

1 Q And in other words, you view it as the  
2 cost for Gulf Power to go out and obtain, using a new  
3 pole, the equivalent space occupied by one of  
4 complainants' attachments, right?

5 A Yes.

6 Q Okay. And in your view of marginal costs  
7 then, because you equate it to replacement cost, the  
8 marginal cost, using your understanding of a cable  
9 operator's attaching to a brand new pole, is the same  
10 as the marginal cost of a cable attachment to a pole  
11 that might be decade olds, right?

12 A Yes, and under my methodology, it provides  
13 the same benefit --

14 Q Okay.

15 A -- to the cable attacher.

16 Q If I told you that the United States  
17 Supreme Court has referred to a marginal cost in the  
18 context of full attachments as the minimum measure  
19 under the FCC rate formula and being equal -- that is  
20 quoting from the statute, the additional cost to the  
21 utility of providing pole attachments, and the Supreme  
22 Court has said this minimum measure is equal to the

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1 equivalent of marginal cost, you're not familiar with  
2 that definition or understanding by the Supreme Court,  
3 are you?

4 A No, I've not read that before.

5 Q Okay. But your classification of marginal  
6 cost of pole attachments as being equal to replacement  
7 costs is something different than any definition which  
8 equates marginal cost to the minimum possible cost to  
9 the utility under the statutory range that the FCC can  
10 set, right?

11 A I believe those would be different.

12 Q Okay. Do you know -- I know you had some  
13 familiarity with the Alabama Power opinion. Do you  
14 know that the court there said that the FCC cable rate  
15 formula provides payment to the utility of much more  
16 than the utility's marginal costs?

17 A I believe I read something to that effect  
18 in your trial brief.

19 Q Okay. Now if marginal costs as a term  
20 were defined as the incremental cost that Gulf Power  
21 incurs as a result of having a cable attachment on a  
22 pole that it would not incur if the cable attachment

1 were not there, then I wanted to ask -- you don't know  
2 what the figures are for the actual incremental annual  
3 expense caused by a cable attachment to Gulf Power, do  
4 you?

5 A I do not know what the numbers would be  
6 under that definition.

7 Q Okay. You don't know how much money Gulf  
8 Power has received in recent years from the  
9 complainant cable operates in make-ready payments, do  
10 you?

11 A No, I don't.

12 Q Okay. And you don't know if the  
13 complainant cable operators have caused Gulf Power in  
14 actuality to lose any money that it would have gotten  
15 had the cable attachments not been there, do you?

16 A My understanding is that Gulf has suffered  
17 a loss of space, and that does have some value.

18 Q Okay. I would ask if you could listen to  
19 my question. You don't know if the cable operators  
20 have caused Gulf Power in actuality to lose money out  
21 of pocket that they would have gotten had the cable  
22 attachers not been there, do you?

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1           A       I do know that there is some additional  
2 expense incurred by Gulf Power for the cable attacher  
3 to be there.

4           Q       That -- that's a different point than my  
5 question --

6           A       Okay.

7           Q       You're not aware --

8           MR. LANGLEY: Your Honor, unless she had  
9 finished her answer, she should be entitled to finish  
10 that before the next question.

11          MR. COOK: And I did not mean to cut the  
12 witness off. I'm sorry.

13          JUDGE SIPPEL: Do you want to say  
14 something further?

15          THE WITNESS: I've lost my train of  
16 thought here, so if you'll let him go back.

17          MR. COOK: I'll -- I'll -- I'll come back  
18 to that in a -- in a minute.

19          BY MR. COOK:

20          Q       You understand that the FCC's pole rate  
21 methodology was designed to make the utility company  
22 pole, right?

