

1           A       No.     That addresses a relatively new  
2 requirement, and I think it's appropriate.

3           Q       And Spec Plate C-11, that's not in the  
4 code is it?

5           A       No.     It's not in the code.   It does make  
6 references, though, in my opinion to the supply space,  
7 the communications workers' safety zone, and the  
8 communications space.   And it does relate closely to  
9 the demonstrative diagram that we used at the opening  
10 of this hearing.

11          Q       Correct.

12                    JUDGE SIPPEL: The demonstrative diagram  
13 that had the power lines on it, or the one that was  
14 just a stick?

15                    THE WITNESS: Both.   I think it started out  
16 just a stick color-coded where Part A would correspond  
17 to the power space, the supply space.   Part B would  
18 correspond to the communications workers' safety zone.  
19 And then, the part below Part C down to a level that's  
20 useable would the communications space.

21                    In other words, if you look at this  
22 diagram, there's a tag depicted on it.   And then, a

1 picture of the tag is above the line, which is both  
2 the bottom of Section C and the bottom of Section B.

3 A is supply space. B is communications  
4 worker's safety zone. And communications space is not  
5 labeled on this diagram.

6 JUDGE SIPPEL: Thank you. This is the  
7 diagram that's on Plate C-11.

8 THE WITNESS: That's correct.

9 BY MR. CAMPBELL:

10 Q You mentioned the communications worker's  
11 safety zone. That is a term from the NESC, correct?

12 A It is. It is, I think, new in 2002.

13 Q Yes, sir. New in 2002, and it is  
14 triggered by the presence of a communications cable on  
15 a utility pole, correct?

16 A Not necessarily, but generally, yes.  
17 Because -- well, I'll leave it there.

18 Q If a utility company has a distribution  
19 pole, let's say a Class 5 40-foot pole, and they have  
20 nothing but electric facilities on the pole, that 40-  
21 inch communications worker's safety zone is not an  
22 issue with respect to the clearances on that pole, is

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1 it?

2 A That's correct. I'd like to add to that  
3 answer to make it clear.

4 Q Okay.

5 A The code does permit communications cables  
6 in the supply space. So if the communications cables  
7 are in the supply space, there is no requirement for  
8 a communications workers' safety zone.

9 The workers who work on the communications  
10 cables which are in the supply space have to comply  
11 with work rules, which are applicable to work in the  
12 supply space.

13 So the code has and does permit  
14 communications cables in the supply space. But where  
15 the cables are placed in the communications space,  
16 there is also a requirement for a communications  
17 worker's safety zone.

18 Q Is that all?

19 A That's all.

20 Q You have met Mr. Mark O'Ceallaigh, a  
21 representative of one of the Complainant's in this  
22 case?

1           A       I have.

2           Q       And Mr. O'Ceallaigh was with you when you  
3 visited Gulf Power service territory for the purposes  
4 of photographing and measuring some of the poles in  
5 this case. Correct?

6           A       Ask that again.

7           Q       It was a poor question. I was kind of  
8 rambling there. Mr. O'Ceallaigh went out in the field  
9 with you when you went down to the Gulf Power service  
10 territory to look at poles for the purposes of your  
11 opinions in this case?

12          A       He did not.

13          Q       He did not. Did you talk to Mr.  
14 O'Ceallaigh about the data you collected while you  
15 were down there with another representative of that  
16 company, Cox?

17          A       I don't recall any level of detail, but  
18 I'm sure it was discussed in general.

19          Q       Did you have any e-mail correspondence  
20 with Mr. O'Ceallaigh concerning the poles that were  
21 going to be identified by Cox Communications for  
22 purposes of this proceeding?

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1 A I did.

2 Q Am I accurate, Mr. Harrelson, that when  
3 Mr. O'Ceallaigh attempted to assist in designating  
4 poles that would be tendered in this proceeding that  
5 he found some full capacity poles in his service  
6 territory?

