13. All documents concerning the statement at paragraph 12 of Mr. Kennedy's Declaration that "FPL and Verizon may have negotiated a 50% pole ownership cost split, which today would run Verizon approximately $300 to $500 (excluding A&G) per pole."

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 4."

14. All documents concerning the statement on page 17 of FPL's Response that "Verizon's attachments require more space than their competitors due to sag."

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 14."

15. All documents concerning FPL's decision "in certain circumstances" to "decline to expand capacity to accommodate attachers" as referenced on page 18 of FPL's Response.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." This request is also not reasonably limited with respect to time or attaching entities. Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 15."

16. All documents concerning the cost incurred by FPL to negotiate and obtain easements or rights-of-way that authorize Verizon's use of an FPL-owned pole but not a CLEC or cable company's use of the FPL-owned pole, including all copies of the easements and rights-of-way.

AMENDED OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." and also that FPL has no duty to create documents where none exist in the ordinary course of business. In addition, it is simply not possible to review the innumerable easements in FPL's property records and provide all such easements responsive to this request. Moreover, the easements and rights-of-way responsive to

this request are available from a public source, and Verizon can independently obtain them via a public records search in Manatee, Charlotte and Sarasota Counties. Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 16." In addition, FPL is continuing its review of potentially responsive documents and will further supplement its response as necessary.

17. All documents concerning poles abandoned by FPL, including all documents concerning notice to Verizon of FPL's intent to abandon the pole and all documents concerning ownership of the pole after it was abandoned by FPL.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." In addition, FPL objects because such documents have previously been provided to Verizon. Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 17."

18. All documents concerning FPL's invoicing and collection of pole bonding costs from CLECs and cable companies, including all documents concerning the statement on page 22 of FPL's Response and at paragraph 23 of Mr. Kennedy's Declaration that "pole bonding costs approximately $200 per pole," and all documents concerning the estimate at paragraph 23 of Mr. Kennedy's Declaration that "there are bonds on one-fourth of the joint use poles Verizon and FPL share."

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 18."

19. All documents concerning FPL's invoicing and collection of unauthorized attachment fees from CLECs and cable companies.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." This request is also not reasonably limited

with respect to time or attaching entities. Subject to and without waiving the foregoing objections, FPL will provide a response reflecting a reasonable set of documents.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 19."

20. All documents concerning FPL's invoicing and collection of annual pole rent from CLECs and cable companies as referenced on page 24 of FPL's Response, including all documents concerning the date of the invoice, the rental rate invoiced, the date of payment, and the amount paid.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Documents evidencing the details of FPL's invoices to and payments from attachers are unnecessary in this matter, particularly because Verizon has asked for the amounts charged and paid in interrogatories. This request is also not reasonably limited with respect to time or attaching entities. FPL will therefore not be providing a substantive response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, FPL states that there are no documents that are responsive to this Request.

21. All documents concerning FPL's calculation of the rental rate under the Joint Use Agreement, including all documents concerning the components of the rental rate, the figures appearing in the table at Attachment C to Exhibit G of the Response, and the methodology used.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." In addition, FPL objects on the basis that such documents were previously produced to Verizon in the state court litigation.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 21."

22. All documents concerning the calculation of the $9.31, $9.78, $11.54, $14.11, $14.29, $14.83, $17.49, $19.78, $21.65, $23.08, $29.97, $34.98, $45.45, $46.16, and $69.96 rates referenced on pages 29 and 43 of FPL's Response and at paragraphs 25 and 26 of Mr. Spain's Affidavit.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 22."

23. All documents concerning the calculation of each and every figure in the table on page 15 of Mr. Kennedy's Declaration at paragraph 32.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 23."

24. All documents establishing each and every instance in which Verizon's facilities use four feet of an FPL-owned pole as alleged on page 42 of FPL's Response.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." In addition, this request would require FPL to create new documents that do not currently exist. Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 24."

25. All documents concerning the statement at paragraph 34 of Mr. Kennedy's Declaration that "the total paid by Verizon [is] less than $50 million," including all documents concerning the inputs and calculation attached as Exhibit 4 to Mr. Kennedy's Declaration.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 25."

26. All documents concerning the statement at paragraph 18 of Mr. Spain's Declaration that "Verizon has sold a substantial number of access lines and related property, plant and equipment to Frontier Communications at an average price of approximately $1,638 per access line."

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light

of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 26."

