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EXHIBIT A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T Florida,	)	
Complainant,	)	
v.	)	**Proceeding No.: 20-276**
	)	**Bureau ID No.: EB-20-MD-003**
DUKE ENERGY FLORIDA, LLC,	)	
Defendant.	)	

DECLARATION OF GILBERT SCOTT FREEBURN

Background

1. My name is Gilbert Scott Freeburn. I am the Joint Use Manager for Duke Energy Corporation, which is the parent corporation of Duke Energy Florida, LLC ("DEF"), Duke Energy Progress, LLC ("DEP") and four other operating companies. My job currently includes management and oversight of all aspects of the joint use and pole attachment relationships to which DEF, DEP and other Duke Energy operating companies are parties. This includes such relationships in Indiana, Ohio, Kentucky, North Carolina, South Carolina and Florida. I have held this position since the merger of Progress Energy Corporation and Duke Energy in 2011. From 2004 until the merger, I held a similar position with Progress Energy Corporation which was the parent corporation of DEF (f/k/a Progress Energy Florida, Inc. and Florida Power Corp.) and DEP (f/k/a Progress Energy Carolinas, Inc. and Carolina Power & Light Company).

2. Prior to joining Progress Energy, I worked as the Manager of Joint Use Operations for Itron, Inc. in Kansas City from 2000 thru 2004. I started my career at the Florida Power and

Light Company ("FPL") in 1984 in the Line and Service department as a lineman. I held various positions over my 17 years at FPL that included Marketing Consultant, IT analyst, Service Planner, Recycling Coordinator and Supervisor of Investment Recovery.

3. I hold a Bachelor of Science Degree in Parks and Recreation from the University of Florida (1983) and I am a commissioned officer in the United States Navy Reserve.

4. DEF is an electric utility with a service area covering approximately 20,000 square miles in west central Florida, including the densely populated areas around Orlando, as well as the cities of Saint Petersburg and Clearwater. DEF serves approximately 1.8 million electric customers within its service area over a network that includes 65,000 miles of distribution lines, 1.2 million distribution poles, 2,400 miles of transmission lines and 63,000 transmission poles/structures. DEF has joint use relationships with five incumbent local exchange carriers ("ILECs") and 42 pole license agreements with cable television systems ("CATVs") and non-ILEC telecommunications carriers. DEF's largest joint use relationships (in terms of the total number of jointly used poles) are with Frontier Florida (f/k/a Verizon Florida), AT&T Florida and CenturyLink, in that order. Excluding the ILECs, there are approximately 575,292 third-party attachments (including CATVs, non-ILEC telecommunications carriers, and wireless companies) on DEF's distribution poles, system wide. 453,850 of those attachments (79%) are by CATVs.

DEF's Joint Use Agreement with AT&T

5. DEF has one joint use agreement with AT&T: the June 1, 1969 joint use agreement between Florida Power Corporation (later known as Progress Energy Florida and now known as DEF) and Southern Bell Telephone and Telegraph Company (now known as AT&T Florida) (the "Joint Use Agreement"). The Joint Use Agreement has been formally amended twice: once in 1980 and once in 1990. Both amendments addressed the manner in which net rentals, if any, were

calculated. A true and correct copy of the Joint Use Agreement is attached as Exhibit 1 to AT&T's Pole Attachment Complaint. Most of the poles currently in joint use between the parties were brought into joint use under the Joint Use Agreement, which neither party has expressly terminated. The parties share approximately 67,500 jointly used poles in their overlapping service areas, with DEF owning approximately 62,300 and AT&T owning approximately 5,200. The overlapping service areas are primarily in the central part of the state surrounding the Orlando metro area.

6. The parties entered into, and have continued to operate under, the Joint Use Agreement in order to share the use of each other's poles and to share the collective costs of the joint use network. In addition to cost sharing, the parties entered into the Joint Use Agreement to minimize the construction of redundant pole networks and to improve the aesthetic appearance along roadways in the parties' overlapping service territory. Under the Joint Use Agreement, a "normal joint use pole" is defined as "a pole which meets the requirements set forth in the CODE for support and clearance of supply and communication conductors…." It is further defined "[i]n and along public streets, alleys, or roads" (which covers just about everything) as "a 40-foot class 5 wood pole." This definition of a "normal joint use pole," which is common to DEF's other joint use agreements, is the reason DEF's standard distribution pole became a 40-foot Class 5 wood pole.

7. In addition, the Joint Use Agreement sets forth an "objective percentage" of joint use pole ownership—a targeted percentage of jointly used poles for each party to own. At all times, this "objective percentage" has been [redacted]% ownership for DEF and [redacted]% ownership for AT&T. If each party owns its "objective percentage"—*i.e.*, if the parties are in parity—no annual joint use rental payments change hands. This was true under the original agreement. It was true

under the 1980 amendment. And it is true under the 1990 amendment. Annual rental payments only come into play when one party owns more than its "objective percentage" of poles in the jointly used network.

AT&T's Utilization of DEF's Poles

8. Under the Joint Use Agreement, each party is allocated "standard space" for its "exclusive use." On 40-foot poles, DEF is allocated the "uppermost" [redacted] feet and AT&T is allocated the lowermost [redacted] feet. As explained in more detail below, DEF's data indicates that the average height of AT&T's highest attachment on DEF's poles is at [redacted]. Because AT&T is allocated the lowermost [redacted] feet of usable space on a joint use pole, and because the lowest point of attachment is generally at 18 feet, it would not be possible (on average) to locate another wireline communications attachment beneath AT&T. For this reason, AT&T's attachments are occupying on average at least [redacted] ([redacted] feet). The average occupancy level might be better expressed as [redacted] feet in light of the fact that nobody can attach lower than [redacted] (on average) because of the 12" separation requirement between communications companies. Regardless of the number of attachments made by a party to the other party's poles under the Joint Use Agreement, and regardless of whether a party is actually occupying more than its allocated space, the cost sharing obligations do not change.

Advantages of Joint Use Agreement

9. The Joint Use Agreement differs from the "pole license agreements" that DEF enters into with CATVs, CLECs and other third parties that, unlike AT&T, do not own poles. Under such pole license agreements, the third party attacher merely rents space on DEF's poles if it is available. DEF does not build or replace its distribution poles, in the normal course, in anticipation of non-ILEC third party attachers like CATVs and CLECs because, to do so would be

speculative (and there is little to gain financially given the regulatory limitations on the rental rates that can be charged to non-ILEC third parties like CATVs and CLECs). If space is not available, the third-party pays the entire cost necessary to create additional space, whether through make-ready or a pole change-out. The rental rate under a pole license agreement is typically a per attachment rate, rather than a per pole rate. For example, if a party to a pole license agreement has two attachments on a pole at a rate of $10 per attachment, the attacher would pay $20 for those two attachments.

10. AT&T has a number of advantages under the Joint Use Agreement that DEF's CATV and CLEC attachers do not have under their pole license agreements. First, DEF has built and maintained, and continues to build and maintain, poles of sufficient height and strength to accommodate AT&T without significant upfront capital cost to AT&T. Because of the Joint Use Agreement (and the mutual cost-sharing commitments within the Joint Use Agreement), DEF's network of distribution poles was built specifically to accommodate AT&T. DEF was able to justify spending more money on its network than necessary for the provision of electric service because AT&T was sharing in the cost of the network (either through pole ownership, payments to offset DEF's pole ownership beyond the "objective percentage," or both). For this reason, unlike DEF's CATV and CLEC attachers, AT&T paid very little in make-ready prior to attaching its facilities to DEF's poles. In other words, because of the Joint Use Agreement, DEF constructed its pole infrastructure to be of sufficient height and strength to accommodate AT&T's facilities.

11. For example, the Joint Use Agreement contemplates a 40-foot joint use pole to accommodate electric and telephone facilities, plus the required separation space. If DEF had constructed its network in the absence of the Joint Use Agreement, DEF would have built a network only to suit its own service needs; thus, the pole network would have been built with

shorter poles. Given that AT&T's allocated space is [redacted] feet and the typical separation space is 40" (3.33 feet), and given that wood poles come in 5 foot increments, this mean DEF, because of the Joint Use Agreement, was on average installing poles that were 5-10 feet taller than necessary to provide electric service. Use of such shorter poles would have translated to DEF incurring less expense, not only in terms of the upfront capital cost of the poles, but also countless other costs such as, for example, the size and capability of bucket trucks. Thus, had AT&T simply entered into license agreements (akin to the DEF pole license agreements with CATVs and CLECs), AT&T likely would have been required to either (a) pay make-ready cost to replace nearly every DEF pole to which it is attached, or (b) construct an entirely redundant network of poles.

12. Second, AT&T occupies significantly more space on DEF poles than CATV and CLEC licensees. Under the Joint Use Agreement, AT&T is allocated the lowest [redacted] feet of space at "sufficient height above the ground to provide the proper vertical clearance." On average, AT&T's highest attachment on DEF poles is at [redacted] ([redacted] feet) (measured at the pole). This average comes from field surveys performed on 941 DEF poles to which AT&T is attached. These surveys were performed during the 2019 and 2020 time period by DEF's contractor, TRC, as part of the third-party pole attachment process. This figure includes all of the DEF poles to which AT&T is attached that were surveyed as part of the pole attachment process. None of the surveyed poles were excluded. Based on my own observations, my knowledge of DEF's system and my knowledge of AT&T's construction practices, I believe this average attachment height is either accurate or understated. In other words, if it is wrong, AT&T's actual average attachment height would be higher, not lower.

13. AT&T witness Mark Peters states, "AT&T installs light-weight copper and fiber optic cables that are comparable in size to the facilities of AT&T's competitors and occupy about

the same amount of space across Duke Energy Florida's poles, which is presumed to be 1 foot of space." (Peters Affidavit at ¶ 25). This is incorrect. AT&T's line are not like the tensioned messengers of CATVs and CLECs; they are often heavy bundles with significant sag. And, in any event, as set forth above, AT&T is occupying at least [redacted] feet of space, on average.

14. Despite what AT&T witness Peters says, AT&T's copper cables are not light, and in many cases, they are not small. In the larger sizes and bundles, AT&T's cables are among the largest, and heaviest, horizontally run cables on DEF's distribution poles. CATV and CLEC cables are significantly smaller, on average, than AT&T's lines. In addition, cable sags for AT&T's cables can be significant. DEF data indicates that the average midspan sag for AT&T attachments is [redacted] This cable sag must be added to the NESC-required minimum clearance above ground to determine AT&T's minimum point of attachment on the pole. Cable sag determines the point of attachment on a pole. As sag increases, so does the required height of attachment on the pole and therefore, the space utilized by the attachment.

15. In addition to the space actually occupied by AT&T's attachments, the communications worker safety zone (also known as the "safety space"), typically comprised of 40 inches (3.33 feet) of space between the top of the communication space and the bottom of the power supply space, must be attributed to AT&T's attachments on DEF's poles. The only reason the safety space existed on DEF's poles in the first place is because of the presence of AT&T on those poles. In the "but for" world in which AT&T did not enter into the Joint Use Agreement, there would have been no need for the safety space on DEF's poles, because there would have been no communications attachments, and thus no need to protect communications workers from electric lines. This space would not have been built into DEF's pole network in its overlapping service area with AT&T but for the Joint Use Agreement. AT&T was almost always the first

communications attachment on DEF's poles in the parties' overlapping service territories. AT&T was thus the initial cost-causer of the safety space.

16. DEF does not need and does not use safety space on its own poles. The safety space on DEF poles serves no purpose in the provision of electric service—it exists only to benefit attaching entities within the communications space. Though streetlights are occasionally mounted within the safety space on DEF's poles, the safety space is not necessary for the proper installation of a streetlight. Streetlights can be, and often are, safely mounted within the electric supply space on DEF's poles. In other words, if there is not safety space on a distribution pole, DEF can still safely install a streetlight on that pole within the electric supply space. The safety space is not necessary for proper installation of a streetlight. Further, transformers are not mounted in the safety space. The presence of a transformer may change the **location** of the safety space, and even reduce the safety space from 40" to 30" in certain circumstance, but the transformer is never within the safety space. Finally, the presence of vertical shielded conductors cannot be considered the utilization of space unless communications risers running from the ground up the pole to the communications space (or even to pole top small cell attachments) are also considered to constitute the use of space on the pole. In any event, the number of distribution pole with vertical shielded electric conductors running through the safety space is limited.

17. Third, AT&T enjoys the lowest position on DEF's poles. Under the Joint Use Agreement, AT&T is allocated the lowest [redacted] feet of space at "sufficient height above the ground to provide the proper vertical clearance." On average, AT&T's highest attachment on DEF poles is at [redacted] ([redacted] feet) measured at the pole. Occupying the lowest position in the communications space provides numerous operational advantages to AT&T. For example, occupying the lowest position on the pole gives AT&T ease of access to its attachments, as there is no need to work

through the lines of other attaching entities. Further, occupying the lowest position gives AT&T the ability to sag cable more than CATVs and CLECs because there is never another wireline attachment beneath them. It also gives AT&T the ability to transfer its facilities to new poles for maintenance projects and operational upgrades faster and more easily than higher mounted communications attachments. Nevertheless, AT&T argues in its Complaint that being the lowest on the pole is not a favorable position. However, until this dispute, not once in my nearly 17 years as the manager of the joint use department for Progress Energy and Duke Energy has AT&T ever asked to renegotiate the Joint Use Agreement in order for AT&T to assume a higher position on the pole, or to avoid what it now contends to be an "unfavorable" location.

18. Fourth, AT&T enjoys benefits vis-à-vis its competitors with respect to the DEF permitting process. Like DEF's CATV and CLEC licensees, AT&T is required to submit a permit when making a new attachment. DEF requires permits for any new load on its pole lines for a variety of reasons, not the least of which are DEF's Florida storm hardening commitments. When AT&T submits a permit application, DEF performs the same pre-construction and post-construction inspections as it performs for CATV and CLEC permit applications. The difference is that AT&T (unlike CATVs and CLECs) does not get charged for this work. The current permitting, engineering and inspection costs for CATV and CLEC licensees in DEF's service area are set forth in Exhibit A-1 attached hereto. As shown on Exhibit A-1, some of these costs are on a "per permit" rather than a "per attachment" basis. Based on 2015-2020 data, the average number of poles per permit was 18. Also, some of the charges do not apply to every attachment, like the structural analysis fee and the second/subsequent post-inspection fee. On average, those fees apply to approximately 10% of the poles. The fees for second/subsequent post-inspection are the only

fees that are hourly, as opposed to unit based. Our contractors, on average, can perform four second/subsequent post-inspections per hour.

19. Fifth, AT&T enjoys a perpetual license under the Joint Use Agreement to remain attached to DEF's poles even after termination of the Joint Use Agreement. Section 16.1 of the Joint Use Agreement states:

> …and provided, further, that notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

This is contractual right that DEF's CATV and CLEC licensees do not have. When DEF terminates a pole license agreement with a CATV or CLEC, DEF's pole license agreements require such entities to remove their attachments from DEF's poles typically within 60 days. In contrast, under the Joint Use Agreement, even after termination, AT&T's existing attachments can remain attached to DEF's poles under the same terms and conditions as set forth in the Joint Use Agreement in perpetuity.

20. DEF would never have negotiated the Joint Use Agreement to include all of the aforementioned terms and conditions if the most DEF could recover from AT&T in return was the one-foot CATV or telecom rate (old or new).

Dispute History

21. Since I began working at Progress Energy, AT&T never complained to DEF that the cost-sharing arrangement in the joint use agreement was unfair, unreasonable, unjust, inaccurate, outdated, or otherwise in need of revision until May 22, 2019. Further, we have reviewed correspondence files and found no indication of any sort of objection or complaint by AT&T. In each year placed at issue in AT&T's complaint (and for many years prior), AT&T actually certified the correctness of both the number of poles invoiced and the applicable rates.

The way this process works is as follows: (1) DEF sends the annual rate calculation worksheet to AT&T for review (these worksheets are attached to AT&T's complaint as Exhibit 4); (2) AT&T reviews the worksheet then prepares what it calls a "Form 6407" which certifies the accuracy of the calculations and the correct number of poles owned by each party for billing purposes; (3) AT&T executed the Form 6047 and returns it to DEF for execution (these forms for 2015-2018 are attached hereto as Exhibit A-2). This exchange of information has served as the basis for annual billing for many years until 2019.

22. AT&T first challenged the cost sharing methodology in the existing joint use agreement on May 22, 2019. On that date, I received a request from Dianne Miller of AT&T to renegotiate the joint use rates in the Joint Use Agreement. A copy of that letter was attached to AT&T's complaint.

23. On July 26, 2019, representatives from AT&T and Duke Energy met in Raleigh, North Carolina. I attended the meeting on behalf of Duke Energy, along with David Hatcher, Managing Director. Dianne Miller was accompanied by Mark Peters and Dan Rhinehart of AT&T. Although no resolution was reached in the July meeting, the parties agreed to meet again on October 24, 2019. During the October meeting, the parties were unable to agree to any new joint use rates under the Joint Use Agreement.

24. In its complaint, AT&T makes a number of statements regarding the parties' July and October 2019 meetings that are inaccurate based upon my recollection of those meetings. First, AT&T argues that in the parties' meetings, Duke Energy representatives claimed that "AT&T would benefit if it is excused [under the Joint Use Agreement] from a permit application requirement." AT&T Complaint at ¶ 17. AT&T argues that "AT&T in fact submits a permit application before it attaches to Duke Energy Florida's poles and uses a form that is nearly identical

to the form attached to the draft license agreement." *Id.* Any discussion about permitting in Florida at all would have been to remind AT&T that it does not pay for permitting as distinguished from DEF's CATV and CLEC licensees; instead, DEF bears these costs (including pre-construction inspection, engineering and post-construction inspection). AT&T is probably confusing this with the joint use relationship with Duke Energy Progress, LLC which does not require permitting.

25. Second, AT&T argues that during the parties' meeting, DEC representatives "said AT&T may be advantaged if it pays for make-ready based on scheduled costs (*i.e.*, costs estimated in advance) instead of costs estimated on a per-project basis." Complaint, ¶ 17. AT&T argues, however, that DEF invoices AT&T for make-ready based on the per-project approach. *Id.* However, any discussion about payment of scheduled costs (sometimes called tabulated costs) would have been in reference to relationships between AT&T and DEF's affiliates (such as Duke Energy Progress, LLC), which use the tabulated costs approach.

26. With respect to the issue of make-ready costs raised at the parties' meetings, AT&T also argues that "A&T also reduces the amount of make-ready work it requires Duke Energy Florida to perform by completing much of AT&T's own make-ready and engineering work itself." AT&T Complaint at ¶ 17. It is unclear to me what AT&T means by this statement. However, I can state unequivocally that if electric supply space make-ready or pole replacements within energized lines are required to accommodate AT&T's modification or expansion of facilities, DEF performs that work.

27. Third, AT&T states that during the parties' meetings, Duke Energy representatives argued that one of the benefits of the Joint Use Agreement is that DEF replaces AT&T poles following road accidents. AT&T argues that "Because AT&T pays Duke Energy Florida for the

cost of these pole replacements, there is no financial benefit to AT&T and no cost to Duke Energy Florida." Complaint at ¶ 20. But as DEF explained during the July 26, 2019 and October 24, 2019 meetings, the benefit to AT&T is that AT&T is able to get this work completed in a timely manner without the cost of carrying crews, equipment, inventory, dispatchers, engineers and all of the other things necessary to replacing a pole in the middle of the night on a moment's notice.

Average Number of Attaching Entities

28. Another piece of information that we shared with AT&T during one of the meetings was that the average number of attaching entities on DEF poles to which AT&T is attached is [redacted]. This average is based on survey data collected by VentureSum, our contractor, during a 2017 survey of all DEF poles. The data was provided to us in a way that allows us to sort only those poles to which AT&T is attached. For this reason, the [redacted] average reflects only those poles to which AT&T is also attached. The [redacted] average includes DEF as an attaching entity. In other words, there are on average [redacted] entities other than DEF attached to those DEF poles to which AT&T is attached.

Pole Replacement and Pole Construction Costs

29. In connection with their investigation and analysis, I gathered and provided a number of pieces of data to the Kenrich Group upon their request. One of the pieces of data was the average wood pole replacement cost for the year ending 2019. That figure is $[redacted] per pole. I obtained this information in the normal course of business from our plant accounting department. This information, as I understand, is also filed with the Florida Public Service Commission as part of an annual reliability report. This replacement cost figure would be akin to the current cost of a make-ready pole replacement. This average is based on 4,115 wood pole replacements in 2019.

30. Another data set that I provided to Kenrich Group, per their request, related to the cost of constructing new pole lines within DEF's service area. The specific data points that I provided are listed in the table below:

	30C6	35C5	40C5	45C4	50C3
Single Phase Tangent	N/A	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Three Phase Tangent - Vertical	N/A	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Secondary Pole	$[redacted]	$[redacted]	N/A	N/A	N/A

The numbers in the top row identify pole height and class. So, for example, "30C6" means a 30-foot Class 6 pole. The column on the far left indicates the most common construction types within the distribution system. Based on data obtained from our GIS department, DEF's distribution system is approximately [redacted]% single phase, [redacted]% three phase and [redacted]% secondary. I asked our engineering firm to provide work order cost estimates for each of these construction types on the above-listed types of poles, and the information provided is set forth above. The work order system used to generate these costs is the same work order system DEF uses for all other purposes. Tangent construction is generally the simplest form of construction and thus yields the lowest costs. By way of example, a three phase dead end with a primary riser would be more than double the three phase tangent cost set forth above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on the 30th day of October 2020.

Gilbert Scott Freeburn

Gilbert Scott Freeburn

EXHIBIT A-1

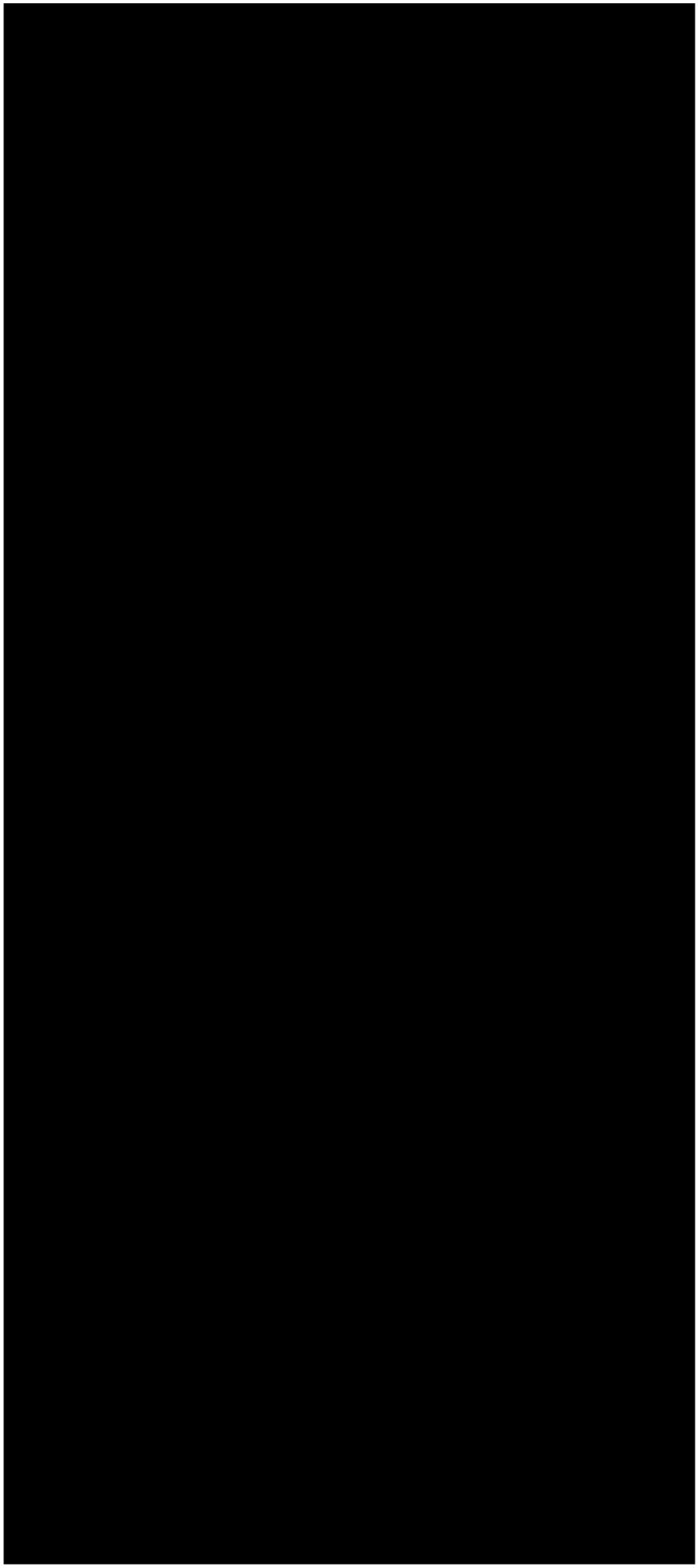
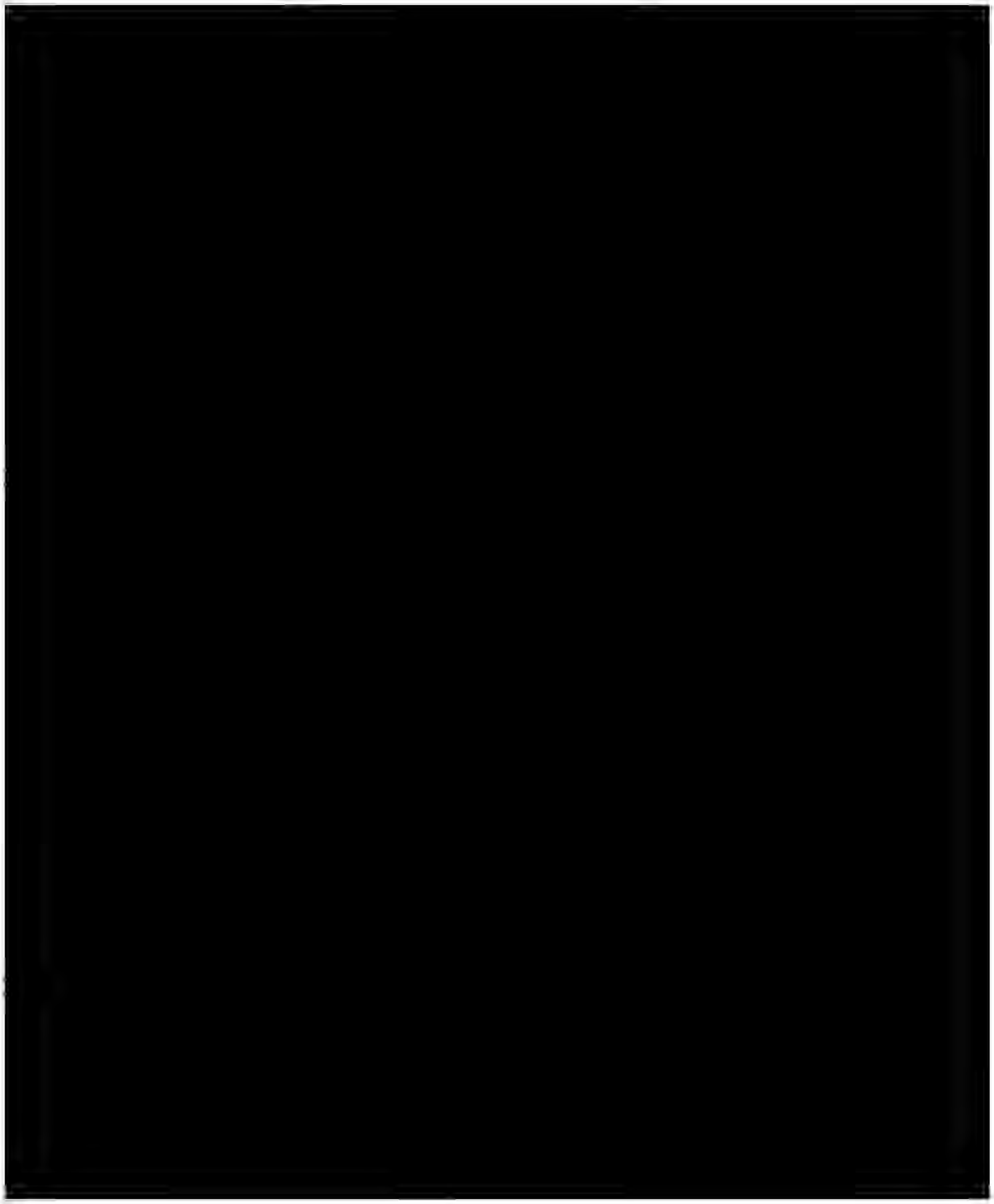


EXHIBIT A-2



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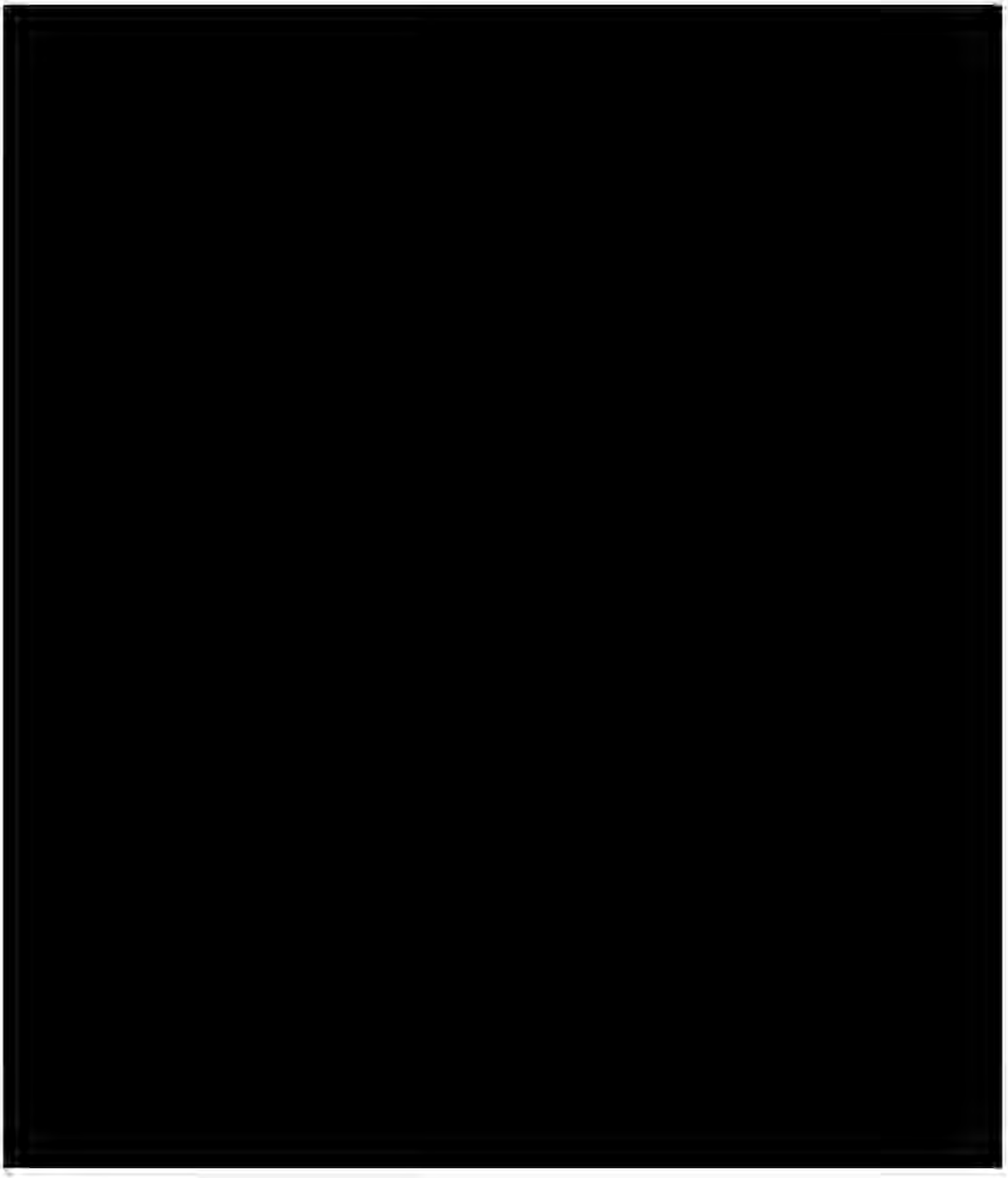
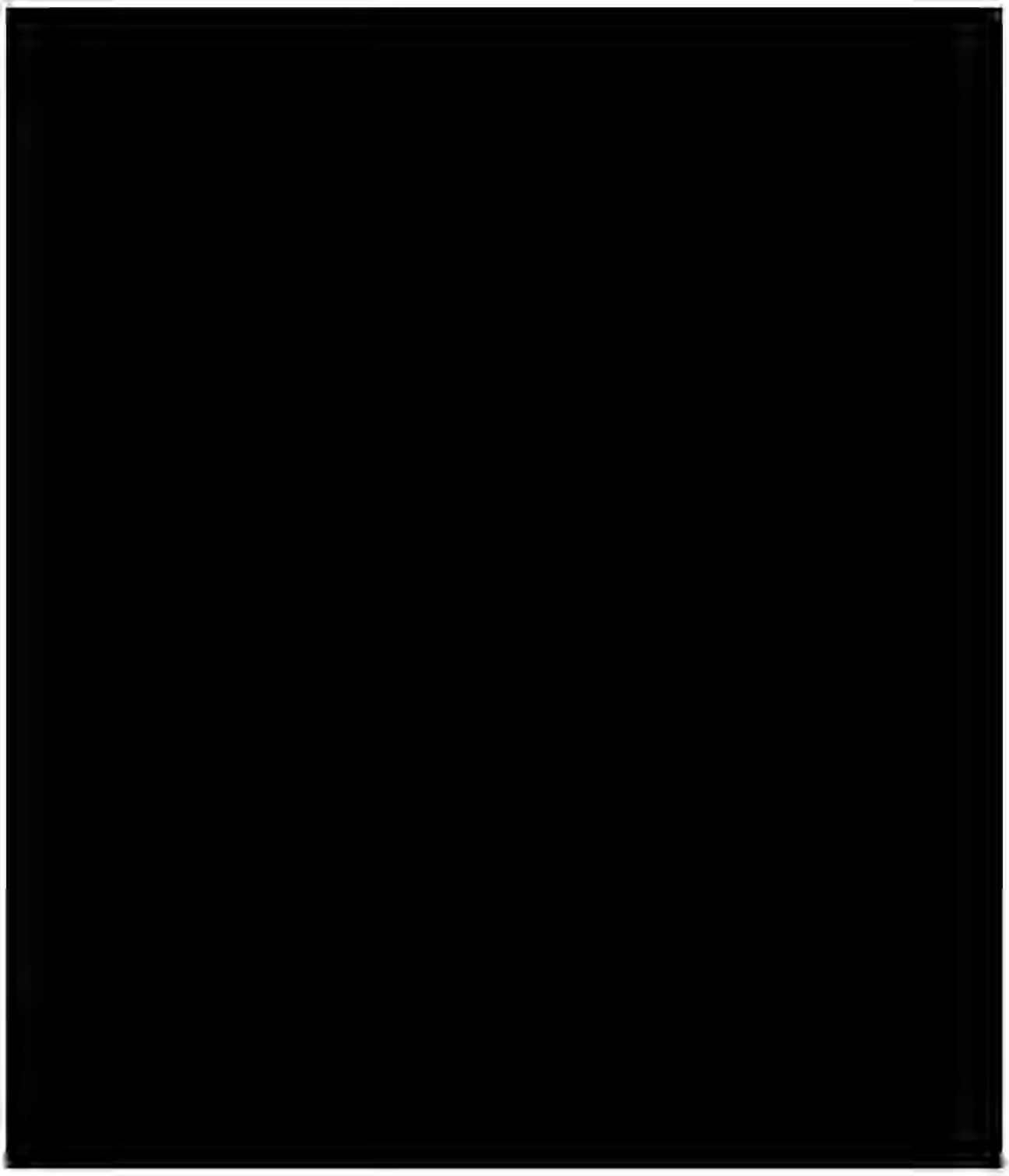




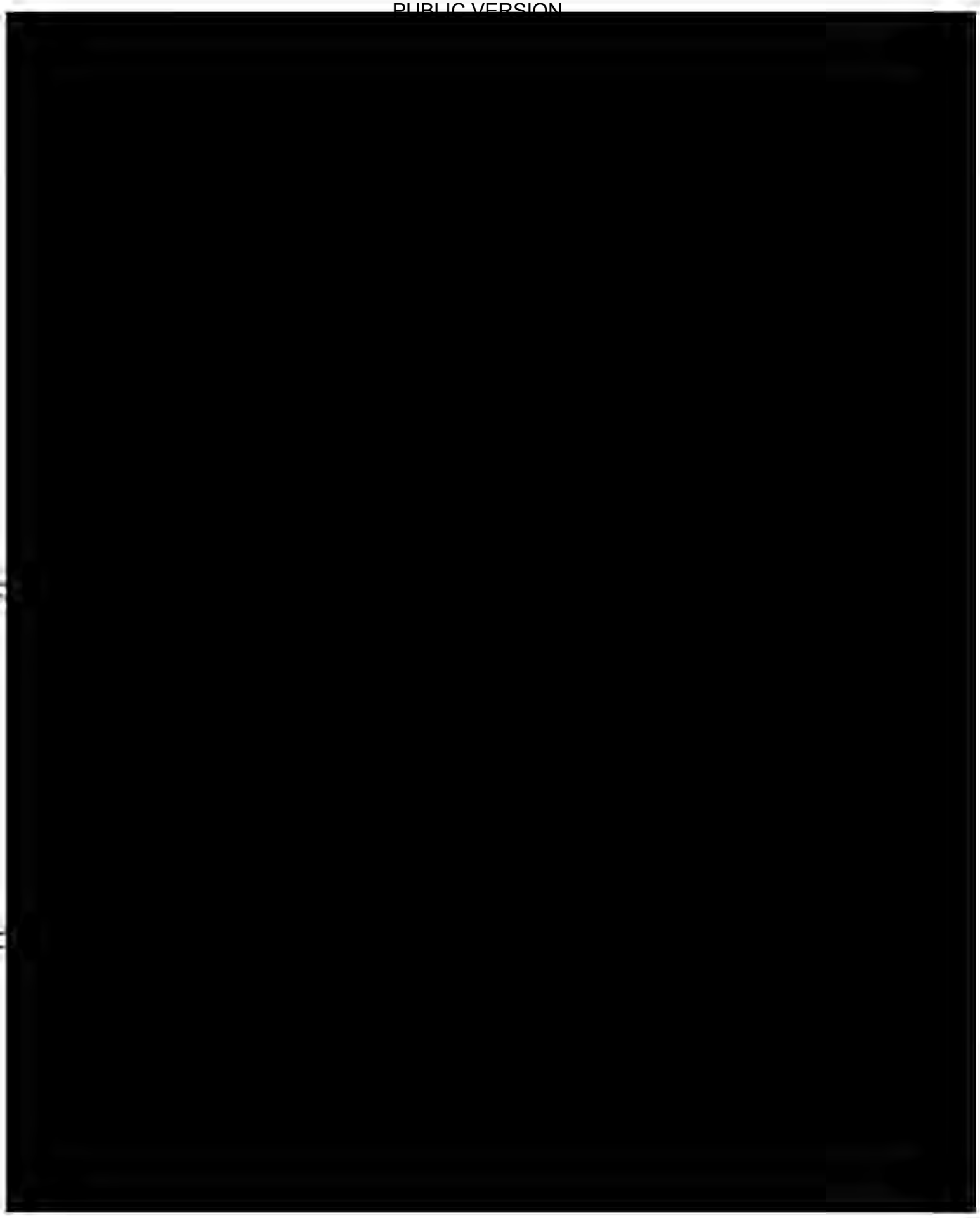


EXHIBIT B

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T Florida,	)	
Complainant,	)	
v.	)	**Proceeding No.: 20-276**
	)	**Bureau ID No.: EB-20-MD-003**
DUKE ENERGY FLORIDA, LLC,	)	
Defendant.	)	

DECLARATION OF DAVID J. HATCHER

1. My name is David J. Hatcher. I currently serve as the Managing Director, Smart City Solutions, for Duke Energy Corporation (the parent corporation of Duke Energy Florida, LLC ("DEF")). My current responsibilities as Managing Director, Smart City Solutions include director-level oversight of pretty much all third-party utilization of Duke Energy infrastructure. This includes things like traditional joint use and pole attachments, as well as streetlight small cell collocation, tower leasing, and other smart service attachments. I also currently oversee Duke Energy's lighting program, which not only provides street and outdoor area lighting to customers within Duke Energy's footprint, but also works with wireless carriers and infrastructure providers on innovative solutions for streetlight collocation. The managers of joint use (Scott Freeburn), lighting and tower leasing for Duke Energy all report to me in my current role. I have been in my current role for approximately three years.