7 A I don't agree with that. No.

8 Q I think my question was did Mr.  
9 O'Ceallaigh find some, not whether you agreed with  
10 him, Mr. Harrelson.

11 A Well, if I say he found some full capacity  
12 poles, I think that implies that I agree that they  
13 were full capacity.

14 Q Fair point. Did Mr. O'Ceallaigh represent  
15 to you that he found some poles that he considered to  
16 be at full capacity?

17 A I saw written on some initial photographs  
18 with some descriptive data, those words. These poles,  
19 this pole is at full capacity or whatever. I do agree  
20 that those words were used in some of the initial  
21 photographic identifications are poles to use as  
22 possible selection.

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1           Q       Let me attempt to refresh your  
2 recollection. I'm going to hand you a document that  
3 has been marked as Gulf Power Exhibit 86.

4           MR. SEIVER: Your Honor, I don't mind him  
5 marking it as Exhibit 86, but I didn't know his  
6 recollection needed to be refreshed.

7           JUDGE SIPPPEL: Well, it's cross-  
8 examination. I think Mr. Campbell told us where he  
9 was going with this. 86 for identification.

10                               (Whereupon, the above-mentioned  
11 document was marked as Gulf  
12 Power Exhibit 86 for  
13 identification.)

14           BY MR. CAMPBELL:

15           Q       Before we move on to this exhibit, did you  
16 indicate in the previous answer that you recall  
17 receiving some writing on photographs from Mr.  
18 O'Ceallaigh?

19           A       What I recall seeing was some photographs  
20 that has some measurements underneath the photographs  
21 and some descriptive words to that effect.

22           Q       What happened to those photographs?

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1           A       They were in e-mail. I don't know what  
2 happened to them.

3           Q       From who to who?

4           A       Well, I don't recall from who to who, but  
5 they were, as far as I recall, of the Cox photographs.  
6 And then, this, I think, was a summary of those  
7 photographs.

8                   JUDGE SIPPEL: What is "this?"

9                   THE WITNESS: This document, this thing  
10 here.

11                  JUDGE SIPPEL: That's the attachment to the  
12 e-mail?

13                  THE WITNESS: I don't remember seeing this  
14 initially. What I remember seeing was photographs of  
15 poles.

16                  MR. CAMPBELL: Yes, sir. I don't want to  
17 go to that document just yet, because I want to  
18 continue on with this line of questioning for just a  
19 moment.

20                   BY MR. CAMPBELL:

21           Q       You recall receiving some photographs that  
22 had measurements written on it and some descriptive

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1 terms on the photograph. Correct?

2 A By e-mail. Yes.

3 Q Did you receive those from Mr.  
4 O'Ceallaigh?

5 A I don't recall if they were direct from  
6 Cox or if they were through Mr. Cook. I don't recall.

7 Q Have you seen in the evidence in this case  
8 or in your preparations to testify here today, any of  
9 those photographs?

10 A I don't recall. I haven't seen it today.  
11 No.

12 Q Have you produced to the lawyers in this  
13 case any of those photographs that contain those  
14 handwritten notations on there?

15 A It wasn't handwritten.

16 Q Was it typewritten?

17 A Yes.

18 Q The descriptive terms. Can you describe  
19 them?

20 A "Full capacity," or words to that effect  
21 with some other sketchy initial measurements.

22 Q And those appeared on the photographs

1 themselves?

2 A As I recall.

3 Q How many photographs are we talking about,  
4 Mr. Harrelson?

5 A I would guess somewhere between 12 and 20.  
6 I don't recall.

7 Q Approximately when did you receive these  
8 photographs?

9 A Sometime during the selection process  
10 after the decision was made to select 50 poles from  
11 Gulf and 50 poles from the Complainants.

12 Q Mr. Harrelson, do you have any knowledge  
13 as to whether those documents, those photographs, with  
14 the notations you describe would have been produced in  
15 this proceeding?

