC Order, at ¶ 216 n. 654 and 655.

paying alleged overcharges for pole attachment fees and then filing a complaint seeking a refund).

The FCC and the courts have found on many occasions that similar self-help nonpayment practices violate the Pole Attachment Act. *MGC Commc'ns, Inc.*, 14 FCC Rcd. 11647 (1999), *aff'd*, *MGC Commc'ns, Inc. v. AT&T Corp.*, Mem. Op. and Order, 15 FCC Rcd. 308 (1999); *Nat'l Commc'ns Ass'n v. AT&T*, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001); *MCI Telecomms. Corp.*, Mem. Op. and Order, 62 F.C.C. 2d 703 (1976); *Communique Telecomms, Inc. d/b/a LOGICALL*, Declaratory Ruling and Order, 10 FCC Rcd. 10399 (1995), *aff'd*, 14 FCC Rcd. 13635 (1999). The Court in *Level 3 v. Telephone Operating Company of Vermont, LLC*, held:

The clear line of authority regarding rate disputes is that the customer may not resort to self-help; that is, the customer may not merely refuse payment of the disputed rate but must pay the rate then bring an action to determine the validity of the carrier's actions. In essence, the [customer] resorted to self-help by refusing to pay the disputed deposit and incurring the alleged lost profits.

Level 3 v. Tel. Operating Co. of Vermont, LLC, 2011 WL 6291959 (D.Vt. Dec. 15, 2011). The FCC-sanctioned approach is commonly referred to as the “sign and sue” rule, which is referenced with specificity and approval in the *Pole Attachment Order*. Thus, the very language of the *Pole Attachment Order* indicates that the FCC expects Verizon (and all ILECs) to pay the contract rate. Because Verizon continues to underpay, any stay of the trial in this case will serve only to perpetuate for an indefinite period misbehavior specifically rejected by the FCC.

D. The FCC May Not Rule For Years

In the absence of an actual trial, Verizon's calculated, self-serving, unauthorized non-payment will continue indefinitely. It is brazen, but successful. Unfortunately – except for Verizon – there is no deadline for the FCC to rule on Verizon's pole attachment complaint, or even a time horizon of any kind. Indeed, attachment-related complaints before the FCC have

taken years to resolve, when they are resolved at all. *See e.g., Comcast Cable Communications Mgmt., LLC*, 26 FCC Rcd 5158 (2011) (dismissing pole attachment complaint after almost **five** years because the parties settled); *Cable Television Ass'n of Georgia, et al.*, 17 FCC Rcd 13807 at ¶6 (complaint filed in 1998 and decision not issued until almost **four** years later); *In re Matter of Cable Texas, Inc.*, 14 FCC Rcd 6647 at ¶2 (taking almost **two** years to resolve). *See Exhibit “2,”* which summarizes the inordinate delays encountered at the FCC in addressing pole attachment complaints. Indeed, Exhibit 2 establishes that the FCC has not issued a decision on the merits of a pole attachment complaint since 2007.

If more uncertainty were required, the FCC has *never* decided a pole attachment complaint filed by an incumbent local exchange carrier (“ILEC”), such as Verizon. And, Verizon’s complaint was not the first one filed. To the contrary, there were at least three ILEC pole attachment complaints filed and fully briefed before Verizon’s, both of which remain pending.² Thus, the open-ended nature of any timetable here is particularly troubling. From a damages perspective, the mounting outstanding balances would total more than \$8 million if the FCC ruled two years from the time Verizon filed its complaint, and that number would rise to approximately \$13 million if the waiting period is five years.

E. FPL Will Be Unduly Prejudiced By an Indefinite Stay

FPL has already spent many hours and expended substantial sums preparing for trial. Witnesses have been prepared to testify. Exhibits are ready to be submitted. This case involves

² Verizon filed its FCC complaint on January 31, 2014. Three other ILEC pole attachment complaints were filed earlier: (i) *Frontier Communications of the Carolinas LLC v. Duke Energy Progress, Inc.*, File No. 13-MD-007 (filed December 9, 2013); (ii) *Frontier Communications of the Carolinas LLC v. Duke Energy Carolinas LLC*, File No. EB-14-MD-001 (filed January 17, 2014); (iii) *Frontier Communications of the Carolinas LLC v. Duke Energy Carolinas LLC*, File No. EB-14-MD-002 (filed January 29, 2014). It is FPL’s understanding that the FCC has one administrative law judge on staff for an agency of approximately 2,000 persons. That judge’s docket is full.

a breach that occurred three years ago and, if Verizon's inventive defenses survive, negotiations that go back even further in time. A delay of two to five years may result in fading memories and, possibly, the loss of FPL's principle witness who may retire before the FCC issues a ruling and this matter is reset for trial.