2. I received a B.S. in Industrial Management with a minor in Electric Engineering from Purdue University in 1988. After graduating from Purdue, I worked for Owens-Illinois in

plastics manufacturing as a production supervisor. In 1992, I received a Master of Business Administration degree from the University of North Carolina at Chapel Hill. Between 1992 and when I joined Carolina Power & Light (predecessor in interest to Duke Energy Progress, LLC) in 1998, I worked in electronics manufacturing for Emco Electronics as Production Manager and then as Operations Manager.

3. I have been employed by Duke Energy and/or its predecessors since 1998 through the present, and have held various strategy, finance, and operations roles during my career at Duke Energy.

4. DEF is party to a June 1, 1969 joint use agreement between Florida Power Corporation (now DEF) and Southern Bell Telephone and Telegraph Company (now AT&T) (the "Joint Use Agreement").

5. DEF entered into the Joint Use Agreement in order to partner with AT&T to share in the costs of the joint use network so that each party could provide ubiquitous electric and telephone service, respectively, across their overlapping service territories at lower cost to their respective customers. By entering into the Joint Use Agreement, the parties avoided construction of redundant pole networks that would have been more expensive than a shared network, and that would have burdened the right of way with unsightly duplicative pole lines. The key component of the Joint Use Agreement was that each party would share equitably in the cost of building and maintaining the jointly used network, either through pole ownership (at the "objective percentage" set forth in the Joint Use Agreement) or through an annual "equity settlement" (calculated pursuant to the rental methodology set forth in the Joint Use Agreement). The Joint Use Agreement was, and remains, a crucial component of DEF's business plan to provide affordable electric service to

its customers because DEF would not have built the distribution pole network the way that it built it without the Joint Use Agreement.

6. It is because of the Joint Use Agreement that DEF (and its predecessors in interest), after the execution of that agreement in 1969, began building a network of primarily 40-foot, Class 5 poles in its overlapping service area with AT&T. DEF, in its overlapping service area with AT&T, has always installed poles taller and stronger than would have been necessary to meet DEF's service needs alone. DEF would not have installed taller and stronger poles than necessary to meet its own service obligations but for the Joint Use Agreement (and its infrastructure cost sharing provisions), because DEF could not have justified the additional investment without the Joint Use Agreement (and its infrastructure cost sharing provisions). In other words, in the absence of the agreement with AT&T, DEF would not have "speculatively" built a network of poles taller and stronger than necessary to meet its core business purposes because there would have been no guarantee that any entities would come along to share in the cost of the excess capacity, and such a gamble would have thus been unacceptable to DEF from a business perspective (not to mention prudency questions related to the Florida Public Service Commission). The reason the investment in taller and stronger infrastructure makes sense (and the reason it is justifiable from a FPSC prudency perspective) is because of the cost sharing obligations in the Joint Use Agreement.

7. One of the reasons that DEF (and its predecessors in interest) initially set 40 foot poles in order to accommodate AT&T is that, in addition to the actual space occupied by AT&T attachments (the Joint Use Agreement reserves AT&T three feet of space per pole), the poles had to include a 40 inch (3.33 foot) communication worker safety zone (sometimes also called the "safety space"). The sole purpose of the safety space is to provide a buffer between DEF's

energized facilities in the power supply space and communications employees/contractors constructing attachments in the communications space. But for AT&T's attachments on the pole, which were almost always the first communications attachments on the poles (and remain the only communications attachments on many poles), the safety space would not have been necessary, and would not have existed on DEF's poles. The safety space on DEF poles serves no purpose whatsoever in the provision of electric service. Though DEF's pole utilization needs have increased over time, DEF has always needed to set a pole 5-10 feet taller than necessary for electric service in order to provide AT&T's reserved space (feet) and the safety space (3.33 feet).

8. Prior to May 22, 2019, I am not aware of AT&T ever complaining to DEF or its predecessors that the cost-sharing arrangement in the Joint Use Agreement was unfair, unreasonable, unjust, inaccurate, outdated, or otherwise in need of revision. However, Scott Freeburn, Duke Energy's Joint Use Manager, received a letter dated May 22, 2019 from Dianne Miller of AT&T requesting to renegotiate the Joint Use Agreement's annual recurring rates. The parties subsequently engaged in two meetings in response to AT&T's request: a July 26, 2019 meeting and an October 24, 2019 meeting. I was present and participated in both of those meetings.

9. In both the July 26 and October 24, 2019 face-to-face meetings between representatives of the parties, DEF explained its perspective relating to the advantages AT&T enjoys under the Joint Use Agreement as compared to CATV and CLEC licensees, including but not limited to the following:

- AT&T's allocated space under the Joint Use Agreement (feet per Section 1.1.6(B) of the Joint Use Agreement) and the amount of space it actually occupies on DEF's poles ( ), as compared to the one-foot of space allocated to CATV and CLEC licensees;
- the make-ready costs AT&T avoided through DEF's construction of a built-to-suit network of poles with sufficient vertical and loading capacity to accommodate AT&T's attachments (40 foot Class 5 poles, in most instances, per Section 1.1.5(A) of the Joint Use Agreement), as compared the CATV and CLEC licensees who take the pole as they find it; and

- the perpetual license enjoyed by AT&T even in the event of a termination (per Section 16.1 of the Joint Use Agreement), as compared with the removal-upon-termination provisions in CATV and CLEC license agreements.

10. The advantages set forth above are not advantages enjoyed by DEF's CATV and CLEC licensees. DEF explained these benefits of the Joint Use Agreement in the parties' meetings in terms of substance, if not by specific section number, and explained how those provisions compared to the analogous provisions of pole license agreements DEF enters into with CATVs and CLECs.

11. Though DEF had not, at the time of the parties' July 26, 2019 and October 24, 2019 meetings, performed any sort of precise economic quantification of those competitive advantages, DEF made clear to AT&T that it would do so if the parties were unable to reach an amicable resolution. When DEF explained the types of "net benefits" it would quantify if required to do so, AT&T merely dismissed them with talking points about the "reciprocal" nature of those benefits. DEF never disputed that those benefits were, indeed, reciprocal; rather, DEF explained that those "reciprocal" benefits disproportionately inure to the benefit of AT&T under the particular relationship at issue here because DEF owns a disproportionally large percentage of the poles in the joint use network.

12. In an affidavit submitted with AT&T's Complaint, Mark Peters, AT&T's Area Manager-Regulatory Relations, attempts to dismiss the above-stated benefits of the Joint Use Agreement identified by DEF in the parties' July 26, 2019 and October 24, 2019 meetings. First, Mr. Peters states that, even though the Joint Use Agreement reserves [redacted] feet of space to AT&T, in practice, other attachers often occupy that reserved space, and DEF does not remit any of the rental it collects associated with those third-party attachments to AT&T. However, the field data rebuts this allegation. That field data indicates that AT&T actually occupies, on average, at least

[redacted] of space on DEF's poles (excluding any portion of the safety space). We shared this fact with AT&T at one or both of the meetings. Neither Mr. Peters nor anyone else at AT&T ever provided any data indicating otherwise.

13. Further, Mr. Peters argues that AT&T's avoidance of make-ready costs resulting from the 40 foot poles contemplated by the Joint Use Agreement is not a material advantage vis-à-vis AT&T's competitors because, "By definition, when AT&T and its competitors attach to the same Duke Energy Florida pole, the pole is tall enough to accommodate communications attachments…." Peters Aff. At ¶ 12. This argument is extremely off-base for several reasons. First, even if AT&T's competitors were occasional incidental beneficiaries of the Joint Use Agreement, it takes nothing away from the fact that the 40 foot poles were built for, and because of, AT&T. They were not built for, or because of, AT&T's competitors. AT&T almost never had to perform make-ready when deploying its attachments on DEFs poles because the poles were built to suit AT&T. By way of contrast, subsequent third party attachers (whom AT&T repeatedly describes as its competitors, even though this was only the case much later in time) took the pole as they found it. If there happened to be sufficient loading and clearance capacity for the new attacher to attach, it could proceed. However, where there was insufficient clearance or loading capacity, the new attacher was required to pay for make-ready and/or pole changeouts in order to accommodate their attachments. These significant make-ready costs were wholly avoided by AT&T as a result of the Joint Use Agreement. If, in an alternate universe, a CATV with a pole license agreement had been the first communications company to make attachments to DEF's poles, the CATV attacher would have been required to pay for change-outs of virtually every pole. A network of poles built solely to meet DEF's electric service needs would not have had sufficient

space for a communications attachment and the communication worker safety zone that is required when electric and communication facilities share the same pole.

14. In addition, Mr. Peters' affidavit avoids perhaps the most significant benefit of the Joint Use Agreement—that AT&T may remain attached to DEF's poles following termination of the Joint Use Agreement, and in such instance each party's existing attachments on the other party's poles are subject to the same rates, terms, and conditions contained in the terminated agreement. Rather than addressing this issue head-on, Mr. Peters instead argues that "the Florida JUA gives Duke Energy Florida the right to exclude poles from joint use *and* the right to terminate AT&T's ability to attach to new pole lines at any time and for any reason." The fact that AT&T lacks a statutory mandatory access right to access DEF poles not currently in joint use is irrelevant to the fact that AT&T, unlike its competitors, has the right to maintain its existing attachments on DEF's poles in perpetuity under the Joint Use Agreement. None of DEF's CATV or CLEC licensees have such a contractual right in their pole license agreements.

15. Further, DEF made clear at the July 26, 2019 and October 24, 2019 meetings that DEF was more than willing to grant AT&T access on a going-forward basis (*i.e.* to DEF poles not already in joint use) on the exact same terms and conditions as DEF's CATV and CLEC licensees. In the July 26, 2019 meeting, DEF proposed that AT&T enter into a new pole license agreement (at the Commission's new telecom rate) that would cover poles that are not already in joint use. AT&T indicated that it had no interest in this proposal.

16. During the July 26, 2019 and October 2019 meetings, we also discussed the proper allocation of the cost of the safety space. We explained to the AT&T representatives that this is space that DEF does not need and does not use on its own poles. We acknowledged that, on AT&T poles, AT&T likewise would not need the safety space without DEF's electric facilities. We thus

discussed the possibility of AT&T bearing the cost of the safety space on DEF's joint use poles, and DEF bearing the cost of the safety space on AT&T's joint use poles. AT&T's response to this issue was obtuse, to say the least. Rather than engaging in a conversation about whether and why it made sense for DEF to absorb the cost of safety space on its own poles (when it does not need and does not use this space), AT&T took the position that none of that mattered because, from its perspective, the FCC had already said that the safety space was excluded from the CATV and CLEC rate formula. We further explained that the FCC authority upon which AT&T was relying seemed to presume that the cost of safety space was already covered under existing joint use agreements and that it made no sense to rely on those authorities when AT&T was seeking to unravel the very premise upon which those authorities were based. We also explained that, though it would certainly make more sense for all communications attachers to share the cost of the safety space equally, the fact that the FCC has excused CATV and CLEC attachers from sharing in this burden meant that the cost necessarily fell on either AT&T or DEF; and given that DEF doesn't need the safety space on its own poles, it only made sense for AT&T to pay for it. Though AT&T said they would "look into it," they never re-engaged on this important issue. To the contrary, all of the "models" proposed by AT&T involved DEF bearing the entire cost of the safety space both on DEF-owned pole and AT&T-owned poles. From a ratemaking, logical and fairness perspective, this was a nonstarter.

17. AT&T has also submitted with its Complaint an affidavit by Dianne Miller, Director—Construction & Engineering for AT&T, containing an inaccurate characterization of the parties' executive level meetings. In her affidavit, Dianne Miller states that during the parties' October 24, 2020 meeting, "…executives for the Duke companies informed AT&T that they would not entertain a change to rental rates for existing pole attachments, would not consider refunding

any past overpayments, and considered the parties too far apart to make an offer." As set forth above, we made clear that we were willing to enter into a new agreement to cover new poles on terms and conditions identical to our CATV and CLEC licensees. Further, we were obviously willing to discuss a new cost-sharing methodology even for existing joint use poles—that was the whole point of the conversation about the proper allocation of the cost of the communication worker safety zone. In fact, during those meetings, Duke explored with AT&T concepts similar to those embodied in the September 10, 2020 settlement offer we ultimately transmitted to AT&T. However, AT&T argued in the 2019 meetings that it was entitled to DEF's current one-foot telecom rate with, at the most, [redacted] feet of allocated space. AT&T made clear that it did not intend to compromise on that position. DEF indicated that, in that case, the parties were likely too far apart on methodology for further productive negotiations at the time, and AT&T agreed. AT&T also discussed interest in retroactive refunds, even though it had not raised any sort of dispute about the agreement until May 22, 2019. DEF made clear that retroactive refunds were a non-starter.

18. In any event, and perhaps more importantly, DEF has, in fact, provided AT&T with a settlement offer that DEF believes to be [redacted]. On September 10, 2020, DEF transmitted by letter an adjusted cost sharing proposal to AT&T that utilizes the FCC's old telecom rate formula and, if accepted, would result in [redacted] over the life of the proposed deal. As of the date of my execution of this declaration, AT&T has not responded to the proposal. In fact, to my knowledge, AT&T has not even indicated one way or another that they intend to respond.

19. AT&T's strategy of seeking to undermine the financial basis of the parties' long-term bargain to share in the cost of the joint use network undermines broadband deployment. The

Joint Use Agreement was successful in allowing AT&T to deploy ubiquitous telephone and other services to their respective customers throughout DEF's service area. When AT&T adds fiber to existing joint use poles, it pays no additional "rental" for this additional burden. Nevertheless, AT&T seeks to characterize the Joint Use Agreement as a vestige of the past, rather than recognizing that the same infrastructure and cost sharing arrangements embodied in the Joint Use Agreement could be harnessed to provide broadband and other network solutions to rural and urban America. By way of example only, if DEF had agreements in place that could economically justify building additional space into the top of its distribution poles (kind of like when DEF built additional capacity beneath its electric facilities for AT&T) when those poles are built or replaced, wireless providers could rapidly deploy small cells and other advanced communications capabilities in the same way that AT&T deployed, and continues to deploy, its wireline facilities—without make-ready and without wait. But instead, in seeking to undermine the Joint Use Agreement, AT&T is undermining the potential for the joint use network to do what so far has proved an elusive task: to actually deploy wireline broadband to places that don't already have it. If AT&T were serious about being a contributor to the FCC's broadband deployment goals, it would be running towards the Joint Use Agreement—not running away from it.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on the 29th day of October, 2020.

David J. Hatcher

EXHIBIT C

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T Florida,	)	
Complainant,	)	
v.	)	**Proceeding No.: 20-276**
	)	**Bureau ID No.: EB-20-MD-003**
DUKE ENERGY FLORIDA, LLC,	)	
Defendant.	)	

DECLARATION OF STEVEN D. BURLISON, P.E.

1. My name is Steven D. Burlison. I am currently employed by Duke Energy Business Services, LLC as Principal Engineer. I work in Duke Energy's Customer Delivery Equipment and Construction Standards group. I am the team lead for the group of engineers that focus on overhead lines and equipment for Duke Energy Florida, LLC ("DEF"). Our responsibilities include, among other things (1) approval of material and equipment used to construct overhead distribution lines and (2) creation of construction specifications to comply with applicable codes and industry best practices.

2. I graduated from Tennessee Technological University in 1982 with a B.S. in Electrical Engineering and have been working in the electric utility industry in various capacities, including Distribution Standards at Progress Energy and Florida Power Corporation, since that time. I am a registered Professional Engineer in the states of Florida and Virginia.

3. I serve as principle on the National Fire Protection Association (NFPA) National Electrical Code (NEC) Code making panel 3 representing the Edison Electric Institute (EEI).

NFPA is the organization that publishes the NEC and manages the proposed public changes through a code making process set on a three-year cycle. The NEC covers electrical installations on the customer's side of the service point (usually the meter base), and sets the foundation for electrical safety in residential, commercial, and industrial occupancies around the world. I also serve as alternate on IEEE National Electrical Safety Code (NESC) Code making subcommittee 2 representing EEI. IEEE is the organization that publishes the NESC and manages the proposed public changes through a code making process set on a five-year cycle. As stated in Section 010 of the NESC Code Book, "The purpose of the NESC is the practical safeguarding of persons and utility facilities during the installation, operation, and maintenance of electric supply and communication facilities, under specified conditions." I also serve on the Southeastern Electric Exchange NESC committee.

4. I am familiar with the joint use of utility structures and the physical requirement for clearances and strengths associated with multiple utilities on the same wood pole as defined by the NESC. The American National Standards Institute (ANSI) O5.01 provides Wood Pole Specifications and Dimensions used across the utility industry. ANSI O5.01 defines wood poles by length and class. Lengths come in 5-foot increments. Class defines the strength of the pole. The lower the class number, the stronger the pole (for example, a Class 5 pole is stronger than a Class 6 pole). Clearance requirements relating to the various types of equipment and cables dictate the length of pole required, and the loading presented by the equipment and cables supported by the pole dictate the strength of class required for each pole.

5. The June 1, 1969 joint use agreement between Florida Power Corporation (now DEF) and Southern Bell Telephone and Telegraph Company (now AT&T) (the "Joint Use Agreement") defines a "normal joint use pole" along public streets, alleys and roads as a 40-foot

Class 5 wood pole. The 40-foot reference with respect to pole height describes the total length of the pole (including the portion that is ultimately set beneath the ground line for support). As stated, the reference to a "Class 5" pole is a reference to the strength of the pole.

6. NESC Rule 232 for "Vertical clearances of wires, conductors, cables, and equipment above ground, roadway, rail or water surfaces" sets the minimum clearance for "Insulated communication conductors and cables; messengers; overhead shield/surge-protection wires; effectively grounded guys; ungrounded portion of guys meeting Rules 215C2 and 279A1 exposed to 1 to 300V; neutral conductors meeting Rule 230E1; supply cables meeting Rule 230C1" all at the same value for the type of surface crossed over. *See* NESC table 232-1. NESC Rule 235 establishes a 40" minimum distance requirement between any communication conductor and an electric utility's lowest facility on the pole. This is what the NESC defines as the "Communication Worker Safety Zone".

7. The purpose of the Communication Worker Safety Zone is to protect communications workers from energized electric facilities. Without the presence of a communication line on a DEF pole, there would be no need for the Communication Worker Safety Zone. Because AT&T was historically the first communications attacher on DEF's poles, AT&T was the original cause of the need for the Communication Worker Safety Zone on DEF's poles.

8. The Communication Worker Safety Zone on DEF's poles serves no purpose in the provision of electric service. DEF does not need and does not use the Communication Worker Safety Zone on its own poles.

9. Though streetlights are occasionally mounted within the Communication Worker Safety Zone on DEF's poles as permitted by the NESC, the safety zone is not necessary for the proper installation of a streetlight. Streetlights can be, and often are, safely mounted within the

electric supply space. In other words, if there is not a Communication Worker Safety Zone on a distribution pole, DEF can still safely install a streetlight on that pole.

10. DEF does not use the Communication Worker Safety Zone to install transformers. DEF has, in the past, in accordance with NESC Rule 238, allowed the grounded portion of a transformer to be within 30 inches of the uppermost telecommunications conductor. However, even under this configuration, there remains a Communication Worker Safety Zone of 40 inches between DEF's lowest supply conductor and the uppermost communications conductor. DEF's current construction standards do not allow any portion of a transformer to extend below the lowest supply conductor into the Communication Worker Safety Zone.

11. The Joint Use Agreement defines AT&T's "standard space" as [redacted]. Therefore, DEF's lowest conductor (neutral meeting Rule 230E1) must be [redacted] higher than necessary in order to accommodate AT&T's standard space of [redacted] plus the 40" Communication Worker Safety Zone. This results in DEF's standard pole being 5 to 10 feet taller than necessary to install electric service facilities only. The communication conductors also create additional wind loading on the pole, resulting in the need for stronger (heavier class) poles than needed to provide electric service. Thus, if DEF and its predecessors had constructed the distribution pole network solely to accommodate DEF's electric distribution needs, virtually every pole would have needed to be replaced with a taller and stronger pole in order to accommodate AT&T.

12. In 1969, when the Joint Use Agreement was executed, Florida Power Corp. (now DEF) could have built its electric distribution system on poles 5 to 10 feet shorter than it did but for the need to accommodate AT&T's facilities under the Joint Use Agreement. In other words, where Florida Power Corp. installed 40-foot poles to meet the Joint Use Agreement's

requirements, in the absence of the Joint Use Agreement, it could have installed 30 or 35-foot poles.

13. Subsequently, Florida Power Corp. started utilizing vertical construction (instead of horizontal cross-arm construction) because it is not as wide as horizontal crossarm construction and occupies less right-of-way. Often, with vertical construction, poles can be set further from the edge of the road and therefore improve safety without impacting adjoining properties. While vertical construction requires taller poles, it does not change the location of the communication space on the pole or the location of the Communication Worker Safety Zone. If AT&T were not present, Florida Power Corp. (and DEF to the present day) would have built its vertical construction on poles that were 5-10 feet shorter than required because of AT&T.

14. Today, as an example, under DEF's typical vertical three-phase construction, DEF requires 181 inches (15'1") from the pole top to the neutral. The top of a 45-foot pole set 6' 6" in the ground is 38' 6" above ground. That places the neutral at 23' 5". At mid-span with a typical sag of 60", the ground clearance is 18'5". This would meet clearance requirement of the Florida Department of Transportation (D.O.T.) of 18' above D.O.T. roads. The foregoing is illustrated in the diagram at Exhibit C-1 hereto.

15. However, today, for example, if AT&T is to be installed on a pole which also has to meet the Florida D.O.T clearance requirement of 18' in mid-span while maintaining a minimum of 40" from the DEF neutral, then the telecommunication conductor will have to be installed at [redacted] at the pole. The neutral would then have to be installed at a minimum of [redacted]. The top of the pole would then need to be [redacted] + 15'1" resulting in the top of the pole requirement at [redacted]. Given the required pole setting depths, this will then require a [redacted] pole. And because AT&T is reserved [redacted] of space under the Joint Use Agreement, the top of the pole will need to be [redacted]

[redacted] which, when accounting for pole setting depth, will require a [redacted] pole. Thus, today, assuming DEF's typical vertical construction, DEF would require a 45-foot pole to accommodate DEF's facilities only; however, because of the need to accommodate AT&T's facilities under the Joint Use Agreement, DEF is required to set a [redacted]-foot pole. The foregoing is illustrated in the diagram at Exhibit C-1 attached hereto.

16. The scenarios set forth in paragraphs 14 and 15 above and the diagram attached hereto as Exhibit C-1 are, as stated, examples. Mid-span clearance requirements vary under NESC Section 232 depending on the nature of the area located at mid-span (*e.g.*, pedestrian crossing, non-D.O.T. road, parking lot, driveway). Further, the amount of sag also depends on the span length between the two poles at issue.

17. AT&T is almost always the lowermost wireline attaching entity on DEF's poles. If there are other third-party attachments beneath AT&T, they are not wireline attachments; they are communications cabinets and other equipment mounted flush with the pole below the communications space. Occupying the lowest position on the pole gives AT&T ease of access to its facilities, as there is no need to work through the lines of other attaching entities. This is true whether the AT&T worker is climbing the pole or working from a bucket truck. Further, so long as AT&T complies with the NESC's clearance over roadway requirements, which have been determined to be safe by industry experts, the risk of its lines being snagged by vehicles should be de minimis.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed on the 28 day of October, 2020.

Steven D. Burlison, P.E.

EXHIBIT C-1

Typical Current DEF Distribution Pole Without AT&T Attached and With AT&T Attached

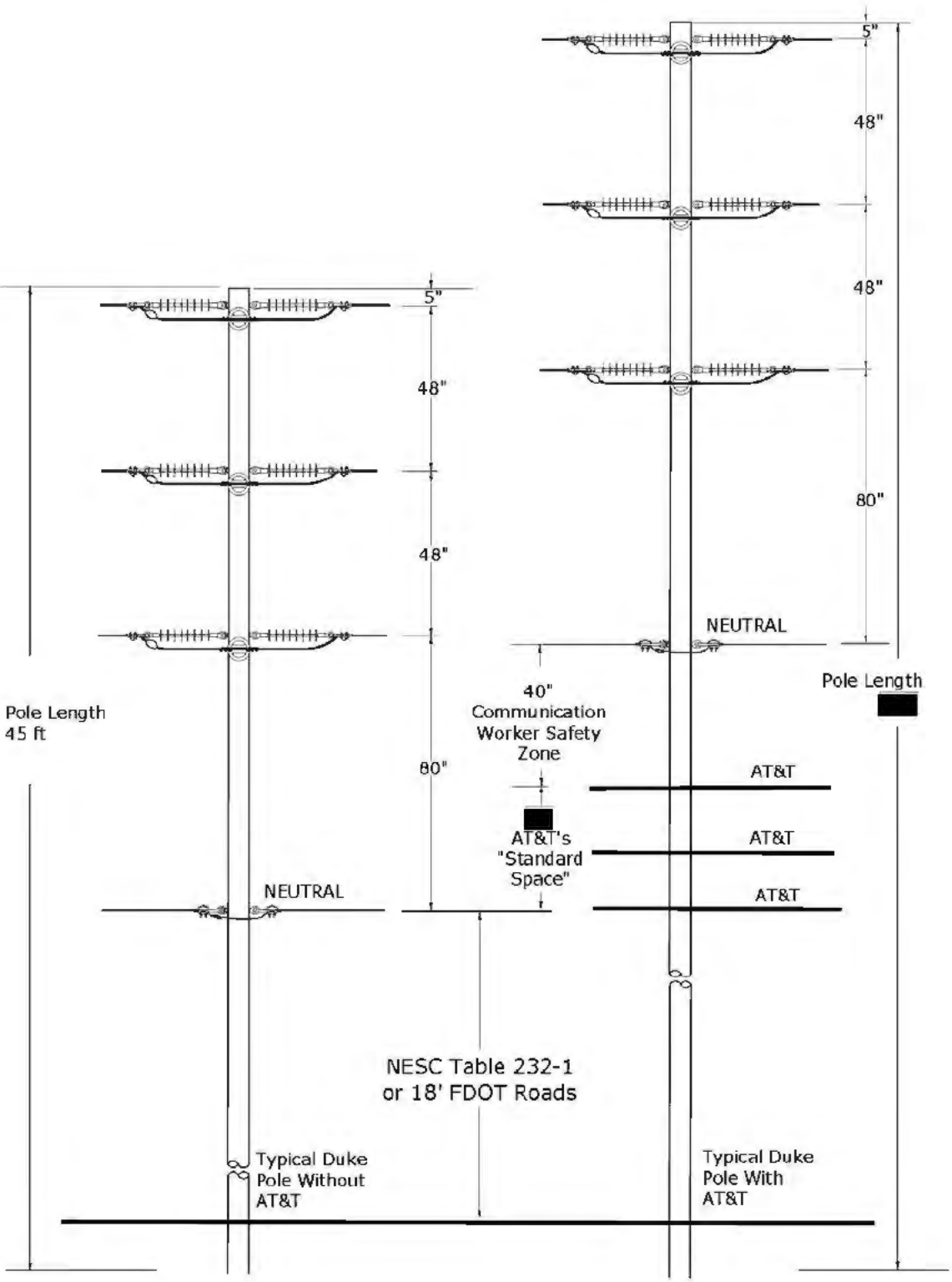


EXHIBIT D

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T Florida,	)	
Complainant,	)	
v.	)	**Proceeding No.: 20-276**
	)	**Bureau ID No.: EB-20-MD-003**
DUKE ENERGY FLORIDA, LLC,	)	
Defendant.	)	

DECLARATION OF MARCIA OLIVIER

1. My name is Marcia Olivier. I am currently employed by Duke Energy Florida, LLC ("DEF") as Director of Rates and Regulatory Planning. I have held my current position since 2014. My job responsibilities include overseeing retail rate cases, including testifying as the cost of service and revenue requirement witness, filing historical and projected earnings surveillance reports with the Florida Public Service Commission ("FPSC"), and overseeing rate calculations for AT&T and other entities who make attachments to DEF's poles.

2. I hold Bachelor of Science degrees in both Finance and Accounting from the University of South Florida. I've worked in the Rates and Regulatory Strategy department for Duke Energy Florida, and previously Progress Energy Florida and Florida Power Corporation, for more than twenty years. During this time, I've held roles as the witness in annual fuel and environmental clause proceedings, storm cost recovery dockets, and various other regulatory proceedings.

3. As referenced above, one of my job responsibilities is preparing the annual rate calculations used for purposes of billing under the joint use agreement between AT&T and DEF. Under this joint use agreement (as amended in 1990), the per pole rate that AT&T pays to DEF is [redacted]% of the majority pole owner's annual pole cost; the per pole rate that DEF pays to AT&T is [redacted]% of the majority pole owner's annual pole cost. During the years that I have been involved with these calculations, my understanding is that DEF has been the majority pole owner. The annual pole cost used in this calculation is the preceding year's annual pole costs. So, for example, the annual pole cost used to calculate the 2019 rate would be the annual pole cost based on year ending December 31, 2018 data.

4. Since I have been involved with preparing the AT&T rate calculations, and as I understand for many years prior, we have utilized the Federal Communications Commission's formula for purposes of calculating DEF's annual pole cost. This is the same annual pole cost calculation that serves as the basis for the rates we calculate for attachments by cable television companies and other telecommunications carriers. The only difference in those calculations is the portion of the annual pole cost allocated to a particular type of attachment.

5. The rate calculation worksheets applicable to DEF's relationship with AT&T, for billing years 2015-2020, are attached hereto as Exhibit D-1. These worksheets show the underlying data, the source of the data, and the steps used to calculate the rate. We lay this information out in a detailed manner so that attaching entities have the opportunity—before billing—to review the data and ask questions. Until the recent dispute with AT&T, I am not aware that AT&T has ever alleged that our calculations were incorrect in any way.

6. By way of summary, DEF's annual pole cost and the rates applicable to AT&T and DEF for billing years 2015-2020 are set forth below:

	Annual Pole Cost	AT&T Rate of DEF Poles	DEF Rate on AT&T Poles
2015	$69.43	[redacted]	[redacted]
2016	$70.12	[redacted]	[redacted]
2017	$72.21	[redacted]	[redacted]
2018	$67.29	[redacted]	[redacted]
2019	$67.12	[redacted]	[redacted]
2020	$73.03	[redacted]	[redacted]

7. The data used in these calculations is the most accurate data available to DEF at the time the calculations are performed. Most of the data comes directly from DEF's FERC Form 1 filing for year ending December 31. The pieces of underlying data that do not come directly from the FERC Form 1 are as follows: the rate of return, the number of distribution poles and the depreciation reserve for FERC Accounts 364, 365 and 369.

8. Rate of Return. DEF uses the rates of return that it reports to the FPSC in its December Earnings Surveillance Reports ("ESRs"). Attached as Exhibit D-2 are the rates of return (and their underlying calculations) that DEF used to calculate annual pole attachment rental rates for billing years 2015 through 2020. As noted in the ESRs, accumulated deferred income taxes ("ADITs") are a zero-cost item in the capital structure, which is why ADITs are not a rate base deduction in our calculation of net bare per pole cost. The relevant rates of return are provided in the chart below:

Billing Year	Rate of Return
2015 (Based on Dec. 2014 ESR)	7.02%
2016 (Based on Dec. 2015 ESR)	6.90%
2017 (Based on Dec. 2016 ESR)	6.65%
2018 (Based on Dec. 2017 ESR)	6.68%
2019 (Based on Dec. 2018 ESR)	6.54%
2020 (Based on Dec. 2019 ESR)	6.27%

The difference between the 2019 rate of return (6.54%) figure and the December 2018 ESR (6.53%) is due to rounding. The FPSC has previously authorized a higher rate of return for DEF—7.88%. *See In re: Petition for Increase in Rates by Progress Energy Florida*, Order No. PSC-10-0131, at p. 172 (Mar. 5, 2010). However, DEF has chosen to use the lower rates of return that it reports in its December ESRs because the December ESRs capture investment and cost data that are more temporally relevant to the cost data used in the rate formulas.

9. Depreciation Reserve. The actual accumulated depreciation for distribution level FERC Accounts is not reported on the FERC Form 1, but this is data that DEF actually maintains for a variety of internal and FPSC reporting purposes. Because we have actual data, it does not make sense from a cost of service ratemaking perspective to utilize a ratio or any kind of "proxy" for the actual data. When actual data is available, as it is with respect to accumulated depreciation for FERC Accounts 364, 365 and 369, it is more appropriate to use the actual data. The actual data and its source ("Plant & Depreciation Accounting") is shown on each of the worksheets.

10. As referenced above, I also prepare rate calculations applicable to cable television companies and other telecommunications carriers (like CLECs) that are attached to DEF's poles. When the space allocation factors (and, in the case of the FCC's new telecom rate, the cost factor) are applied to DEF's annual pole cost, it yields the following rates per one-foot of space occupied for years 2015-2020:

	2015	**2016**	**2017**	**2018**	**2019**	**2020**
CATV	$5.14	$5.20	$5.35	$4.99	$4.97	$5.41
CLEC	$7.74	$7.81	$5.37	$5.00	$4.99	$5.43

11. There are several differences between DEF's calculations and the calculations of AT&T witness Dan Rhinehart, the most noteworthy of which is Mr. Rhinehart's calculation and application of ADITs. Mr. Rhinehart calculates the net cost per bare pole in Exhibit R-1 (Page 1 of 2), line 20 by reducing the net pole investment by an estimated amount of ADITs rather than using the FPSC's prescribed methodology of including ADITs as a zero-cost source of capital. In utility ratemaking, ADITs have historically been treated in one of two ways across state and federal jurisdictions. It is a common principal of rate making that either method produces the same revenue requirement and cost-based rates). One method is for ADITs to be included as a reduction to rate base. This is consistent with the FCC formula. The other method is for the ADITs to be included in the cost of capital with a zero-cost rate. The Federal Energy Regulatory Commission (FERC) method is the rate base offset. The FPSC uses the cost of capital with zero-cost rate method. Since the company's primary jurisdiction is Florida retail service, DEF uses the FPSC method.

12. Mr. Rhinehart makes several other changes in his calculation of the various components of the carrying charge rate that differ from what we have been applying for many years. His changes primarily result from including his calculation of ADITs as a reduction to the net plant investment as the denominator. He also includes income taxes along with other taxes in his calculation of the tax rate component of the carrying charge rate. Our calculation simply grosses up the equity component of our weighted average cost of capital ("WACC") by the statutory tax rate, thereby arriving at a clear and accurate income tax component of the carrying charge. In conclusion, I am confident in our calculation of the cost per pole and the carrying charge rate, and I do not agree with Mr. Rhinehart's changes.

13. I am also familiar with the FCC's "old" telecom rate (a/k/a the pre-existing telecom rate). DEF's joint use department asked me to prepare a calculation of the FCC's "old" telecom rate assuming [redacted] of usable space occupied and [redacted] average attaching entities. For years 2015-2019, it would yield the following rates:

	2015	2016	2017	2018	2019
Pre-Existing Telecom Rate	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

14. I understand from my review of AT&T's complaint that one of the issues in the dispute is who, as between DEF and AT&T, should bear the cost of the communication worker safety zone (also called the "safety space") on DEF's poles. If this space is not useful or necessary to the provision of electric service (an issue on which I express no opinion) then it should not be allocated to DEF from a ratemaking perspective. From a cost-of-service ratemaking perspective, the appropriate question to ask is whether the cost is of benefit to the class of customers who will be required to pay for it. If the answer to this question with respect to the safety space is "no" then this is not a cost that DEF should be required to bear. No sound ratemaking rationale would support allocating such a cost to DEF and its electric ratepayers.