27. All documents concerning the assumption at paragraph 19 of Mr. Spain's Affidavit that Verizon's cost of capital is 5.6%.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 27."

28. All documents concerning the statement at paragraph 24 of Mr. Spain's Affidavit that "FPL records indicate that the average age of a 35', 40', or 45' wood pole that was replaced from 2010 to 2014 is 36 years. This means that of the 65,526 wood poles to which Verizon was attached in 2013, approximately 1,820 are replaced by a new pole each year."

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 28."

29. All documents, including all internal communications, concerning the statement on page 48 of FPL's Response that "after the Dismissal Order, FPL requested several times that Verizon engage in the required good faith executive-level negotiations prior to filing a follow-on complaint and also that Verizon provide documentation that supports its position so that FPL might be in a position to better understand and discuss the disputed issues."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Additionally, Verizon's counsel received the referenced documents and thus already is in possession of them. Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 29."

30. All documents, including all internal communications, concerning the statement on page 49 of FPL's Response that "no [Verizon] executives were present" at the parties' January 27, 2012 meeting and that it was "[t]o FPL's dismay" that "none of the January 27, 2012 Verizon attendees were present" at the parties' October 15, 2012 meeting.

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, FPL states that there are no documents that are responsive to this Request.

31. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that "[t]he lack of executive personnel-and lack of continuity in non-executive personnel-in the meetings between the parties was an obstacle to productive discussions."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, FPL states that there are no documents that are responsive to this Request.

32. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that "[t]here has been no legitimate process to engage in comprehensive, informed settlement discussions."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 32."

33. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that "FPL personnel have had to re-explain facts and positions to new people who appeared to have no understanding of what had already been discussed."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, FPL states that there are no documents that are responsive to this Request.

34. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that "it was clear FPL was not dealing with Verizon decision-makers."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 32."

35. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that FPL "on at least three occasions took the initiative to attempt to engage in executive level discussions."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Additionally, Verizon's counsel

received the referenced documents and thus already is in possession of them. Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 32."

36. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that "an exchange between an FPL executive and a Verizon executive" in April 2013 was "brief' and "confirmed that no resolution could be achieved" because "Verizon had no interest in moving in that direction."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 32."

37. All documents, including all internal communications, concerning the statement on page 50 of FPL's Response that "FPL made clear that while it must preserve its legal rights, it did not believe that litigation was mutually exclusive of settlement negotiations."

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response if FPL is in possession of any documents response to this request.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 32."

38. All documents, including all internal communications, concerning the statement on page 51 of FPL's Response that FPL requested "settlement discussions . . . at the executive level" on May 3, 2013, May 21, 2013, May 29, 2013, and October 29, 2013, and that Verizon rejected FPL's requests.

OBJECTION:

FPL objects to this request as it seeks privileged, attorney-client communications and work product. FPL also objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible

evidence in light of the definition and use of the term "concerning." FPL's internal communications have no relationship to the facts alleged. Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, please see the attached documents labeled as responsive to "Document Production No. 32."

39. All documents you reviewed or consulted in preparing FPL's answers to the Interrogatories and Requests for Production of Documents that Verizon served in this Pole Attachment Complaint proceeding.

OBJECTION:

FPL objects to this request on the grounds that it is overbroad, unduly burdensome, oppressive, harassing and not reasonably calculated to lead to the discovery of admissible evidence and incorporates herein all objections to the foregoing requests and all objections made in response to Verizon's interrogatories to FPL. Subject to and without waiving the forgoing objections, FPL will provide a response.

RESPONSE:

Subject to and without waiving the forgoing objections, FPL states that there are no documents that are responsive to this Request.

Respectfully submitted,

Charles A. Zdebski
Gerit F. Hull
Robert J. Gastner
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W., Suite 1200
Washington, D.C. 20006
(202) 659-6600
czdebski@eckertseamans.com
ghull@eckertseamans.com
rgastner@eckertseamans.com

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

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

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2015, I caused a copy of the foregoing **Florida Power and Light Company's Amended Objections and Responses to Verizon Florida's Requests for Production of Documents** to be served on the following by hand delivery, U.S. mail or electronic mail (as indicated):

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

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

Robert J. Gastner

Reply Exhibit 8

Wiley Rein LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

Christopher S. Huther
202.719.7197
chuther@wileyrein.com

August 21, 2015

VIA EMAIL

Charles A. Zdebski, Esquire
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW
12th Floor
Washington, DC 20006

Re: *Verizon Florida LLC v. Florida Power and Light Company*,
FCC Docket No. 15-73, File No. EB-15-MD-002,
Related to FCC Docket No. 14-216, File No. EB-14-MD-003

Dear Mr. Zdebski:

I am writing to urge FPL to supplement its responses to Verizon's discovery requests by September 4 so the parties can have comprehensive and well-informed settlement discussions when we meet with the Enforcement Bureau on September 15.