16 A I don't know.

17 Q Mr. Harrelson, could I direct your  
18 attention to Gulf Power Exhibit 86, which is now up on  
19 the screen?

20 MR. CAMPBELL: And can we flip over to  
21 Page 2, first, Katy.

22 JUDGE SIPPEL: Let's identify what the

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1 cover page sheet is. This is from Mr. Cook?

2 MR. CAMPBELL: This appears to be an e-mail  
3 from Mr. Cook to Mr. Harrelson with a forwarding e-  
4 mail that originated from Mr. Mark O'Ceallaigh to a  
5 distribution list and an attachment to this e-mail.  
6 They were produced to us in this proceeding, Your  
7 Honor, by Mr. Seiver.

8 JUDGE SIPPEL: And it's dated January 20,  
9 2006.

10 MR. CAMPBELL: Correct.

11 BY MR. CAMPBELL:

12 Q You've seen this document before, Mr.  
13 Harrelson?

14 A I've seen it. I don't know that I'm very  
15 familiar with it. But I've seen it, and I think it  
16 was color-coded.

17 Q Yes, sir. On the second page of that  
18 exhibit, the color code is explained at the top left  
19 part of the page, correct?

20 A I see it. Yes.

21 Q Was this data assembled by Mr.  
22 O'Ceallaigh?

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1           A       I would say at his direction, but I don't  
2 know that.

3           Q       It was forwarded to you from Mr.  
4 O'Ceallaigh, correct?

5           A       Well, I mean, I would have to look and  
6 see. To, from. "From Jeff Cook."

7           Q       Originating from Mr. O'Ceallaigh, correct?

8           A       Yes.

9           Q       So someone at Cox prepared this data, and  
10 it landed in your office, correct?

11          A       On my e-mail. Yes.

12          Q       And it represents on the second page that  
13 yellow indicates a pole that would require make-ready  
14 by someone either Gulf Power, Bell, or Cox, correct?

15          A       Well, that's what this indicates.

16          Q       That's all I asked you, Mr. Harrelson.

17          A       Well, no. You said it would require make-  
18 ready. I don't know if it would or not. And I don't  
19 know the qualifications or who produced this document.

20          Q       The document that you received has a green  
21 marker that represents that it indicates a pole that  
22 needs no make-ready.

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1 A That's what it represents.

2 Q And red is indicated to mean a pole that  
3 is in violation, correct?

4 A That's what it said.

5 Q And finally, tan indicates what?

6 A It says, "Poles that are full." And I  
7 don't know what they mean by that. And again, I don't  
8 know what, if any, engineering investigation was  
9 conducted to make such a preliminary or a final  
10 determination.

11 Q Yes, sir. Let's go to the second page of  
12 this exhibit. Am I accurate, bearing in mind the  
13 color coordination we went through on the previous  
14 page, that three poles on this page are identified as  
15 being full?

16 MR. SEIVER: Objection, Your Honor.

17 JUDGE SIPPEL: What's the nature of the  
18 objection?

19 MR. CAMPBELL: It's too relevant?

20 MR. SEIVER: No. It's misleading. Read  
21 the descriptions. Read the descriptions.

22 JUDGE SIPPEL: Well, the witness can read

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1 the description to himself, and then answer the  
2 question.

3 THE WITNESS: That indicates that those  
4 poles are full, whatever full means.

5 BY MR. CAMPBELL:

6 Q Yes, sir. And there are three of the  
7 there that are colored tan, correct?

8 A That's correct?

9 Q And then, on the first page, the tan color  
10 says, "Poles that are full," correct?

11 A That's what it says.

12 Q Now, there are two of them on this page.  
13 But if you go over to the description in the far  
14 right-hand column, it actually says, "Full pole,"  
15 doesn't it? That first pole right there DSCF0561,  
16 correct?

17 JUDGE SIPPEL: He's already admitted all of  
18 that, Mr. Campbell. He said that the document says  
19 that these are full poles.

20 MR. CAMPBELL: And an objection that I was  
21 mis-characterizing --

22 MR. SEIVER: I am about to help everybody

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1 out, Your Honor. Read the second one. What does that  
2 say?