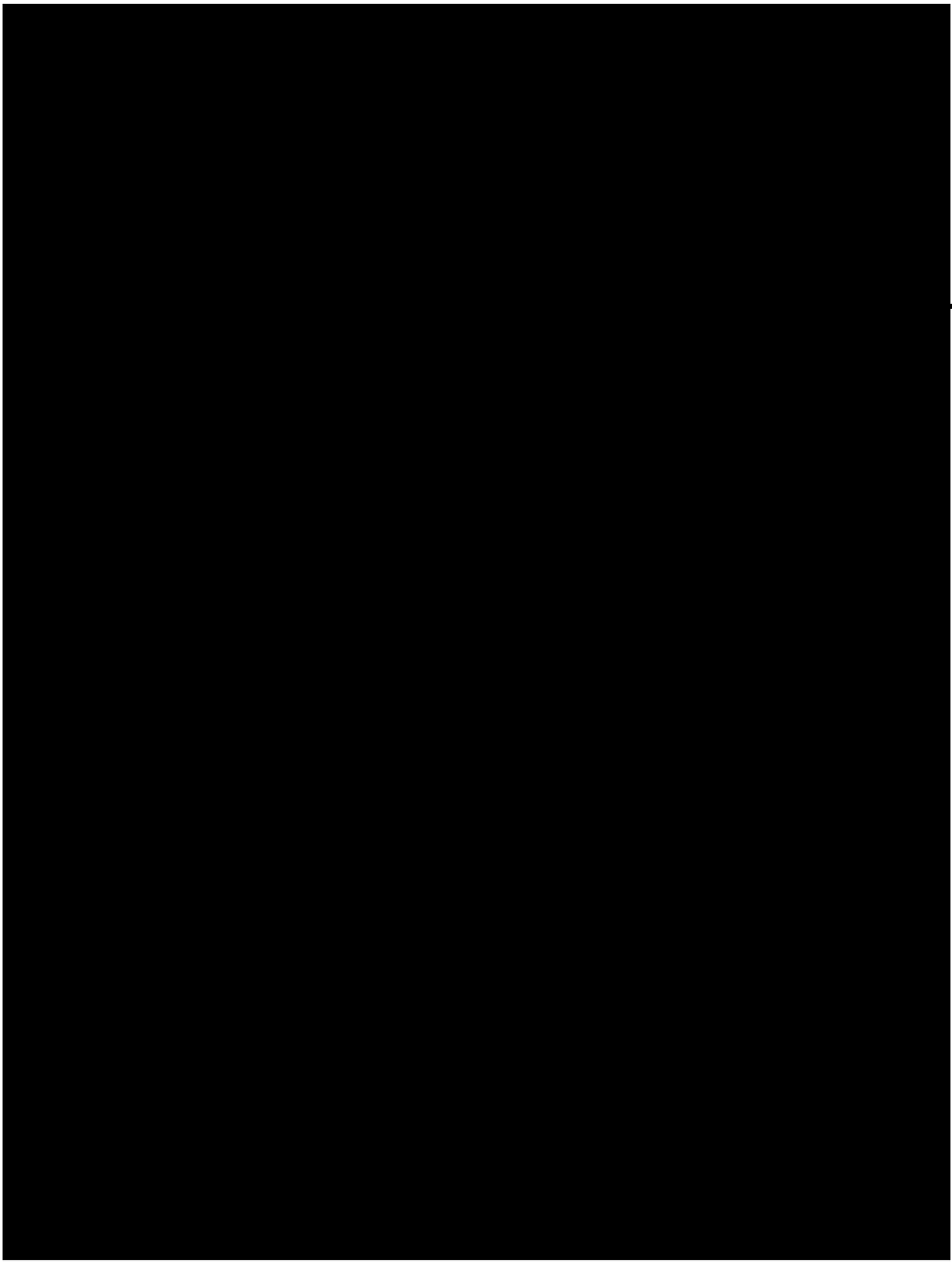
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief.

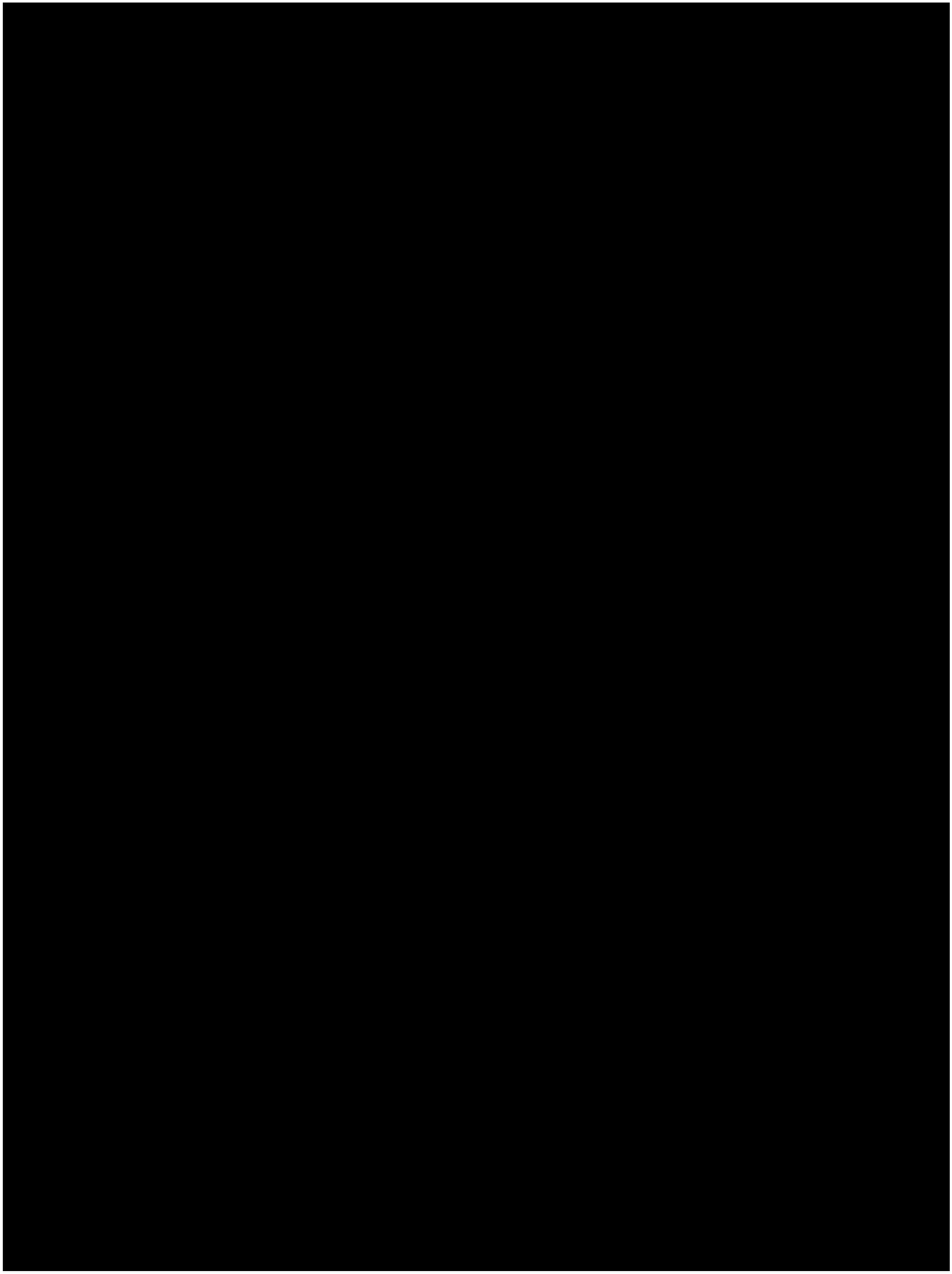
Executed on the 29th day of October, 2020.