1           A       I understand that that's your  
2 interpretation of it. Yes, I would --

3           Q       Okay. If I could direct you to page 118 -  
4 -

5           JUDGE SIPPEL: Is there anything you want  
6 to add to that --

7           THE WITNESS: I would not agree with that  
8 characterization.

9           JUDGE SIPPEL: Let her finish her answer,  
10 Mr. Cook.

11          MR. COOK: Yes, Your Honor.

12          THE WITNESS: Are you referring me to a  
13 document I have up here?

14          JUDGE SIPPEL: All right. Let -- he'll  
15 tell you.

16          MR. COOK: Okay.

17          THE WITNESS: Oh, okay.

18          MR. COOK: If -- if I could direct the  
19 witness' attention to Complainant's Deposition  
20 Excerpts page 156.

21          THE WITNESS: And is that in the bound --

22          MR. COOK: That's in the bound one, and

1 then within that -- I'll let you get to page 156 --

2 THE WITNESS: All right.

3 MR. COOK: -- and then within that, to  
4 page 118, the upper right-hand corner --

5 THE WITNESS: Okay.

6 MR. COOK: -- of your deposition, there --  
7 the preceding discussion talks about FCC calculations,  
8 and I'd like to read a question on page 118 starting  
9 with page six -- line six. (Reading) "Question. Do  
10 you have some passing knowledge. Answer. Knowledge  
11 was passed to me that the original formulas devised by  
12 the FCC for cable companies were designed to give that  
13 industry in the boos so to speak and that the  
14 calculation was not derived to make the utility  
15 company whole, and part of our argument here is that  
16 the just compensation includes an allocation of the  
17 whole pole, and that is a more fair and just  
18 compensation" (end reading). Did I read that right?

19 THE WITNESS: You did.

20 BY MR. COOK:

21 Q So your replacement cost methodology  
22 requires cable to pay more than the FCC formula,

1 right?

2 A Yes.

3 Q Let's look at page six of your testimony.

4 A I'm there.

5 Q You start with a rate of \$38.00 for 2000,  
6 right?

7 A Yes.

8 Q And, by the way, is it correct to say your  
9 -- you have an understanding of what the rates are  
10 that the complainant operators have been paying over  
11 the last five or six years?

12 A Prior to the break, I mentioned that it  
13 was less than \$10.00. I don't --

14 Q Okay.

15 A -- I don't have the exact numbers per  
16 complainant.

17 Q Okay. Now on page 13 of your testimony,  
18 you had testified to the differences between the  
19 amounts paid by complainants and the amounts owed  
20 under the replacement cost calculations?

21 A Yes, I did.

22 Q Can -- can you say today sitting here

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1 under oath what those rates are that were actually  
2 paid by the complainants that went into your  
3 calculation of the differences.

4 A I don't have those memorized. These  
5 numbers were prepared for me by our accounting  
6 department at Gulf Power and -- and obviously would  
7 include the exact rates per company.

8 Q And so you don't know if I told you that  
9 the range or ranges currently being paid, and this was  
10 Your Honor's question, is between \$5.65 per pole per  
11 year and \$6.30, does that sound --

12 A I would --

13 Q -- familiar --

14 A -- I would say that's reasonable.

15 Q Okay. So going back to page six of your  
16 testimony, this \$38.00, that's about six times the  
17 rate being paid by the cable operators before Gulf  
18 demanded payment based on replacement costs, right?  
19 Thirty-eight is about six times the \$6.00 maximum pole  
20 rate currently being paid?

21 A Yes, that's correct math --

22 Q Okay. And then your rate goes up to

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1 \$40.00 in 2001? Your calculation then goes down to  
2 \$34.00, then goes up \$11.00 in one year to \$45.15,  
3 right?

4 A Yes, it does.

5 Q And then it goes up some \$14.00 in one  
6 year to \$59.27, right?

7 A Yes, it does.

8 Q Then down a few dollars to \$55.00 in  
9 2005, and then to the rate of 2006 for \$64.98, right?

10 A Yes.

11 Q And that 60 -- almost \$65.00 rate, that  
12 would be about ten times the maximum pole attachment  
13 rate currently being paid by complainant operators of  
14 about \$6.00, right?