3 JUDGE SIPPEL: The second line?

4 MR. SEIVER: Yes, Your Honor. "Close up of  
5 pole listed above."

6 MR. CAMPBELL: That was my very next  
7 question, if you had allowed me to get to it.

8 BY MR. CAMPBELL:

9 Q Mr. Harrelson, did I read the first line  
10 correctly? Does it say "full pole?"

11 A That's correct.

12 Q What does the next description say?

13 A It says, "Close up of pole listed above."

14 Q So those are the same pole. Is that your  
15 understanding?

16 A As far as I can tell from this document.

17 Q Go down to the last line. What does that  
18 say in the description on the far right-hand column?

19 A "Full pole."

20 Q Did each of those two full poles that Mr.  
21 O'Ceallaigh identified as poles make it into the 50  
22 poles that were identified by complainants in the

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1 proceeding?

2 A I don't recall both. I do recall that the  
3 one at the IHOP Restaurant did not.

4 Q Is this the pole you're talking about that  
5 is not identified as part of Complainant's  
6 identification of 50 poles?

7 A It was not selected. It is a photograph  
8 which I took and which you and I discussed at my  
9 deposition.

10 Q Yes, sir. But Mr. O'Ceallaigh identified  
11 this as a full pole, correct?

12 A I don't know who identified, and I don't  
13 know what they meant by poles that are full. I would  
14 suppose that would be the same as full pole.

15 I took the photograph. Then from all of  
16 my photographs, the first pass at selection was done  
17 by Cox. Then I refined it and took out some of the  
18 ones that I took and inserted some of the ones that  
19 were from the Osmose survey. I wanted some of the  
20 sample from the Osmose survey in the poles that I  
21 selected. I did the final selection.

22 Q Can we go back to the previous exhibit?

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1 JUDGE SIPPEL: Before you do, can you tell  
2 me what exhibit is this picture on?

3 MR. CAMPBELL: We'll go ahead and mark that  
4 for identification while Ms. Corbin is going back to  
5 the previous exhibit, and we'll tender that, Your  
6 Honor.

7 JUDGE SIPPEL: This is a new document, the  
8 IHOP picture?

9 MR. CAMPBELL: It is. It was not submitted  
10 by the Complainants as part of their 50-pole  
11 identification.

12 Gulf Power is submitting the IHOP pole  
13 referred to in the previous testimony as Gulf Power  
14 Exhibit 87.

15 JUDGE SIPPEL: Okay. Thank you. That will  
16 be identified as Gulf Power's 87.

17 (Whereupon, the above-mentioned  
18 document was marked as Gulf  
19 Power Exhibit 87 for  
20 identification.)

21 BY MR. CAMPBELL:

22 Q The communication from Mr. Cook to you on

1 January 20, 2006 indicates that he has e-mailed Mr.  
2 O'Ceallaigh about whether it's truly accurate to call  
3 three of the poles "full" or whether given make-ready  
4 techniques, including pole change-outs, a new  
5 attachment could be made to all those pole locations.  
6 Do you see that?

7 A At those pole locations. Yes.

8 Q Did either Mr. Cook or Mr. O'Ceallaigh or  
9 anyone else from Cox follow up with you with respect  
10 to this message?

11 A I don't recall. I took the photograph and  
12 I drew my own conclusions about the conditions of this  
13 pole. It was irrelevant to me whether Mr. O'Ceallaigh  
14 determined or someone on his behalf determined that  
15 that is or might be a pole at full capacity.

16 Q It's your testimony, Mr. Harrelson, that  
17 as an expert representing the Complainants in this  
18 proceeding that after receiving the color-coordinated  
19 chart that we have just looked, that was Exhibit 86  
20 for identification purposes, you didn't have any  
21 conversations with Mr. O'Ceallaigh or anyone at Cox  
22 about why they had labeled these two poles full?

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1           A       I did not.