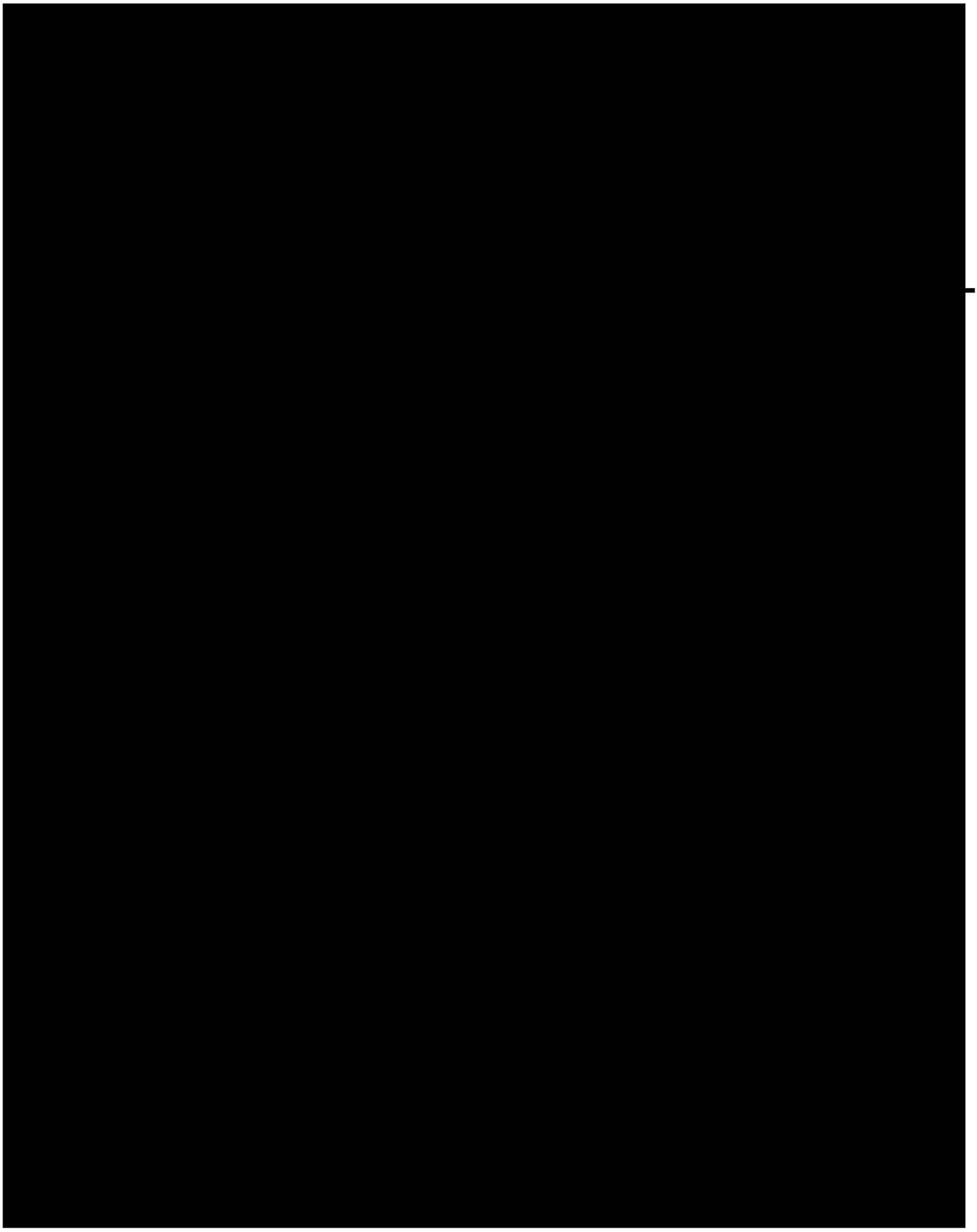
Marcia Olivier

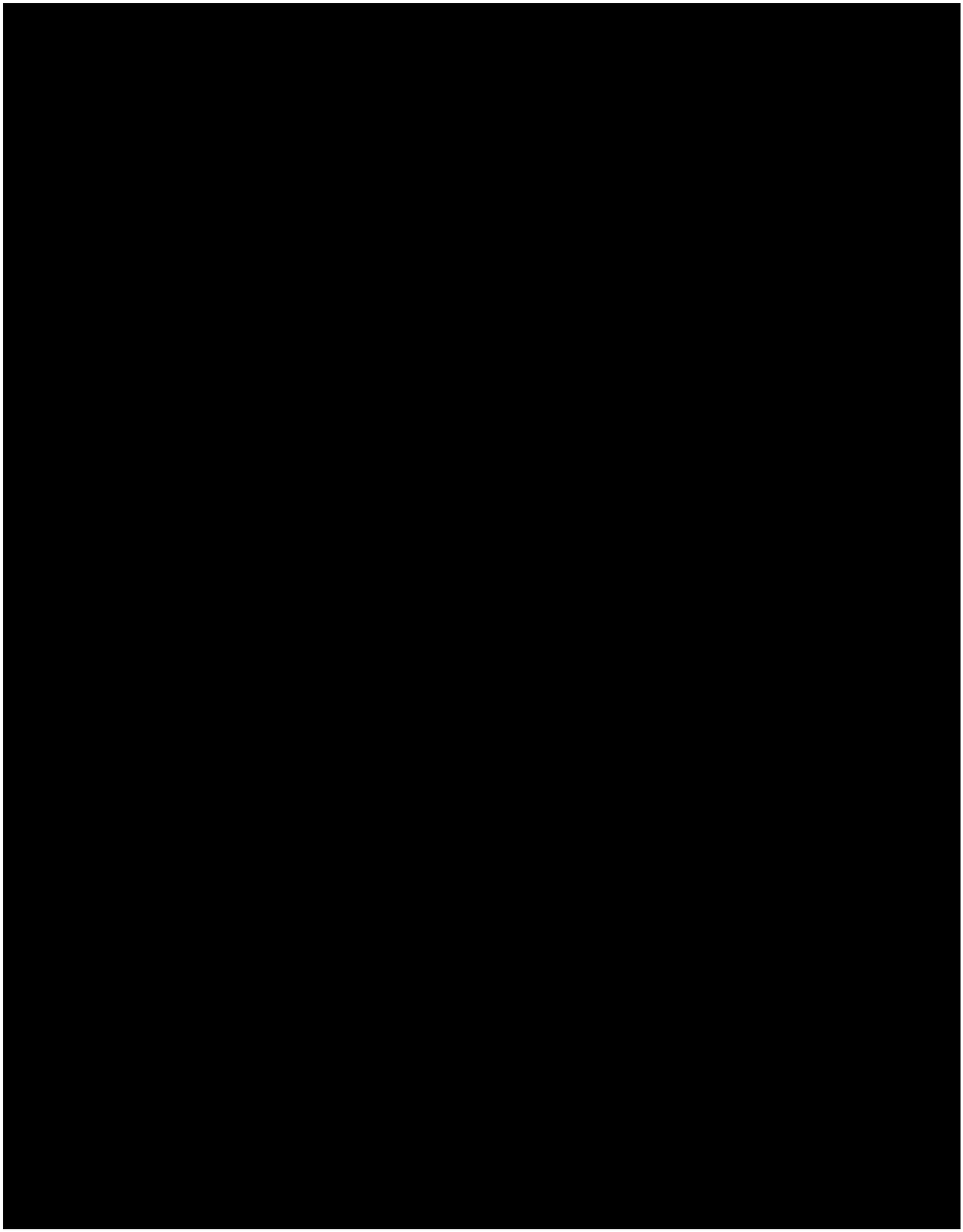
Marcia Olivier

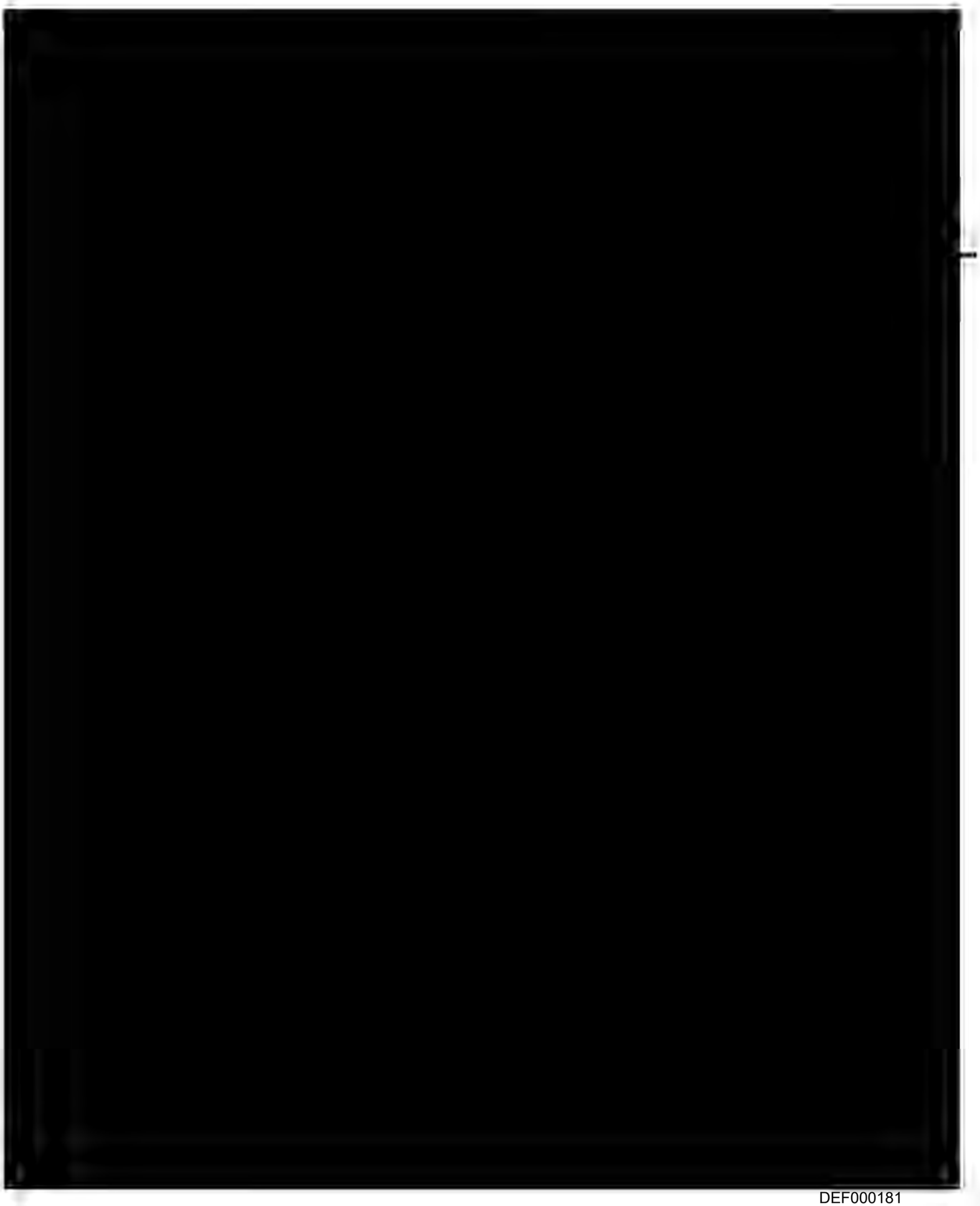
EXHIBIT D-1

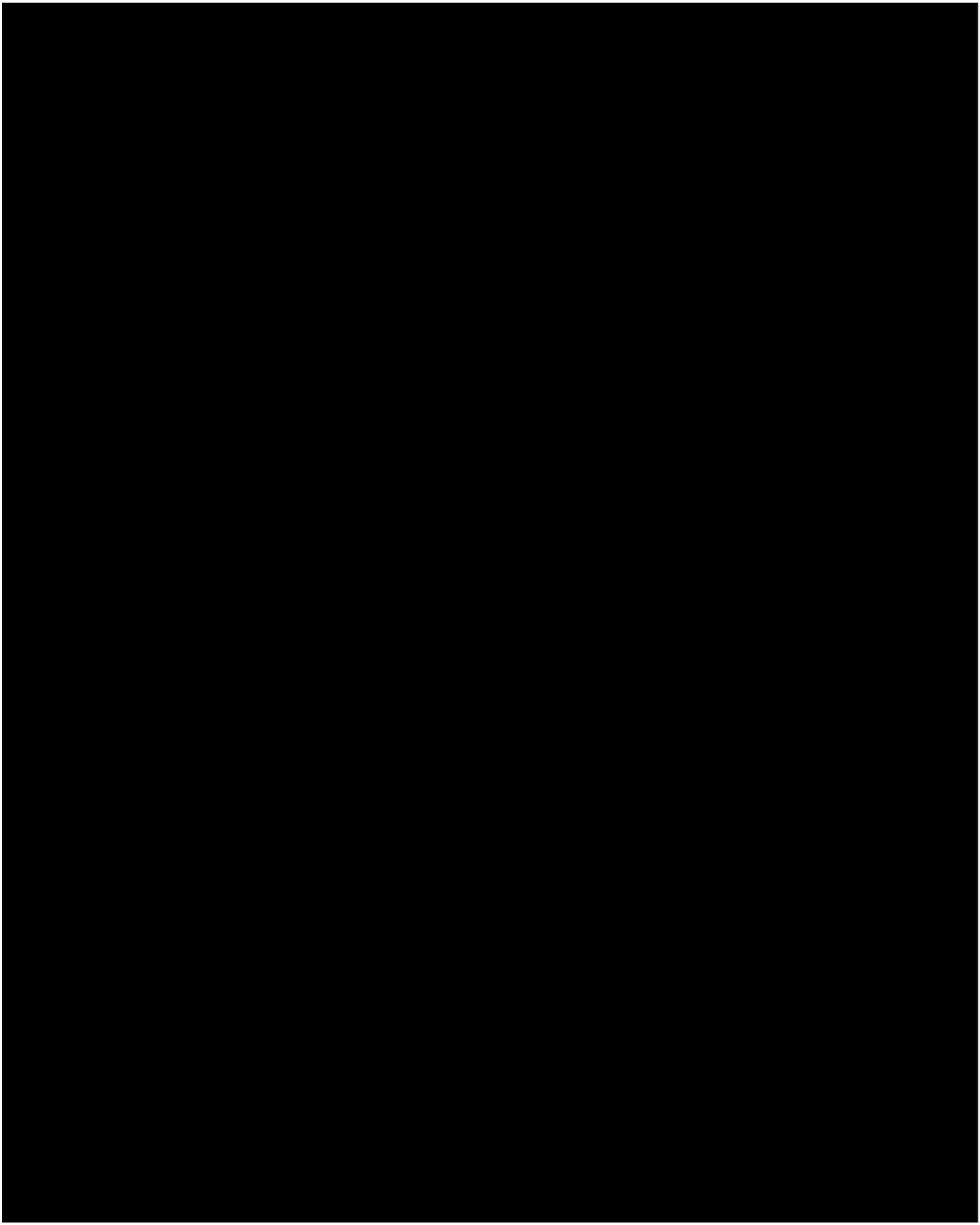


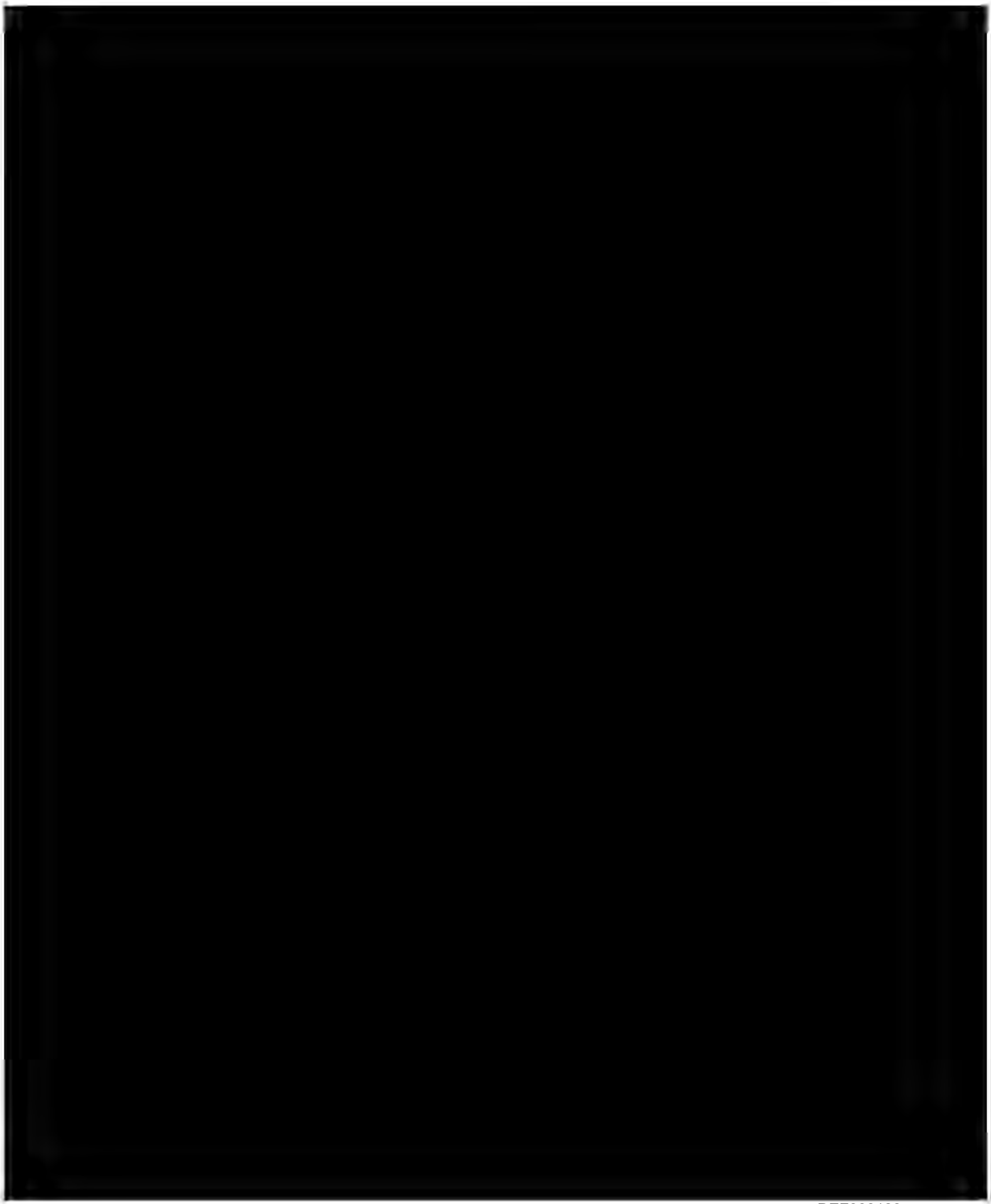


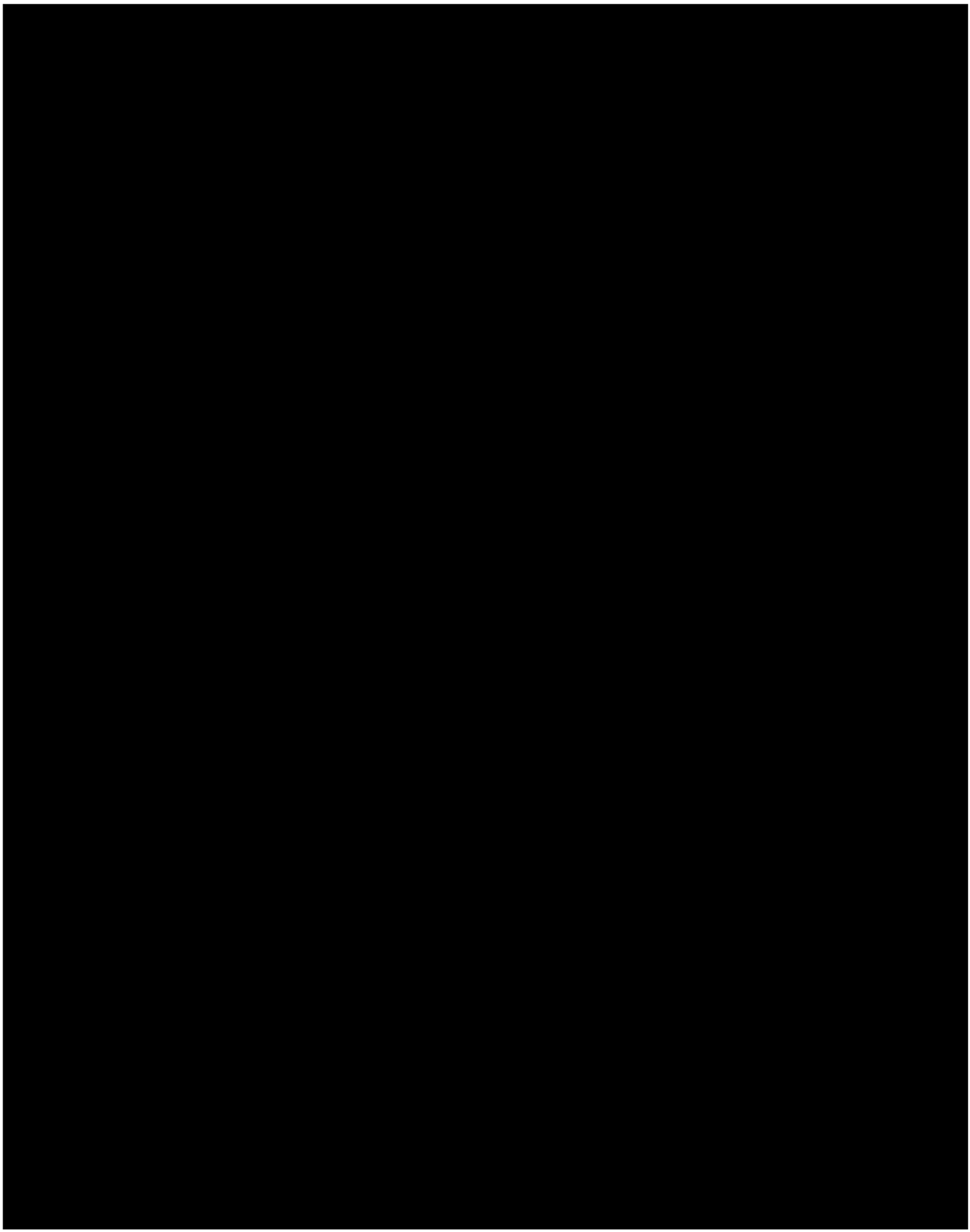


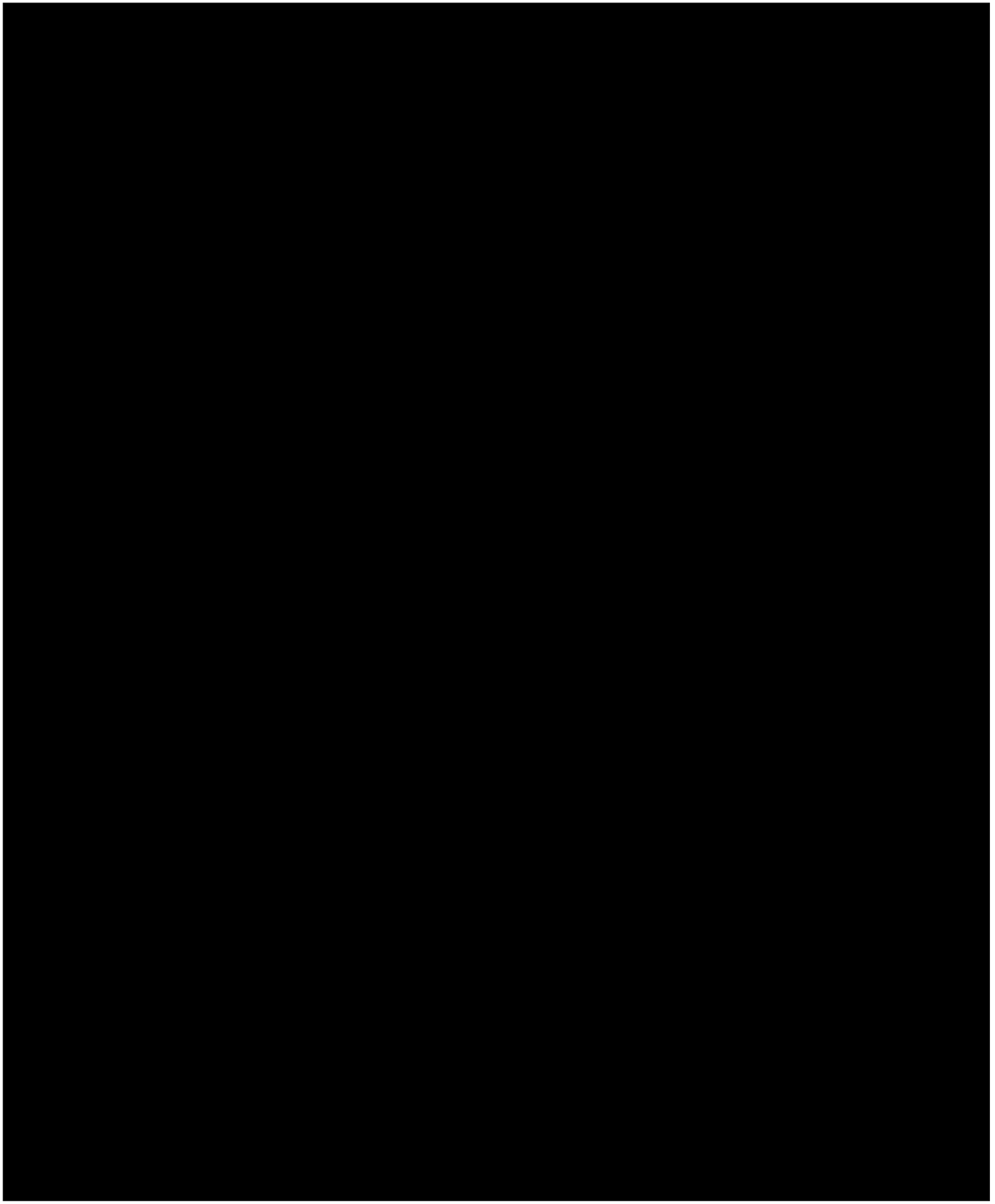


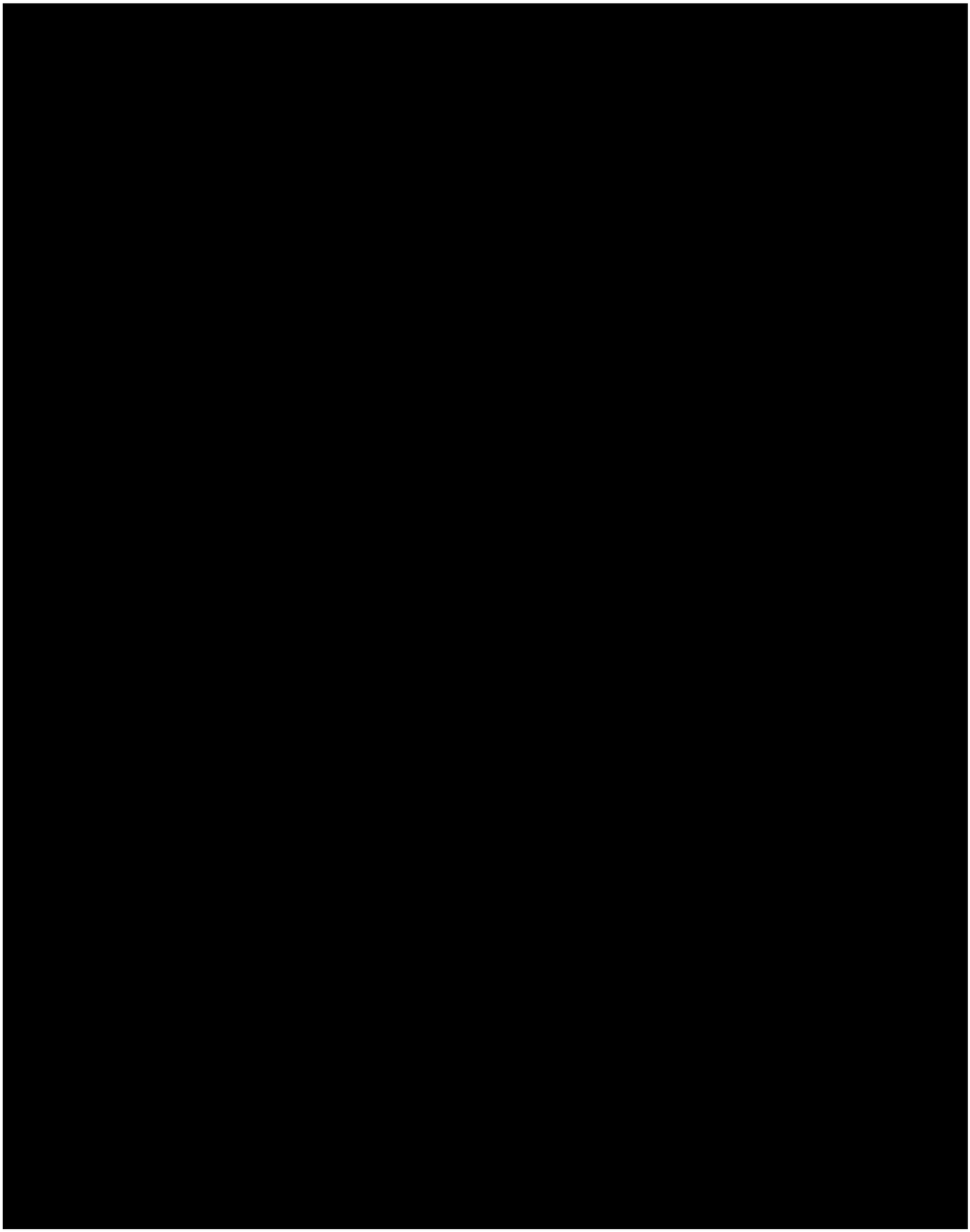


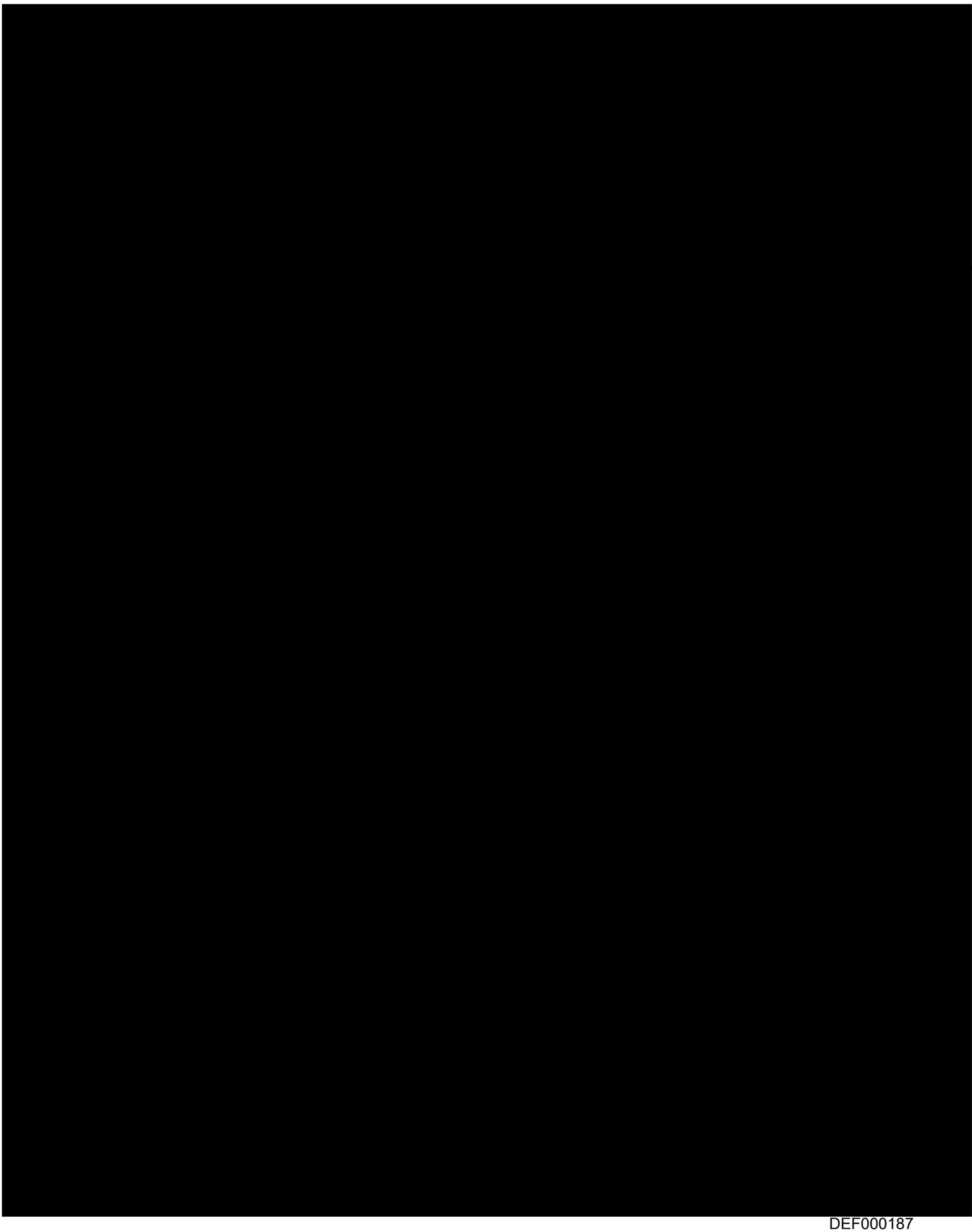












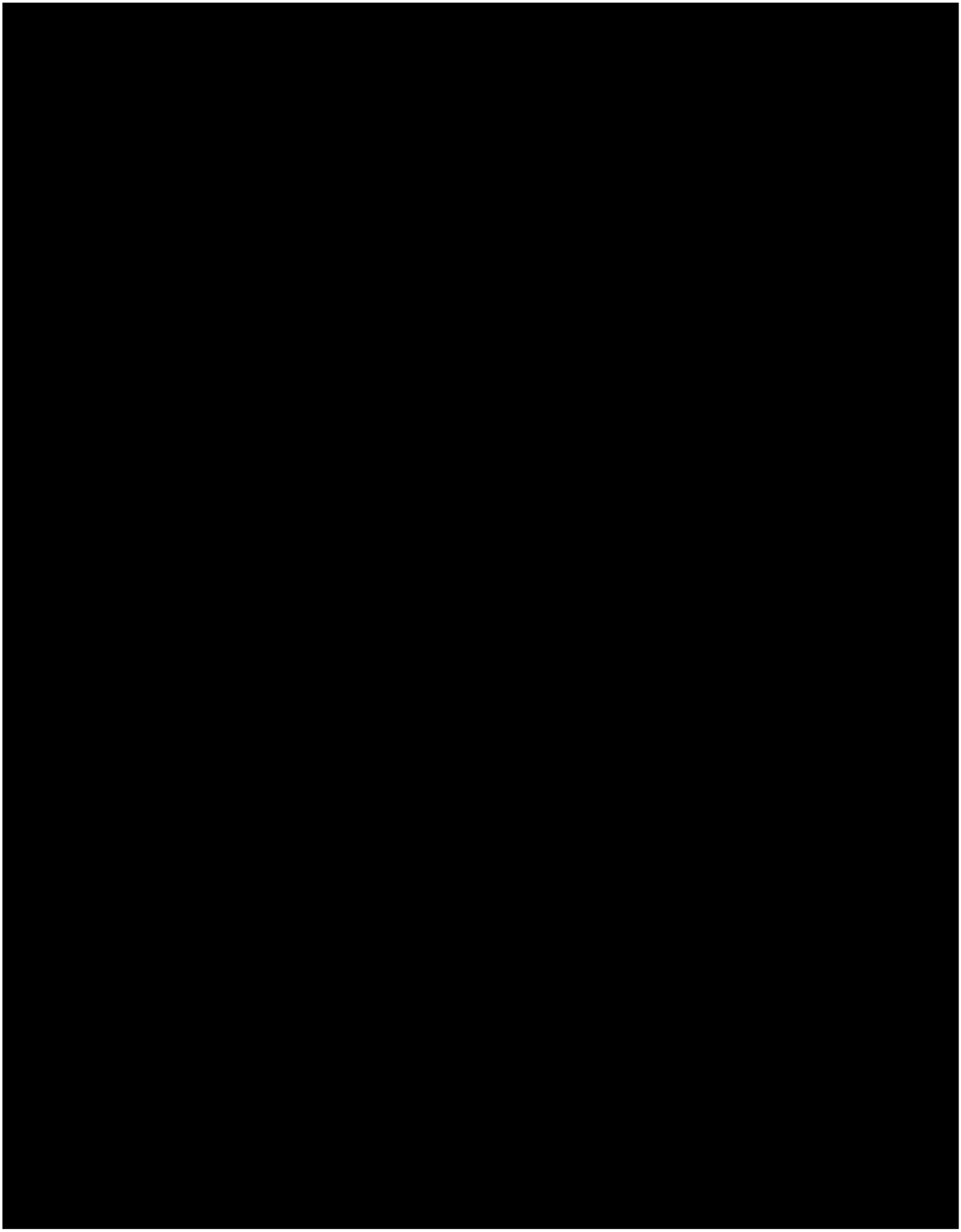


EXHIBIT D-2

DUKE ENERGY. FLORIDA

February 16, 2015

Mr. Bart Fletcher
Public Utility Supervisor
Surveillance Section
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, Inc.'s Earnings Surveillance Report for the twelve months ended December 31, 2014.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2014. The separation factors used for the jurisdictional amounts were developed from the cost of service prepared in compliance with the Stipulation & Settlement Agreement, Order No. PSC-13-0598-FOF-EI.

The report also includes Schedule 6, the CR3 Regulatory Asset Value provided quarterly (Docket 130208-EI), Schedule A and B, the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), and the Commercial/Industrial Service Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

Marcia Olivier

Marcia Olivier
Director Rates & Regulatory Planning

dc
Attachment
xc: Mr. J. R. Kelly, Office of the Public Counsel

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	4,977,003,307	4,534,505,927	(864,255,431)	754,027,408	4,424,277,904	47.54%	9.50%	4.52%	10.50%	4.99%	11.50%	5.47%
Long Term Debt	4,808,727,173	4,381,190,954	(835,034,320)		3,546,156,634	38.11%	5.14%	1.96%	5.14%	1.96%	5.14%	1.96%
Short Term Debt *	(85,057,915)	(77,495,553)	14,770,287	229,703,883	166,978,617	1.79%	1.22%	0.02%	1.22%	0.02%	1.22%	0.02%
Customer Deposits												
Active	212,816,732	212,816,732	(40,561,865)		172,254,868	1.85%	2.27%	0.04%	2.27%	0.04%	2.27%	0.04%
Inactive	1,583,181	1,583,181	(301,747)		1,281,434	0.01%						
Investment Tax Credits **	1,087,391	990,713	(188,825)		801,887	0.01%						
Deferred Income Taxes	1,834,581,380	1,671,471,693	(318,574,617)	(200,115,774)	1,152,781,302	12.39%						
FAS 109 DIT - Net	(215,661,182)	(196,487,092)	37,449,513		(159,037,580)	-1.71%						
Total	**11,535,080,068**	**10,528,576,555**	**(2,006,697,006)**	**783,615,517**	**9,305,495,066**	**100.00%**		**6.54%**		**7.02%**		**7.49%**

* Daily Weighted Average

** Cost Rates Calculated Per IRS Ruling

Duke Energy Florida, LLC's Earnings Surveillance Report, Schedule 4 (for the 12 months ended December 31, 2015)

DUKE ENERGY FLORIDA
Average - Capital Structure
FPSC Adjusted Basis
December 2015

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point Cost Rate	Low-Point Weighted Cost	Mid-Point Cost Rate	Mid-Point Weighted Cost	High-Point Cost Rate	High-Point Weighted Cost
Common Equity	$5,114,702,534	$4,658,027,808	($745,039,338)	$758,170,897	$4,671,159,367	47.18%	9.50%	4.48%	10.50%	4.95%	11.50%	5.43%
Long Term Debt	4,581,253,822	4,172,208,952	(667,333,885)		3,504,875,067	35.40%	5.37%	1.90%	5.37%	1.90%	5.37%	1.90%
Short Term Debt *	245,126,308	223,239,798	(35,706,620)	(48,706,939)	138,826,238	1.40%	0.17%	0.00%	0.17%	0.00%	0.17%	0.00%
Customer Deposits												
Active	219,324,889	219,324,889	(35,080,441)		184,244,448	1.86%	2.32%	0.04%	2.32%	0.04%	2.32%	0.04%
Inactive	1,641,019	1,641,019	(262,477)		1,378,543	0.01%						
Investment Tax Credits **	353,448	321,890	(51,485)		270,405	0.00%						
Deferred Income Taxes	2,310,060,656	2,103,803,047	(336,497,783)	(205,703,042)	1,561,602,222	15.77%						
FAS 109 DIT - Net	(211,613,962)	(192,719,657)	30,825,004		(161,894,653)	-1.64%						
Total	**$12,260,848,715**	**$11,185,847,746**	**($1,789,147,026)**	**$503,760,916**	**$9,900,461,636**	**100.00%**		**6.43%**		**6.90%**		**7.37%**

* Daily Weighted Average
** Cost Rates Calculated Per IRS Ruling

PUBLIC VERSION

DEF000193

DUKE ENERGY. FLORIDA

February 15, 2017

Mr. Bart Fletcher
Public Utility Supervisor
Surveillance Section
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2016.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2016. The separation factors used for the jurisdictional amounts were developed from the cost of service prepared in compliance with the Stipulation & Settlement Agreement, Order No. PSC-13-0598-FOF-EI.

The report also includes Schedule A and B, the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), and the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

Marcia Olivier

Marcia Olivier
Director Rates & Regulatory Planning

Attachment
xc: Mr. J. R. Kelly, Office of the Public Counsel

DUKE ENERGY FLORIDA
Average - Capital Structure
FPSC Adjusted Basis
December 2016

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point Cost Rate	Low-Point Weighted Cost	Mid-Point Cost Rate	Mid-Point Weighted Cost	High-Point Cost Rate	High-Point Weighted Cost
Common Equity	$5,023,997,074	$4,559,486,259	($628,289,799)	$730,143,789	$4,661,340,251	45.53%	9.50%	4.33%	10.50%	4.78%	11.50%	5.24%
Long Term Debt	4,279,273,292	3,883,616,459	(535,156,313)		3,348,462,145	32.70%	5.52%	1.81%	5.52%	1.81%	5.52%	1.81%
Short Term Debt	568,717,000	516,134,327	(71,122,472)	(14,788,690)	430,223,185	4.20%	0.56%	0.02%	0.56%	0.02%	0.56%	0.02%
Customer Deposits												
Active	217,238,534	217,238,534	(29,935,117)		187,303,417	1.83%	2.31%	0.04%	2.31%	0.04%	2.31%	0.04%
Inactive	1,536,624	1,536,624	(211,744)		1,324,880	0.01%						
Investment Tax Credits	1,535,925	1,393,916	(192,079)		1,201,837	0.01%						
Deferred Income Taxes	2,574,334,211	2,336,315,346	(321,940,458)	(236,465,354)	1,777,909,534	17.36%						
FAS 109 DIT - Net	(216,055,335)	(196,079,200)	27,019,395		(169,059,805)	-1.65%						
Total	$12,450,577,325	$11,319,644,264	($1,559,828,587)	$478,889,745	$10,238,705,423	100.00%		6.20%		6.85%		7.11%

* Daily Weighted Average

** Cost Rates Calculated Per IRS Ruling

PUBLIC VERSION

DUKE ENERGY. FLORIDA

February 15, 2018

Mr. Bart Fletcher
Public Utility Supervisor
Surveillance Section
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2017.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2017. The demand-related separation factors used for the jurisdictional amounts were from Order No. PSC-2017-0451-AS-EU.

The report also includes the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI, and the Summary of Osprey 2017 Outage O&M and Deferral Costs in compliance with Order No. PSC-2016-0521-TRF-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

Marcia Olivier

Marcia Olivier
Director Rates & Regulatory Planning

Attachment
xc: Mr. J. R. Kelly, Office of the Public Counsel

DUKE ENERGY FLORIDA
Average - Capital Structure
FPSC Adjusted Basis
Dec 2017

	System Per	Retail Per	Pro Rata	Specific	Adjusted	Cap	Low-Point		Mid-Point		High-Point	
	Books	Books	Adjustments	Adjustments	Retail	Ratio	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	$5,154,887,401	$4,657,740,815	($460,633,311)	$669,104,959	$4,866,212,463	44.04%	9.50%	4.18%	10.50%	4.62%	11.50%	5.06%
Long Term Debt	5,467,663,019	4,940,351,791	(488,582,489)		4,451,769,302	40.29%	5.03%	2.03%	5.03%	2.03%	5.03%	2.03%
Short Term Debt *	(166,901,090)	(150,804,849)	14,914,041	(30,589,866)	(166,480,674)	(1.51%)	0.58%	(0.01%)	0.58%	(0.01%)	0.58%	(0.01%)
Customer Deposits												
Active	205,654,348	205,654,348	(20,338,453)		185,315,895	1.68%	2.27%	0.04%	2.27%	0.04%	2.27%	0.04%
Inactive	1,727,299	1,727,299	(170,823)		1,556,475	0.01%						
Investment Tax Credits **	3,909,058	3,532,061	(349,308)		3,182,753	0.03%	7.89%	0.00%	7.89%	0.00%	7.89%	0.00%
Deferred Income Taxes	2,656,690,875	2,400,474,842	(237,398,069)	(455,859,128)	1,707,217,645	15.45%						
Total	**$13,323,630,908**	**$12,058,676,306**	**($1,192,558,412)**	**$182,655,964**	**$11,048,773,858**	**100.00%**		**6.24%**		**6.68%**		**7.12%**

*** Daily Weighted Average**

**** Cost Rates Calculated Per IRS Ruling**

PUBLIC VERSION

DEF000197

DUKE ENERGY. FLORIDA

February 14, 2019

Mr. Bart Fletcher
Public Utility Supervisor
Surveillance Section
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2018.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2018. The demand-related separation factors used for the jurisdictional amounts were from Order No. PSC-2017-0451-AS-EU.

The report also includes the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI, and the Summary of Osprey 2017 Outage O&M and Deferral Costs in compliance with Order No. PSC-2016-0521-TRF-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

Marcia Olivier
Director Rates & Regulatory Planning

Attachment
xc: Mr. J. R. Kelly, Office of the Public Counsel

DUKE ENERGY FLORIDA
Average - Capital Structure
FPSC Adjusted Basis
Dec-18

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point		Mid-Point		High-Point	
							Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	5,886,848,270	5,315,754,153	(655,556,521)	588,381,568	5,248,579,200	44.32%	9.50%	4.21%	10.50%	4.65%	11.50%	5.10%
Long Term Debt	5,916,715,514	5,342,723,920	(658,882,523)		4,683,841,397	39.55%	4.72%	1.87%	4.72%	1.87%	4.72%	1.87%
Short Term Debt *	(226,441,006)	(204,473,542)	25,216,359	(37,189,773)	(216,446,956)	(1.83%)	1.60%	(0.03%)	1.60%	(0.03%)	1.60%	(0.03%)
Customer Deposits												
Active	198,990,345	198,990,345	(24,540,153)		174,450,192	1.47%	2.34%	0.03%	2.34%	0.03%	2.34%	0.03%
Inactive	2,136,848	2,136,848	(263,523)		1,873,325	0.02%						
Investment Tax Credits **	12,092,649	10,919,519	(1,346,631)		9,572,888	0.08%	7.25%	0.01%	7.78%	0.01%	8.30%	0.01%
Deferred Income Taxes	2,824,081,232	2,550,111,851	(314,488,294)	(295,105,366)	1,940,518,191	16.39%						
Total	**14,614,423,852**	**13,216,163,094**	**(1,629,861,286)**	**256,086,428**	**11,842,388,236**	**100.00%**		**6.09%**		**6.53%**		**6.98%**

*** Daily Weighted Average**
**** Cost Rates Calculated Per IRS Ruling**

PUBLIC VERSION

DEF000199

DUKE ENERGY. FLORIDA

February 14, 2020

Mr. Bart Fletcher
Public Utility Supervisor
Surveillance Section
Division of Accounting and Finance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0820

Dear Mr. Fletcher:

Pursuant to Commission Rule 25-6.1352, enclosed please find Duke Energy Florida, LLC's Earnings Surveillance Report for the twelve months ended December 31, 2019.

The report includes the Company's actual rate of return computed on an end-of-period rate base, the Company's adjusted rate of return computed on an average rate base, the Company's end-of-period required rates of return, and certain financial integrity indicators for the twelve months ended December 31, 2019. The demand-related separation factors used for the jurisdictional amounts were from Order No. PSC-2017-0451-AS-EU.

The report also includes the AFUDC Rate Computation Report provided annually in compliance with the FPSC Rule 25-6.0141(6), the Commercial/Industrial Rider Report provided annually in compliance with Order No. PSC-14-0197-PAA-EI, and the Summary of Osprey 2017 Outage O&M and Deferral Costs in compliance with Order No. PSC-2016-0521-TRF-EI.

If you have any questions, please feel free to contact me at (727) 820-5653.

Sincerely,

Christopher King, Senior Rates & Regulatory Strategy Analyst
Signing For: Marcia Olivier, Director Rates & Regulatory Planning

Attachment
xc: Mr. J. R. Kelly, Office of the Public Counsel

DUKE ENERGY FLORIDA
Average - Capital Structure
FPSC Adjusted Basis
Dec-19

	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	Low-Point		Mid-Point		High-Point	
							Cost Rate	Weighted Cost	Cost Rate	Weighted Cost	Cost Rate	Weighted Cost
Common Equity	6,424,935,129	5,806,769,571	(442,760,836)	31,696,756	5,395,705,492	41.34%	9.50%	3.93%	10.50%	4.34%	11.50%	4.75%
Long Term Debt	6,106,304,323	5,518,795,353	(420,803,067)		5,097,992,287	39.06%	4.67%	1.82%	4.67%	1.82%	4.67%	1.82%
Short Term Debt *	250,617,905	226,505,077	(17,270,804)	(27,233,641)	182,000,632	1.39%	3.29%	0.05%	3.29%	0.05%	3.29%	0.05%
Customer Deposits												
Active	199,182,384	199,182,384	(15,187,473)		183,994,911	1.41%	2.43%	0.03%	2.43%	0.03%	2.43%	0.03%
Inactive	1,973,922	1,973,922	(150,510)		1,823,412	0.01%						
Investment Tax Credits **	45,365,237	41,000,488	(3,126,250)		37,874,239	0.29%	7.15%	0.02%	7.67%	0.02%	8.18%	0.02%
Deferred Income Taxes	2,913,480,538	2,633,164,350	(200,776,358)	(280,162,442)	2,152,225,550	16.49%						
Total	**15,941,859,438**	**14,427,391,145**	**(1,100,075,297)**	**(275,699,327)**	**13,051,616,521**	**100.00%**		**5.85%**		**6.27%**		**6.68%**

*** Daily Weighted Average**
**** Cost Rates Calculated Per IRS Ruling**

EXHIBIT E

AT&T Florida v. Duke Energy Florida
Pole Attachment Complaint

Affidavit Of

Kenneth P. Metcalfe
The Kenrich Group LLC,
An HKA Company
1919 M Street, NW
Suite 620
Washington, DC 20036

October 30, 2020

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I. Introduction

I, Kenneth P. Metcalfe, being sworn, depose and say:

1. I was retained by Langley & Bromberg LLC to determine whether AT&T's Joint Use Agreement ("JUA") with Duke Energy Florida provides AT&T any unique advantages as compared to Duke Energy Florida's pole license agreements with Cable Television Companies ("CATVs") and Competitive Local Exchange Carriers ("CLECs"), and if so, to assess and/or value selected advantages; and to evaluate whether the cost sharing arrangements with AT&T under the JUA were just and reasonable, given those advantages.

2. I am Co-Chief Executive Officer of The Kenrich Group LLC ("Kenrich"), an HKA Company ("HKA"), a Certified Public Accountant and a Certified Valuation Analyst. For over 38 years, I have provided consulting expertise in the areas of accounting, finance, business management, financial decision making, economic causation, and economic damages analyses. My experience includes matters both in dispute and not in dispute, and encompasses analyzing, documenting, teaching, and testifying on the proper methods to determine economic damages, as well as evaluating economic analyses and results. I have consulted for and provided expert consulting and/or expert witness testimony on behalf of numerous entities, including electric and other utilities, in various matters, including the proper measurement of economic damages, cost quantification, prudence reviews, regulatory requirements and accounting, alternative vendor and project selection, and nuclear decommissioning support. I have provided testimony in numerous U.S. federal and state courts, in U.S and international arbitration, and to state public utility commissions. See Appendix 1 for my resume.

3. Kenrich, now part of HKA, is an international consulting firm of accounting, financial, economic, and engineering professionals with significant experience and expertise with the public utility industry, government contracting, construction, intellectual property, and other matters. HKA has over 1,000 consultants in 45 offices across the globe.

4. My opinions are based on an independent professional examination, including my and my team's review of documents provided by Duke Energy Florida, as well as discussions with knowledgeable Duke Energy Corporation personnel, including Mr. Scott Freeburn

(Joint Use Manager); Mr. Jeremy Gibson (Supervisor Joint Use); and Mr. Andy Russell (Lead Engineer). The opinions contained in this Affidavit have been prepared on the basis of the information and assumptions set forth in this Affidavit. My opinions are based on the information provided and reviewed to-date and are subject to change if new information becomes available. I reserve the right to supplement and amend my opinions based on additional evidence provided in this matter.

II. Duke Energy Florida And AT&T Joint Use Agreement, And Historical Context

5. The term "joint use" refers to the shared use of the poles owned by electric and telephone utilities. The telephone companies, now referred to as incumbent local exchange carriers ("ILECs"), and electric utilities began sharing poles in the early 1900s to minimize overall costs (i.e., using one pole instead of two to support both the telephone company's and the electric utility's overhead facilities).

6. JUAs first came into existence in the early 20th century and continue today to govern the terms for pole ownership and cost sharing arrangements between electric utilities and ILECs. The overall approach was such that electric utilities and ILECs would each own "joint use" poles in approximately the same proportion as their respective space requirements (with equal sharing of the costs of the "unallocated" portions on the pole) on a single pole. That way, assuming pole ownership "parity" was maintained under the JUA, no significant exchange of net annual payments would be necessary between the parties.

7. Duke Energy Florida and AT&T most recently entered into a JUA in June 1969.[1] I understand that the parties last amended the cost sharing provisions of that agreement in or around 1990.[2] As originally executed and as later amended in 1990, the JUA is premised upon an "objective percentage" of ownership, such that if Duke Energy Florida owns [redacted]% of the jointly used network and AT&T owns [redacted]% of the jointly used network, then no net rentals exchange hands between the parties.[3]

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[1] See "Joint Use Agreement between Florida Power Corporation and Southern Bell Telephone and Telegraph Company," dated June 1, 1969 ("JUA") at ATT00089.

[2] See Amendment to the JUA dated January 2, 1990 at ATT00108.

[3] See Amendment to the JUA, Section 10.4(b) dated January 2, 1990 at ATT00109.

8. I understand AT&T is now taking a position that its cost sharing obligations under the JUA are not just and reasonable. Further, AT&T believes it should be entitled to pay the same pole attachment rates that CLECs and CATVs pay for access to Duke Energy Florida poles, which rates are limited under Federal Communications Commission ("FCC") regulations.[4]

III. Foundational Considerations

A. AT&T Appears To Ignore A Fundamental Difference Between The ILECs And The CLECs And CATVs

9. I understand that FCC regulations require a utility to "provide a cable television system or any ***telecommunications carrier*** with nondiscriminatory access to any pole" that the utility owns.[5] [emphasis added] I further understand that the FCC explicitly excludes ILECs from the definition of "telecommunications carrier," specifically indicating that the term "does not include any incumbent local exchange carrier."[6] In other words, Duke Energy Florida is required by the FCC to provide mandatory access to CLECs and CATVs, but is not required to provide mandatory access to AT&T, which is an ILEC. This represents a fundamental difference between CLECs or CATVs, as compared to ILECs. Without a contractual obligation for a utility to provide access, such as the terms in the JUA, ILECs are at a material disadvantage compared to CLECs and CATVs.[7]

10. I further understand that, as part of negotiating the cost sharing provisions and other terms under the JUA, Duke Energy Florida and AT&T agreed to incorporate a provision precluding, in perpetuity, either party from removing from its own poles any existing attachments belonging to the other party (i.e., even if the JUA itself was terminated). This provision states that at any time, either party can terminate the JUA with respect to the right to attach to ***additional*** joint use poles, however, "applicable provisions of [the] Agreement shall remain in full force and effect with respect to all poles jointly used by the

[4] See Complaint dated August 25, 2020 p. 1.

[5] See 47 U.S.C. § 224(f)(1).

[6] See 47 U.S.C. § 224(a)(5).

[7] Similarly, I understand that Duke Energy Florida would not have mandatory access rights to AT&T's poles, absent the JUA.

parties at the time of such termination."[8] In other words, both parties to the JUA effectively have mandatory access to each other's poles, in perpetuity (at least on all of those joint use poles to which both have already attached prior to any termination). This perpetual license provision provides a very significant benefit to AT&T by effectively providing mandatory access to Duke Energy Florida's poles by contract, which access I understand it lacks by law. As a result of this perpetual license provision in the JUA, AT&T can avoid the costs it would otherwise incur to build out its own system of poles in areas where Duke Energy Florida currently owns poles to which AT&T is attached.

B. AT&T Appears To Now Take A Position That One Of The Most Significant Benefits Arising From The JUA Is Now Irrelevant

11. I understand that, as an electric utility regulated by the Florida Public Service Commission, Duke Energy Florida has a responsibility to incur costs prudently. My understanding is that, absent the JUA, Duke Energy Florida would have installed poles only tall enough to accommodate Duke Energy Florida's own electric supply facilities.[9] Had AT&T later requested access to Duke Energy Florida's poles, AT&T would have had to pay for the cost of replacing Duke Energy Florida's existing poles with taller/stronger poles that would then be capable of accommodating AT&T's attachments. Of course, this pole replacement cost would far exceed the shared cost of installing taller/stronger poles in the first place, which points to the main economic purpose of the JUA, i.e., to minimize total costs for both parties.

IV. Quantification Of Selected ILEC Benefits

A. Introduction To Analyses

12. I understand that, per the FCC's rule, Duke Energy Florida must provide "clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems

[8] See JUA, Article XVI at ATT00103.

[9] See letter from Scott Freeburn of Duke Energy Corporation to AT&T dated September 10, 2020, "40-feet is more pole than Duke Energy needed (or needs) for its core electric service".

providing telecommunications services on the same poles."[10] First, as discussed above, two of the most significant benefits received by AT&T include (1) the perpetual license provision, as well as (2) AT&T's avoided costs to replace Duke Energy Florida's poles with taller poles to accommodate AT&T's attachments. I also identify certain additional "operational" benefits to AT&T that arise from the JUA, which are not available to CLECs and CATVs under their respective license agreements with Duke Energy Florida.

13. In the analyses described below, I quantify certain benefits to AT&T (as well as the reciprocal benefits to Duke Energy Florida). I also calculate the "net benefit" received by AT&T, which is equal to the benefit to AT&T, less the reciprocal benefit to Duke Energy Florida.

B. The Use Of Cost Annualization Rates

14. My analyses include the quantification of AT&T benefits that are one-time in nature (e.g., avoided "system replacement"[11]), as well as AT&T benefits that recur from year-to-year (e.g., AT&T's benefits from the use of the [redacted] feet or more of space AT&T is allocated in the JUA).[12] As part of my analyses, I also convert one-time benefits into an annualized rate per pole. By quantifying the benefits in terms of an annualized rate per pole, one-time benefits can be compared to annual, per pole rates, such as the rates (identified in the JUA) and the FCC's telecom and cable rates.

15. When calculating Duke Energy Florida's annualized benefits, I use Duke Energy Florida's cost of capital as an annualization rate.[13] The cost of capital is the rate of return

[10] See 47 CFR § 1.1413.

[11] For example, both AT&T and Duke Energy Florida benefit from the perpetual license provision in the JUA which precludes either party from removing the other party's attachments even if the JUA is terminated.

[12] See JUA, Section 1.1.6(B) at ATT00090.

[13] Cost of capital is sometimes referred to as Return on Investment or ROI in the documents I reviewed in this case. Duke Energy Florida's cost of capital for the years 2015 through 2020 is included in Duke Energy Florida's interrogatory responses, dated October 7, 2020.

required to commit capital to an investment.[14] For example, Duke Energy Florida's cost of capital for 2019 is 6.54%.[15] It follows that if Duke Energy Florida were to receive a one-time benefit of $100 in 2019, that benefit can be expressed as an annual amount. A $100 one-time benefit is equivalent to an annualized benefit of $6.54 per year in perpetuity.[16]

16. Mr. Daniel Rhinehart's affidavit included AT&T's "cost of capital" from 2015 through 2019, which ranged from 10.375% to 11.25%.[17] This is significantly higher than Duke Energy Florida's cost of capital, which ranged from 6.27% to 7.02% over a similar time period.[18] The use of a higher cost of capital as an annualization rate will result in a higher annualized benefit. Therefore, as a conservatism for the purposes of my analyses, I have used Duke Energy Florida's significantly lower cost of capital when calculating AT&T's annualized benefits.

C. Benefit Of The Bargain

17. As noted above, the JUA contains a perpetual license provision that provides significant benefits to AT&T, as it guarantees AT&T can maintain access to Duke Energy

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[14] See Litigation Services Handbook, 5th edition, at 9.2. "The cost of capital is the rate of return required by investors (both bondholders and equity holders) for them to supply capital. One can view it as an opportunity cost because the rate must equal or exceed what the investor could obtain from a similar investment of comparable risk."

[15] See Duke Energy Florida's interrogatory responses, dated October 7, 2020.

[16] See *The Cost of Capital*, by Eva Porras, at p. 131, describing the use of the cost of capital as a hurdle rate. "The 'hurdle rate' is the minimum acceptable rate of return from an investment project. For projects of average risk, it is usually equal to the firm's cost of capital."

This concept is analogous to a perpetuity, which is a type of annuity in which fixed annual amounts are received by the annuity-holder every year in perpetuity. The present value of a perpetuity is equal to the fixed annual amount divided by the interest rate. Using our earlier example with an interest rate of 6.54%, the present value of receiving $6.54 every year in perpetuity is equal to $100 (i.e., $6.54 / 6.54% = $100). See Financial Management: Theory & Practice, 12th edition, at 2.11.

Another example of this concept relates to formulas used as part of business valuations. Specifically, the value of a business is sometimes calculated as the annual free cash flows divided by the firm's cost of capital. If the firm's cost of capital is 6.54% and annual cash flows are expected to be fixed at $65,400, this formula calculates the value of the company at $1 million (i.e., $65,400 / 6.54% = $1 million). See Litigation Services Handbook, 5th edition, at 10.12 – 10.13. See also Measuring Commercial Damages at pp. 230 – 231.

[17] See Rhinehart affidavit, Exhibit R-3 at ATT00019. Mr. Rhinehart indicated he used the FCC default cost of capital.

[18] Duke Energy Florida's cost of capital for the years 2015 through 2020 is included in Duke Energy Florida's interrogatory responses, dated October 7, 2020.

Florida's poles even after a termination of the JUA. In contrast, CLEC and CATV license agreements state that upon termination by either party, that a CLEC or CATV must remove its attachments from Duke Energy Florida's poles, often within a specified period of time.[19] AT&T therefore receives a unique and fundamental benefit as a result of the JUA.

i. Avoided System Replacement Costs

18. If the perpetual license provision of the JUA did not exist, AT&T would have to remove its attachments from Duke Energy Florida's poles in the event of termination by either party (and Duke Energy Florida would have to remove its attachments from AT&T's poles). To quantify this benefit, I have calculated the costs AT&T would incur to replace the network AT&T currently has in place on the joint use poles owned by Duke Energy Florida, as well as the costs that Duke Energy Florida would incur to replace the network Duke Energy Florida currently has in place on joint use poles owned by AT&T.[20]

19. Mr. Freeburn provided me with the estimated costs for Duke Energy Florida to procure and install poles of different types and sizes.[21] Based on discussions with Mr. Freeburn, I assumed AT&T would install a 30-foot Class 6 pole to build out its own network, rather than the 40-foot Class 5 "normal joint use pole," per the JUA, that accommodates both AT&T and Duke Energy Florida. I used the estimated cost provided by Mr. Freeburn for 30-foot Class 6 pole as the basis for a non-JUA pole owned by AT&T.

20. Under these assumptions, the estimated annualized cost to AT&T to purchase and install 62,363 poles (i.e., the number of joint use poles owned by Duke Energy Florida to which AT&T is attached to as of December 2019) is $[redacted] or $[redacted] per pole.[22, 23]

[19] See example CLEC license agreement, Section 17 at ATT00136.

[20] As a conservatism, I do not include the costs to store poles in this analysis.

[21] I understand that Mr. Freeburn used Duke Energy Florida's estimating system, when preparing these estimates.

[22] See Exhibit E-2.

[23] The annualized estimated cost is derived from the one-time cost to replace AT&T's pole network plus applicable carrying charges. The cost estimate includes labor, material, and equipment costs to install new poles and transfer AT&T's equipment and wires from the Duke Energy Florida-owned pole to the newly installed pole.

After accounting for the reciprocal benefits to Duke Energy Florida, the **annualized** net benefit to AT&T is $[redacted], or $[redacted] per pole.[24]

21. Again, this is a significant and fundamental contractual benefit to AT&T associated with the JUA. In contrast, CLEC and CATV license agreements do not provide any such benefit.

22. As a general matter, for purposes of quantifying the annualized net benefit to AT&T described above, as well other analyses throughout my affidavit, I focus solely on the economic implications of contractual terms per the JUA. Because, as I understand, Duke Energy Florida has no control over the regulations promulgated by the FCC, my valuations necessarily do not address or account for the FCC's goals and policy objectives.

ii. Avoided Contingency Costs

23. While of lesser magnitude than a full system replacement, there are other benefits which stem from the perpetual license provision. As a result of the risk of termination, but for the JUA, I understand AT&T may need to incur costs to be "ready" to build-out, if necessary, its own network of poles (or pursue some alternative means for providing service). Again, if AT&T had the same termination provision as CLECs and CATVs, then AT&T would need to be prepared to install its own network of poles within a short period of time.[25]

24. Given the current levels of respective pole ownership between the parties, AT&T would need to procure nearly 12 times the number of poles as Duke Energy Florida within a short period of time.[26] I understand from Mr. Freeburn that it is reasonable to assume AT&T would likely need to procure poles and potentially acquire land and storage equipment to store the poles in inventory in reasonable proximity to the service areas at issue. Conservatively, I have not accounted for this avoided cost resulting from the JUA perpetual license provision. Similarly, there may be additional risk to AT&T resulting from it being

[24] See Exhibit E-2.

[25] The basis for the 60 days assumed here is the period of time which applies to CLECs and CATVs per their agreements with Duke Energy Florida.

[26] 62,363 poles / 5,233 poles = 11.9.

unable to continue providing service to its customers (during its pole replacement work or otherwise) that I have not accounted for in this analysis.

D. Accounting For Other Selected Costs Paid By CLECs And CATVs, But Not Paid By AT&T

25. Per the terms of the JUA, I understand that AT&T is not required to and does not pay inspection or permitting costs when attaching to a JUA pole and that AT&T almost never paid make-ready costs at the initial point of access, and pays make-ready costs in relatively rare situations even for modifications after initial access.[27] In contrast, CLECs and CATVs pay permitting and inspection costs for all their pole attachments, as well as pole modification costs when necessary.[28]

26. When CLECs and CATVs seek to attach to JUA poles, I understand that Duke Energy Florida charges fees to cover inspection and permitting costs. Mr. Freeburn explained that inspections are performed before installing attachments (i.e., "pre-inspections") to determine whether there is sufficient available pole space, if any of the existing attachments will need to be moved or modified, or if the existing pole needs to be replaced with a taller or stronger pole to accommodate the new attachment. A structural analysis is also performed on certain poles before installing attachments.[29] I further understand through discussions with Mr. Freeburn that CLECs and CATVs pay for another inspection performed by the pole owner following the installation of any new attachments by a CLEC or CATV ("post-inspections"). The purpose of the post-inspection is to confirm the newly installed attachment actually conforms with the necessary requirements.[30] Additionally, Duke Energy Florida charges an application fee to CLECs and CATVs to cover Duke Energy Florida's administrative costs associated with the inspections and make-ready

[27] Per discussions with Mr. Freeburn.

