

1 are set forth in Exhibit 42 have an element of time or  
2 fault attributed?

3 A The -- to answer y our question, there's  
4 an element of time, and it was taken on 4/29/05 at  
5 12:33 in the afternoon in 30 seconds. That was the  
6 time that that photo was taken. And the clearance  
7 problems on that pole at the time that it was taken  
8 were identified as 52 inches which meets the  
9 definition that we gave Osmose for crowding, and it  
10 meets the 30-inch definition we gave them for mid-  
11 span, which would be another crowding issue. So based  
12 on the information I have in front of me, it meets the  
13 definition.

14 Q But there's nothing to indicate when the  
15 violation occurred before that 30-second moment in  
16 time that the picture was taken or whether it was even  
17 corrected some time after that 30-second moment in  
18 time when the picture was taken?

19 A It was a violation on 4/29/05.

20 Q Can you say yes or no and then give me  
21 your answer?

22 A My -- my answer is is that 4/29/05 of last

1 year, at 12:33 in the afternoon, there was a violation  
2 on that pole, Mr. Seiver. I think we can all see that  
3 from the numbers on the page.

4 Q I understand that, and I just want to make  
5 a clarification is that you have nothing on this  
6 document or in your knowledge to indicate when a  
7 violation actually occurred?

8 A And I can add to that that in fact --

9 Q Is that a -- yes or no first.

10 A Give me the question one more time?

11 Q There's nothing on here that -- on this  
12 document that gives you an indication as to when a  
13 violation did occur?

14 A The violation was at 4/29/05, last year,  
15 and I saw it again this year.

16 Q Well, then can we assume for purposes of  
17 our testimony that there was, up until April 29th '05,  
18 that there were no violations on that pole?

19 A I can't answer that question.

20 Q And can we then also assume that after  
21 4/29/05, there were no violations on that pole?

22 A I would say that there was a violation on

1 that pole even after the date in time.

2 Q And even though you don't know that for --  
3 for a fact if there was anything done to the pole  
4 after that date?

5 A You're right. I don't know it for a fact.

6 Q Mr. Dunn, I do want to direct your  
7 attention -- I'm sorry, did I say Dunn?

8 A Yes, you did.

9 Q I'm sorry. Mr. Bowen. I think I've done  
10 that before. On this particular pole that we've been  
11 looking at, I want to -- whoa -- I want to switch now  
12 to a different one. It's pole 318-65. It's your pole  
13 number 2, and it's on page 3 of Exhibit 42. And, Mr.  
14 Bowen, if you look at your testimony, I believe this  
15 is a pole that you did indicate you had gone out and  
16 examined.

17 A Yes, sir, it is one that I've looked at.

18 Q You remember this one?

19 A Yes, I do.

20 JUDGE SIPPEL: I think we're -- we're  
21 using the notebook on the -- on -- on the writing --  
22 on the -- on the numbers and it -- but it's the

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1 picture that we -- I'd like to see up on the screens -  
2 -

3 MR. SEIVER: I'm sorry.

4 JUDGE SIPPEL: -- of the, you know, the  
5 picture of the pole.

6 MR. SEIVER: Yes, that's page four,  
7 please.

8 JUDGE SIPPEL: My benefit.

9 BY MR. SEIVER:

10 Q Mr. Bowen, so looking at this -- this  
11 pole, you recognize this one --

12 COURT REPORTER: Is that a yes?

13 THE WITNESS: Yes.

14 BY MR. SEIVER:

15 Q And, Mr. Bowen, looking at this pole, and  
16 if you need to refer back to page three of Exhibit 42  
17 that has all the specs on it, it's -- would it be fair  
18 to say there are multiple violations?

19 A On pole number two, there are multiple  
20 violations, yes, sir.

21 Q And one thing that I wanted to look at  
22 this with this and ask you about is if you have looked

1 on the perspective from the other side of the pole,  
2 behind it where it appears that some of the power's  
3 secondaries are going below the communications cables?  
4 Do you recall if you looked on the other side of the  
5 pole?