2           Q       Did you, Mr. Harrelson, share with any of  
3 the representatives of the Complainants in this  
4 proceeding, your determination with respect to Gulf  
5 Power Company's poles that they tendered, the 50 poles  
6 of Gulf Power Company?

7           A       No.

8           Q       In fact, there was a coordinated decision  
9 made between you and counsel in the case not to  
10 discuss Gulf Power's identification with any of the  
11 Complainants in the proceeding, correct?

12          A       I don't recall coordination. I didn't see  
13 any value in discussing the Gulf poles with the  
14 Complainants.

15          Q       You felt that was just between the experts  
16 and the lawyers, right?

17          A       No. I felt it was my task to try to  
18 develop a reasonable definition of poles at full  
19 capacity and to use these 100 poles to try to  
20 illustrate whether that's a valid or invalid  
21 definition.

22          Q       You also wanted to come up with one that

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1 was practical and workable, too, correct?

2 A That's exactly right.

3 Q But you didn't think it was important to  
4 include the people who work in the field with Gulf  
5 Power on that decision?

6 A I didn't think they were experts in the  
7 National Electric Safety Code or make-ready or the  
8 techniques that power companies do and can use to make  
9 modifications on power poles. I thought I was better  
10 qualified.

11 Q I'm handing you a document, Mr. Harrelson,  
12 that I've marked as Gulf Power Exhibit 88. Do we have  
13 any more copies?

14 JUDGE SIPPEL: This is identified as Gulf  
15 Power Exhibit 88.

16 (Whereupon, the above-mentioned  
17 document was marked as Gulf  
18 Power Exhibit 88 for  
19 identification.)

20 BY MR. CAMPBELL:

21 Q This is an email from Mr. Cook to Mr.  
22 Harrelson dated February 3, 2006. Do you recall

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1 receiving this e-mail, Mr. Harrelson?

2 A I don't recall receiving it. But I'm sure  
3 I did receive it.

4 Q Do you recall the communication that you  
5 had with Mr. Cook concerning whether the Complainants  
6 would review the Osmose pole crowding classifications  
7 in this case?

8 A I do.

9 MR. SEIVER: Can I just inquire of counsel  
10 since we're at a lull, we seem to have misplaced 84 if  
11 we had it. Oh, we skipped it?

12 MR. CAMPBELL: Correct. I haven't used it  
13 yet, but I might come back to it.

14 MR. SEIVER: We thought we might have lost  
15 one.

16 MR. CAMPBELL: And we will true up at the  
17 end of the day, Mr. Seiver, just to make sure  
18 everybody's squared away.

19 MR. SEIVER: Your Honor, I don't know if we need  
20 to go off the record at this point, take a break in  
21 the testimony at this point, but we thought it might  
22 be helpful if we discussed the issue of our request to

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1 cross examine Mr. O'Ceallaigh, and this line of  
2 questioning we just completed relates to our concerns  
3 and our need to do that. I don't know if you want to  
4 take that up now, or continue until we stop for the  
5 day, but while it's fresh on everyone's minds, this is  
6 it.

7 JUDGE SIPPEL: This is your proffer. I'm  
8 just going to ask the witness one question, and that  
9 is do you know anything about -- I mean what does Mr.  
10 O'Ceallaigh do for Cox? What's the nature of his job  
11 and what's his experience? How old is he?

12 THE WITNESS: I've had a conversation with  
13 Mr. O'Ceallaigh by phone, and then, I've met him and  
14 had supper a couple of times with him with Mr. Seiver.

15 And he is vice-president of Engineering  
16 Operations at Cox. He is in charge of, among other  
17 things, pole attachments. But he has a gentleman who  
18 went to the field with me named George Rollinson who  
19 does the pole attachments. And he is maybe at least  
20 a couple of layers down in the organization.

21 Mr. O'Ceallaigh, I believe, is a very  
22 experienced electrical engineer in the field of

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1 telecommunications or whatever you call the  
2 electronics part of Cox's business.