15 A Yes.

16 Q Okay. And these rates are all based on  
17 Gulf's view that cable operators should take on a  
18 greater share of the expenses associated with  
19 maintaining a pole, right?

20 A If you're referring to greater than the  
21 FCC formula allows, yes.

22 Q Okay. And I believe you testified,

1           though, at your deposition you will not go so far as  
2           to say that Gulf will lose money on pole attachments  
3           unless it receives the annual rents in your  
4           replacement calculations, right?

5           A        Would you show me that place in my  
6           deposition?

7           Q        Okay. If you would turn to complainant's  
8           Deposition Excerpts page 156.

9           A        Yes.

10          Q        And then within that to page 118. I'll  
11          direct you to line 16. (Reading) "Question. Are you  
12          saying that the utility company is losing money  
13          hosting a cable operator's attachment unless a  
14          replacement cost is or rate is paid? Answer. I'm  
15          saying they are not being fully compensated with the  
16          rate that they deserve. I will not go so far as to  
17          say that they are losing money" (end reading). Did I  
18          read that right?

19          A        You have.

20          Q        Okay. No further questions, Your Honor.

21                    JUDGE SIPPPEL: Okay. Does the Bureau have  
22                    any questions of this witness?

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1 MS. GRIFFIN: No, Your Honor, we don't.

2 JUDGE SIPPEL: Okay. Thank you, Ms.  
3 Griffin. Redirect?

4 MR. LANGLEY: Your Honor, we have no  
5 redirect.

6 JUDGE SIPPEL: Okay. That leaves only me,  
7 and I don't have any questions.

8 THE WITNESS: Okay.

9 JUDGE SIPPEL: So thank you very much, Ms.  
10 Davis. You're excused as a witness. Do we have --  
11 can we start with another witness?

12 MR. LANGLEY: He's in the witness room.  
13 We have sent a messenger.

14 JUDGE SIPPEL: Okay. Let's go off the  
15 record.

16 (Whereupon, the matter went off the record  
17 at 11:04 a.m. and back on the record at 11:06 a.m.)

18 JUDGE SIPPEL: We are on the record.  
19 Okay. You all set? We're back on the record. We do  
20 have a witness in the -- in the witness chair, and I'm  
21 going to swear him in in just a minute, but as I  
22 understand is you have -- Mr. Seiver, you have

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1 requested copies of Ms. Davis' notebook references  
2 which have her written comments on -- as to those  
3 specific pages that she used in her testimony? Is  
4 that correct?

5 MR. SEIVER: That is correct, Your Honor.

6 JUDGE SIPPEL: And you're going to make  
7 that available to her --

8 MR. LANGLEY: We will provide --

9 MR. SEIVER: I'm sorry -- to Mr. Seiver?

10 MR. LANGLEY: We will. We'll provide that  
11 to him no later than tomorrow morning.

12 JUDGE SIPPEL: All right. No problem.  
13 Thank you. Mr. Brown would you please rise and raise  
14 your right hand. Do you swear or affirm the testimony  
15 you are about to give in this case will be the truth,  
16 the whole truth, and nothing but the truth?

17 THE WITNESS: Yes, sir, I do.

18 JUDGE SIPPEL: Thank you. Please be  
19 seated.

20 WHEREUPON,

21 BENJAMEN AUGUSTINE BOWEN

22 was called as a witness by Counsel for Respondent and,

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1 having been first duly sworn, assumed the witness  
2 stand, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. LANGLEY:

5 Q Mr. Bowen, would you state your full name,  
6 please?

7 A Benny Augustine Bowen, Jr.

8 Q Are you the same Ben Bowen that has  
9 submitted pre-filed written direct testimony in this  
10 case marked as Gulf Power Exhibit B?

11 A Yes, sir.

12 Q Do you have any corrections that you need  
13 to make to your pre-filed written direct testimony?

14 A Yes, sir, I do.

15 Q Would you walk us through those, please?

16 A Sure. Page seven, line five, complainants  
17 are attached -- are in the 40-foot poles. If we could  
18 strike the 40-foot poles and insert 35 to 45-foot  
19 tall.