[28] See example CLEC license agreement, Section 7.1 at ATT00129.

[29] Per discussions with Mr. Freeburn, structural analyses are performed on selected representative poles within a particular group of poles, and that on average one pole out every 10 is selected. See also example CLEC license agreement, Section 5 at ATT00125-7.

[30] Per discussions with Mr. Freeburn.

modifications, and I understand from Mr. Freeburn that a single application covers an average of 18 poles.[31]

27. In accordance with the JUA, I understand that AT&T is not assessed any of the aforementioned inspection and permitting-related fees and has thus avoided a total of $[redacted] per year, or $[redacted] per pole for all inspection and application fees.[32] After accounting for reciprocal benefits to Duke Energy Florida, AT&T's annualized net benefit is $[redacted], or $[redacted] per pole.[33]

28. Mr. Freeburn explained that, in addition to the above-identified fees, CLECs and CATVs are charged for the costs to perform physical modifications of a pole (e.g., the relocation of existing pole attachments), which are often required to accommodate the CLEC or CATV attachment.[34] Per their respective license agreements, I understand that CLECs and CATVs are responsible for the cost of any modifications performed by Duke Energy Florida.[35]

29. In contrast to CLECs and CATVs, I understand that under the JUA, Duke Energy Florida is required to reserve [redacted] feet of pole space for AT&T's *exclusive* use.[36] Further, the JUA permits AT&T to use more than [redacted] feet of space, without additional charge, if that space is available.[37] Therefore, only in relatively unusual circumstances (e.g., when AT&T needs

[31] Per discussions with Mr. Freeburn.

[32] See Exhibit E-3.2.

[33] See Exhibit E-3.2.

[34] Per discussions with Mr. Freeburn.

[35] See example CLEC license agreement, Section 10 at ATT00130-1.

[36] See JUA, Section 1.1.6(B) at ATT00090.

[37] See JUA, Section 1.1.6(C) at ATT00090. "[E]xcess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachments of the other party."

more than [redacted] feet of space) would AT&T pay any costs to Duke Energy Florida to modify joint use poles.[38, 39]

30. When there is insufficient space or load capacity on an existing JUA pole to accommodate another attacher, the CLEC or CATV must cover the cost of replacing the existing pole with a new longer/stronger pole. Per Mr. Freeburn, but for the existence of the JUA and the reserved pole space provided for AT&T therein, AT&T would have been required to pay for pole replacement costs for virtually every JUA pole currently owned by Duke Energy Florida.[40] In 2019, Duke Energy Florida paid approximately $[redacted] per pole to replace its own poles throughout its JUA pole network, which I understand would be similar to the cost that a CLEC or CATV would be required to pay Duke Energy Florida for a pole replacement.[41] The annualized avoided pole replacement costs by AT&T due to the JUA totals $[redacted], or $[redacted] per pole.[42] After accounting for reciprocal benefits to Duke Energy Florida, AT&T's annualized net benefit is $[redacted], or $[redacted] per pole.[43,44]

[38] When AT&T requires physical modifications to a pole, it is responsible for moving its own equipment; however, per the JUA, AT&T is not charged by Duke Energy Florida for other work required on the pole because of AT&T's requested change. (AT&T may be required to pay a third-party to rearrange CLEC or CATV.) (See JUA, Article III at ATT00092.)

[39] For purposes of my analysis, I have not quantified the net benefit to AT&T of avoided make-ready costs associated with non-replacement modifications, such as rearranging attachments on a pole.

[40] Per discussions with Mr. Freeburn.

[41] Scott Freeburn is the source of the $[redacted] per pole amount, and we understand from Mr. Freeburn this amount to be contained in the annual reliability reports filed with the Florida Public Service Commission.

[42] See Exhibit E-3.1.

[43] See Exhibit E-3.1.

[44] Similarly, I conservatively assumed Duke Energy Florida would have had to pay AT&T $[redacted] for virtually every JUA pole currently owned by AT&T. I understand that AT&T's costs to replace a non-JUA pole with a JUA pole would likely be a lower amount than for Duke Energy Florida, given that AT&T's equipment transfer costs, a significant component of the total cost, would be lower.

E. Other Selected Benefits

i. Assigning The Value Of The "Safety Space" And Reserved Space To The Licensee

1. Safety Space

31. A minimum of 40 inches of space is typically required between Duke Energy Florida's electric facilities on a pole and any communications attachments.[45] On Duke Energy Florida's joint-use poles, this safety space was initially required solely due to the presence of AT&T, and on AT&T's joint-use poles, the safety space is required solely due to the presence of Duke Energy Florida. I understand that under the terms of the JUA, the parties agreed to more or less equally share the costs associated with all space on the pole other than the space allocated to the parties, including the safety space. If both parties maintained equal pole ownership levels, neither party would pay the other party any annual net rental fees, including any amounts associated with safety space. This is further confirmed by the cost sharing percentages agreed upon in the 1990 amendment to the JUA.[46]

32. From an economic cost-causation perspective, and under the current circumstances, it would be more equitable to allocate 100% of the safety space to the licensee. This alternative approach to allocating the cost of the safety space is justified because safety space is different than any other parts of the unallocated space on a joint use pole (e.g., buried space providing foundational support, space providing required height

[45] See Federal Communications Commission, "Report And Order," FCC 00-116, dated April 3, 2000 ¶ 20.

[46] The January 2, 1990 Amendment to the JUA includes a [redacted]% [redacted]% allocation of annual pole costs between Duke Energy Florida and AT&T, respectively. The amendment does not specify how the parties settled on this allocation. The allocation is generally consistent with an even split of unallocated space between the parties. There is [redacted] feet of unallocated space on a typical 40-foot JUA pole after removing the [redacted] feet and [redacted] feet allocated to AT&T and Duke Energy Florida per the JUA (40' – [redacted] – [redacted] = [redacted]). Adding half of the unallocated space to each party's allocation of space results in a [redacted]% [redacted]% allocation between Duke Energy Florida and AT&T respectively (for Duke Energy Florida, [redacted] + [redacted] = [redacted] / 40' or [redacted]%, and for AT&T, [redacted] + [redacted] = [redacted] / 40', or [redacted]%). See JUA at ATT00090 and Amendment to the JUA dated January 2, 1990 at ATT00109.

clearance from obstructions), all of which would need to exist even when there is only a single attacher.[47]

33. Based on the above premise, on a JUA pole owned by Duke Energy Florida, AT&T requires more cumulative space than it pays for (and vice versa). If AT&T paid Duke Energy Florida for 100% of the safety space on Duke Energy Florida-owned poles, AT&T would owe Duke Energy Florida $1,030,037 per year, or $16.52 per pole for the safety space (i.e., this does not include amounts for the space that is reserved for AT&T's exclusive use on Duke Energy Florida's poles, which is discussed below).[48] After accounting for reciprocal benefits to Duke Energy Florida, AT&T's annualized net benefit is $974,971, or $15.63 per pole for the safety space.[49]

34. I use the FCC's new telecom rate to allocate the costs of safety space to each party. I apply the new telecom rate in a way that is in parity with the formula used to calculate the cable rate (i.e., so that the rates paid under the new telecom formula are not materially different from the rates that would be paid by CATVs for the use of the same space). I understand that the FCC "sought to bring parity to pole attachment rates calculated using the telecom or cable rate formula so that all attachments rates would be at or near the cable rate formula."[50] The FCC's new telecom formula does result in a rate that is approximately equal to the cable rate, but only when the attacher is using 1 foot of space (i.e., 7.41% of pole costs for the cable rate, and 7.39% for the new telecom rate). That parity between the cable rate and new telecom rate is lost when the attacher uses even 1 additional foot of usable space, as shown in Exhibit E-6 and in Table 1 below.

[47] Given the increased level of pole ownership by Duke Energy Florida, and the fact that Duke Energy Florida installed taller poles with safety space solely to accommodate AT&T, it could be argued the cost sharing arrangement in the JUA does not provide an equitable result.

[48] See Exhibit E-4A.

[49] See Exhibit E-4A.

[50] See Federal Communications Commission, "Order On Reconsideration", FCC 15-151, dated November 24, 2015 ¶ 2.

Table 1

Percentage Of Annual Pole Costs Using FCC Cable (CATV) & New Telecom (CLEC) Formula[51]

	Cable Rate (CATV)	New Telecom Rate (CLEC)
1 Foot Of Space	7.41%	7.39%
2 Feet Of Space	14.82%	9.15%

35. In order to apply the FCC's new telecom rate formula in a way that does not disadvantage a CATV, I use the FCC's new telecom rate for the use of 1 foot of space and multiply it by the amount of space used. For example, if a telecommunications company uses 2 feet of space, I would use a rate equal to 14.78% of annual pole costs (i.e., 7.39% * 2 feet), which is approximately equal to the cable rate of 14.82% for the same space.

36. As mentioned above, safety space is required between Duke Energy Florida and any other communications attacher, including CLECs and CATVs. However, the FCC's formulas for calculating the rates charged to CLECs and CATVs do not capture any portion of the safety space to the attaching entities or treat it as unusable space. If AT&T was permitted to pay a rate which did not incorporate any costs associated with safety space, Duke Energy Florida would be bearing the entire burden of providing pole space required only because other entities are attaching to its poles.[52]

2. Space Reserved For AT&T's Exclusive Use

37. AT&T has [redacted] feet of reserved space per the JUA.[53] I calculated the value to AT&T for the use of [redacted] feet of space based on the same rate methodology discussed above.[54]

[51] See Exhibit E-6 for more information.

[52] It is noteworthy that Mr. Rhinehart appears to allocate safety space to Duke Energy Florida on Duke Energy Florida and AT&T owned poles in his calculations on Exhibit R-3. See Rhinehart affidavit, Exhibit R-3 at ATT00018.

[53] See JUA, Section 1.1.6(B) at ATT00090.

[54] I understand other entities are not permitted to attach within 1 foot of AT&T's existing attachments. I did not include this additional 1 foot of space in my analysis.

I also calculated the reciprocal benefits to Duke Energy Florida, which assumes Duke Energy Florida uses the full [redacted] feet of space on AT&T's poles that is reserved for Duke Energy Florida per the JUA.[55] AT&T's annualized benefit totals approximately $[redacted], or $[redacted] per pole.[56] After accounting for reciprocal benefits to Duke Energy Florida, AT&T's annualized net benefit is $[redacted], or $[redacted] per pole (i.e., this is in addition to the amounts for safety space calculated in the previous section).[57]

V. Other Considerations Regarding AT&T's Contention That It Should Be Entitled To The Same Pole Attachment Rates That CLECs And CATVs Currently Pay

A. Incremental Carrying Costs

38. Duke Energy Florida incurs carrying costs to maintain its system of poles. The greater the investment in its pole network, the greater the carrying costs incurred. Duke Energy Florida has incurred, and continues to incur, substantially greater carrying costs by installing a system of taller and stronger poles to accommodate AT&T's attachments. As noted above, absent the JUA, Duke Energy Florida would have installed poles only tall enough to accommodate Duke Energy Florida's own attachments.[58] As a result of the JUA, to accommodate AT&T's attachments, I understand from Mr. Burlison that Duke Energy Florida procured and installed poles generally 5 to 10 feet taller than it would have otherwise.

B. Rates Have Remained Unchanged When Adjusted For Inflation

39. I understand AT&T contends Duke Energy Florida enjoys and uses to its advantage certain bargaining power arising by virtue of the large number of JUA poles Duke Energy Florida owns relative to AT&T. Recognizing that the relatively high level of JUA pole ownership by Duke Energy Florida has only increased since 1990, when Duke Energy Florida and AT&T last amended the JUA, I reviewed the pole attachment rates since that

[55] See JUA, Section 1.1.6(A) at ATT00090.

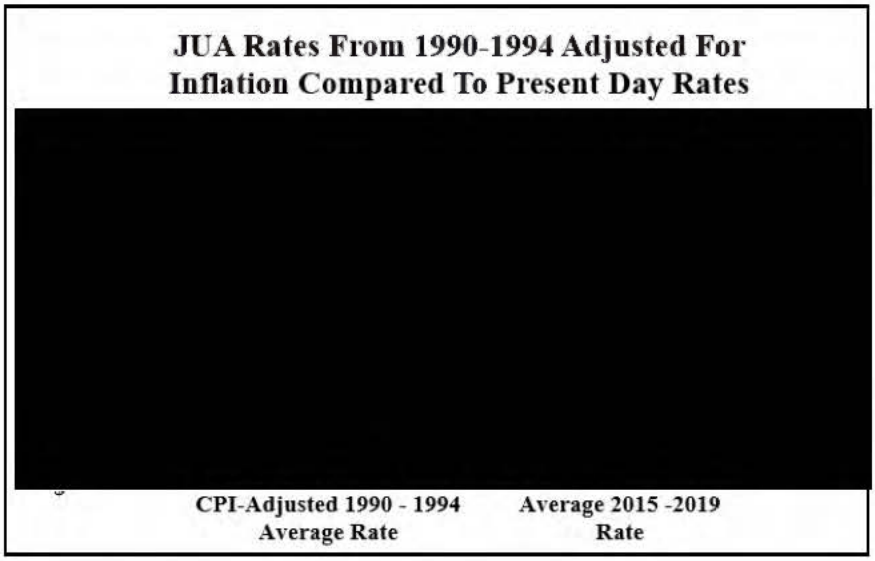
[56] See Exhibit E-4B.

[57] See Exhibit E-4B.

[58] See letter from Scott Freeburn of Duke Energy Corporation to AT&T dated September 10, 2020, "40-feet is more pole than Duke Energy needed (or needs) for its core electric service".

time.[59] After adjusting for inflation, the rates charged to AT&T today are no higher than the rates AT&T has paid historically.[60] For example, the average rate paid by AT&T for attaching to Duke Energy Florida poles from 1990 to 1994 is $[redacted] and the average rate paid from 2015 to 2019 is $[redacted].[61] The different amounts reflect an average annual increase of [redacted]%.[62] Over the same period of time, the Consumer Price Index ("CPI") increased from 138.10 to 242.84, reflecting an average annual increase of 2.28%.[63] As the JUA rates are lower than as they were 30 years ago (after adjusting for inflation) when AT&T agreed to the 1990 amendment to the JUA, it is unclear why AT&T contends they are currently unfair. See Figure 1 and Exhibit E-7 for a comparison of the average 1990 to 1994 JUA rate adjusted for CPI and the current average JUA rate from 2015 to 2019.

Figure 1



[59] In 1991, Duke Energy Florida owned 48,278 poles and AT&T owned 5,675 poles. 48,278 / (48,278 + 5,675) = 89%. (See Duke Energy Florida Invoice to AT&T dated January 25, 1991 at ATT000172.) In 2019, Duke Energy Florida owned 62,363 poles and AT&T owned 5,233 poles. 62,363 / (62,363 + 5,233) = 92%. (See Duke Energy Florida Invoice To AT&T dated December 30, 2019 at ATT00159.)

[60] See Exhibit E-7.

[61] See Exhibit E-7.

[62] [redacted]) ^ ([redacted])%. The formula uses 25 years because the midpoints of the two ranges of data are 1992 and 2017.

[63] (242.84 / 138.10)^(1 / 25) – 1 = 2.28%.

VI. Response To Selected Points In Dr. Dippon's Affidavit

40. AT&T's complaint included an affidavit by Dr. Christian Dippon, a managing director at NERA Economic Consulting.[64] As he has done in other similar matters, he generally opines that the cost sharing rates pursuant to the JUA are not just and reasonable and not competitively neutral, that Duke Energy Florida has abused its position as owner of a large majority of poles, and that the use of the FCC's new telecom rate will ensure competitive neutrality.[65]

41. Dr. Dippon does not provide any substantive analysis supporting his opinions, nor does he appear to have fully thought through certain of his opinions. For example, he appears to argue that AT&T and Duke Energy Florida receive the same economic benefits under the JUA for avoided permitting costs, and therefore AT&T receives "no *net* benefits."[66] Surprisingly, he does not acknowledge that Duke Energy Florida's significantly greater pole ownership results in AT&T receiving the great majority of any "reciprocal" benefits for avoided permitting fees.

A. Duke Energy Florida Does Not Enjoy Or Exercise "Bargaining Power" Due To Pole Ownership Disparity

42. Dr. Dippon claims, "Duke Energy Florida has been able to impose and retain unjust and unreasonably high rental rates on AT&T because of the bargaining power it enjoys by virtue of the significant and increased disparity in pole ownership."[67] However, Duke Energy Florida's actions do not appear to support this claim.

43. Since 1990, Duke's pole ownership percentage has increased and the JUA formula has not changed. In fact, as set forth above, relative to inflation, the rate has gone down. Additionally, the perpetual license provision in the JUA precludes Duke Energy Florida from ever removing AT&T's attachments. This fundamental constraint effectively obviates any real or perceived bargaining power that might otherwise come with increased

[64] See Dippon Affidavit ¶ 1 at ATT00047.

[65] See Dippon Affidavit ¶ 5 at ATT00049.

[66] See Dippon Affidavit ¶ 44 at ATT00069-70.

[67] See Dippon Affidavit ¶ 30 at ATT00061.

pole ownership. As mentioned above, the perpetual license provision states that at any time, either party can terminate the JUA with respect to the right to attach to ***additional*** joint use poles, however, "applicable provisions of [the] Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination."[68] As a result, under the contract, even if Duke Energy Florida were to attempt to exercise any existing bargaining power, AT&T can terminate the JUA and perpetually enjoy exactly the same terms, conditions and benefits afforded to AT&T by the JUA for all of its attachments on JUA poles existing at the date of termination.

44. Dr. Dippon does not provide a single example of how Duke Energy Florida has allegedly used its increased pole ownership as leverage in past or ongoing rate negotiations with AT&T. Nor does he offer an example of how Duke Energy Florida might use its bargaining power if it believed Duke Energy Florida had any such power and actually chose to do so.

B. Allocation Of Pole Costs Under The JUA Is Reasonable

45. Dr. Dippon claims "the rate formula unreasonably divides the pole cost between Duke Energy Florida ([redacted]%) and AT&T [redacted]%)."[69] However, I understand that the JUA cost sharing formula was contemporaneously negotiated and agreed to by both parties and is generally based on the amount of usable space reserved for each party on a typical 40-foot JUA pole (i.e., [redacted] feet for AT&T and [redacted] feet for Duke Energy Florida), and sharing of the remaining, unallocated space.[70] Since the amount of space allocated to each party on a "normal joint use pole" has not changed, it is not logical to view the previously agreed-to cost sharing formula as no longer reasonable.

46. Dr. Dippon also performs a calculation attempting to show that AT&T pays more than Duke Energy Florida on a per-foot basis. He states, "Duke Energy Florida was allocated [redacted] times the space on a 40-foot pole but paid [redacted] times the rate."[71] He derives the

[68] See JUA, Section 16.1 at ATT00103.

[69] See Dippon Affidavit ¶ 34 at ATT00064.

[70] See JUA, Section 1.1.6 at ATT00090 and Amendment to the JUA dated January 2, 1990 at ATT00109.

[71] See Dippon Affidavit ¶ 33 at ATT00063.

[redacted] multiple by simply dividing AT&T's [redacted] feet of "usable" space into Duke Energy Florida's [redacted] feet of usable space (i.e., [redacted] feet / [redacted] feet = [redacted]). The [redacted] multiple is flawed and misleading. The multiple is based only on usable space and ignores the fact that almost [redacted]% of the pole consists of space that is not allocated and there are fewer than [redacted] attachers on each Duke Energy Florida pole (including Duke Energy Florida), on average, to share that cost (i.e., [redacted]).[72]

C. Dr. Dippon's Calculation Of Third-Party Rent Is Flawed

47. As explained earlier, the cost sharing percentages under the JUA between Duke Energy Florida and AT&T are [redacted]% and [redacted]%, respectively.[73] Dr. Dippon opines that Duke Energy Florida is actually paying less than [redacted]% of the costs for the poles it owns on account of offsetting fee revenue it collects from CLEC and CATVs.[74] In an illustration, he uses several unrealistic and unsupported assumptions—most importantly the number of third-party attachers. He assumes there are five attachers per pole, when in fact Duke Energy Florida joint use poles have an average of less than [redacted] attachers (including Duke Energy Florida).[75]

D. So-Called "Reciprocal Benefits" Under The JUA Do Not Net To Zero

48. Dr. Dippon asserts that "a proper analysis of benefits must also consider the reciprocal benefits that Duke Energy Florida receives as part of the JUA."[76] Dr. Dippon uses permitting fees as an example and states that if AT&T were to receive benefits from avoided permitting fees, "it does not result in net benefits because AT&T extends the same permitting

[72] (24 feet unusable space + 3.3 feet safety space) / 40 feet = 68%. See Duke Energy Florida's interrogatory responses, dated October 7, 2020.

[73] See Amendment to the JUA, Section 10.4(b) dated January 2, 1990 at ATT00109.

[74] If Duke Energy received approximately 7.4% of pole costs from each of three other attachment entities on every joint use pole, it would recover approximately 22.2% of costs in fee revenue, and its net costs would decrease from [redacted]% to [redacted]% (i.e., [redacted]% minus 22.2% = [redacted]%). See Dippon Affidavit ¶ 35 at ATT00059.

[75] See Duke Energy Florida's interrogatory responses, dated October 7, 2020.

[76] See Dippon Affidavit ¶ 44 at ATT00069.

benefit to Duke Energy Florida, therefore resulting in no *net* benefits."[77] This view seems particularly surprising, as it appears to suggest he believes AT&T's use of 62,363 Duke Energy Florida-owned poles is of equivalent economic benefit to the 5,233 of AT&T-owned poles used by Duke Energy Florida.[78] If Duke Energy Florida and AT&T each owned the objective percentage in the JUA, neither party would pay the other material amounts under the JUA. However, assuming the monetary benefit on a "per pole" basis is the same for AT&T as it is for Duke Energy Florida, the fact that Duke Energy Florida owns 92.3% of the joint use poles simply means AT&T is receiving significantly more "net benefits."[79]

E. Other Attachers Not Using AT&T's Allocated 3 Feet Of Space

49. Dr. Dippon claims "additional entities typically attach in the [redacted] feet of space allocated to AT&T, which means that AT&T bears the cost of [redacted] feet of allocated space and receives no offset from the revenues that Duke Energy Florida receives when portions of that space are rented to others."[80] He does not provide any independent support for this statement. As discussed earlier, AT&T receives [redacted] feet of space reserved for AT&T's exclusive use. I understand that actual data from Duke Energy Florida personnel indicate that the average highest point of AT&T's attachments is at [redacted].[81] Because no attacher may attach within 1 foot of AT&T's attachment and AT&T is the lowest attacher on a JUA pole, it follows that additional attachers are not, on average, occupying space reserved for AT&T on an JUA pole.[82]

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[77] See Dippon Affidavit ¶ 44 at ATT00070.

[78] Mr. Peters makes a similar argument to Dr. Dippon stating that "AT&T cannot receive a 'net advantage' over its competitors if it must afford to Duke Energy Florida each and every alleged 'benefit' that it receives. This is so because the unique cost to AT&T from providing that alleged 'benefit' cancels out any unique value from the alleged 'benefit' that it receives, leaving a net value of zero." See Peters Affidavit ¶ 26 at ATT00044-45.

[79] (62,363 Duke Poles / (5,233 AT&T Poles + 62,363 Duke Poles) = 92.3% poles owned by Duke Energy Florida. See Exhibit E-1 for examples of my quantification of reciprocal benefits that do not net to zero.

[80] See Dippon Affidavit ¶ 34 at ATT00064.

[81] See Duke Energy Florida's interrogatory responses, dated October 7, 2020.

[82] Per the JUA, Section 1.1.6(B) at ATT00090, AT&T's [redacted] feet of reserved usable space extends from 18 feet to [redacted] feet. Given AT&T's average attachment is at [redacted], it follows that, on average, any additional attachers must attach at [redacted] or higher (i.e., at least one foot above AT&T's attachment), which is outside of AT&T's reserved space.

F. Benefits Quantified Take Into Account Average Per Pole

50. Dr. Dippon's final argument is that "if a benefit were to be found, it would likely apply to only a small number of poles and/or be a temporary benefit."[83] He appears to misinterpret the benefits of the JUA. Duke Energy Florida is not suggesting the benefits exist for every pole every year. As shown in Section IV.B, my quantifications of benefits calculate an average annualized cost per pole, which does not assume the costs are incurred every year, but translates the benefits, which may be one-time costs, into an annualized average.

VII. Conclusion

51. AT&T receives significant benefits under the JUA, which CLECs and CATVs do not. In accordance with the JUA cost sharing formula, Duke Energy Florida charged AT&T in 2019 approximately $[redacted] per pole.[84] As indicated in Exhibit E-1, the JUA provides AT&T with benefits that vastly exceed AT&T's costs. This result is, of course, expected since AT&T is sharing the cost of a single pole network rather than having to build and operate its own.

[83] See Dippon Affidavit ¶ 47 at ATT00071-2.

[84] See Energy Florida Invoice To AT&T dated December 30, 2019 at ATT00159.

Kenneth P. Metcalfe
Partner, HKA
Co-CEO, Kenrich Group LLC | An HKA Company

City/County of Arlington
Commonwealth of Virginia
The foregoing instrument was acknowledged before me
this 30 day of October, 2020
by Kenneth Metcalfe
Lauren E. Sheats Notary Public
Reg. # 7597948 Com. Exp. 09/30/2022

LAUREN ELIZABETH SHEATS
NOTARY PUBLIC
REG # 7597948
MY COMMISSION EXPIRES
9/30/2022
COMMONWEALTH OF VIRGINIA

CURRICULUM VITAE

KENNETH P. METCALFE

PARTNER, HKA
CO-CEO, KENRICH GROUP LLC, AN HKA COMPANY

QUALIFICATIONS

Georgetown University; Bachelor of Science in Business Administration, *Cum Laude;* Accounting major with concentrations in Economics, Finance, Auditing, and Statistics

MEMBERSHIPS

American Institute of Certified Public Accountants
Association of Certified Fraud Examiners
Greater Washington Society of Certified Public Accountants
National Association of Certified Valuators and Analysts
Virginia Society of Certified Public Accountants

CERTIFICATIONS

Certified Public Accountant
Certified Valuation Analyst
Associate Certified Fraud Examiner

PROFILE

Kenneth Metcalfe has more than 38 years of experience consulting on financial, accounting, and economic damages matters in numerous areas, including aerospace, biotechnology, fraud and money laundering investigations, nuclear and fossil fuel generation, financial institutions, construction, manufacturing, and government contracts. (He is the "Ken" in Kenrich).

Ken has analyzed accounting and economic issues in various types of disputes, including alleged breach of contract, patent infringement and trade secret misappropriations. Damages addressed include business lost profits, price erosion, increased costs, delay and disruption, lost value, and other business interruption impacts, including the valuation of lost royalties. He has also performed detailed forensic analyses and historical cost reconstructions, as well as advised clients in the area of evaluating the economics related to significant alternative investments.

Ken has provided expert testimony on economic damages and other issues in various forums, as well as assisted clients, counsel and other experts in deposition and trial testimony and in alternative dispute resolution proceedings. He has also participated in mediations and in extensive settlement negotiations on various matters. He has testified numerous times in federal, state and local courts, in state regulatory proceedings, and in US and international arbitration.

Ken has provided other consulting and accounting services, including analysis of cost allowability and allocability, as well as the propriety of business decisions, such as least cost option and life cycle cost analyses.

Client Responsibilities

Ken is responsible for numerous client assignments in a variety of areas, including commercial contract disputes, regulated industry cost analysis, fuels-related cost analysis, fraud investigations, construction claims, intellectual property disputes, valuations, supplier claims, business interruptions, and terminations for convenience and default. His clients have included electric utilities, construction companies, biotechnology companies, aerospace companies, financial institutions, architect engineers, project owners, government contractors, computer software and hardware developers, manufacturers, telecommunications companies, an accounting oversight organization and various government and quasi-government entities.

SELECTED EXPERIENCE

ECONOMIC, OPERATIONAL AND DAMAGE ANALYSIS AND GENERAL BUSINESS CONSULTING

Performed analyses of claims, financial statements and financial projections, accounting and auditing standards, contracts, policies and procedures and project cost and scheduling issues. Work has included planning, implementing, and supervising the analyses and other tasks to be performed on matters, leading teams from several to more than 50 people. Assignments have included performing detailed work for numerous in-house and outside counsels, company management and other personnel, accounting and auditing firm personnel, as well as other consultants and fact and expert witnesses.

Analyzed the financial condition of corporations, partnerships and sole proprietorships and performed economic damage analyses under a variety of circumstances, including intellectual property disputes, valuations, regulatory matters, commercial breach of contract, contract termination, business interruption, fraud investigations, personal injury, discrimination and wrongful death.

Prepared and analyzed claims for increased direct and allocated indirect costs due to numerous factors, including changed work, differing site conditions, delay and disruption, defective specifications and acceleration.

Performed valuations of various assets and businesses, including securities, receivables, real estate, partnership interests, service businesses, market segments, franchises, oil and gas properties and electric utilities.

Analyzed financial transactions and performed extensive funds tracing and other forensic accounting work on a variety of assignments, including commercial damage matters and investigations of alleged fraud.

Performed various analyses that have involved developing economic models reconstructing and analyzing financial data and operating information.

Addressed the use, propriety and economic implication of overall cost and pricing indices, as well as the weighting of indices in various scenarios, including life cycle cost analyses, the potential re-powering of electric generation facilities, and for capital projects and decommissioning-related costs associated with generating plants in the U.S. and internationally.

Assisted clients and counsel in general direct and indirect cost determination studies; the preparation and evaluation of least-cost project comparison models, including life cycle cost analysis; incorporating the

impacts of long-term and spot market fuel prices; the selection, development and operation of information management systems and a variety of document and other information databases.

REGULATED INDUSTRIES

Consulted on numerous utility matters in the electric, water, and telecommunications industries. Work has included direct and indirect cost and accounting studies, disputes involving nuclear, fossil fueled, geothermal, biomass, solar, and hydroelectric power plants, relating to such issues as prudence investigations, construction management, replacement power costs and the impacts of alternative fuel assumptions, cost allocations and the rate making process. Work has involved preparation and analysis of claims for more than three dozen utilities throughout the US and internationally and has included increased costs, lost sales and other claims related to over fifty nuclear plants.

Consulted on the proper costs to be included by the US Department of Energy regarding its charges to public utilities for nuclear fuel enrichment, as well as cost claims for numerous utilities regarding the disposal of spent nuclear fuel. Prepared first significant utility claim against the Department of Energy for increased costs related to spent nuclear fuel, ultimately leading to settlement with the government. Has since represented nuclear utilities in matters for over twenty nuclear power plants related to the "Standard Contract" with the Department of Energy and the economic damages related to the Department's obligation to accept spent nuclear fuel from US commercial nuclear reactors.

Provided consultation related to utility operation and maintenance costs, as well as the examination of utility missions, objectives, organization, policies, procedures and controls.

Consulted on prudence investigations of nuclear power plants, including the underlying causes of and amounts for direct and indirect cost increases and schedule delays, replacement power costs and the proper methods for assessing and supporting the cost of particular impacting events and activities, including the specific identification of direct costs and indirect cost allocation methodologies.

Consulted on the preparation and evaluation of damage claims related to increased costs, as well as defective equipment and plant operating procedures, including direct and consequential impacts.

Developed models and consulted to utilities and government agencies regarding decisions related to electric generation resources, such as the cost evaluation of alternative power plants, incorporating life cycle cost analysis with concentration on alternative fuels and their related costs under different short- and long-term delivery structures. Models have included appropriate cost and pricing indices to properly address the impact of time on equipment, material and labor costs.

SECURITIES-RELATED, FORENSIC ACCOUNTING, FRAUD AND OTHER INVESTIGATIONS

Reconstructed historical financial information and performed forensic analyses of alleged money laundering and other fraudulent transactions, including those related to companies and individual executive management personnel. These engagements have included those involving the detailed analysis of tens of thousands of account transactions over multi-year periods and through multiple entities and accounts to determine the structure and propriety of funds inflows and outflows.

Assisted in investigating various allegations regarding company management, including the misappropriation of company assets and willful fraudulent transactions committed against the government.

Performed detailed transaction reviews related to alleged embezzlement, check kiting and other illegal accounting schemes, fraudulent invoicing schemes and alter ego analyses.

Investigated the compliance with detailed contractual terms related to the recording of transactions, recognition of revenue and costs. Related analyses have included forensic investigations of thousands of transactions to assess allegations of intentional circumvention of contractual requirements and other obligations. Investigations have included the use of complex computer databases and models, as well as hard-copy records.

Assisted counsel in understanding and applying Generally Accepted Accounting Principles and Generally Accepted Auditing Standards in the context of business disputes, fraud investigations, accounting reconstructions and other forensic analyses. Examples include the application of various standards, including materiality, risk assessment, commonality, accumulating and evaluating sufficient documentary evidence, adequate disclosures, and adequate training and professional care, as well as actual and perceived independence.

Analyzed financial transactions and performed funds tracing and other forensic accounting work on a variety of assignments, including commercial damage matters, analyses of regulated industries and investigations of alleged fraud.

Prepared and implemented detailed work programs for tracing transactions to detailed supporting documents, “auditing” costs allegedly incurred, as well as testing compliance with the financial and accounting related requirements of agreements.

Performed numerous interviews of company executives and employees, accounting firm personnel, company customers and competitors and others to obtain information in the context of fraud investigations and other disputes.

Assisted national accounting oversight organization in reviewing and evaluating several international public accounting firms’ systems, procedures and internal controls relating to independence. Helped perform research on certain accounting and SEC issues in their relationship to independence regulatory requirements. Acted as an advisor to counsel regarding independence-related issues to assist in communications among counsel, the accounting oversight organization, the accounting firms and the SEC. Assistance included developing and drafting detailed work programs for use during the independence reviews.

INTELLECTUAL PROPERTY

Calculated lost profits and other damages resulting from potential infringement of patent, trade secret and proprietary agreement rights. Example matters in this area have included those involving software licensing and royalty issues, pharmaceutical market penetrations, nuclear technology and steam reforming high temperature waste destruction and processing, as well as government contracting in the aerospace industry.

Analyzed direct and indirect labor and other operating cost structures and considered mitigation efforts during alleged infringement periods.

Analyzed the impact on damages of various interpretations of what products and/or processes were protected as intellectual property.

Analyzed the economic damages resulting from the loss of particular clients and customers due to alleged patent and trade secret infringement and misappropriation, based on analyses of similar clients and customers, as well as other previous company experience.

Analyzed financial, technical and production capacity and the feasibility and cost of potential add-on capacity in connection with the calculation of lost profits.

Performed reasonable royalty analysis considering potential licensor and licensee projections and expectations regarding the level and profitability of future work and required investment, as well as applicable Georgia Pacific, Honeywell and other factors. Analyzed the projected incremental benefit from intellectual property by comparing expected licensee profit margins on products using intellectual property to profit margins on products that did not utilize intellectual property.

CONSTRUCTION AND GOVERNMENT CONTRACTING

Performed analyses of financial statements and projections, contracts, auditing standards, policies and procedures and project cost and scheduling information for a variety of construction-related entities and projects.

Experience has encompassed numerous types of major construction projects, including nuclear, fossil fueled power plants, multi-unit housing projects, wastewater treatment plants, commercial and office buildings, liquid natural gas tankers, as well as ship, aircraft and simulator construction.

Analyzed and prepared claims relating to contracts, including assessment of formal and constructive change orders and the impact of delays, disruptions, defective specifications, differing site conditions, inefficiencies and accelerations.

Reviewed and analyzed various cost and schedule issues, as well as contract administration matters, including avoidance of disputes, appropriateness of contractual terms and conditions, and improvement of management procedures and controls.

Analyzed original scope project costs, contract additions, changes and associated payments.

Assisted numerous clients on a variety of government contracting-related issues, including the determination of damages on commercial disputes arising from government contracts, such as increased cost and lost profits damages resulting from contract breach or termination (for convenience and default); regulatory consulting on compliance issues; the review and preparation of claims for changed work, delay and disruption; and consulting on forensic accounting and funds tracing matters (e.g., alleged false claims, improper cost charging and improper billings.)

TESTIMONY AND ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE

Testified numerous times as an expert witness in various forums, including bench and jury trials in federal and state courts, as well as the Court of Federal Claims. Testimony has also been provided in state regulatory proceedings and in alternative dispute forums, including US and international arbitration.

Testimony has covered accounting, economics, finance and economic damages issues in matters including breach of contract and business interruption, lost profits, reasonable royalties, direct and indirect increased cost claims, regulated industry issues, property damage, construction matters, contract claims and business management and operations.

Actively participated in numerous settlement negotiations presenting accounting, economic and business operations analyses and assisting in developing alternative methods for dispute resolution. Those services have been provided on a variety of matters, including for example, an international matter assessing the impact of alternative fuels and operating and maintenance costs for the potential repowering of an international nuclear-powered electric generating plant.

Addressed ability-to-pay issues, including those in the context of settlement discussions, by analyzing financial statements, cash flows and other business and accounting records.