3 He does not have an in-depth familiarity  
4 of the National Electric Code based on my discussion  
5 with him. And he does have people who handle the pole  
6 attachments in the field who interface and get along  
7 very well with the Gulf people in process and pole  
8 attachments matters.

9 JUDGE SIPPEL: So in terms of your dealings  
10 with him, has he been more of a front office person as  
11 opposed to being a field hand?

12 THE WITNESS: He is upper management and a  
13 very nice fellow, but I think he doesn't have time.  
14 They don't pay him to do things in the field, as I  
15 understand it.

16 JUDGE SIPPEL: I'm not trying to be  
17 critical of him. You're giving me your best  
18 description. All right.

19 I think it might be helpful if we excused  
20 Mr. Harrelson for a couple of minutes and see what we  
21 get on this question of yours.

22 MR. CAMPBELL: I will also represent while

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1 Mr. Harrelson is here, Your Honor, in fairness to him  
2 that it is quarter to 4:00, and I have been trying to  
3 hurry, cut, be efficient. I'm not going to get  
4 through.

5 JUDGE SIPPEL: Well, I'm going to stay  
6 beyond 4:00.

7 MR. CAMPBELL: Well, I'm happy to do that  
8 but, you know, I'm at least, I think a good two hours  
9 to two and a half hours to finishing. And then,  
10 there's going to be redirect, I'm sure. I just don't  
11 see it happening today, as much as that disappoints.

12 JUDGE SIPPEL: Well, I want to go beyond  
13 4:00 to see how far we can get. But I think it would  
14 make sense to give this a couple -- We have five  
15 minutes anyway.

16 All right. Now, what is it that you're up  
17 to with this?

18 MR. CAMPBELL: Well, there's missing  
19 information, Your Honor, is what we're up to. And we  
20 want to just get the answers. We can't get the  
21 answers from Mr. Harrelson. I tried to do that. We  
22 don't know what Mr. O'Ceallaigh or whoever prepared

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1 that document meant when they labeled those two poles  
2 "full."

3 And then, also, I didn't bring this out in  
4 the questioning, but there's actually on the first  
5 page, a third pole that is identified as being full as  
6 DSCFO500. And what it says there is, "Broken pole,  
7 Hurricane Ivan. Waiting for Gulf Power to complete  
8 change-out. Pole is full. But a taller one than one  
9 installed next to it would allow for additional  
10 attachments."

11 So there are 3 of the 13 identified on  
12 this document as being full. And that's very  
13 different than the data that they've submitted in the  
14 50-pole identification. And what we don't know is  
15 what he meant when he labeled these as "full." We  
16 don't know who prepared the data, what measurements  
17 were considered or not considered, what definition  
18 they were applying when they were making that  
19 consideration.

20 We don't know about the follow up  
21 communication that Mr. Cook had with a representative  
22 concerning, are these really full or can they be

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1 labeled not full because of our creative definition of  
2 full capacity. He says it's irrelevant what Mr.  
3 O'Ceallaigh thought about the poles. We disagree.  
4 You know, and I tried to explore it with this witness  
5 and we just didn't get there.

6 JUDGE SIPPEL: Well, I understand what  
7 you're trying to say here. But Mr. Harrelson said  
8 that he didn't really put any weight on what he was  
9 told, that he made his own independent determination,  
10 and the fact that somebody made a comment or a  
11 commentary or a notation about something being full  
12 doesn't necessarily mean -- you know, I'm having a  
13 hard time following.

14 You know, I see the broad relevance of it.  
15 But in terms of bringing somebody in and then asking  
16 them what do they mean by full, not knowing in advance  
17 what they meant by full, it's speculative at best.  
18 And if Mr. O'Ceallaigh is, as he's described by this  
19 witness, I don't know what good he's going to even if  
20 he thinks it's whatever his definition of full is.

21 MR. CAMPBELL: Your Honor, it's relevant  
22 for couple of reasons. One, it's an admission by a

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