More significantly, in this current state of Verizon-induced limbo, Verizon's underpayments will continue to mount. Effectively, Verizon's position leaves FPL customers to cover the shortfall occasioned by Verizon's breach. Due to the manner in which regulatory rate-making works, there is no practicable way to compensate FPL customers who cover these Verizon obligations, but then move out of FPL's service territory before this Court enters a judgment years later.

Verizon's underpayments will result in increasing customer rates. Moreover, as a rate-regulated utility, FPL's rates are set based on projected revenues and expenses. Thus, with an indefinite stay in place, FPL's projected pole attachment revenues would be based on receiving \$8.52/pole rather than the full contract rate, leaving FPL customers to make up the difference. Yet, based on forward-looking projections on which rates are set, there would be no offset for a judgment entered years from now based on past-due amounts. Thus, the harm to customers caused by an indefinite stay could be irreparable for all customers and, in practical terms, will be irreparable for FPL customers who relocate outside of FPL's service territory. Florida's population continues to have a significant transient component.

Relief Sought

WHEREFORE, FPL respectfully requests that this case be reinstated on the Court's December trial docket. Alternatively, if this is no longer possible, FPL requests that this case be set on the Court's next available docket.

If the Court continues to believe it appropriate to await an FCC Ruling, FPL further requests that, pursuant to FCC precedent and policy, and out of fundamental fairness, the Court enter an order requiring Verizon to pay FPL the full contract amount, including all arrearages, until the FCC has ruled on the Verizon complaint, subject to a refund, if any, by FPL, if the FCC establishes a rate other than the contract rate for the period at issue in the contract.

Dated: November 11, 2014

Respectfully submitted,

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By: *s/ Alvin B. Davis*
Alvin B. Davis
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via e-mail to Lewis F. Collins, Jr., (lcollins@butlerpappas.com), Butler Pappas Weihmuller Katz Craig, LLP, Suite 500, 777 S. Harbour Island Boulevard, Tampa, Florida 33602 and Christopher Huther (chuther@wileyrein.com), Wiley Rein LLP, 1776 K. Street NW, Washington, D.C. 20006, on this 11th day of November 2014.

s/ Alvin B. Davis

Alvin B. Davis

Exhibit 18

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION

Complex Business Litigation Section
Case No.: 13-014808-CA-01 – Division 40

FLORIDA POWER & LIGHT
COMPANY, a Florida corporation,
Plaintiff,

vs.

VERIZON FLORIDA LLC, a Florida
corporation,
Defendant.

_____ /

**ORDER DENYING FLORIDA POWER & LIGHT'S MOTION FOR
RECONSIDERATION AND REINSTATEMENT ON THE DECEMBER TRIAL
CALENDAR**

THIS CAUSE having come on for consideration upon Plaintiff, Florida Power & Light's Motion for Reconsideration and Reinstatement on the December Trial Calendar, and the Court having reviewed the motion, having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby ORDERED and ADJUDGED as follows:

1. The Motion for Reconsideration and Reinstatement on the December Trial Calendar is **DENIED** without prejudice.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 12/11/14.



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.

Copies Furnished To:

Alvin B. Davis, Esq.

Lewis F. Collins, Jr., Esq./Scott J. Frank, Esq.

Christopher S. Huther, Esq./Claire Evans, Esq.

Exhibit 19

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

FLORIDA POWER & LIGHT CO.,

Plaintiff,

Complex Business Litigation Section (40)

Case No. 13-14808

v.

VERIZON FLORIDA LLC,

Defendant.

NOTICE OF FILING AND REQUEST FOR TRIAL SETTING

On November 3, 2014, this Court entered an Order continuing the trial setting in this cause "pending resolution of Verizon's pending matter before the [Federal Communications Commission ("FCC.")] A copy of the November Order is attached for the Court's convenience.

On February 11, 2015, in a Memorandum Opinion and Order, the FCC dismissed Verizon's FCC Complaint and terminated that FCC proceeding. Herewith, FPL provides Notice to the Court of that decision and files a copy of the FCC ruling, which is attached.

The FCC found, among other things, that Verizon had failed to demonstrate that the rate in the Pole Sharing Agreement between Florida Power & Light Company ("FPL") that is at issue in this case was unjust and unreasonable.

While the FCC left open the possibility that Verizon might refile its complaint and "attempt to fill the evidentiary gaps," the "pending matter" identified in the Court's November 3rd Order has been resolved. That Complaint has been dismissed.

PUBLIC VERSION

Accordingly, and consistent with this Court's November Order, FPL respectfully requests that this matter be re-set on the Court's trial docket at the earliest available date.

Respectfully submitted,

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By: s/ Alvin B. Davis
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's E-Portal system on this 11th day of February, 2015.

s/ Alvin B. Davis
Alvin B. Davis

Exhibit 20

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

Complex Business Litigation Section

FLORIDA POWER & LIGHT CO.,

Case No. 13-014808-CA-01

Plaintiff,

v.

VERIZON FLORIDA LLC,

Defendant.