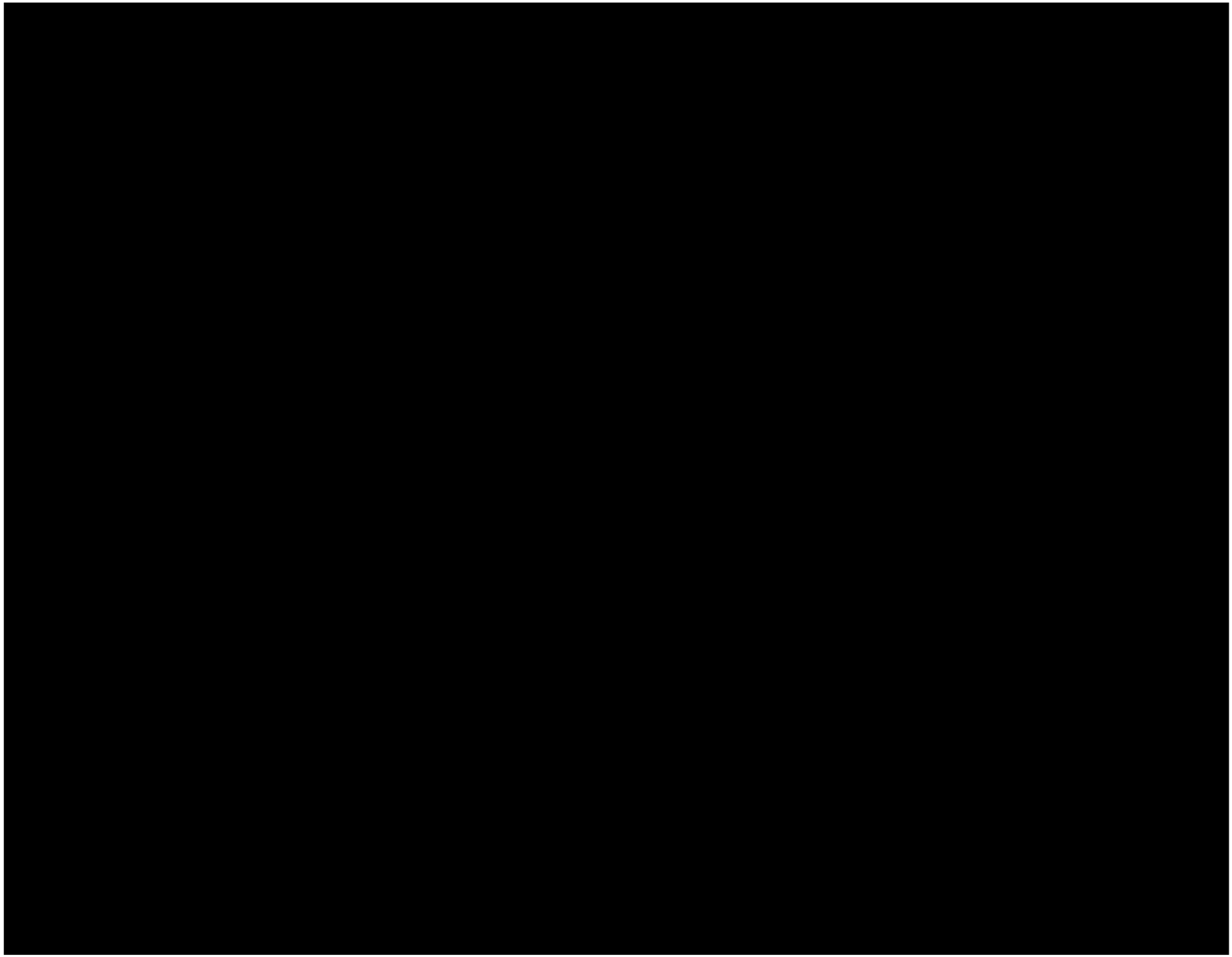
Prepared numerous other expert witnesses for testimony, as well as for participation in various alternative dispute resolution and negotiation forums.

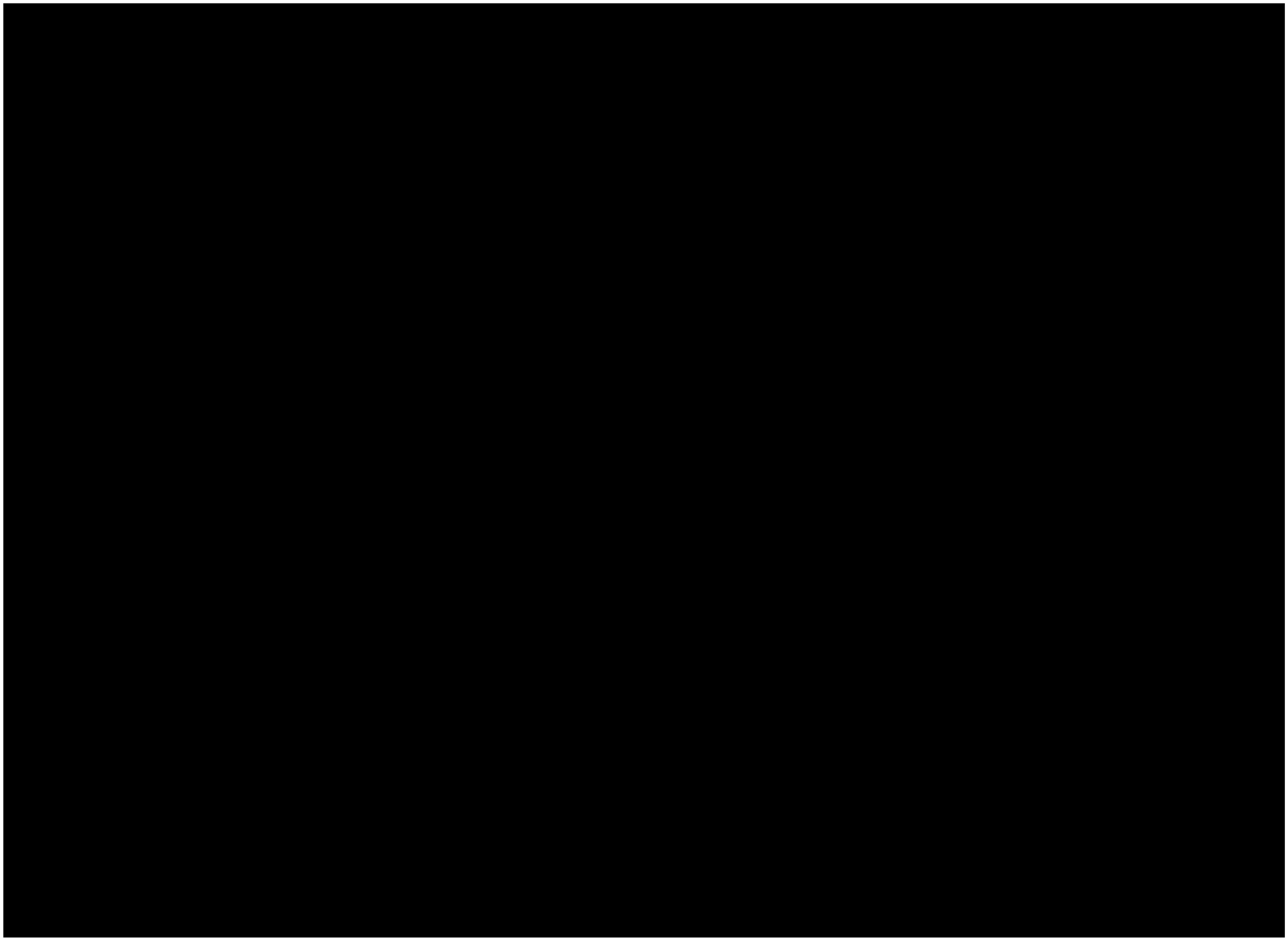
SELECTED LECTURES AND SEMINARS

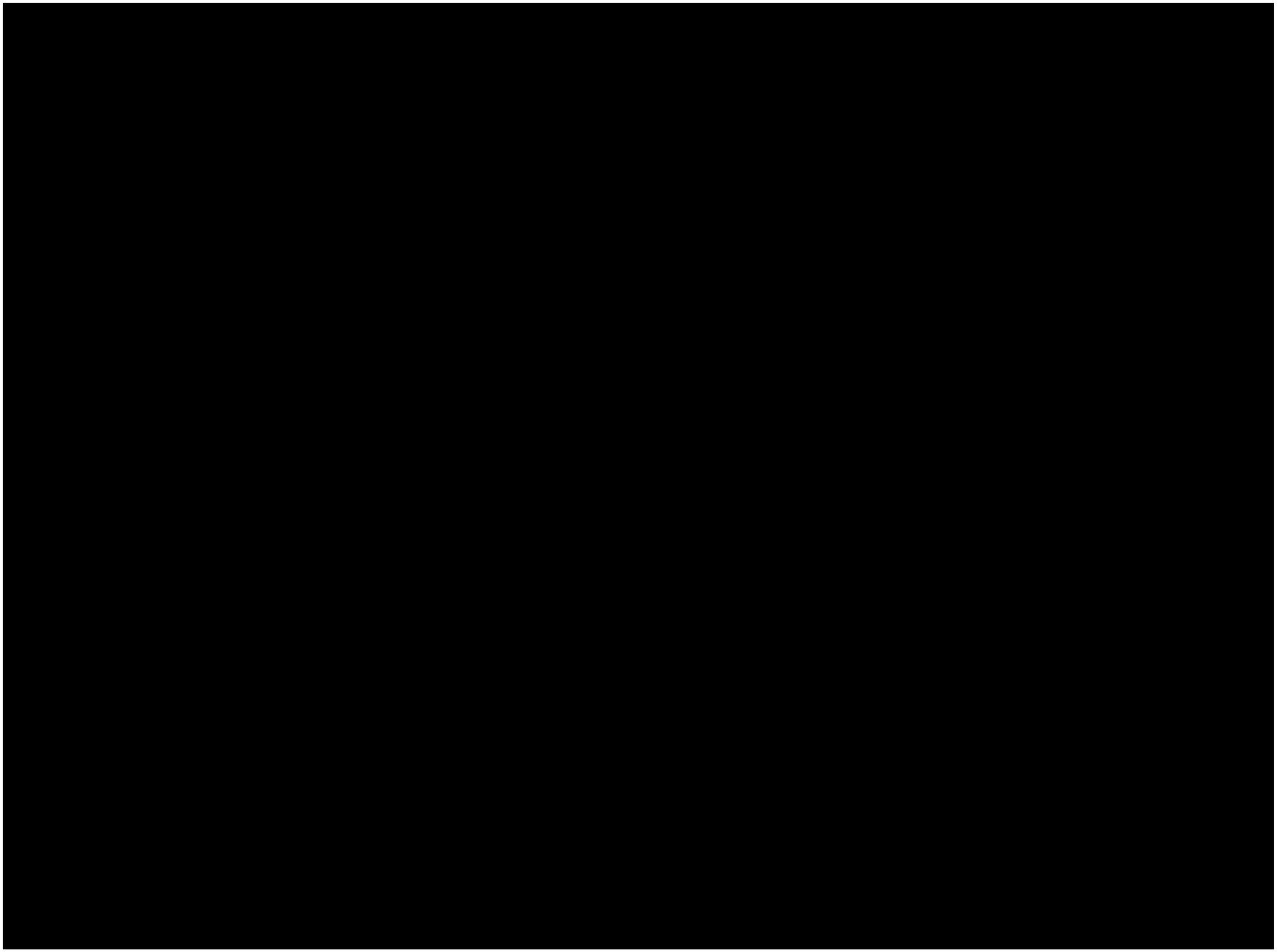
Provided instruction on the preparation and analysis of claims and accounting practices to graduate students, construction executives and attorneys. For example, Ken has lectured on various economic damages-related issues to graduate students at Stanford University's Construction, Engineering and Management Program. Ken has also taught to graduate students at the George Washington School of Business regarding the preparation and analysis of economic damages claims related to government contracts, as well as in the private sector. Additionally, he has had extensive involvement related to cost issues in the Trial Advocacy Program sponsored by the Public Contracts Section of the American Bar Association. He has also presented to various attorney forums, as well as to project owners, contractors and financiers at the annual Forbes Conference in New York.

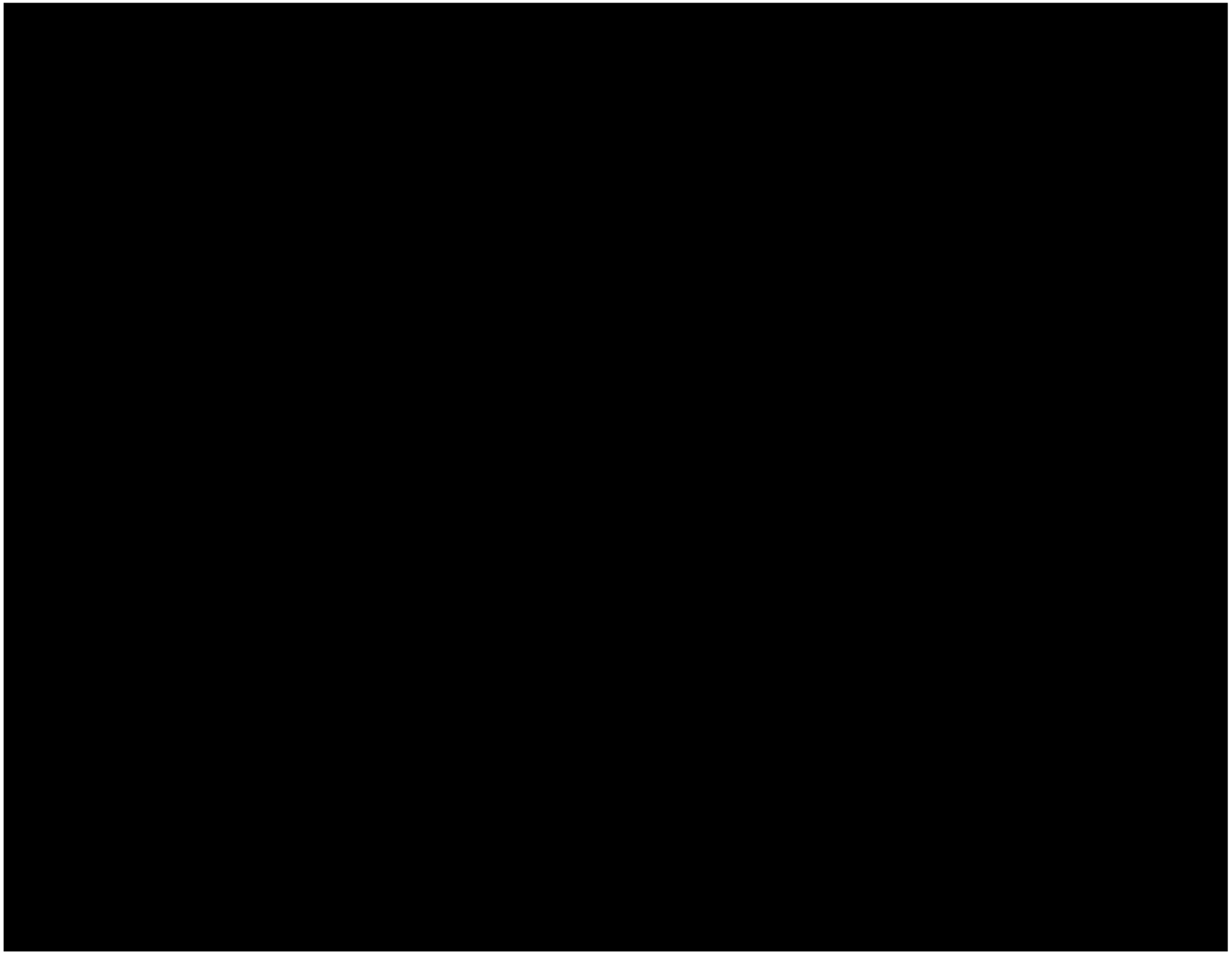
LANGUAGES

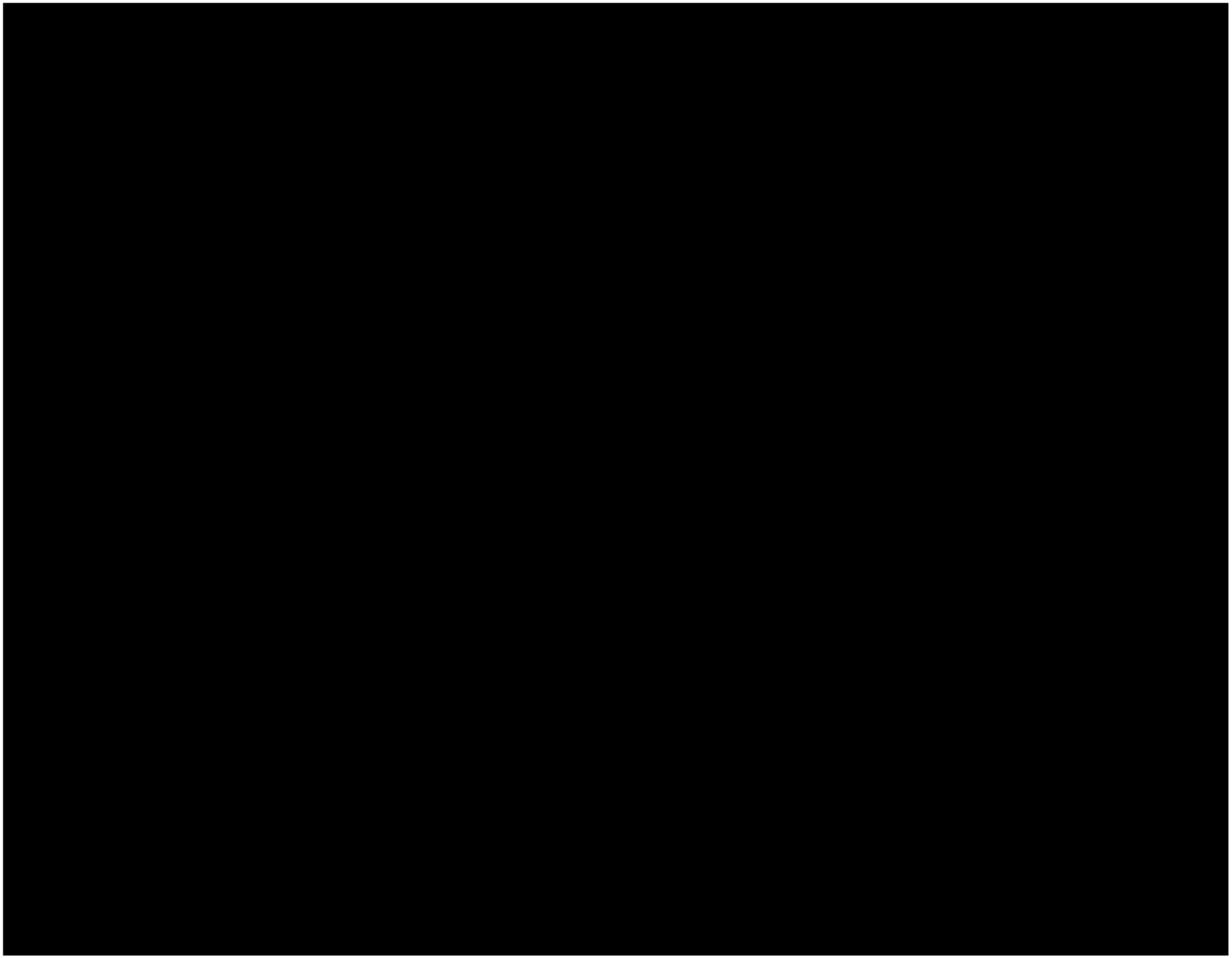
English (native)

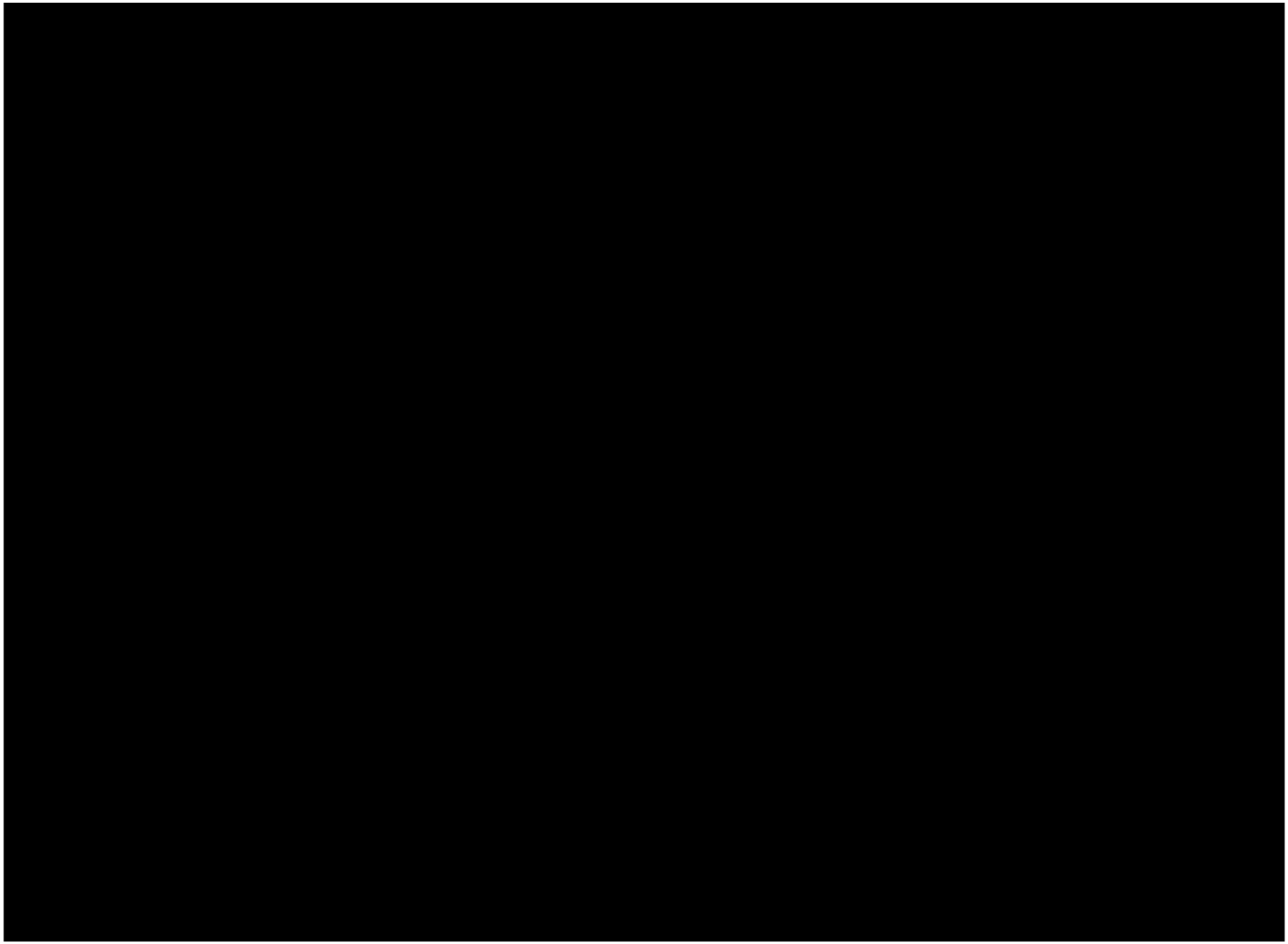












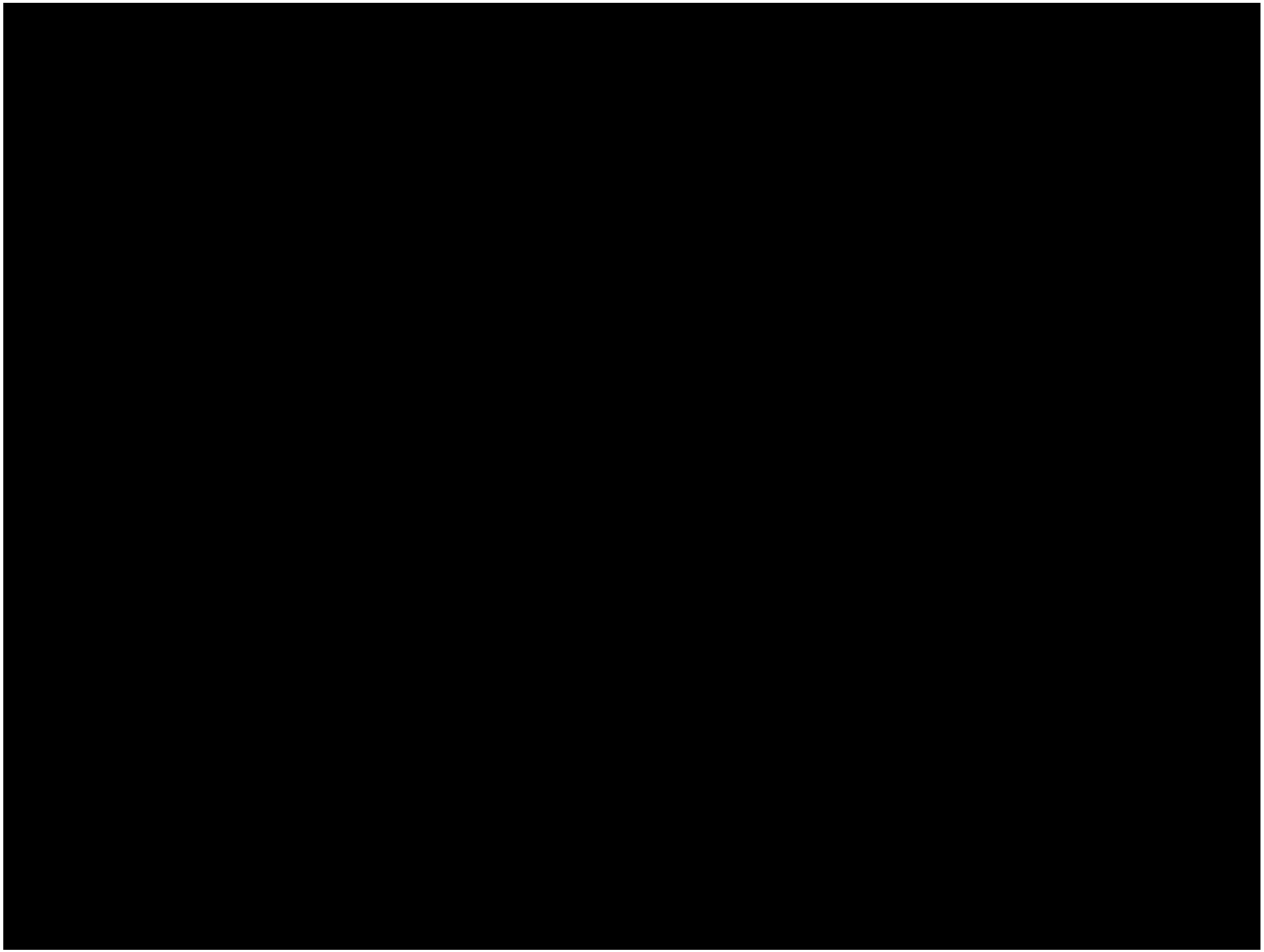


EXHIBIT 1

JOINT USE AGREEMENT
BETWEEN
FLORIDA POWER CORPORATION
AND
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Section 0.1 THIS AGREEMENT, made and entered into this first day of June, 1969, by and between FLORIDA POWER CORPORATION, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "Electric Company", and SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a corporation organized and existing under the laws of the State of New York, herein referred to as the "Telephone Company".

WITNESSETH

Section 0.2 WHEREAS, the parties hereto desire to cooperate in accordance with terms and provisions set forth in the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded; and

Section 0.3 WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

Section 0.4 NOW, THEREFORE, in consideration of the foregoing premises and of mutual benefits to be obtained from covenants herein set forth, the parties hereto, for themselves and for their successors and assigns, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 For the purpose of this Agreement, the following terms when used herein, shall have the following meanings:

1.1.1 CODE means the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded.

1.1.2 ATTACHMENTS mean materials or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant attached to poles.

1.1.3 JOINT USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

1.1.4 JOINT USE POLE is a pole upon which space is provided under this Agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefore upon specific request.

1.1.5 NORMAL JOINT USE POLE under this Agreement shall be a pole which meets the requirements set forth in the CODE for support and clearance of supply and communication conductors under conditions existing at the time joint use is established or is to be created under known plans of either party. It is not intended to preclude the use of joint poles shorter or of less strength in locations where such structures will meet the requirements of both parties and the said specifications in Article VI. A normal joint pole for billing purposes shall be:

(A) In and along public streets, alleys, or roads, a 40 foot class 5 wood pole.

(B) In all other areas, a 35 foot class 5 wood pole.

(C) In locations where the Electric Company, at its option, sets a pole of special material such as steel, laminated wood or prestressed concrete in an existing joint use wood pole line, the Telephone Company may attach to these special poles at the rental rate specified in Article X, unless excluded under Section 2.2. The Electric Company will keep the Telephone Company advised of those areas where such special poles are not placed at their option, and in each such event, the Telephone Company may attach by mutual agreement between the parties.

1.1.6 STANDARD SPACE on a joint use pole for the use of each party shall be not less than that required by the CODE and shall be for the exclusive use of the parties except as set forth in the CODE whereby certain attachments of one party may be made in the space reserved for the other party. This standard space is specifically described as follows:

(A) For the Electric Company, the uppermost [redacted] feet on 40 foot poles, and the uppermost [redacted] feet on 35 foot poles.

(B) For the Telephone Company a space of [redacted] feet extending upward from a sufficient height above the ground to provide the proper vertical clearance for the lowest line wires or cables attached (in such space) and to provide at all times the minimum clearances required by the specifications outlined in Article VI.

(C) It is the intention of the parties that any pole space in excess of the aforementioned reservations and clearance requirements shall be between the standard space allocations of the parties. This excess space, if any, is thereby available for the use of either party without creating a necessity for rearranging the attachments of the other party.

1.1.7 OWNER means the party hereto owning the pole to which attachments are made.

1.1.8 LICENSEE is the party having the right under this Agreement to make attachments to a joint use pole of which the other party is the Owner.

1.1.9 INSTALLED COST is the cost incurred in setting a new pole (either as a new installation or replacement) and includes the cost of material, direct labor, construction and equipment charges, engineering and supervision, and standard overhead charges of the Owner as commonly and reasonably incurred in the joint usage of poles. The installed cost does not include the cost of attaching or transfer costs but does include the cost of ground wires.

1.1.10 COST OF ATTACHING is the cost of making attachments to a new pole and includes the charge for hardware necessary to make the attachment.

1.1.11 TRANSFER COST is the cost of transferring attachments from the replaced pole to the replacement pole and does not include the material cost of replacing hardware.

1.1.12 VERTICAL GROUND WIRE means a suitable conductor, conforming to the requirements of the CODE, attached vertically to the pole and extending through the Telephone Company space to the base of the pole, where it may be either butt wrapped on the pole or attached to a ground electrode.

1.1.13 MULTI-GROUNDED NEUTRAL means an Electric Company conductor, located in the Electric Company space, which is bonded to all Electric Company vertical ground wires.

1.1.14 BONDING WIRE shall mean a suitable conductor conforming to the requirements of the CODE, connecting equipment of the Telephone Company and the Electric Company to the vertical ground wire or to the multi-grounded neutral.

1.1.15 OBJECTIVE PERCENTAGE shall be based on the total combined number of joint use poles in the common operating area and shall mean [redacted] of the total joint use poles for the Telephone Company and [redacted] of the total joint use poles for the Electric Company.

1.1.16 REMOVAL COST is the cost incurred in removing an existing pole and includes the cost of direct labor, construction and equipment charges, engineering and supervision and standard overhead charges of the Owner as commonly and reasonably incurred in the joint usage of poles.

ARTICLE II

SCOPE OF AGREEMENT

Section 2.1 This Agreement shall be in effect in those parts of the State of Florida now or hereafter served by both the Telephone Company and the Electric Company, and shall cover all poles of each of the parties now existing in such service areas, or hereafter erected or acquired therein, when said poles are brought hereunder in accordance with the procedure hereafter provided.

Section 2.2 Each party reserves the right to exclude from joint use poles which have been installed for purposes other than or in addition to normal distribution of electric or telephone service including, among others, poles which, in the judgement of the Owner (a) are required for the sole use of the Owner, (b) would not readily lend themselves to joint use because of interference, hazards or similar impediments, present or future, or (c) have been installed primarily for the use of a third party. In the event one of the parties deem it desirable to attach to any such excluded poles, the party wishing to attach will proceed in the manner provided in Article III. Where a third party use is involved, approval must be obtained from such third party as a prerequisite to processing under Article III.

Section 2.3 With the exception of Telephone Company service drops on public right of way, the Telephone Company may not make initial or additional attachments to Electric Company transmission line poles (above 35,000 volts phase to phase nominal rating) without the written approval of the Electric Company as provided in Article III of this Agreement.

ARTICLE III

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS AND BONDING SAID ATTACHMENTS

Section 3.1 Whenever either party desires to reserve space on any pole of the other, for any attachments requiring space thereon not then specifically reserved by application hereunder for its use, it shall make written application to the other party specifying in such application the location of the pole in question. Within ten (10) days after the receipt of such application, the Owner shall notify the applicant in writing, whether or not said pole is one of those excluded from joint use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not one of those excluded, and after the Owner completes any transferring or rearranging which may then be required in respect to attachments on said poles, including any necessary pole replacements as provided in Article IV, the applicant shall have the right as Licensee hereunder to use said space in accordance with the terms of this Agreement.

Section 3.2 The provisions of Section 3.1 do not apply to the poles of either party being used jointly by the other party as of the effective date of this Agreement; therefore, the Licensee shall have the right to use space on these poles for attachments in accordance with the terms of this Agreement.

Section 3.3 Except as herein otherwise expressly provided, each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense, and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

Section 3.4 Each party, regardless of pole ownership, shall be responsible for determining the proper pole strength and arranging for any necessary guying of a joint pole where a requirement therefore is created by the addition or alteration of attachments thereon by such party.

Section 3.5 The Electric Company shall give sixty (60) days written notice to the Telephone Company, advising the Telephone Company of any initial attachments or conversion of any existing attachments that will result in joint use with any of the following conditions:

(A) The absence of a multiple grounded Electric Company neutral line conductor.

(B) Voltage in excess of 15,000 volts phase to ground.

If the Telephone Company agrees to joint use with any such change then the joint use of such poles shall be continued with such changes in construction as may be required to meet the requirements of the CODE. If, however, the Telephone Company fails within thirty (30) days from receipt of such written notice to agree in writing to such change then both parties shall cooperate and determine the most practical and economical method of effectively providing for separate lines and the party whose circuits are to be moved shall promptly carry out the necessary work.

Section 3.6 The ownership of any new line constructed in a new location under the foregoing provision shall be vested in the party for whose use it is constructed, unless otherwise agreed by the parties.

Section 3.7 On joint use poles the Telephone Company may, at its own expense, bond its attachments in the Telephone Company space together and to the vertical ground wire where the same exists.

Section 3.8 Under no condition will the Electric Company's vertical ground wire be broken, cut, severed or otherwise damaged by the Telephone Company.

Section 3.9 On joint use poles the Electric Company shall, at its own expense, bond its street light brackets, conduit and other attachments in the Telephone Company space together and to the vertical ground wire where the same exists.

ARTICLE IV

ERECTING, REPLACING OR RELOCATING POLES

Section 4.1 Whenever, for whatever reason, the Owner shall deem it necessary to change the location of a jointly used pole, the Owner shall, before making such change in location, give timely notice thereof to the Licensee in writing (except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing), specifying in such notice the time of such proposed relocation, and the Licensee shall, at a time mutually agreed upon, transfer its attachments to the pole at the new location.

Section 4.2 Whenever either party hereto is about to erect new poles within the territory covered by this Agreement, either as a new pole line, an

extension of an existing pole line, or as the reconstruction of an existing pole line being jointly used hereunder, such party shall immediately notify the other party hereto prior to completion of engineering plans for such erection in order that any necessary joint planning may be coordinated and so that compliance may be had with the provisions of Section 4.3 and 4.4 of this Article IV.

Section 4.3 Where the parties conclude arrangements for joint use and unless it is mutually agreed otherwise, the party owning less than its objective percentage of joint use poles under this Agreement shall erect or replace within a reasonable time any joint use pole, or any pole about to be so used, that is required by either of the parties and be the Owner thereof. This obligation shall include wood poles only. The costs associated with such new and replacement poles and such other changes in the existing pole line as the new conditions may require are to be as outlined in Section 4.4.

Section 4.4 The costs of erecting joint use poles coming under this Agreement shall be borne as provided in one or more of the following Sub-sections:

4.4.1 For a new pole to which no existing facilities of either party are to be attached (e.g., new pole lines) a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required the obligation of the parties for such extra cost shall be in accordance with Section 4.4.5.

4.4.2 For a new pole to which existing facilities of either party must be attached (e.g. adding pole in existing line) and:

(A) The pole is of benefit to both parties, a normal or shorter joint use pole shall be the obligation of the Owner. If a pole taller and/or stronger than a normal joint use pole is required the obligation of the parties for such extra cost shall be in accordance with Section 4.4.5. Each party shall bear its own cost of attaching.

(B) The pole is of benefit only to the Licensee, the Licensee shall pay the Owner a sum equal to the installed cost of the required pole plus the cost of attaching the Owner's facilities to said pole.

(C) The pole is of benefit only to the Owner, the Owner shall pay the Licensee a sum equal to the cost of attaching the Licensee's facilities to said pole.

4.4.3 Where an existing joint use pole is inadequate and said pole is replaced, the party requiring such replacement shall be obligated for the cost as follows:

(A) If such party is the Owner of both the existing and replacing pole that party shall bear the cost of the pole and the cost of transferring the Licensee's attachments.

(B) If such party is the Licensee of both the existing and replacing pole that party shall pay the Owner a sum equal to (A) the difference between the installed cost of the required pole and the installed cost of the removed pole, plus (B) the then value in place of the removed pole, plus (C) the removal cost of the pole removed, plus (D) the Owner's transfer cost, less (E) the salvage value of the removed pole.

(C) If such party is the Owner of the existing pole and the Licensee of the replacing pole such party shall pay the new Owner's transfer cost plus any cost for a pole taller and/or stronger than a normal joint use pole in accordance with Section 4.4.5.

(D) If such party is the Licensee of the existing pole and the Owner of the replacing pole such party shall bear the cost of the pole and pay the former Owner a sum equal to (A) the then value in place of the removed pole, plus (B) the removal cost of the pole removed, plus (C) the transfer cost, less (D) the salvage value of the removed pole.