20 Q Okay. What is your next change?

21 A Okay. Page 14, line nine. The second  
22 word in that line is drop. If we could strike that

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1 and insert drip.

2 JUDGE SIPPEL: So it would read light drip  
3 loop?

4 THE WITNESS: Yes, sir.

5 JUDGE SIPPEL: Thank you.

6 BY MR. LANGLEY:

7 Q Your next change, Mr. Bowen?

8 A Page 20, line 22, inside the parenthetical  
9 GTC owns very few comma, if any poles. And then  
10 insert to which Gulf Power is attached.

11 JUDGE SIPPEL: I'm sorry. Would you give  
12 me that again.

13 THE WITNESS: Yes, sir. GTC owns very few  
14 poles, comma, if any poles. And then insert to which  
15 Gulf Power is attached.

16 JUDGE SIPPEL: That's -- that's in the  
17 parentheses, is that correct?

18 THE WITNESS: Yes, sir.

19 JUDGE SIPPEL: Got it.

20 THE WITNESS: Thank you.

21 BY MR. LANGLEY:

22 Q Your next change, Mr. Bowen?

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1           A       Page 22, line 13, strike unregulated  
2       communications companies.

3           Q       And why are you making that change?

4           A       It's redundant. It's already -- it's  
5       covered in the next three listed items.

6           Q       Do you have any other changes on that  
7       page?

8           A       Yes, sir, I do. Page 19 -- excuse me --  
9       page 22, lines 19 and 20, the sentence (reading) "Some  
10      telecommunications carriers, like Knology, Inc., pay  
11      the higher FCC telecom rate" (end reading).

12          Q       And you're striking that entire sentence?

13          A       Yes, sir.

14          Q       Why is that?

15          A       They should be paying that and they -- it  
16      -- they're just not.

17          Q       What is your next change?

18          A       Page 29, the last line on page 29, line  
19      23, (reading) "The NESC comma" (end reading). And  
20      then strike and. (Reading) "Gulf Power specs comma"  
21      (end reading). And then insert and any other  
22      applicable codes or laws period.

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1 Q So it should read all of these criteria  
2 come from the NESC comma, Gulf Power specs, and other  
3 applicable codes or laws?

4 A Yes, sir.

5 Q And why are you making that change, Mr.  
6 Bowen?

7 A Well, it was just -- it was -- it -- it  
8 reflects the contract.

9 Q All right. Any other changes?

10 A Yes, sir. Page 33, line 14, strike each  
11 and then insert 38 of these poles meet. So I guess we  
12 need to strike the s of meet -- meets at least one of  
13 the credit criteria set forth. So strike each, insert  
14 38 of 40. And on line 16, instead of 40, insert 38.

15 Q Why are you making that change?

16 A There was an issue with two of the -- two  
17 of the poles there.

18 Q Do you remember which ones?

19 A Yes. It was pole 18 and pole 35.

20 Q Those are pole numbers in the exhibit that  
21 you --

22 A Yes. Yes, sir.

1 Q -- mentioned in your testimony?

2 A Yes, sir.

3 Q Do you remember why specifically there was  
4 an issue with each of those poles?

5 A Yes. Pole 35 on my review when I went out  
6 to check the -- the -- the ones that were selected by  
7 -- that Osmose did the work-ups on, they're -- Gulf  
8 Power has a blaze on the poles and -- for  
9 identification purposes -- and Bell South -- it was  
10 mismarked. The pole was -- the tag to the pole was  
11 missing, and it was a Bell South pole.

12 Q So is the reason you're withdrawing it  
13 because it's not actually a Gulf Power pole?

14 A That -- that's correct.

15 Q What about the other one?

16 A Oh, the -- I believe that the Osmose just  
17 mis -- misinterpreted the violation on that pole?

18 Q Do you remember what kind of violation  
19 they had detected?

20 A Yes. It was -- it was -- Yes, sir. It  
21 was the -- the four inch separation between the  
22 communication drops, and it wasn't pole to pole. It

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1 was from pole to house.