6 A The only thing I had to look at here, Mr.  
7 Seiver, is the one that is identified as pole number  
8 two. Can you -- I'm not sure where you're talking  
9 about behind it, because I don't know what the front  
10 of it I would be unless-- I mean --

11 Q Well --

12 A -- my idea of the front would be the road  
13 side but --

14 Q Well, if -- the angle we're looking at,  
15 did you look 180 degrees on the other side of the  
16 pole?

17 A Oh.

18 Q That's what I meant. Sorry.

19 A Yes, sir

20 Q You did? Do you remember looking at it  
21 with a riser?

22 A Yes, sir.

1 MR. SEIVER: Ms. Corbyn, if you could  
2 switch to my computer. I want to show a picture that  
3 was provided to Gulf of this pole that is included in  
4 the Exhibits 6 to Complainants' Exhibits that were  
5 admitted into evidence, and it's also discussed on  
6 page 16 of Mr. Harrelson's testimony. And I'll  
7 represent to you that in the testimony, Mr. Harrelson  
8 said this is the other side of the pole, 318-65, that  
9 we are looking at, and I just wanted to ask you is do  
10 you recognize -- does this look familiar to you  
11 compared to the way that pole was set up in Exhibit  
12 42?

13 JUDGE SIPPEL: Once again, this is a flip-  
14 side of the pole that's on page four of Exhibit 42,  
15 correct?

16 MR. SEIVER: Yes, Your Honor.

17 JUDGE SIPPEL: Thank you.

18 THE WITNESS: It looks like it.

19 BY MR. SEIVER:

20 Q And just so we can -- my pointer doesn't  
21 work -- I'll try to work off of this -- but this is a  
22 relatively clear picture, I think, and you can follow

1 me -- this gray covering is a -- a riser shield? Is  
2 that right?

3 A Yes, it is.

4 Q And these are all hot secondaries that are  
5 coming out of the top of the riser shield? Is that  
6 right?

7 A Yes, they are.

8 Q And it appears that the communications  
9 cable is even below where the riser shield ends and  
10 the secondaries are? Is that right? And if you need  
11 to confirm with -- with the -- the book or with your  
12 testimony, please do. If it helps, the secondary is  
13 listed on the page 3 of Exhibit 42 as 21.9, and the  
14 mainline cables for Cox is at 22.1, which would be  
15 above it, and the mainline cables for KMC appear to be  
16 at 23.1 -- 24.1 so this actually would be above, I  
17 believe, according to the Osmose chart? Is that  
18 right?

19 A Let me verify it. Four inches it appears.

20 Q Now this is one of the -- the poles that  
21 when you were talking about it in your testimony that  
22 really -- I think you said it stood out in your mind

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1 as a good example. That was your language on page 35  
2 of your testimony, line 7 was the question. And when  
3 discussing this pole on page 36, actually at line 16  
4 to 19, you said (reading) "This is an example of the  
5 lengths to which some companies will go to avoid make-  
6 ready and their contractual responsibilities on  
7 crowded poles. This pole has numerous crowding and/or  
8 safety clearance violations that must be fixed by  
9 changing the pole out to a taller pole" (end reading).

10 A Thirty-five where?

11 Q I'm sorry. That was 36, line 16 to 19,  
12 really the last sentence of the full paragraph.

13 A You know, in my review of the pole, it  
14 shows that the attachments were above the riser which  
15 you cannot tell because of the angle that the photo  
16 was taken.

17 Q There's also another interesting  
18 violation, is there not, that the power from the light  
19 lead is actually -- it looks like it's touching the  
20 communications cables? Do you see that?

