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

VERIZON FLORIDA LLC,	*	
	*	
Complainant,	*	Docket No. 15-73
	*	File No. EB-15-MD-002
v.	*	
	*	Related to
FLORIDA POWER & LIGHT	*	Docket No. 14-216
COMPANY,	*	File No. EB-14-MD-003
	*	
Respondent.	*	
	*	

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Accepted/Filed
MAR 14 2016
Federal Communications Commission
Office of the Secretary

RESPONDENT FLORIDA POWER & LIGHT COMPANY'S
REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE RECORD SUPPLEMENT

Respondent Florida Power & Light Company ("FPL"), by and through its attorneys, respectfully submits this Reply in Support of FPL's Motion for Leave to File Record Supplement ("Motion to Supplement"). In further support hereof, FPL states as follows.

1. FPL's Motion to Supplement has the modest but important goal of providing the Commission with a single additional relevant document to assist its evaluation of the reasonableness of the rate in the parties' joint use agreement. That single document would provide the Commission with a more complete and accurate record on which to base its decision. Given the limited nature of FPL's Motion to Supplement, Verizon's strident and hyperbolic opposition to FPL's request is, at first glance, puzzling. Upon further reflection, however, the pains to which Verizon goes to studiously avoid two elements – (i) any dispute that Verizon had the survey data in its possession prior to filing two complaints with the Commission omitting the survey data; and (ii) any hint of prejudice as a result of allowing the record supplement —

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illuminate Verizon's tactical efforts to avoid a full and truthful record for the Commission's decisional basis.

2. Verizon had the results of the 2011/2012 filed survey since shortly after the survey was completed.[1] Nowhere in its Opposition does it dispute that fact or explain its reasons for not including the survey data in at least one of two complaints it filed with the Commission. The closest Verizon comes to an explanation is that it had "no responsibility" to provide the data. That statement is as wrong as Verizon's efforts to exclude the survey data. The Commission's rules, of course, obligate Verizon to be truthful and accurate in the provision or omission of material factual information:

> § 1.17 Truthful and accurate statements to the Commission.
> (a) In any investigatory or adjudicatory matter within the Commission's jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall;
> (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or **intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading**; and
> (2) In any written statement of fact, provide material factual information that is incorrect or **omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading** without a reasonable basis for believing that any such material factual statement is correct and not misleading.[2]

3. Verizon's Opposition is similarly devoid of any argument that it will suffer prejudice from the addition of one additional document to the record. Again, Verizon approaches the issue only obliquely. The closest it comes to identifying some form of harm is a claim that FPL is using the record supplement to "create more . . . . delay" and that should not be

[1] Florida Power & Light Company's Motion for Leave to File Record Supplement, Feb. 29, 2016, 15-73, EB-15-MD-002 ("Motion to Supplement"), ¶ 13 n.3.
[2] 47 C.F.R. § 1.17 (emphasis added).

allowed.[3] Verizon also makes the weak related argument that the "record . . . has been closed for over three months."[4] However, as FPL has argued and the Commission has acknowledged, any delay only arguably prejudices FPL, while Verizon has the benefit of retaining over $6.5 million and counting in joint use fees unless and until this matter is resolved and/or Verizon is ordered to pay FPL. Moreover, that the record has been closed for "over three months" is insignificant in proportion to the effort to build a complete, thorough and factual record in a dispute that has been extant between the parties for nearly five years. Indeed, there is no reason at all to believe that the mere filing of one additional document in the record will delay the Commission's process in the slightest. If it does, FPL believes that the benefit to the record and the Commission's decision-making greatly outweigh any prejudice any additional small period of time will cause FPL.

4. Verizon's Opposition also contains a multitude of misstatements and mischaracterizations that FPL is compelled to address briefly.[5] For example, Verizon's Opposition repeatedly accuses FPL of seeking to revise its previous arguments. However, FPL's Record Supplement does not contain any new argumentation; it simply provides the Commission with one additional, directly relevant document. It is FPL's position that that document speaks for itself, and the Commission is more than capable of evaluating it without additional briefing.