The problems with FPL's responses are systemic. Nearly every response—if not every response—fails to satisfy FPL's obligation to produce information and documents that are relevant to the material facts in dispute in this proceeding. This letter focuses on two particularly material deficiencies that could significantly and adversely affect the upcoming mediation:

1) although FPL claims that Verizon is "not similarly situated to <u>any</u> CLEC or cable company," Response at 28 (emphasis added), FPL has failed to produce the vast majority of its pole attachment agreements with Verizon's competitors, and

2) FPL has failed to support its quantifications of the value of benefits it alleges were "afforded to [Verizon] but not CLECs," *id.* at iii-v.

FPL has repeatedly claimed a desire to have Verizon's Pole Attachment Complaint decided on a full and complete record. *See, e.g.*, Mot. for Leave ¶ 1 (Apr. 1, 2015); Mot. for Discovery ¶¶ 2, 4 (Apr. 1, 2015); Mot. for Extension ¶ 7 (May 29, 2015). FPL has also complained that the parties did not previously negotiate following an exchange of "documentation that supports [Verizon's] position so that FPL might be in a position to understand and discuss the disputed issues." Response at 48. Absent supplementation, FPL's current production would nonetheless force Verizon to mediate *without* an understanding of the documentation that supports or

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undermines FPL's position—and *without* knowledge of a full and complete record on which this case may be decided.

It is therefore essential that FPL immediately remedy the deficiencies in its production. At a minimum, by September 4, FPL should remedy the deficiencies identified in this letter, which go to the core issue in dispute—the value of the unique benefits, if any, that Verizon receives under the joint use agreement. *See Verizon Fla. v. Fla. Power and Light Co.*, 30 FCC Rcd 1140, 1148-51 (¶¶ 2, 21, 24, 26) (E.B. 2015).

FPL's Pole Attachment Agreements: Request No. 1

In response to Interrogatory No. 1, FPL provided a list of 26 non-governmental entities that attach to its poles. But in response to Request No. 1, FPL produced just four redacted agreements in addition to the parties' Joint Use Agreement.

FPL must produce an unredacted copy of its pole attachment agreement with each non-governmental entity that attaches to its poles. These agreements provide highly relevant information about whether and to what extent the parties' Joint Use Agreement provides Verizon a net material advantage over its competitors—the central issue before the Commission. FPL has itself made claims about the contents of its agreements and has asserted that the terms and conditions of the parties' Joint Use Agreement do not similarly situate Verizon to *any* of them. Verizon has a right to review all of FPL's agreements to determine the validity of FPL's claims.

Under Commission rules, Verizon "may seek to obtain such access [to pole attachment agreements] through discovery." 47 C.F.R. § 1.1424. Indeed, "[i]n a complaint where an incumbent local exchange carrier . . . claims comparability to the pole attachment agreements of a telecommunications carrier or cable television system attacher, and it is not able to file such agreements, the respondent shall have the duty to file such agreements." *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217 n.660) (emphasis added). Should any agreement contain confidential information, the rules provide that "[c]onfidential information contained in any documents produced may be subject to the terms of an appropriate protective order." 47 C.F.R. § 1.1424.

FPL has ignored its duty and instead withheld the vast majority of its pole attachment agreements and heavily redacted the few that it did produce—even though FPL did not lodge an objection for reasons of confidentiality, the produced

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agreements do not include confidentiality provisions, and the parties entered into a confidentiality agreement on May 7, 2015. FPL should produce a complete and unredacted set of its pole attachment agreements without further delay.

FPL's Value Quantifications: Interrogatory No. 3 and Request Nos. 4, 6, 8, 9, 10, 11, 18, 20

FPL has argued that certain "specific benefits . . . establish that Verizon's annual payment of a joint use attachment fee of approximately $35 to $37 per pole is eminently just and reasonable." Response at iii-v. And FPL has placed significant monetary values on the alleged benefits. *Id.* But FPL has not produced a single payment record showing its receipt of a single dollar for any of the alleged benefits. And it has produced essentially no other documentation to support its quantifications.