21 A I do. What a -- a good --

22 Q Is that the condition when you saw it?

1 A I don't believe that it was.

2 Q But I can do KBI -- Ms. Corbyn, I have it  
3 on my computer. I have -- and I -- I can switch back.  
4 Sorry. No, not -- not my car --

5 JUDGE SIPPEL: The one we were just  
6 looking at, so I'm clear on this, what we -- what you  
7 just had up there on the screen is -

8 MR. SEIVER: This one?

9 JUDGE SIPPEL: -- is identified or  
10 described at page 35 of Mr. Bowen's testimony also?

11 MR. SEIVER: Not this precise picture but  
12 that pole.

13 JUDGE SIPPEL: Well that-- this pole --  
14 all right -- yes, okay -- okay -- okay. That's all  
15 right. You've answered my question. And you're --  
16 the picture that he was looking at and -- his -- his  
17 test point to is your Exhibit what?

18 MR. SEIVER: That's from our Exhibit 6 and  
19 also our testimony of Mr. Harrelson at page 16. He  
20 has the picture repeated there.

21 JUDGE SIPPEL: Thank you. Okay. Clear  
22 enough.

1 MR. SEIVER: And just so it's also clear  
2 for the record, for some reason this, it doesn't show  
3 the top, but this has a picture number of 1353 that  
4 will help tie it into what we have, but if I go back  
5 to our version of 318-65, which is what we were  
6 looking at before that Ms. Corbyn had put it up, this  
7 is a Gulf Power picture, and it's the same pole, it's  
8 a little bit -- the contrast is a little bit better --  
9 I think it was a scan version in that -- so you can  
10 see a little bit better how the -- the wires go, and  
11 I think you can see that the secondary power that was  
12 -- that we showed was lame does appear, at least in  
13 this picture, to not be touching the communications  
14 cables. So it's sometime after the Osmose picture was  
15 taken and -- and Mr. Harrelson took his pictures when  
16 that must have come down? Would that be fair?  
17 Because that -- that's something that Osmose would  
18 have noted, too? Am I right?

19 A If -- had Osmose had seen that, I would --  
20 I would hope that they would have noted that, yes.  
21 And there was notes available -- they knew that that  
22 was -- when they say a safety issue that needed

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1 addressing to -- to make a -- a not of that and keep  
2 in mind that there was, what, three or four hurricanes  
3 between that photo being taken and today, so any  
4 number of things could have happened.

5 MR. SEIVER: Maybe that was the only  
6 thing?

7 THE WITNESS: Excuse me?

8 MR. SEIVER: I'm sorry. I'll -- I'll  
9 withdraw that.

10 THE WITNESS: I don't --

11 BY MR. SEIVER:

12 Q If we look at this pole, and judging from  
13 what you said before, maybe now we have two moments in  
14 time -- we have the moment in time that the picture  
15 was taken to show the violations and the moment in  
16 time Mr. Harrelson took the picture to show violations  
17 -- but you can't tell from looking at this pole, I  
18 guess you could say, who shot John or who was there  
19 first, you can't say who was on the pole at any  
20 particular time to then say that any particular  
21 entity, whether it be Gulf, KMC, Cox, or Bell South  
22 caused it to be in violation as set forth in Exhibit

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1 42? Is that right?

2 A We -- as I've stated before --

3 Q Yes or no, and then, please?

4 JUDGE SIPPEL: Can you answer that yes or  
5 no and then give an explanation?

6 THE WITNESS: Ask the question one more  
7 time make sure I've got it straight?

8 BY MR. SEIVER:

9 Q As you look at this picture today that was  
10 taken with the Osmose, part of Exhibit 42, you cannot  
11 tell us who was on the pole in what order or whose  
12 attachment caused the pole to go into violation?

13 A Are you saying that I -- I cannot? Are  
14 you asking me if I can?

15 Q I am suggesting that you cannot and you're  
16 answer would be yes if you cannot, and if -- no if you  
17 can. And if you can tell the difference, then who  
18 went on first or second or third or caused the  
19 violation. I'm going to ask you to explain.

20 A The order for attaching to the pole would  
21 have been, in this case, or any case, would be the  
22 power company goes first, and then the ILEC would

1 typically go next, and then the subsequent  
2 telecommunication company would go, and they would go  
3 above the ILEC, and the next one to permit would go  
4 above the next.