4.4.4 Where an existing joint use pole is replaced due to deterioration or damage, each party shall pay its own transfer costs. If a pole taller and/or stronger than a normal joint use pole and the existing pole is required, the provisions of Section 4.4.5 apply.

4.4.5 For any new pole that is taller and/or stronger than a normal joint use pole, the cost of the extra height and/or strength shall be as follows:

(A) If the extra height and/or strength is due wholly to the Owner's requirements, the entire cost of the pole shall be borne by the Owner.

(B) If the extra height and/or strength is due wholly to the Licensee's requirements the Licensee shall pay the Owner a sum equal to the difference between the installed cost of the required pole and the installed cost of a normal joint use pole. Notwithstanding the foregoing, where pole line economy resulting from the use of fewer poles can be effected by the Owner increasing the strength of poles, billing would be based only on the extra height.

(C) Where the extra height and/or strength is due to the requirements of both parties herein to provide CODE clearances or meet the requirements of public authority or property owners, the Licensee shall pay the Owner a sum equal to one-half (½) the difference between the installed cost of the required pole and the installed cost of a normal joint use pole.

Section 4.5 Any payments made by the Licensee under the foregoing provisions of this Article shall not in any way affect the ownership of said poles.

Section 4.6 When replacing a joint use pole carrying terminals of aerial cable, underground connections or transformer equipment, the replacement pole shall be set in such a location that existing facilities may be transferred at a minimum of cost and inconvenience.

Section 4.7 Whenever, in any emergency, the Licensee replaces a pole of the Owner, the Owner shall reimburse the Licensee all reasonable costs and expenses that would otherwise not have been incurred by the Licensee if the Owner had made the replacement.

ARTICLE V

PERMISSION OF JOINT USE

Section 5.1 Each party hereto hereby permits joint use by the other party of any of its poles when brought under this Agreement as herein provided subject to the terms and conditions herein set forth.

ARTICLE VI

SPECIFICATIONS

Section 6.1 Joint use of poles covered by this Agreement shall at all times be in conformity with the terms and provisions of the National Electrical Safety Code in its present form or as subsequently revised, amended or superseded. Said CODE, by this reference is hereby incorporated herein and made a part of this Agreement.

ARTICLE VII

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

Section 7.1 From and after the date of this Agreement, the Owner will, insofar as practicable, obtain suitable right of way easements or permits for both parties on joint poles brought hereunder.

Section 7.2 While the Owner and the Licensee will cooperate as far as may be practicable in obtaining rights of way for both parties on joint poles, no guarantee is given by the Owner of permission from property owners, municipalities or others for use of poles and right of way easements by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at

any time upon thirty (30) days notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved and its appurtenances from the right of way easement involved and the Licensee shall, within thirty (30) days after receipt of said notice, remove its attachments from said poles and its appurtenances from said right of way easement at its sole expense. Should the Licensee fail to remove its attachments and appurtenances, as herein provided, the Owner may remove them and the Licensee shall reimburse the Owner for the expense incurred.

Section 7.3 Each party shall be responsible for its own circuits where tree trimming or cutting (e.g., shade trees, side clearances, etc.) is required. Where benefits are mutual and the need for the work is agreed upon beforehand, costs shall be apportioned on an equitable basis.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

Section 8.1 The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with Article VI of this Agreement, and shall replace, subject to the provisions of Article IV, such of said poles as become defective. Each party shall, at its own expense and at all times, maintain all of its attachments in accordance with the specifications contained in the CODE and keep said attachments in safe condition and in thorough repair.

Section 8.2 Both parties shall, in writing, report to each other all hazardous conditions found to exist in any joint use construction hereunder, immediately upon discovery, and the responsible party shall proceed forthwith to alter such construction so as to remove the hazard. Any existing joint use construction hereunder which does not conform to the specifications set forth in Article VI shall be brought into conformity with said specifications at the earliest possible date.

Section 8.3 The cost of removing hazards and of bringing existing joint use construction into conformity with said specifications, as provided in Section 8.2, shall be borne by the parties hereto in the manner provided in Section 3.3 and Article IV.

ARTICLE IX

ABANDONMENT OF JOINTLY USED POLES

Section 9.1 If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole thereupon becomes the property of the Licensee, and the Licensee (a) shall indemnify and save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter and arising out of the presence or condition of such pole

or of any attachments thereon; and (b) shall pay said former Owner a sum equal to the then value in place of such abandoned pole, less credit on a depreciated basis for any payments which the Licensee furnishes proof he has made under the provisions of Article IV when the pole was originally set, or shall pay such other equitable sum as may be agreed upon between the parties.

Section 9.2 The Licensee may at any time abandon the joint use of a pole by giving due notice thereof in writing to the Owner and by removing from said pole any and all attachments the Licensee may have thereon.

ARTICLE X

RENTAL AND PROCEDURE FOR PAYMENTS

Section 10.1 The parties contemplate that the use or reservation of space on poles by each party, as Licensee of the other under this Agreement, shall be based on the equitable sharing of the costs and economies of joint use.

Section 10.2 Each party, acting in cooperation with the other and subject to the provisions of Section 10.3 of this Article, shall ascertain and tabulate the total number of poles in use by each party as Licensee as of December 31, which tabulation shall indicate the number of poles in use by each party as Licensee for which an adjustment payment by one of the parties to the other is to be determined as hereinafter provided.

Section 10.3 The parties hereto agree that an attachment count also includes any pole on which it is mutually agreed that space was reserved for the Licensee at the Licensee's request and on which the Licensee has not attached. The Licensee is only liable for billing under this Section until the Licensee makes an initial attachment or an interval of five (5) unattached years elapses from the date of the space reservation, whichever condition occurs first.

Section 10.4 At the end of each calendar year, the party having less than its objective percentage ownership of jointly used poles shall pay an equity settlement to the other party for that calendar year an amount equal to the number of poles it is deficient from its objective percentage ownership times the appropriate adjustment rate given below, which sum shall be due and payable upon the first day of February following each year end determination of the number of jointly used poles owned by each party.

Applicable Adjustment rate to be utilized for each calendar year

1969: $[redacted] 1971: $[redacted] 1973 and until revised: $[redacted]
1970: $[redacted] 1972: $[redacted]

Section 10.5 Upon the execution of this Agreement and every five (5) years thereafter, or as may be mutually agreed upon, the parties hereto shall make a joint field check to verify the accuracy of the joint use records hereunder. If the parties mutually agree to postpone the first joint field

check hereunder, the parties shall use their existing records as changed from time-to-time to determine the number of jointly used poles owned by each party until the first joint field check is made hereunder. The said joint inventory shall be a one hundred (100) percent field inventory unless the parties voluntarily and mutually agree to some other method. Upon completion of such inventories the office records will be adjusted accordingly and subsequent billing will be based on the adjusted number of attachments. The corrections to the estimations made over the years elapsed since the preceeding inventory shall be prorated equally (i.e., if the latest joint field check shows 100 more joint use poles owned by one party than office records indicate and if the interval since the last joint field check is 5 years, then each of the intervening annual pole inventory amounts would be adjusted upward by 20 poles). Unless otherwise agreed upon, retroactive billing for the prorated adjustment will be added to the normal billing for the year following completion of the field inventory.

Section 10.6 Rental or other charges paid to the Owner by a third party will in no way affect the rental or charges paid between the parties of this Agreement.

Section 10.7 Payment of all other amounts, provision for which is made in this Agreement, shall be made currently or as mutually agreed thereto.

ARTICLE XI

PERIODIC REVISION OF ADJUSTMENT PAYMENT RATE

Section 11.1 Article X of this Agreement covering Rental and Procedures for Payment shall remain in effect for a minimum term of five (5) years. The adjustment rate shall then become subject to renegotiation at the request of either party annually thereafter upon not less than six (6) months prior notice.

Section 11.2 In the event the parties cannot, within six (6) months after a request under Section 11.1 is made, agree upon rental payments, this Agreement shall terminate and be of no further force and effect insofar as the making of attachments to additional poles. All other terms and provisions of this Agreement shall remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties herein with respect to existing joint use poles; except that all pole replacements shall be the obligation of the party owning less than its objective percentage. In the event that the party owning less than its objective percentage fails to replace the pole within a reasonable period of time, the other party may replace the pole and the party owning less than its objective percentage shall pay the party owning greater than its objective percentage a sum equal to the installed cost of the new pole and assume ownership thereof.

ARTICLE XII

DEFAULTS

Section 12.1 If either party shall default in any of its obligations (other than to meet money payment obligations) under this Agreement and such default shall continue for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default hereunder, insofar as such rights may relate to the further granting of joint use of poles hereunder shall be suspended; and such suspension shall continue until the cause of such default is rectified by the party in default or the other party shall waive such default in writing.

Section 12.2 If either party shall default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the total cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days after presentation of bills therefore shall constitute a default under Section 12.3.

Section 12.3 If the default giving rise to a suspension of rights involves the failure to meet a money payment obligation hereunder, and such suspension shall continue for a period of sixty (60) days, then the party not in default may forthwith terminate the rights of the other party to attach to the poles involved in the default.

ARTICLE XIII

LIABILITY AND DAMAGES

Section 13.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this Agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this Agreement, the liability for such damages, as between the parties hereto, shall be as follows:

13.1.1 Each party shall be liable for all damages for such injuries, to all persons (including employees of either party) or property, caused solely by its negligence or solely by its failure to comply at any time with the specifications as provided for in Article VIII hereof.

13.1.2 Each party shall be liable for all damages for such injuries, to its own employees or its own property, that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.3 Each party shall be liable for one half (½) of all damages for such injuries to persons other than employees of either party, and for one half (½) of all damages for such injuries to property not belonging to either party, that are caused by the concurrent negligence of both parties or that are due to causes which cannot be traced to the sole negligence of the other party.

13.1.4 Where, on account of injuries of the character heretofore described in this Article, either party hereto shall make payments to injured employees or to their relatives or representatives in conformity with (a) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding Subsections 13.1.1 and 13.1.2 and shall be paid by the parties hereto accordingly.

13.1.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half (½) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

13.1.6 In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses, including court costs, attorneys' fees, valid disbursements and other proper charges and expenditures, incurred by the parties in connection therewith.

ARTICLE XIV

ASSIGNMENT OF RIGHTS AND EXISTING RIGHTS OF OTHER PARTIES

Section 14.1 Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights of way covered by this Agreement, to any firm, corporation, or individual, without written notification to the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in the case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the leasee, transferee, merging or consolidating company, as the case may be.

Section 14.2 If either of the parties hereto has, as Owner, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing

herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges; it being expressly understood, however, that, for the purpose of this Agreement, all attachments of any such third party shall be treated as attachments belonging to the Owner, and, except as modified by Section 14.3, the rights, obligations and liabilities hereunder of said Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

Section 14.3 In the event that attachments to be made by a third party require rearrangements or transfer of the Licensee's attachments to maintain STANDARD SPACE (as defined in Section 1.7), and STANDARD CLEARANCE (as outlined in the CODE), the Licensee shall have the right to collect from said third party, all costs to be incurred by the Licensee to make such required rearrangements or transfers prior to doing the work.

Section 14.4 Each Owner reserves the right to use, or permit to be used by other third parties, such attachments on poles owned by it which would not interfere with the rights of the Licensee with respect to use of such poles.

Section 14.5 Third party space requirements must be accommodated without permanent encroachment into the standard space allocation of the Licensee; therefore, neither party hereto shall, as Owner, lease to any third party, space on a joint use pole within the allotted standard space of the Licensee without adequate provision for subsequent use of such standard space by Licensee without cost to the Licensee.

Section 14.6 Where either party allows the use of its poles for fire alarm, police or other like signal systems, or where such systems are presently or hereafter permitted by the Owner to occupy its poles, such use shall be permitted under and in accordance with the terms of this Article.

ARTICLE XV

SERVICE OF NOTICES

Section 15.1 Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its principal office at St. Petersburg, Florida, or to the Telephone Company at its principal office at Jacksonville, Florida, as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE XVI

TERM OF AGREEMENT

Section 16.1 Subject to the provisions of Articles XI and XII herein, the provisions of this Agreement, insofar as the same may relate to the further granting of joint use of poles hereunder, may be terminated by

either party, after the first day of January, 1979, upon six (6) months notice in writing to the other party; provided, however, that, if such provisions shall not be so terminated, said Agreement in its entirety shall continue in force thereafter until partially terminated as above provided in this Section by either party at any time upon six (6) months notice in writing to the other party as aforesaid; and provided, further, that notwithstanding any such termination, other applicable provisions of this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

Section 17.1 The failure of either party to enforce, or insist upon compliance with, any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

EXISTING CONTRACTS

Section 18.1 All existing Agreements between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement are, by mutual consent, hereby abrogated and annulled.

ARTICLE XIX

SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing herein shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto, by their respective officers thereunto duly authorized, on the day and year first above written.

(Seal)
Attest

Asst. Secretary

FLORIDA POWER CORPORATION

By
Senior Vice President

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Witness:

By
Vice President and
General Manager

EXHIBIT 2

AND
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

This AMENDMENT TO JOINT USE AGREEMENT, made and entered into this 16 day of October, 1980, by and between Florida Power Corporation, a corporation of the state of Florida (hereinafter referred to as the "Electric Company") and Southern Bell Telephone and Telegraph Company, a corporation of the state of New York (hereinafter referred to as the "Telephone Company").

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company entered into a JOINT USE AGREEMENT, dated the 1st day of June, 1969, concerning the joint use of certain of their poles located in the state of Florida, and

WHEREAS, said Electric Company and Telephone Company now desire to amend said Agreement in the particulars set forth herein,

NOW, THEREFORE, in consideration of the mutual promises and benefits to be obtained from the amendments set forth hereunder, the parties hereto, for themselves and for their successors and assigns, do hereby agree to amend the JOINT USE AGREEMENT as follows:

1. Article X, Section 10.4 is deleted in its entirety and hereby revised as follows:

Article X, Section 10.4 At the end of each calendar year, the party having less than its objective percentage ownership of jointly used poles shall pay an equity settlement to the other party for that calendar year an amount equal to the number of poles it is deficient from its objective percentage ownership times the appropriate adjustment rate given below, which sum shall be due and payable upon the first day of February following each year end determination of the number of jointly used poles owned by each party.

Applicable Adjustment Rate To Be Utilized For Each

Calendar Year -

1979:	$[redacted]	1981:	$[redacted]	1983 & until revised:	$[redacted]
1980:	$[redacted]	1982:	$[redacted]		

2. Except as modified herein, the JOINT USE AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to be executed by their duly authorized officers on the day and year first above written.

FLORIDA POWER CORPORATION

Attest:

By _____
Vice President

FLORIDA POWER CORP. LEGAL DEPT. APPROVED Date 10-7-80 By

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Attest:

By _____
Vice President
No.Fla. Area

APPROVED AS TO FORM ATTORNEY

EXHIBIT 3

AMENDMENT TO JOINT USE AGREEMENT
BETWEEN
FLORIDA POWER CORPORATION
AND
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

This AMENDMENT TO THE JOINT USE AGREEMENT, made and entered into between Florida Power Corporation, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "Electric Company" and Southern Bell Telephone and Telegraph Company, a corporation organized and existing under the laws of the State of Georgia, herein referred to as the "Telephone Company"

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company entered into a JOINT USE AGREEMENT, dated June 1, 1969, amended October 16, 1980, concerning the joint use of certain of their poles located in the State of Florida, and

WHEREAS, said Electric Company and Telephone Company now desire to amend said Agreement in the particulars set forth herein,

NOW, THEREFORE, in consideration of the mutual promises and benefits to be obtained from the amendments set forth hereunder, the parties hereto, for themselves and for their successors and assigns, do hereby agree to amend the JOINT USE AGREEMENT, dated June 1, 1969, amended October 16, 1980 as follows:

1. Section 10.4 is deleted in its entirety and hereby revised as follows:

   Section 10.4(a) As of January 1 of each year, the yearly rental charges for each company will be calculated by the party owning the majority of poles. Rental charges will be based on that company's total number of joint use pole attachments, as specified in Section 10.2, times that company's annual rate, as defined in Section 10.4(b). Any equity settlement shall be due and payable within thirty (30) days upon receipt of invoice.

Section 10.4(b) It is mutually agreed by both parties that the annual rates for joint use pole attachments shall be determined as follows. The Electric Company as a Licensee, shall pay [redacted] of the majority pole owner's annual pole cost and the Telephone Company as a Licensee, shall pay [redacted] of the majority pole owner's annual pole cost. In order to determine the annual pole cost, the net investment per bare pole cost shall be multiplied by an annual carrying charge rate comprised of: return (cost of capital), depreciation, federal and state taxes, other taxes, maintenance expense and administrative expense. Distribution FERC accounts will be used for these calculations.

For the year 1989, Florida Power Corporation's (as the majority pole owner) annual pole cost of [redacted] shall apply which yields an annual rate of [redacted] for the Electric Company, as a Licensee; and [redacted] for the Telephone Company, as a Licensee.

2. Section 11.1 is deleted in its entirety and hereby revised as follows:

Section 11.1 Subsequent to 1989, rates shall be adjusted yearly by the party owning the majority of the jointly used poles who shall by June 30 of each year, send to the other party for their review and acceptance, its documentation establishing the latest annual pole cost with the resulting annual rates for each company to be effective January 1st, of the current year, and billed the subsequent January 1st, as defined in Section 10.4(a).

3. The JOINT USE AGREEMENT between the parties hereto dated June 1, 1969, amended October 19, 1980 shall remain in full force and effect according to its terms and this AMENDMENT TO THE JOINT USE AGREEMENT shall not be construed to make any changes in said Agreement except such changes as are specifically set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to be executed by their respective representatives, being duly authorized, on the dates indicated below.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Patricia L. Phelps
Witness

By _____

Title Vice President-Network/Florida

Witness

FORM APPROVED dsd ATTORNEY

Dated this 20TH day of DECEMBER, 1989.

FLORIDA POWER CORPORATION

Diane Hugari
Witness

By _____
Executive Vice President

Witness

Dated this 2nd day of January, 1990.

FLORIDA POWER CORP. LEGAL DEPT. APPROVED Date 11/14/89 By DAE

EXHIBIT 4

AT&T

Dianne W. Miller
Director, Construction & Engineering

AT&T Services, Inc.
754 Peachtree Street, NE
C-1263
Atlanta, GA 30308

September 5, 2019

Scott Freeburn
Manager of Joint Use and Tower Leasing
Duke Energy Corporation
3300 Exchange Place
NP4D
Lake Mary, FL 32746
Scott.Freeburn@pgnmail.com

BY EMAIL

Re: Pole Attachment Rental Rates

Dear Scott:

Thank you again for the materials you provided last month after our executive-level meeting regarding AT&T's concerns with the pole attachment rental rates it has been paying for use of poles covered by the 1969 and 2000 joint use agreements previously managed by Progress Energy Florida and Progress Energy CP&L, and the just and reasonable rate to which AT&T is entitled under federal law. We reviewed the materials you provided and continue to believe that AT&T should pay a new telecom rental rate like its competitors, with Duke paying a proportional new telecom rate for its use of AT&T's poles calculated in the manner shown in the spreadsheet I sent you last month.

Consistent with the commitments made during our meeting, I would like to schedule a follow-up meeting with the hope of reaching a negotiated resolution. We are available to travel back to Duke's offices in Raleigh for a meeting on September 9-12, 16, or 19-20. Please let me know as soon as possible which of these dates is most convenient for you and your team. We have some questions about Duke's rate calculations that we would like to discuss at the meeting. But more importantly, we want to see whether we can reach an agreement about just and reasonable rates during the meeting. To that end, I will have full settlement authority, and request that Duke come prepared with a proposal to resolve this matter.

Regards,

Dianne W Miller

Dianne Miller
AT&T
Director – Construction & Engineering, National Joint Utility Team

EXHIBIT 5

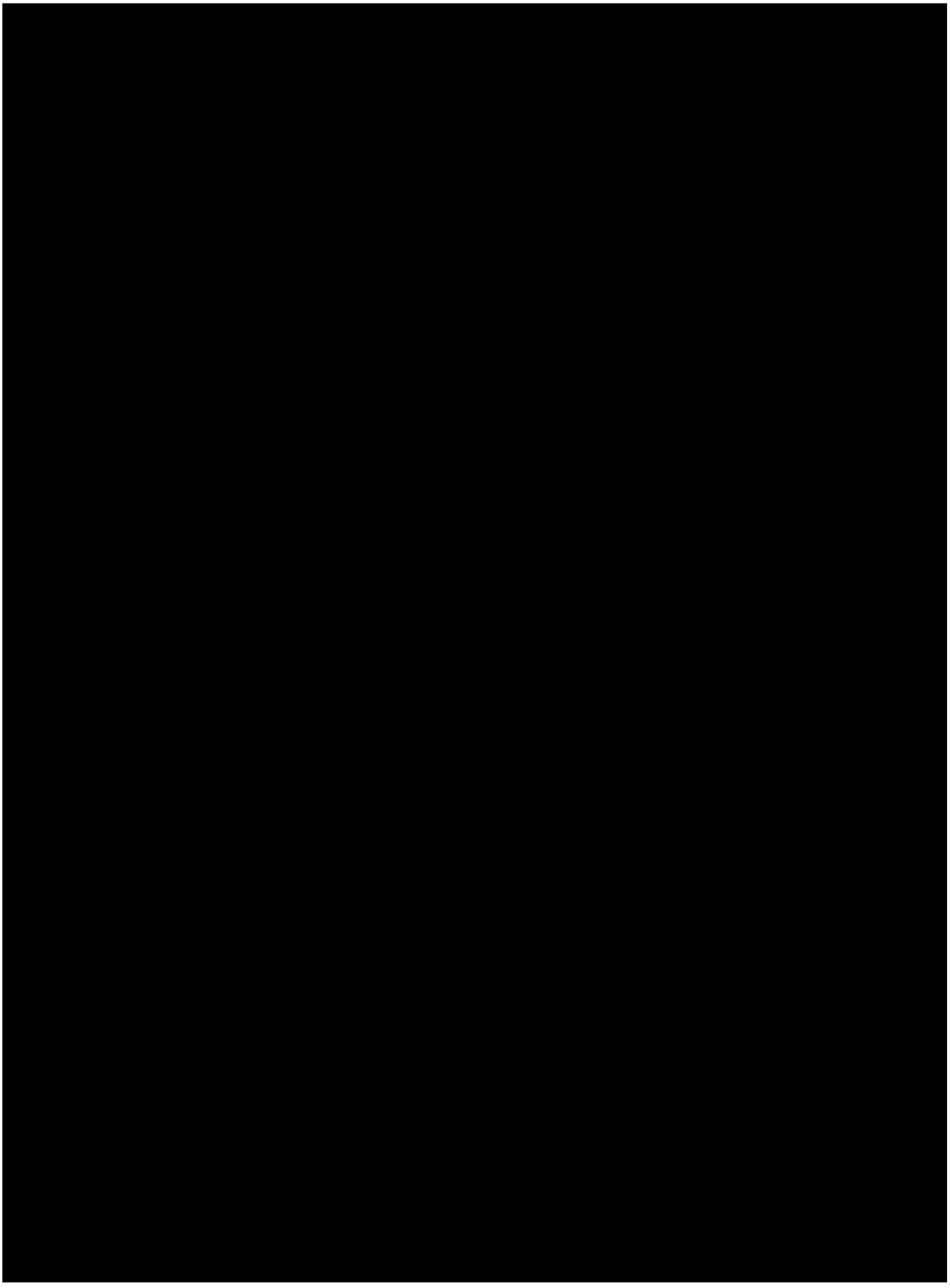
September 10, 2020

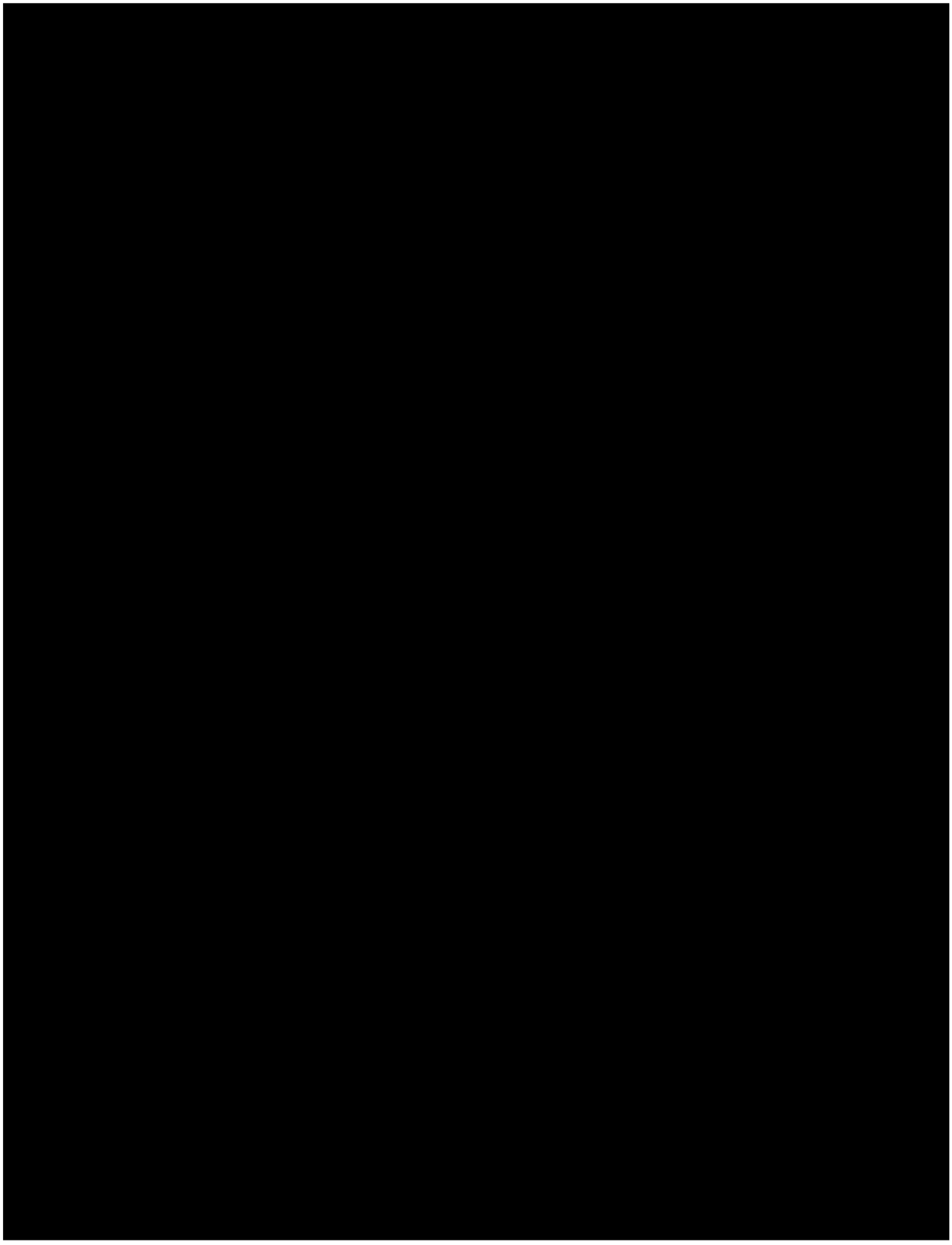
VIA U.S. MAIL & E-MAIL

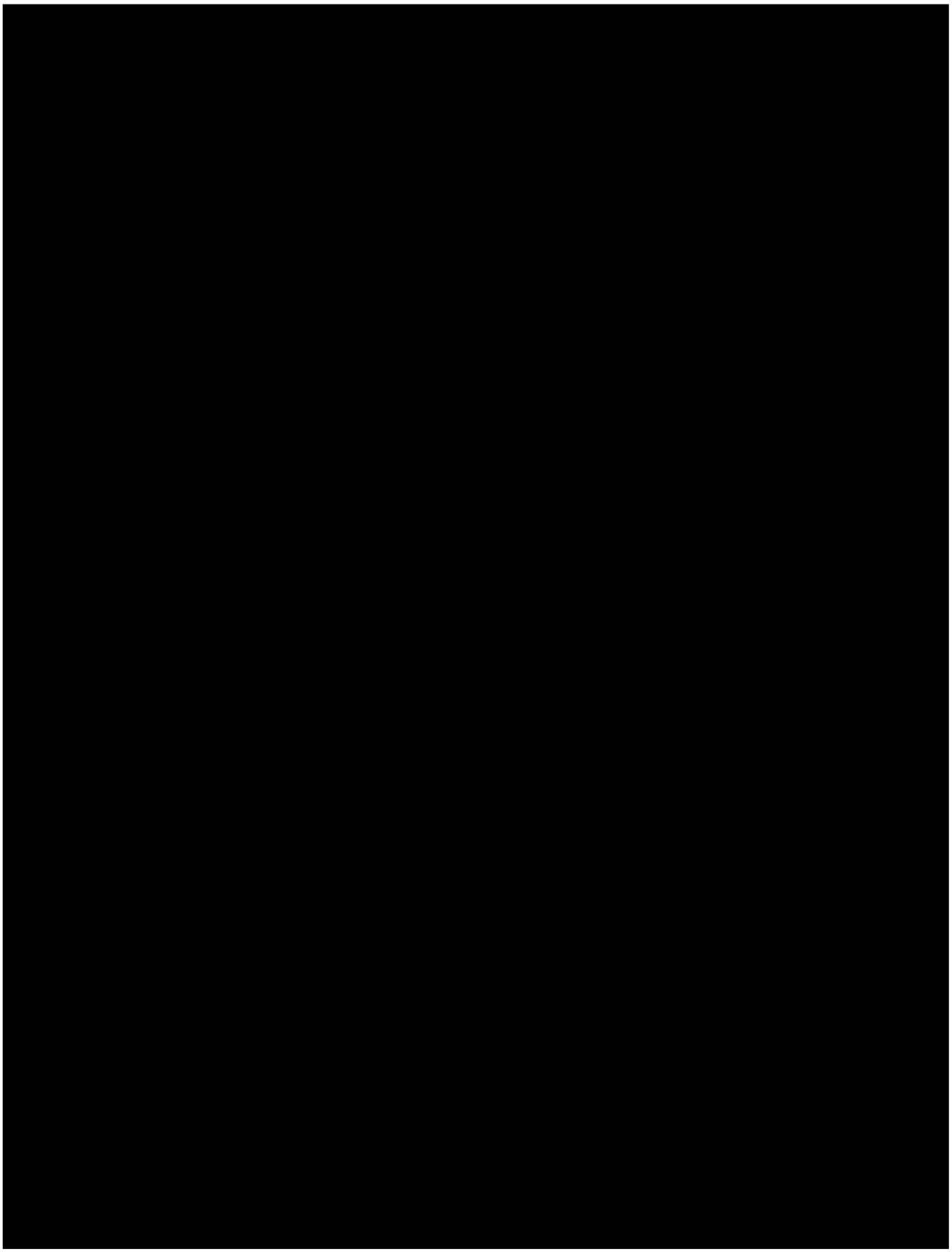
Ms. Dianne Miller
Director—Construction & Engineering
AT&T Services, Inc.
754 Peachtree Street, NE
C-1263
Atlanta, GA 3308
dm6516@att.com

Dear Dianne:

[redacted]







[redacted]