For certain of the alleged "benefits," FPL provided nothing. In response to Interrogatory No. 3, for example, FPL merely stated that the requested information about amounts charged and collected from Verizon's competitors is not "available/readily available." FPL similarly refused to produce any information in response to Request No. 20, which sought information about the date on which Verizon's competitors were invoiced annual rent and the date on which they paid rent—information that is plainly relevant to FPL's claim that the timing of Verizon's rental payment provides Verizon a $145,056 annual benefit over its competitors. Response at 24.

For other alleged "benefits," FPL produced only hypothetical information to support claims about actual amounts charged and collected. In response to Request No. 9, for example, FPL produced a rate sheet rather than evidence that Verizon's competitors have paid "FPL's contractor at rates of $45 to $65 per hour and . . . fees ranging from $7.95 to $13 per pole" as FPL claimed. Response at 15 and Ex. A ¶ 20. In response to Request Nos. 4, 6, 11, and 18, FPL produced "job cost *estimates*"—some explicitly marked "void"—rather than evidence supporting its claims: that Verizon avoided per pole costs ranging from $500 to $1,000 for each pole installed, Response at 10; that the "typical charge to a third party applicant for the replacement of an FPL distribution pole with a taller stronger distribution pole is approximately $4,390," *id.* at 15; that the cost of pole "relocations mandated by Florida governmental entities [is] between $500 and $1,000 in each instance," *id.* at

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iv; and that FPL charges Verizon's competitors approximately $200 to install a pole bond when needed, *id.* at 22.

For other benefits, FPL confirmed that it has access to responsive information by producing some of it—but produced so little that it is difficult to believe that more information is not available. For example, FPL responded to Request Nos. 8 and 10 by producing four invoices (two per Request). It strains credulity to imagine that these four invoices are the sole basis for FPL's claims that Verizon has saved "more than Nine Million Dollars" by not paying permitting fees to FPL, Response at iii, and "more than $300 million" by avoiding "make-ready and engineering fees," *id.*

FPL's production is deficient in many ways that are not detailed in this letter and Verizon will soon raise them in a separate letter. But the deficiencies identified here are particularly troubling because they could thwart the mediation itself, which depends on the parties' candid discussion of disputed facts based on a full, complete, and accurate understanding of them. FPL should supplement its production by September 4.

Best regards,

Christopher S. Huther

cc: Maria J. Moncada, Esq. (by email)
Alvin B. Davis, Esq. (by email)
Robert J. Gastner, Esq. (by email)

PUBLIC VERSION

Wiley Rein LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

Christopher S. Huther
202.719.7197
chuther@wileyrein.com

September 2, 2015

VIA EMAIL

Charles A. Zdebski, Esquire
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW
12th Floor
Washington, DC 20006

Re: *Verizon Florida LLC v. Florida Power and Light Company*,
FCC Docket No. 15-73, File No. EB-15-MD-002,
Related to FCC Docket No. 14-216, File No. EB-14-MD-003

Dear Mr. Zdebski:

I have not heard from you about my August 21 letter, which identified significant deficiencies in FPL's discovery responses that must be cured by September 4 so that the parties can have a productive and well-informed meditation beginning on September 15. I am writing this letter to reiterate Verizon's need for the documents and information identified in the August 21 letter, and to identify additional deficiencies in FPL's discovery responses. FPL should promptly cure these deficiencies—in no event later than September 10—so the upcoming mediation is based on a full and complete record.

Other Entities That Attach To FPL's Poles: Interrogatory Nos. 1, 2, 4

FPL produced incomplete information about the other entities that attach to its poles. This information is highly relevant to the comparative rate-setting analysis required by the *Pole Attachment Order* and the Enforcement Bureau's February Memorandum Opinion and Order.

In response to Interrogatory Nos. 1 and 2, FPL produced information covering an unreasonably short time period. FPL made claims in its Response about the entities that were attached to its poles as far back as 1975, but FPL appears to have improperly restricted the "relevant time period" in its response to Interrogatory No. 1 to its "most recent billings." In response to Interrogatory No. 2, FPL included 1998 as the earliest known date that another entity had attachments on its poles, but FPL produced license agreements that were dated as early as 1984.