5 Q So if we assume that Gulf built this pole  
6 as we see it with the primaries and the secondaries,  
7 the transformers, street light -- and do you call it  
8 flood light -- what kind of light do you call that  
9 other light?

10 A A directional light.

11 Q Directional light. Assuming you had built  
12 it exactly that way and looking at the Exhibit then,  
13 when Bell South went up, it went in violation. When  
14 Cox went up, it went in violation. And when KMC went  
15 up, it went in violation? Is that right? It still  
16 went in that order?

17 A I'd have to look at the numbers here again  
18 and see.

19 Q IF you look at Exhibit 42 --

20 A Yes.

21 Q -- page three.

22 A It would appear that they would all be in

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1 violation.

2 Q Now, Mr. Bowen, we've talked about make-  
3 ready and permitting probably more than we needed to,  
4 but would Gulf Power have given permission to Bell  
5 South to attach or to Cox or to KMC if its power  
6 facilities were constructed this way at the time?

7 A I sure hope they wouldn't.

8 Q Did you go to look at any permits or see  
9 if any make-ready requests had been submitted?

10 A I didn't check. No.

11 Q But it would be a violation of Gulf policy  
12 to issue a permit for an attachment like this where  
13 violations were made by virtue of the attachment? Is  
14 that right?

15 A Yes.

16 Q Now if we look at the pole a little  
17 closer, tell me if you can -- if this'll help you --  
18 this pole picture is a little brighter -- I don't know  
19 if you can see it on the other one, but if you look  
20 between the two transformers, you can see somewhat of  
21 a -- a shaded line and, in fact, if you look above it,  
22 an area of the pole looks a little bit lighter than

1 down below. Does that give you any hint as to whether  
2 or not at some point in time before this picture was  
3 taken Gulf facilities may have been located higher on  
4 the pole than they are?

5 A I can't tell from seeing that photo.

6 Q If you could see different bolt holes in  
7 different areas of the pole, would that help you at  
8 all?

9 A If there's different bolt holes, it could  
10 have been the transformers were changed out.

11 Q Is there a way to determine whether or not  
12 those transformers were changed out from records of  
13 Gulf Power?

14 A Well, if it was done during a storm, no.  
15 If it was done on a normal maintenance, possibly.

16 Q Now is there any way to tell as well --  
17 where is the picture -- I am not as good as this as  
18 Ms. Corbyn -- so there it is -- from the pictures on  
19 the back side, as you look up, do you see those holes?  
20 Could that give you an indication maybe just how  
21 they're set? And if you can look at this pole right  
22 here, can you see that there's even a -- a bit of a

1 square washer outline around it? Could that help you  
2 maybe understand -- maybe the transformers were  
3 located higher on the pole at some point?

4 A Mr. Seiver, all I see is knots on the  
5 pole. I'm not really sure where we're going.

6 Q I'm going to magnify the picture we were  
7 just looking at.

8 A Yes.

9 Q Can you see better now the whole that  
10 looks like it has a square around it? Does that help  
11 understand that maybe some of the equipment on the  
12 pole was higher at some point in time?

13 A Yes, it does look there was a washer  
14 there. Yes.

15 Q Now would you also be able to determine,  
16 as we look at this pole, as we go down -- I'm going to  
17 go back in resolution to where we were -- looking at  
18 the -- actually, look at that -- I don't need a -- if  
19 you look at where the end of the riser shield is and  
20 how everything else is configured, would it be  
21 possible that the underground service was installed at  
22 some point after the KMC, Cox, or Bell South

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1 attachments were made to the pole?

2 A Are you saying is it possible?

3 Q Yes.

4 A It is possible.

5 Q Now that would not be a -- a Gulf Power  
6 policy to do an installation that violates the code,  
7 right?

8 A It would not be.

9 Q And in fact, when we were talking about  
10 the amount of pole space that would be attributed as  
11 the power space, if we look at document page three for  
12 Exhibit 42, where the secondary -- if we look at that,  
13 which is also really the top of the riser shield is at  
14 21.9, and I believe we agreed that the top of the pole  
15 is 38-1/2 feet, approximately how much space would be  
16 consumed by power facilities?