2 Q So they had applied that spec between two  
3 communication drops going to a house?

4 A Correct.

5 Q And the poles that we're referencing, do  
6 you -- can you identify the Exhibit number, Gulf Power  
7 Exhibit number in which those are located?

8 A The pole -- all I know is the pole number.

9 Q I'm talking about the Gulf Power Exhibit  
10 number. If you'll look in -- if you'll look at the  
11 next question, I think you can give the answer.

12 A Oh, 42. Sorry.

13 Q Do you have any further corrections, Mr.  
14 Bowen?

15 A Yes. Page 38, line 18, strike the word  
16 and, and insert cost -- cost methodology.

17 Q And your next change?

18 MR. COOK: Could you say that one again --

19 MR. LANGLEY: Mr. Bowen, do you remind  
20 repeating the change?

21 THE WITNESS: Certainly. Sure. Page 38,  
22 line 18, strike and, insert cost. Okay. And on page

1 39, line number one, we have and then insert two per  
2 form. Insert two.

3 BY MR. LANGLEY:

4 Q Does that complete your changes?

5 A Yes, sir, it does.

6 Q With those changes, if I were to ask you  
7 the same questions today, would you provide the same  
8 answers?

9 A Yes, sir, I would.

10 MR. LANGLEY: Your Honor, we'd move into  
11 evidence Gulf Power Exhibit B, which is the pre-filed  
12 written direct testimony of Ben Bowen.

13 JUDGE SIPPEL: Okay. Gulf Power Exhibit  
14 B is marked for identification as your Exhibit B.

15 (Whereupon, the aforementioned  
16 document was marked for  
17 identification as Gulf Exhibit  
18 B.)

19 JUDGE SIPPEL: Is there any objection to  
20 its receipt into evidence at this time?

21 MR. SEIVER: Not at this time, Your Honor.

22 JUDGE SIPPEL: Well, at any time.

1 MR. SEIVER: I think I may have a renewed  
2 objection about certain parts after we get through it.

3 JUDGE SIPPEL: Fine. You can move to  
4 strike if that's --

5 MR. SEIVER: Yes --

6 JUDGE SIPPEL: -- if it comes up that way,  
7 please.

8 MR. SEIVER: Thank you.

9 JUDGE SIPPEL: And Gulf Power Exhibit B  
10 for identification is hereby received into evidence as  
11 Gulf Power Exhibit B subject to Mr. Seiver's right to  
12 -- to move to strike portions as we go through the  
13 testimony.

14 (Whereupon, the aforementioned  
15 document, having previously  
16 been for identification as Gulf  
17 Power Exhibit B, was received  
18 in evidence.)

19 MR. LANGLEY: in that case, Your Honor, we  
20 tender the witness for cross examination.

21 JUDGE SIPPEL: Thank you, Mr. Langley.  
22 Okay. Your witness for cross examination then, Mr.

1 Seiver.

2 MR. SEIVER: Thank you, Your Honor. Good  
3 morning, Mr. Bowen. It's still morning. Good  
4 morning.

5 THE WITNESS: Good morning.

6 MR. SEIVER: Nice to see you again.

7 THE WITNESS: Nice to see you.

8 MR. SEIVER: I'm going to try and deal  
9 with some of the changes. I was writing frantically  
10 to try and keep up, but let me see if I can get to a  
11 few of those.

12 THE WITNESS: Okay.

13 CROSS EXAMINATION

14 BY MR. SEIVER:

15 Q Let me understand then before I get into  
16 the details of your testimony that you've gone and re-  
17 read the testimony and looked at the exhibits to  
18 confirm those things that you've testified about?