In response to Interrogatory No. 2, FPL unreasonably withheld pole counts for the entities attached to its poles. FPL has claimed a value for the alleged "benefits" as though they were provided to Verizon's competitors every time they made an attachment to a pole, but has acknowledged that some "benefits" are only provided

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when needed. Verizon is therefore entitled to compare its competitors' total pole counts to the pole counts for which they were provided the alleged "benefits" so that it can rebut FPL's valuation methodology and properly estimate the value of "benefits" at issue.

In response to Interrogatory Nos. 2 and 4, FPL refused to provide information about other ILECs that have facilities on FPL's poles. This information is relevant to FPL's claim that the rates it demands from Verizon did not result from FPL's superior bargaining power. FPL has "noted" that it charges other ILECs a rate that is different from the rate it has invoiced Verizon. Verizon is entitled to see that rate, its corresponding terms and conditions, and the associated pole counts so it can judge the effect of FPL's bargaining power on the rates it demands from Verizon. If the information is confidential, FPL can produce it pursuant to the terms of the parties' confidentiality agreement.

Rental Rate Calculations: Interrogatory No. 5, Request Nos. 5, 21, 22, 23, 25

FPL produced incomplete information about its rate calculations, which are undisputedly relevant to the calculation of a just and reasonable rate in this case.

In response to Request Nos. 21 and 22, FPL failed to produce any information about several rates it relies on in its Response. In response to Request No. 22, FPL did not produce calculations, inputs, or supporting documentation for the $9.31, $9.78, $14.11, $14.83, and $45.45 rates cited in the Response. In response to Request No. 21, FPL did not produce calculations, inputs, or supporting documentation for its 2011 through 2014 invoiced rates, claiming that relevant documents "were previously produced to Verizon in the state court litigation." This is not true. Verizon has sought information in this proceeding that either was not requested or was not produced in the state court proceeding. Most obviously, discovery in state court was limited to the claims in FPL's state court complaint, which does not include claims for additional 2013 and 2014 rent. In addition, FPL has not produced support for each of the inputs in the table at Attachment C to Exhibit G of the Response (which is referenced in Request No. 21) or the contract, property accounting, agreement, finance department, and other information referenced below the table.

In response to Interrogatory No. 5 and Request Nos. 5, 22, 23, and 25, FPL produced calculations, but no inputs or supporting documentation, for certain rates. Request No. 25 asked for supporting documentation for the inputs to Mr.

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Kennedy's Exhibit 4 calculation of rent paid by Verizon under the Joint Use Agreement. In response, FPL only re-produced the referenced exhibit, which does not contain any information regarding its inputs. Interrogatory No. 5 and Request Nos. 5, 22, and 23 requested supporting documentation for the inputs to FPL's rate calculations. FPL admitted that it relied on "actual information from FPL's books and records," some of which is not publicly available, to populate its calculation of "the net investment per pole and the capital carrying charge rate (depreciation, A&G and O&M expenses, taxes and cost of capital)," but did not produce any of that "actual information."

Information About Costs: Request Nos. 12, 13, 16, 27

FPL produced incomplete information about costing claims in its Response. In response to Request Nos. 12 and 13, FPL produced a series of "estimates"—some marked "void do not use"—rather than documents showing that FPL has incurred the specific costs claimed. In response to Request No. 16, FPL did not produce any evidence of costs incurred to negotiate and obtain easements and rights-of-way that authorize Verizon's, but not its competitors', use of an FPL pole. And in response to Request No. 27, FPL did not produce any supporting documentation for the inputs to its calculation of a 4.75 percent cost of capital.

Allegations About Verizon's Facilities: Interrogatory No. 7; Request Nos. 14, 24

FPL's production is deficient with respect to its claims about Verizon's facilities. In response to Request No. 14, FPL did not produce any evidence that Verizon's facilities, in fact, "require more space than their competitors due to sag." Instead it provided excerpts from a 1999 training manual.

In response to Interrogatory No. 7 and Request No. 24, FPL did not provide information about any of the locations that it claims to be "aware" of "where Verizon uses 4 feet of space on a pole." It also failed to provide identification numbers for the poles in the photographs attached to each of its Responses. It also provided information about just two of seven photographs attached to its April 24, 2014 Response, and the information it provided conflicts with the information provided about seemingly identical photographs attached to FPL's June 29, 2015 Response.