17 A You said I assume that there was a  
18 particular height to the pole. Are we talking about  
19 back to when -- earlier when we were talking about  
20 just in general poles?

21 Q Well this is a 45-foot pole? Am I right?

22 A Yes, it is.

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1 Q And I thought in general, we assumed that  
2 it would be 38-1/2 feet out of the ground.

3 A Generally speaking, yes.

4 Q And if we assume that 38-1/2 feet, since  
5 it wasn't sticked, and the 21.9, does that come up  
6 with 16.8?

7 A I don't know. And I didn't stick that, so  
8 I haven't -- I can't tell you.

9 Q I'm asking you for the differential. If  
10 we assume that it's a 38.5 and that the secondary is  
11 a 28 -- 21.9?

12 A What did you say ti was?

13 Q Well, I was trying to do it in my head,  
14 and I didn't do a very good job. I know it's at least  
15 16 feet would take it to 37.9 and then another 8  
16 inches.

17 A Yes, what the problem is is that what I  
18 gave you was a general indication, and I don't know  
19 what this -- I -- I -- I don't know how much is in the  
20 ground. I have no idea.

21 Q But could we safely assume that Gulf Power  
22 is using considerably more than it's contracted for of

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1 the power space on a joint use pole with its  
2 facilities configured this way?

3 A What we talked about earlier were a  
4 standard joint use pole. It was a 40-foot pole. And  
5 what we also discussed was that we didn't -- I didn't  
6 have a number for a 45-foot pole.

7 Q Right. And we agreed that it would -- if  
8 it -- even if it were the additional 4-1/2 feet, that  
9 would still put you at 13 feet, and at 13 feet, this  
10 is still some 3-1/2 feet beyond that? Am I right?

11 A What I've given you is guidelines, and if  
12 we exceed those guidelines, we have just as many  
13 examples of where we're under the guidelines. This is  
14 -- just shows the variability of a pole network. It's  
15 variable.

16 Q Would you have -- would you agree if Gulf  
17 Power were the last entity attaching, everybody else  
18 would have been properly permitted and it moved its  
19 facilities down, that it would be incumbent upon Gulf  
20 Power to either change out or rearrange the pole to  
21 bring it back into compliance --

22 A It would be.

1 Q Pardon me?

2 A It would be.

3 Q You can blank it out now. Mr. Bowen, I  
4 also want to talk to you about some of the projects  
5 that were done for make-ready, in fact one of the  
6 larger ones which I think you discuss in your  
7 testimony for Knology in Panama City.

8 A Yes, sir.

9 Q You -- you spent a lot of time on the  
10 Knology make-ready? Isn't that right?

11 A I did not. No.

12 Q Well, I didn't mean that you personally  
13 did, but you were involved in paperwork and permitting  
14 and reviewing what was going on with the Knology --  
15 right?

16 A I wasn't involved in the --

17 Q You were not involved in what, in Knology  
18 at all?

19 A Yes, I was involved in the Knology, but  
20 you're pinning me down to exactly what -- where I  
21 worked and I don't recall filling out a permit.

22 Q All right. Well, why don't you tell me

1 what your responsibilities were with respect to the  
2 Knology project.

3 A Well, it pretty much came in after the  
4 fact. On the front end, I did do some work up front  
5 early on in the field with some of our field  
6 engineers, but at the end is pretty much were my  
7 involvement was intensified once we had the issues of  
8 the payment with that client -- customer.

9 Q Mr. -- Mr. Bowen, would you please look at  
10 your testimony on page 36 starting at line 21 going on  
11 to page 37, line 2. (Reading) "Question.