5. Verizon's strenuous opposition to the inclusion of additional evidence is particularly odd given the nature of this proceeding. Verizon is asking the Commission to rely on equity in adjudicating, based on all facts and circumstances, the justness and reasonableness of the rate in the parties' joint use agreement. It also claims that this proceeding is of great

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[3] Verizon Florida's Opposition to Florida Power & Light Company's Motion for Leave to File a Record Supplement, March 7, 2016, 15-73, EB-15-MD-002 ("Opposition"), p. 3.
[4] Opposition, p. 6.
[5] *Id.*

significance to the communications industry and national broadband deployment, asking the Commission to issue a decision that "will send a valuable signal to the industry that the Commission will not tolerate efforts to undermine broadband deployment . . . ."[6] At the same time, however, Verizon seeks to prevent the Commission's consideration *of the actual data underlying the potential rates and Commission decision,* to the detriment of the "industry." Under Verizon's logic, this proceeding of great significance should not be cluttered by relevant and consequential facts.

6. Throughout this proceeding, Verizon has had tactical reasons for avoiding any mention of the average number of attaching entities in either the complaint or the accompanying declarations in that this input directly affects the rate.[7] Similarly, in the prior Commission proceeding between the parties, Verizon did not discuss the average number of attaching entities. Instead, its witness simply plugged the number "5" into his rate calculation without any rationale or explanation[8]—despite that Verizon possessed the results of the most recent (2011/2012) field survey jointly commissioned by FPL and Verizon.[9] Shockingly, Verizon is now going even further and actively trying to prevent the Commission from reviewing those results.

7. Similar to its treatment of the average number of attaching entities in its rate calculation, Verizon also purported to rely on the survey data regarding average pole height, inserting 41 feet as its input to the Commission's Florida. The survey document that FPL seeks

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[6] Pole Attachment Complaint Reply, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002 (Nov. 24, 2015)("Verizon Reply"), p. 2.

[7] Pole Attachment Complaint, March 13, 2015, EB-15-MD-002 ("Complaint"), 44-47. Even Verizon's rate witness did not address the average number of attaching entities in this proceeding. *Id.*, Exhibit A, Second Affidavit of Mark S. Calnon, Ph.D.

[8] Pole Attachment Complaint, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 14-216, File No. EB-14-MD-003 (Jan. 31, 2014)("Prior Complaint"); *see also* Pole Attachment Complaint, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002, Related to Docket No. 14-216, File No. EB-14-MD-003 (Mar. 13, 2015)("Complaint"), Exhibit B, Affidavit of Mark S. Calnon, Ph.D., ¶ 9.

[9] Response to Pole Attachment Complaint, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002, Related to Docket No. 14-216, File No. EB-14-MD-003 (June 29, 2015) ("FPL Response"), Ex. C Verizon Florida LLC's Responses to Florida Power and Light Company's Requests for Production of Documents, Response to Request No. 20 (referring to the "2011 pole attachment survey results that FPL provided to Verizon.").

to include will set the record straight. Consistent with FPL's undisputed testimony, it will show that Verizon blithely chose to use came not from the data analysis or survey evidence, but from a portion of a 2010 FPL worksheet that identified a sample population of three different sized poles installed in a one-year period. This worksheet did not purport to classify the heights for the 67,000 FPL poles to which Verizon is attached.[10]

8. Despite the lack of focus on the actual data by either party in this proceeding, Verizon now claims that FPL is being disingenuous in explaining that neither party made the mechanics of calculating the "old telecom rate" a focal point of their briefs.[11] Even Verizon disagrees with itself, however, stating as follows in its Reply in this proceeding: "Setting Verizon's "just and reasonable" rate **requires an answer to just one question**: what value, if any, is there associated with the "unique benefits" that FPL claims that Verizon has received under the Joint Use Agreement, both before and after the Agreement's termination in 2012."[12] Indeed, Verizon's two briefs focus almost exclusively on this issue and provide little or no analysis of the calculation of the "old telecom rate." Thus, Verizon's own filings in this proceeding completely undermine any notion that FPL is not proceeding in good faith regarding its request to supplement the record.

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[10] FPL Response at 43; FPL Response, Ex A 2015 Declaration of Thomas J. Kennedy on Behalf of Defendant Florida Power and Light Company ("2015 Kennedy Decl.") ¶ 33; FPL Response, Ex. A, Attachment 1, 2014 Declaration of Thomas J. Kennedy on Behalf of Defendant Florida Power and Light Company ("2014 Kennedy Decl."), ¶ 39.

[11] Verizon Opposition, pp. 4-5.

[12] Verizon Reply, p. 1 (emphasis added).

For the foregoing reasons, FPL respectfully requests that the Bureau grant FPL the following: 1) leave to file this reply; 2) leave to file the record supplement it previously submitted to the Commission on February 29, 2016; and 3) such other and further relief as the Bureau deems proper.

Respectfully submitted,

CZ /RJG

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