19 A I've re-read the testimony, yes, sir, and  
20 made these corrections.

21 Q It was your -- you were the one that  
22 discovered the problems or the variations what Osmose

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1 had done? Is that right -- that's in the poles that  
2 you defined or described that were in Exhibit 42?

3 A Yes, sir.

4 Q No on the one that you mentioned that was  
5 I thought you used the term blaze? Is that the right  
6 word?

7 A I used the term blaze.

8 Q What does that mean?

9 A Blaze is an identifying mark that  
10 manufacturer puts on a -- on a pole, and they,  
11 depending on who the company is, they would also have  
12 an identifying mark in addition to putting the -- the  
13 -- ever since referred to as a birthmark -- the --  
14 something identifying the company that -- that owns  
15 it.

16 Q So on pole, and we're referring to it as  
17 pole 35, which for the record is in Defendant's  
18 Exhibit -- or Gulf Power's Exhibit 42 at page 69, that  
19 pole is not a -- a Gulf Power pole but is instead a  
20 Bell South phone pole? Is that right?

21 Q If you're talking about pole number 35,  
22 then I believe I would agree with that, but I don't

1 know what -- I'd have to flip through pages to find  
2 out if we're on the right page or not.

3 MR. SEIVER: Just so the record's clear,  
4 may I have defendant's exhibit to take to him. Is  
5 this-- is this it?

6 THE WITNESS: I think this may be on here.

7 MR. SEIVER: Oh, it's right here -- 42.

8 THE WITNESS: That's at 62?

9 MR. SEIVER: Sixty-nine.

10 THE WITNESS: Okay.

11 JUDGE SIPPEL: What are -- what are you  
12 looking at now?

13 THE WITNESS: He's looking at the page  
14 number. I gave him the pole number. He wants the  
15 page number.

16 JUDGE SIPPEL: Oh, I see.

17 MR. SEIVER: This is just so the record  
18 reflects what part of Exhibit 42 is the pole --

19 JUDGE SIPPEL: Right. I understand. I  
20 understand. Are you going to have questions on this?

21 MR. SEIVER: I just wanted to make sure  
22 that he agreed that this was the pole he was talking

1 about in the exhibit. Is that the pole?

2 THE WITNESS: Yes, Mr. Seiver, it is.

3 JUDGE SIPPEL: Well, what -- the pole  
4 appears on what page? Sixty-nine?

5 THE WITNESS: The photo actually appears  
6 on page 70, but the data on it from Osmose appears on  
7 page 69.

8 JUDGE SIPPEL: Okay. And does it have a -  
9 - does the pole have a pole number? Did you give it  
10 a pole number or --

11 THE WITNESS: Well, that -- yes, it's pole  
12 number 35.

13 MR. LANGLEY: Your Honor, there were --  
14 there were two poles that Mr. Bowen had mentioned. I  
15 don't want the record to be unclear about which --  
16 which pole --

17 MR. SEIVER: I am going to get to te next  
18 one. I just wanted to do this one first.

19 JUDGE SIPPEL: Thank you. Thank you.

20 BY MR. SEIVER:

21 Q And Mr. Bowen, on -- on this particular  
22 pole, you discovered that it was a Bell South pole

1 when you went out to physically visit the pole? Is  
2 that right?

3 A Yes, sir.

4 Q And you said you physically visited all  
5 the poles?

6 A I did not say that.

7 Q I'm sorry. Physically visited the -- all  
8 the poles that Gulf Power had designated in the 40  
9 Osmose poles?

10 A I have not said that.

11 Q You just randomly selected a couple of  
12 them?

13 A I -- I would --

14 JUDGE SIPPEL: Maybe it would help if you  
15 asked him what he did in terms of checking poles?

16 BY MR. SEIVER:

17 Q What did you do to check them -- the  
18 poles?

19 A I went to virtually all of them. There  
20 was a few that I did not get to, and I -- I -- I can't  
21 tell you which ones those were, but there was a few  
22 that I did not. But this was one of the ones I did get