12 A Whoa, whoa --

13 Q Oh, I'm sorry.

14 A Tell me where again?

15 Q Page 36, line 21.

16 A Okay.

17 Q Question.

18 A Okay.

19 Q (Reading) "What about the other ten poles  
20 in Gulf Power's 15 pole identification question mark?  
21 Answer. Those are exemplar poles selected from the  
22 Knology make-ready project. The Knology was a major

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1 make-ready project in Panama -- in the Panama City  
2 area which took roughly four years to complete. I was  
3 personally involved in the permitting for that  
4 project" (end reading).

5 A Yes, sir.

6 Q Does that refresh your recollection of  
7 your involvement in the project?

8 A It does.

9 Q So it would have been you reviewing  
10 permits as they were applied for at the time you  
11 became involved?

12 A As I said before, I was involved in the  
13 field with the, you know, permitting has multiple  
14 stages, and filling out a permit I did not do. What  
15 I was involved with was sticking poles with an  
16 engineer early on for a period of days.

17 Q Did you make determinations as to make-  
18 ready costs?

19 A Did I

20 Q Yes, you.

21 A No, sir.

22 Q Did you make determinations as to whether

1 make-ready would be required for any particular point  
2 of entry --

3 A Yes.

4 Q -- for the Knology -- yes, you did?

5 A Yes, sir.

6 Q And did you follow the guidelines for the  
7 permitting procedures that we had talked about the  
8 other day, and if you need to look at them, I think  
9 it's open Gulf Exhibit 4, page three --if you look at  
10 that -- would those be the permitting procedures that  
11 you followed?

12 A There was some -- we deviated from the  
13 permitting procedure on that project.

14 Q And in what manner did you deviate?

15 A It was -- we didn't use a CPR like we  
16 normally would do on a -- on a day to day business --

17 Q CPR -- I'm sorry.

18 A The -- we-- we didn't use the -- the  
19 matrix in here for doing it by hand -- the keeping  
20 track of the permits. It was done at the local office  
21 via a -- a clerk using a spreadsheet.

22 Q And in your testimony on page 37, you make

1 reference to the Gulf Power Exhibit 43, and you  
2 mention work packets K-48 and K-70. Do you see that?

3 A Yes, sir. Line 6 and 7 -- I mean 7 and 8.  
4 That was on line 7 -- excuse me.

5 Q Now Mr. Bowen, I'm going to ask you to  
6 look at what has been -- I'm going to see if I can get  
7 this right -- I want you to look at the K-70 which I  
8 have on my computer -- Ms. Corbyn will bring it on --  
9 and this is from the Exhibits that are part of 43 --  
10 Exhibit 43, and this was the second page -- let me get  
11 the exact right page number for you -- I'm sorry --  
12 it's been very confusing going back and forth.

13 MR. LANGLEY: Mr. Seiver, this does not  
14 have a page number --

15 MR. SEIVER: I know --

16 MR. LANGLEY: -- on it --

17 MR. SEIVER: This was the document that  
18 was provided to us when you did your 50 pole  
19 identifications, and I compared it, and it's the same  
20 that was in the -- in the Exhibit, but it did not have  
21 your exhibit numbers on it. But I compared it, and  
22 I'll go to the next page just so you can see. And if

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1 you look at this, this is the field copy for the K-70  
2 permit which, as best I could tell, is identical to  
3 Gulf's 43. If you look at page 100 of the Gulf  
4 Exhibit 43, you'll see that Knology K-70 draft pole  
5 set with the x out, and then if you go to page 101, I  
6 think you'll see this is identical if you want to  
7 take a moment just to confirm that. Mr. Bowen, are  
8 you okay now? Can you tell me -

9 THE WITNESS: Yes, it looks to be the same  
10 best I can tell.

11 BY MR. SEIVER:

12 Q Now as you were preparing for your  
13 testimony when you were referring to the work packets  
14 for K-48 and K-70, do you think you had occasion to  
15 recall this particular page of the Exhibit?

16 A I -- I don't recall it, but I -- I did  
17 look through them.

18 Q And would it be fair to say that when it  
19 gives an estimate and numbers and signatures that this  
20 represents work that was done in that work packet  
21 called K-70 for the Knology poles which are included  
22 in Exhibit 43?