**VERIZON FLORIDA'S MEMORANDUM OF LAW IN OPPOSITION TO FLORIDA
POWER & LIGHT'S REQUEST FOR TRIAL SETTING**

Comes now, the Defendant, Verizon Florida, LLC (“Verizon”) and responds to plaintiff’s motion to remove stay and set this cause for trial and responds as follows. The Court should not set this case for trial. To the contrary, it is now clearer than ever that the FCC can and *will* decide – after Verizon shortly files with the FCC an amended complaint supplying the factual information the Enforcement Bureau identifies in its February 11 Order¹ – the appropriate rate for Verizon’s pole attachments for the entire period at issue in this case.

The FCC’s February 11 Order expressly and directly rejected FPL’s overarching claim in this case that it is entitled under the parties’ expired 1975 contract – notwithstanding the 2011 *Pole Attachment Order* – to forever charge Verizon the rates FPL calculates under the contract. Instead, the Order held as a matter of law that Verizon is entitled to a “just and reasonable rate” from July 2011 forward. Order ¶¶ 17-19, 25-26. The Bureau confirmed that the FCC has the authority to set that “just and reasonable” rate, observing in doing so that it would not dismiss Verizon’s complaint with prejudice because that “could force Verizon to pay the relatively high

¹ See Memorandum Opinion and Order, *Verizon Florida LLC v. Florida Power and Light Company*, ECFS No. 14-216, File No. EB-14-MD-003 (EB/MDRD Feb. 11, 2015) (“Order”), attached to FPL’s Notice of Filing and Request for Trial Setting (Feb. 11, 2015).

Agreement Rates for as long as its attachments remain on Florida Power’s poles.” *Id.* ¶ 25. Thus, the FCC’s Enforcement Bureau has held both that FPL is not entitled to the result it is seeking in this litigation, and that the Enforcement Bureau stands ready to resolve the matter in full once Verizon provides it with additional information. *Id.*

The Bureau’s Order is effectively a request for information that the FCC needs to complete its job.² Verizon will refile its Complaint in early March and will request its expedited resolution. This should be achievable because the Enforcement Bureau has already rejected FPL’s argument that Verizon is not eligible for rate relief. The key remaining issue relates to the value, if any, that should be given to certain terms and conditions in the parties’ agreement when setting a just and reasonable rate for Verizon’s attachments. *See, e.g., id.* ¶¶ 24, 26. And make no mistake: the facts on that issue, as Verizon will demonstrate to the FCC, are as straightforward as can be and further underscore that the rates FPL calculates under the agreement at issue are unjust and unreasonable.

Trying a breach-of-contract case where the contract rate has not only been called into question but will ultimately be set by the FCC would be a wasteful and injudicious exercise. This is particularly so because the Enforcement Bureau did not order Verizon to pay disputed amounts pending resolution of this dispute even though FPL asked for that relief, which it also seeks here. The Bureau also exposed the folly of FPL’s insistence that an FCC Order may not issue for years. Fewer than ten months after Verizon’s Pole Attachment Complaint was fully briefed, the Enforcement Bureau issued an Order that rejected the vast majority of FPL’s arguments and clarified the key rate-setting issue that remains. The Order thus confirms what Verizon has argued from the outset of this litigation: the FCC (the expert agency for setting pole

² *See* Order ¶ 25 n.88 (“We view these alternatives—dismissing without prejudice or asking the complainant to supplement the record—as functionally equivalent.”).

PUBLIC VERSION

attachment rates) will set the just and reasonable rate for Verizon's attachments for the period from July 2011 forward. It will do so as quickly as it is able and in a manner that informs, streamlines, or eliminates the need for further proceedings in this Court. The Court should reject FPL's request to set a trial date at this time.

Respectfully submitted,



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Attorneys for Verizon Florida LLC

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

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Attorneys for Florida Power & Light Co.

via E-Portal on February 13, 2014.



Lewis F. Collins, Jr., Esq.

Exhibit 21

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

FLORIDA POWER & LIGHT CO.,

Plaintiff,

Complex Business Litigation Section (40)

Case No. 13-14808

v.

VERIZON FLORIDA LLC,

Defendant.

MOTION FOR TRIAL SETTING

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The FCC found, among other things, that Verizon had failed to demonstrate that the rate in the Pole Sharing Agreement between Florida Power & Light Company ("FPL") that is at issue in this case was unjust and unreasonable.

PUBLIC VERSION

While the FCC left open the possibility that Verizon might refile its complaint and “attempt to fill the evidentiary gaps,” the “pending matter” identified in the Court’s November 3rd Order has been resolved. That Complaint has been dismissed.

Accordingly, and consistent with this Court’s November Order, FPL respectfully requests that this matter be re-set on the Court’s trial docket at the earliest available date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court’s E-Portal system on this 18th day of February, 2015.

s/ Alvin B. Davis
Alvin B. Davis