Sincerely,

Scott Freeburn

cc: David Hatcher

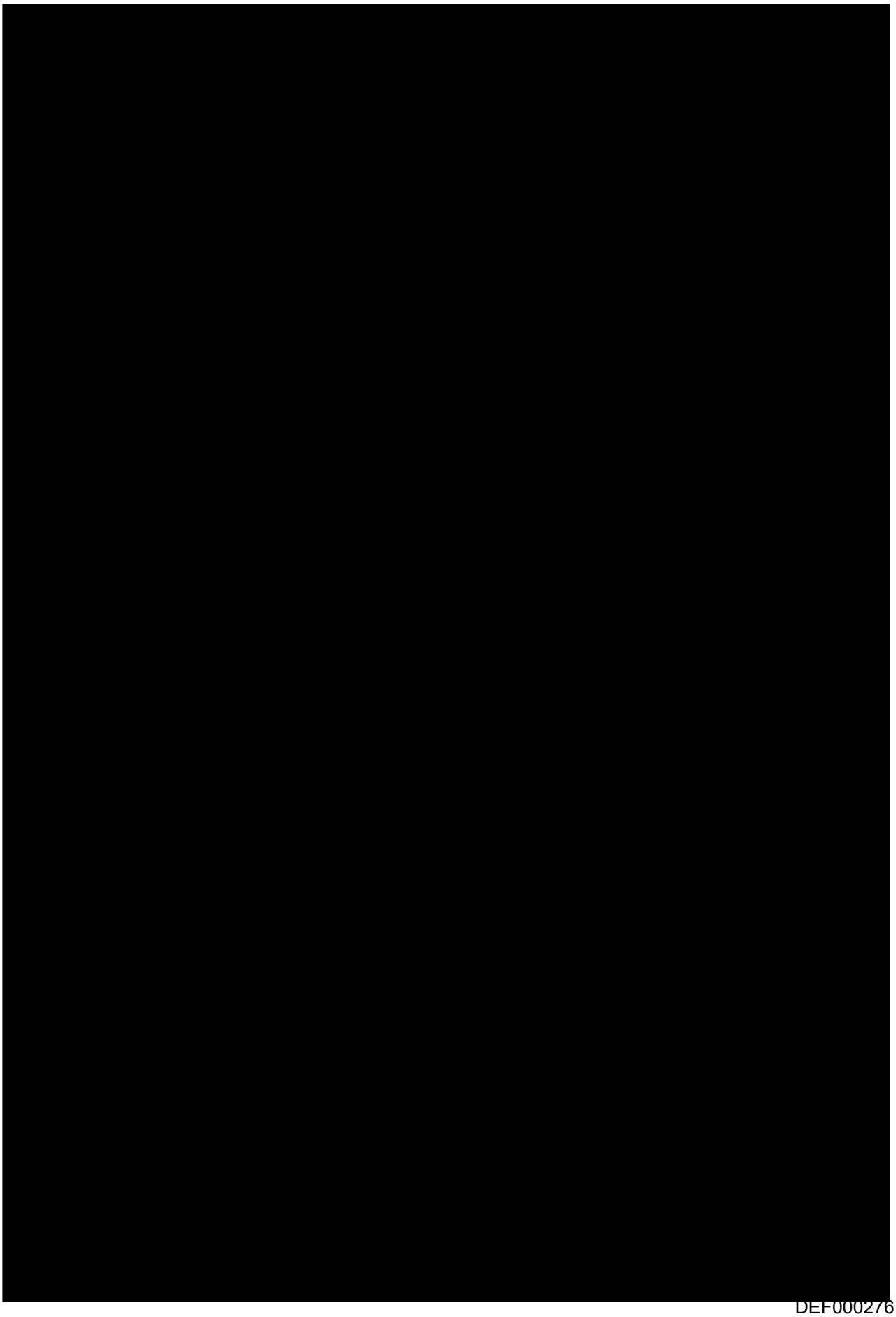
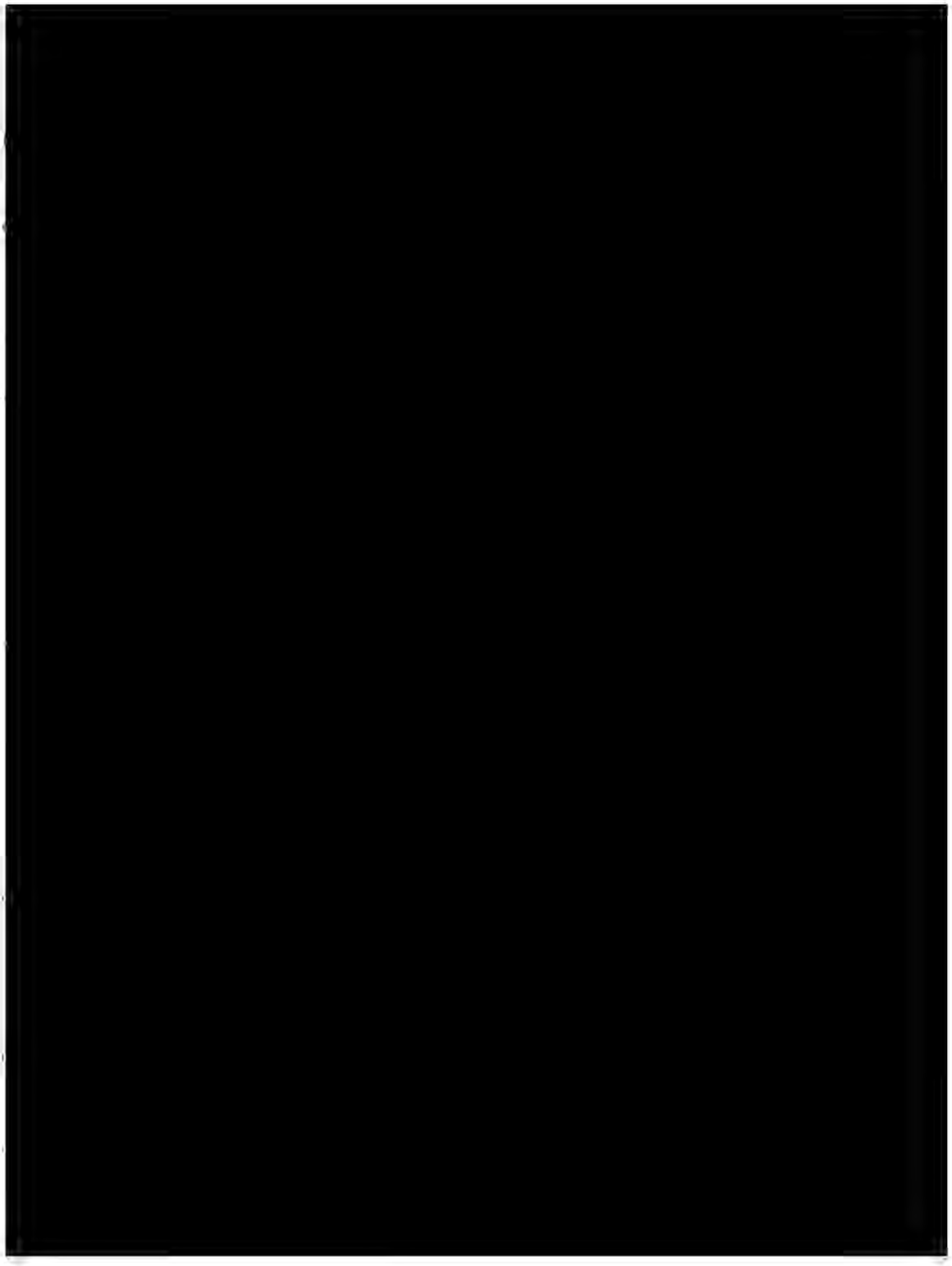
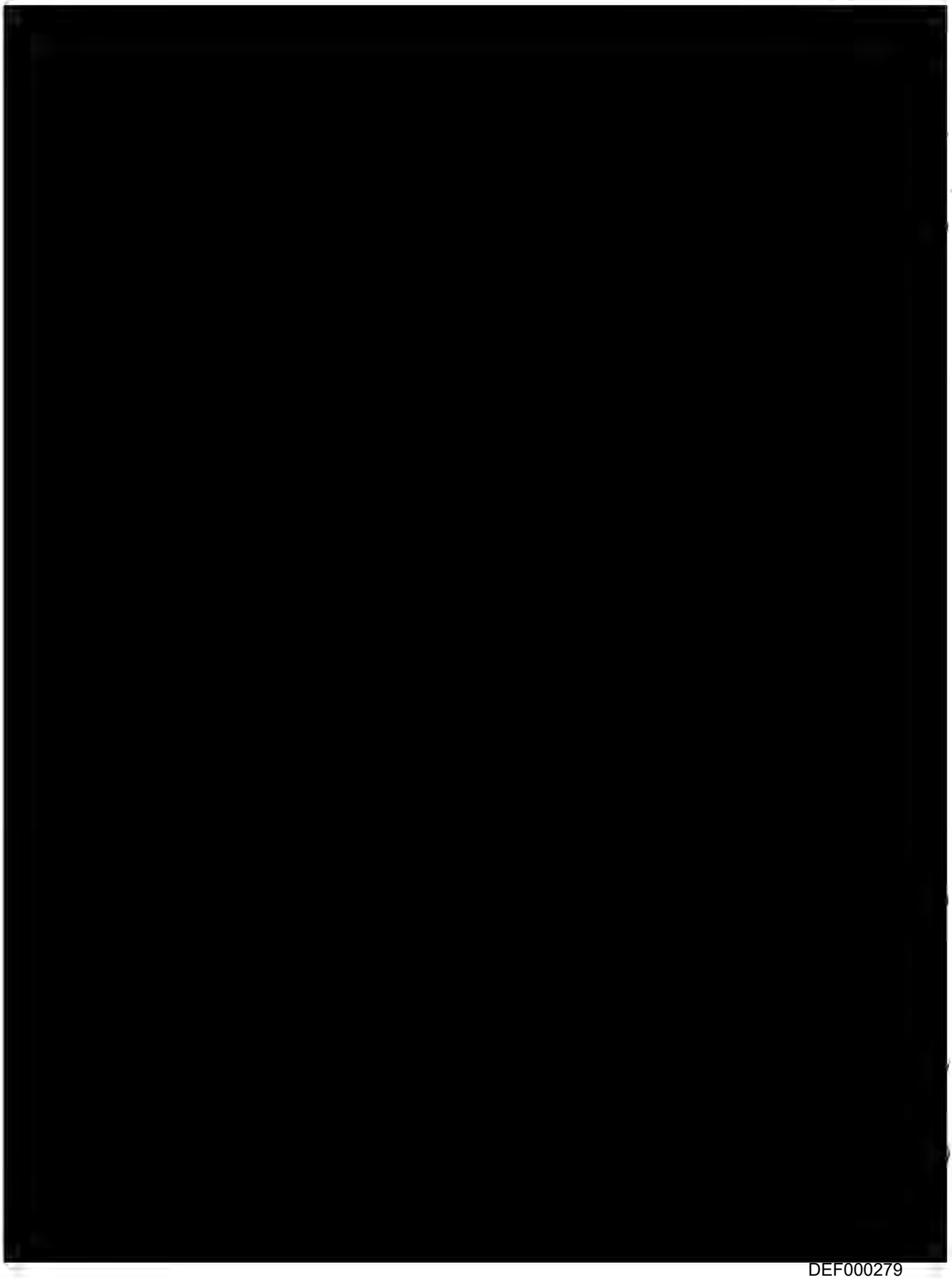
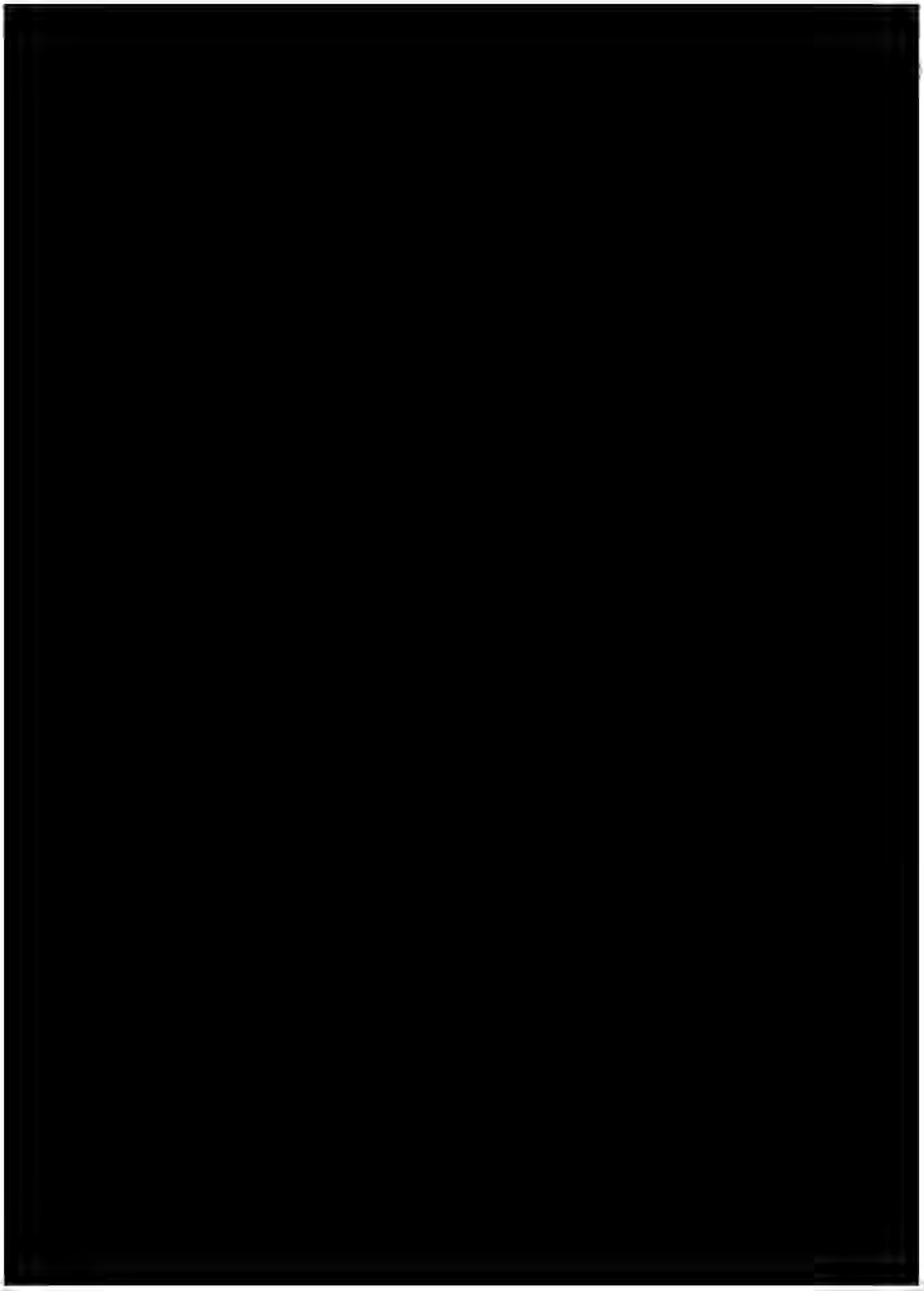
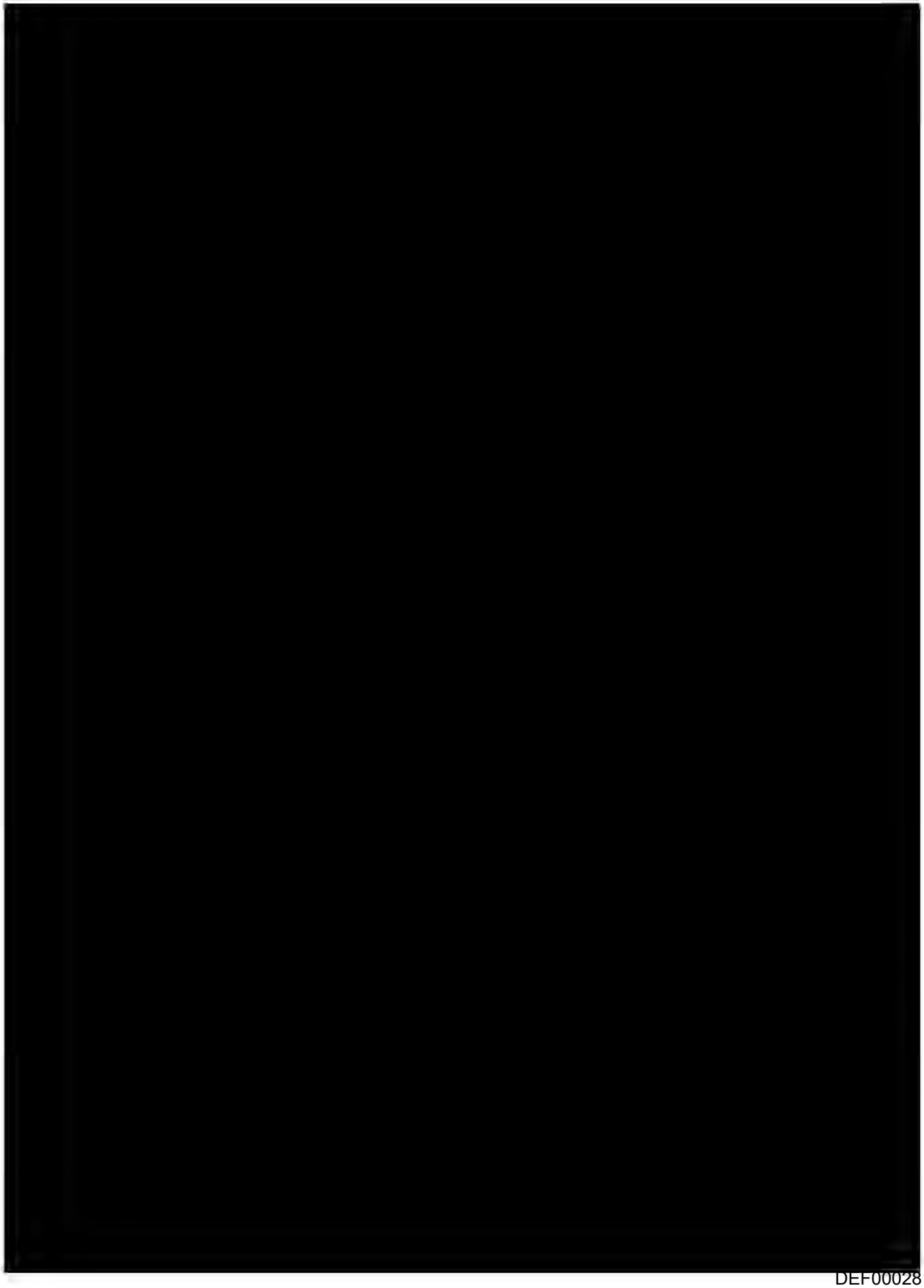


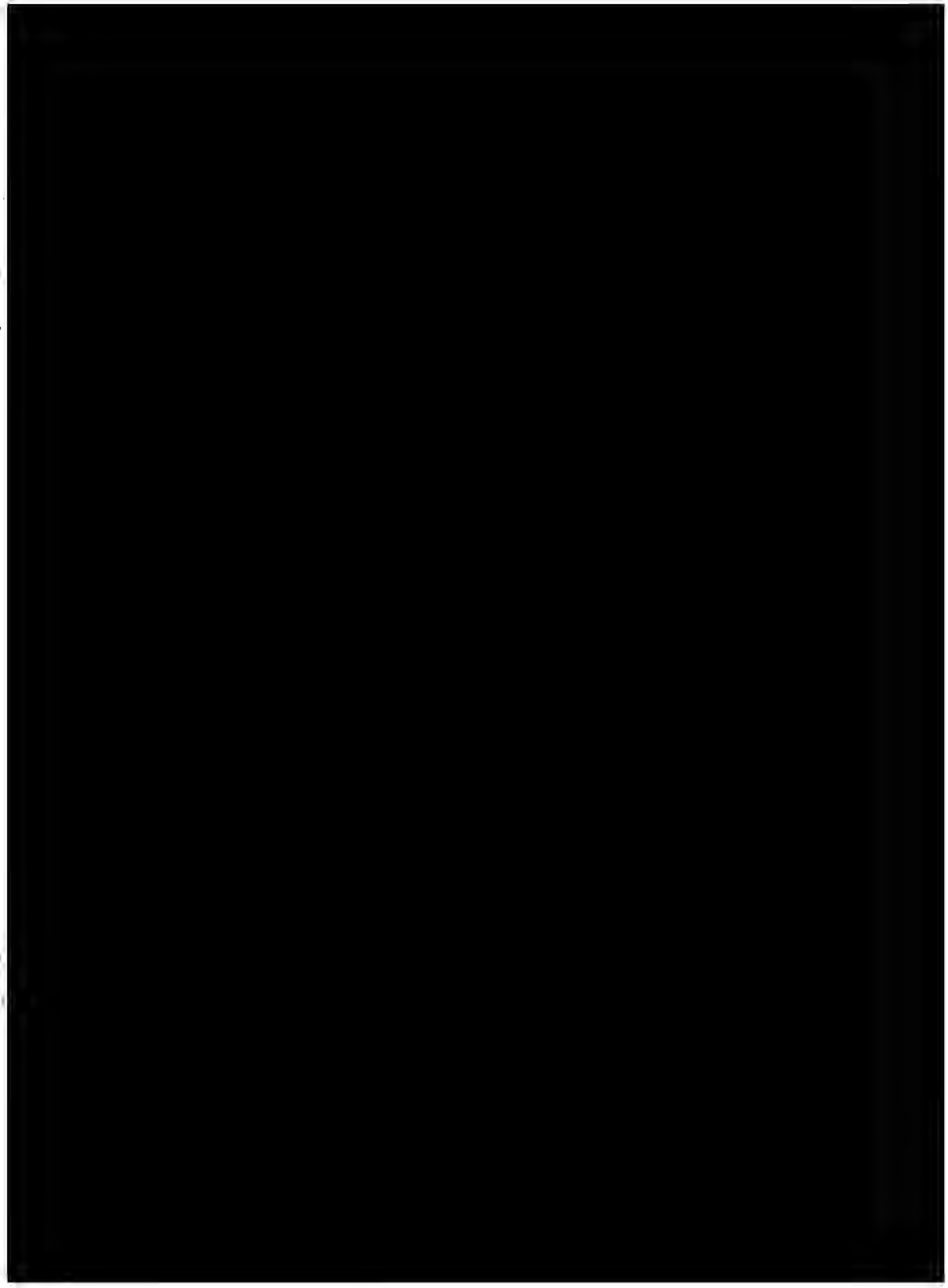
EXHIBIT 6

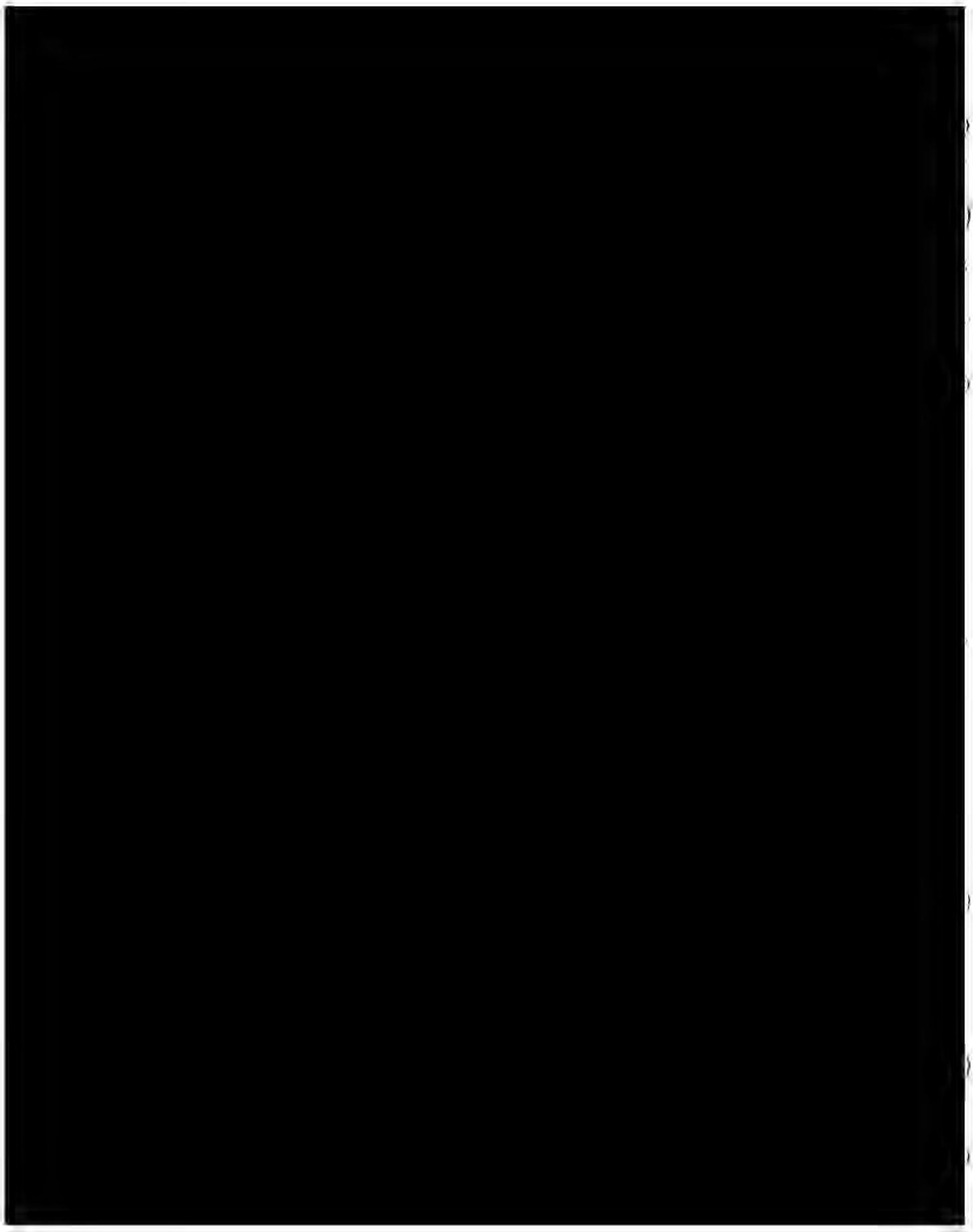


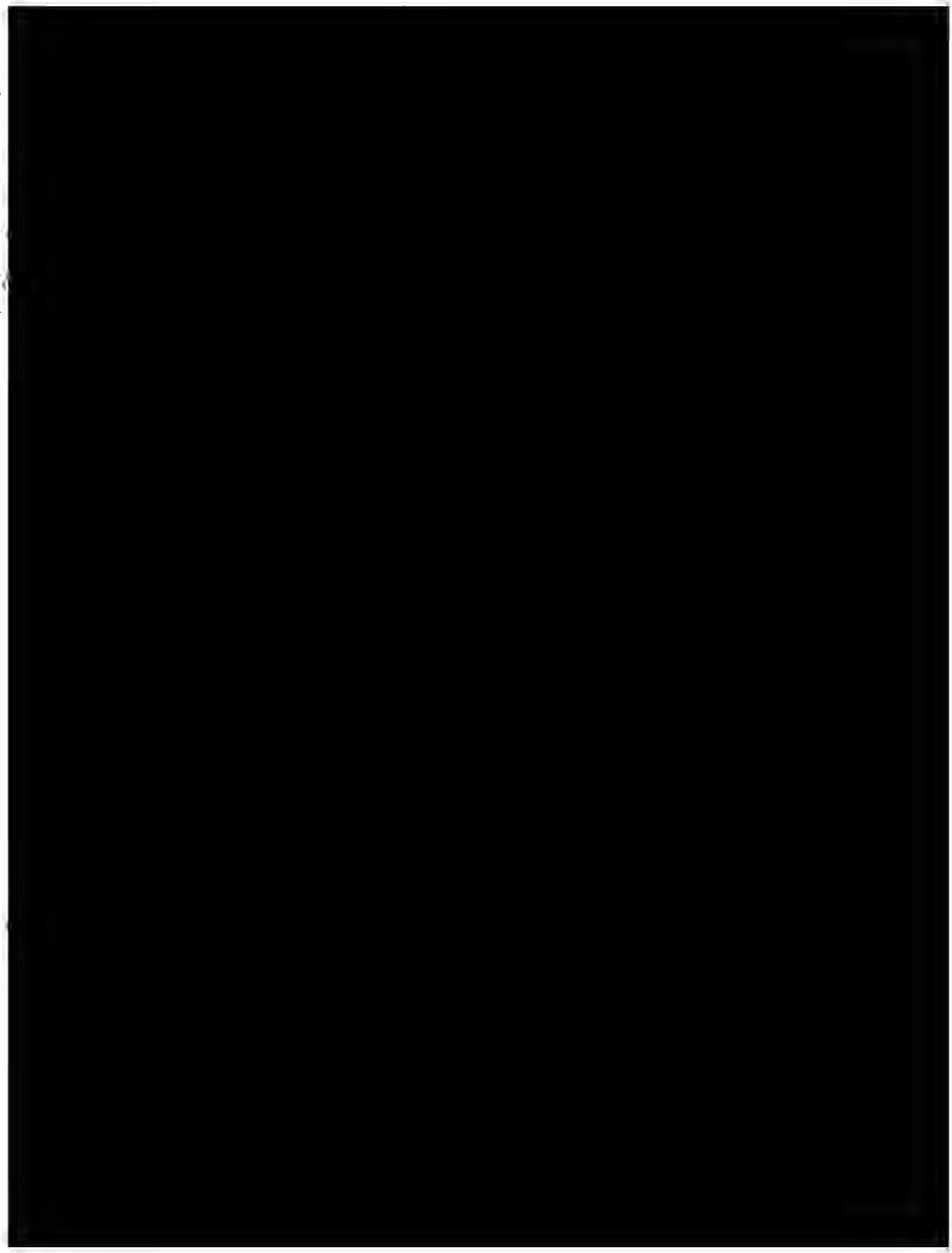


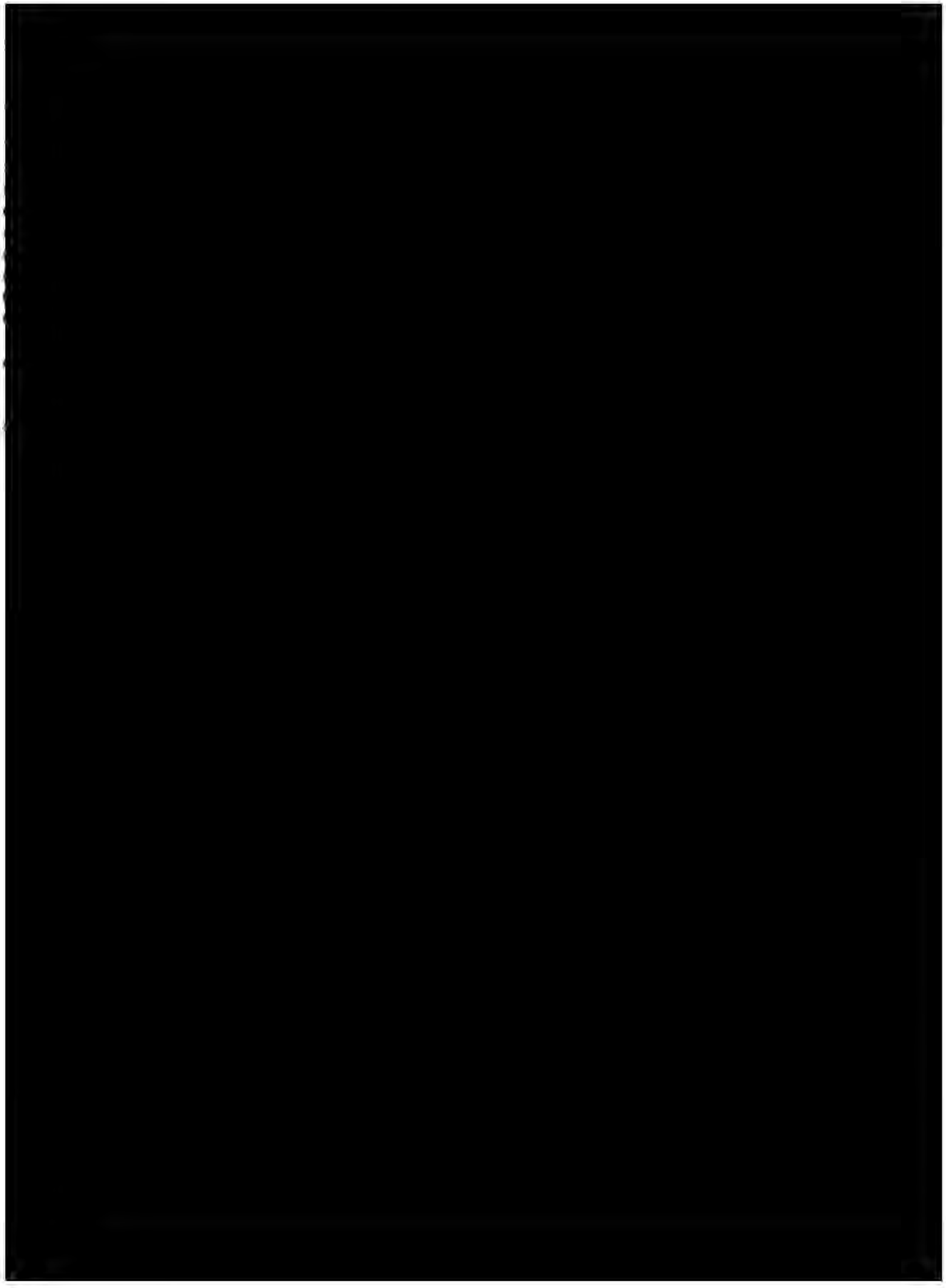


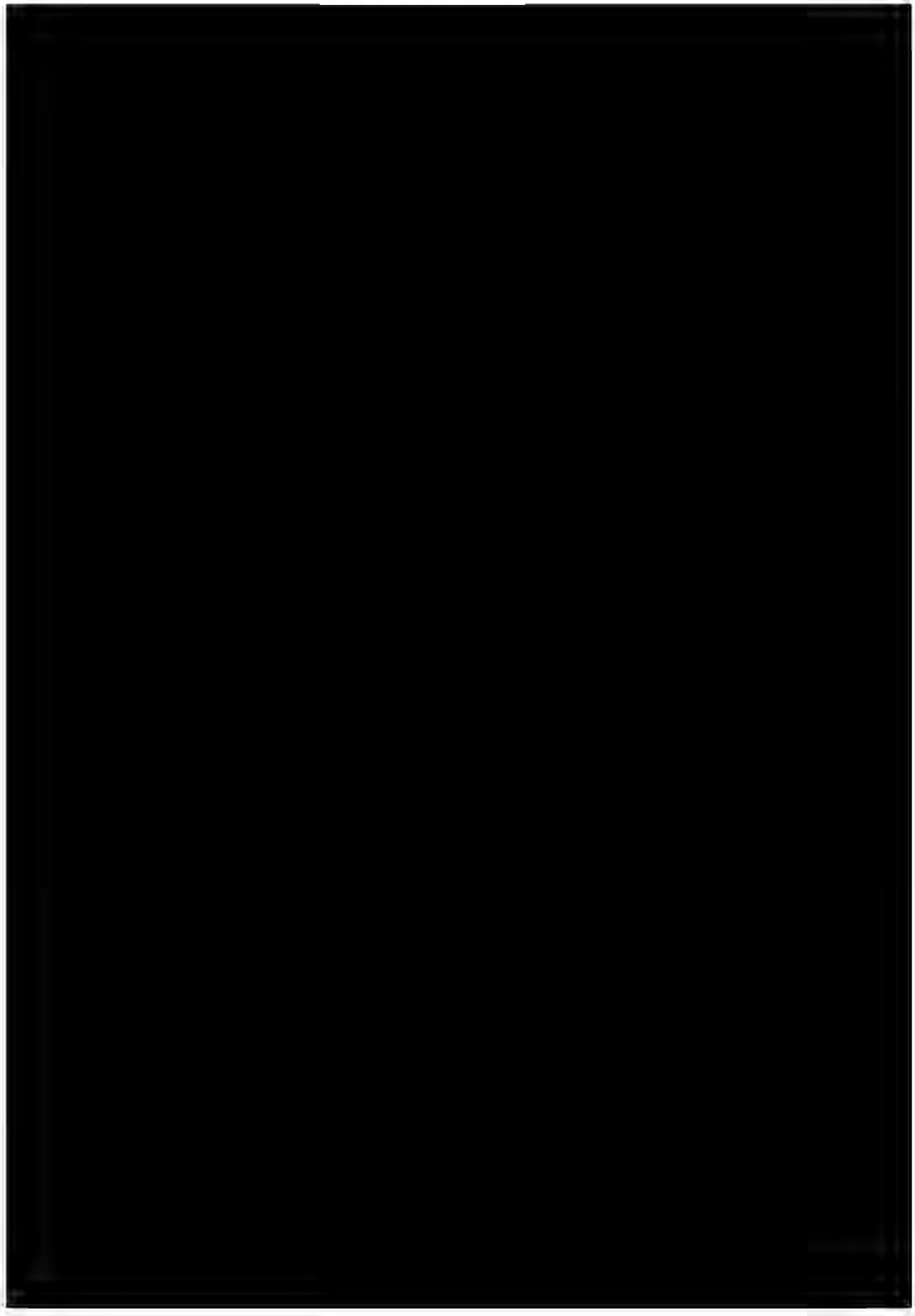


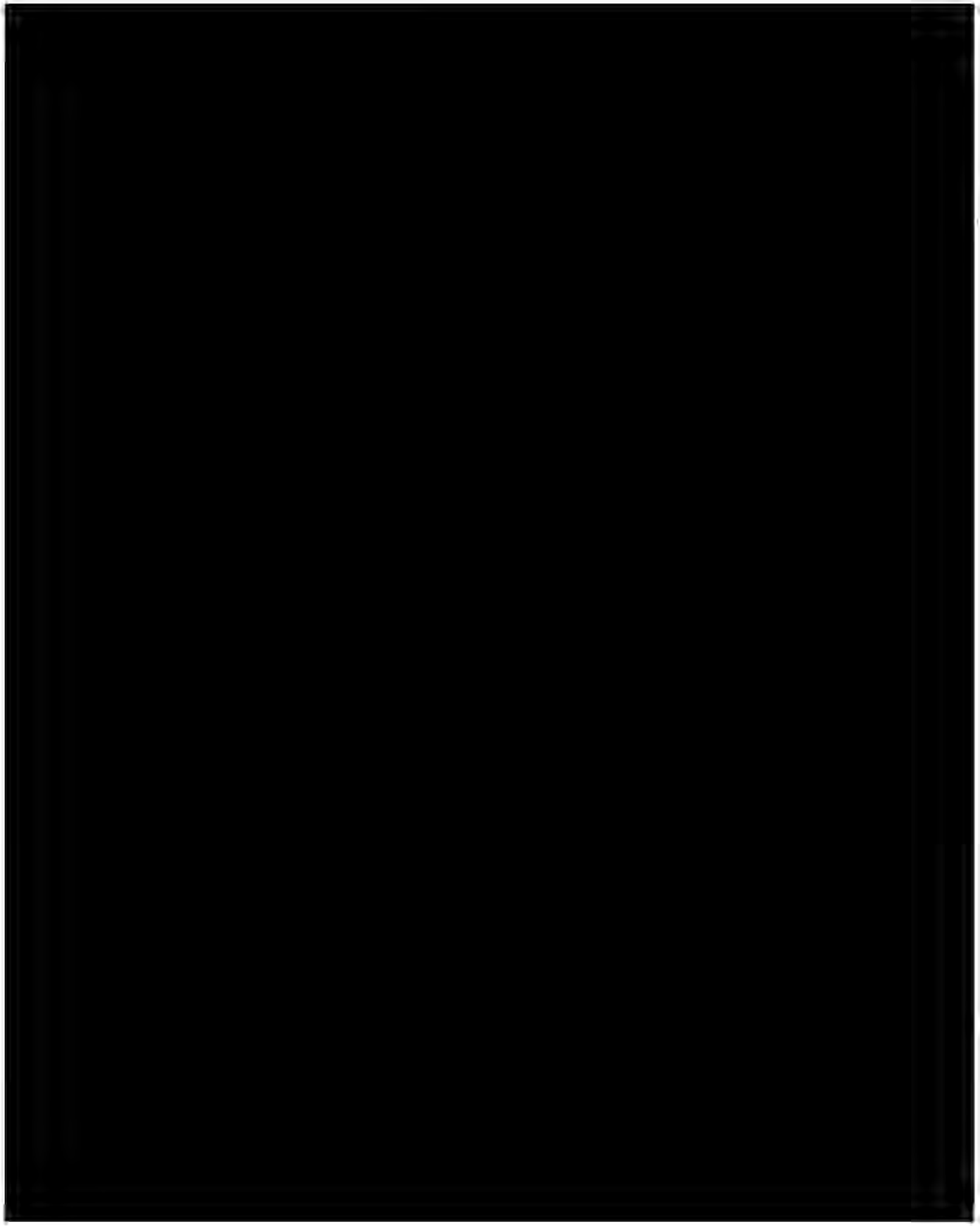


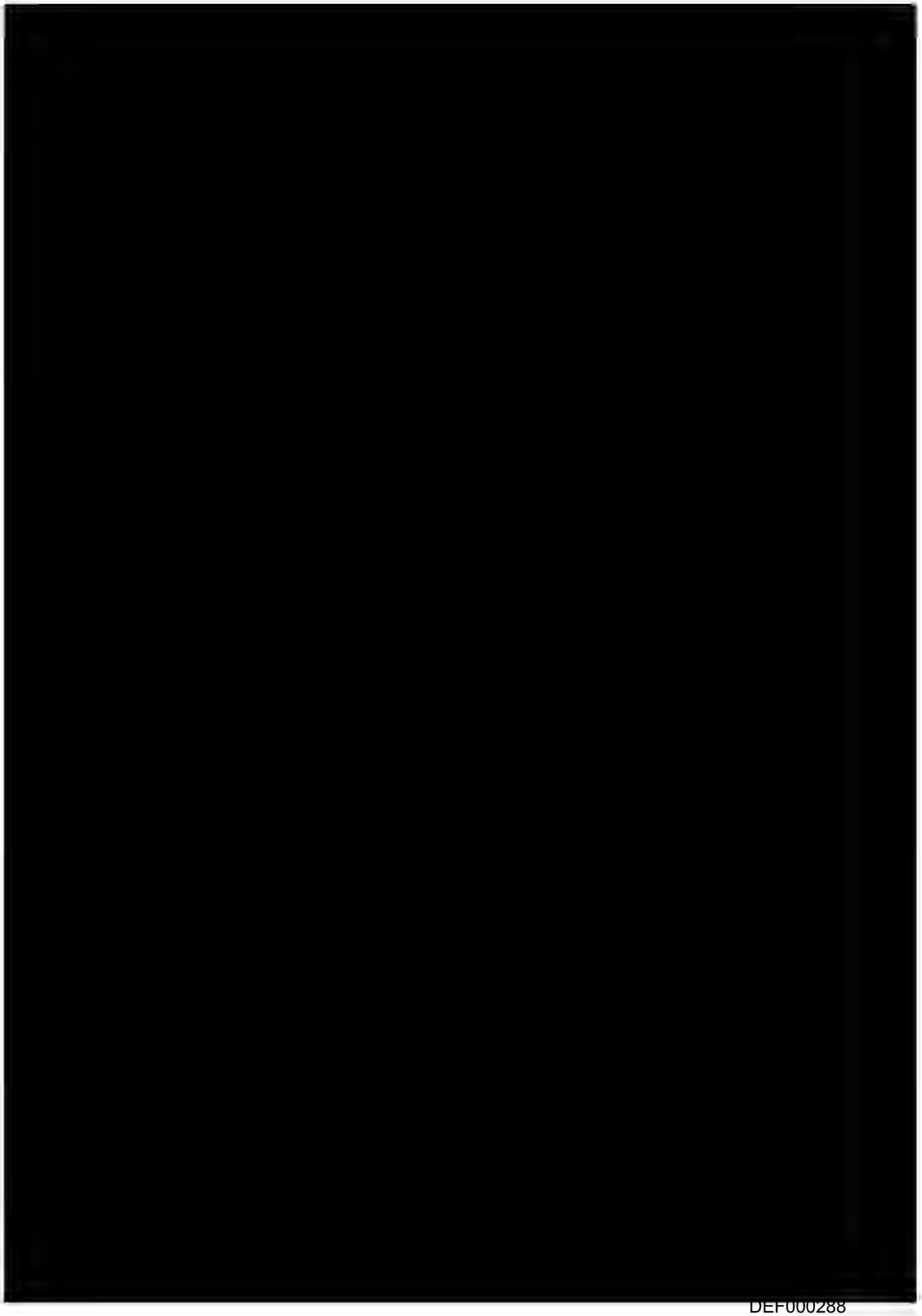


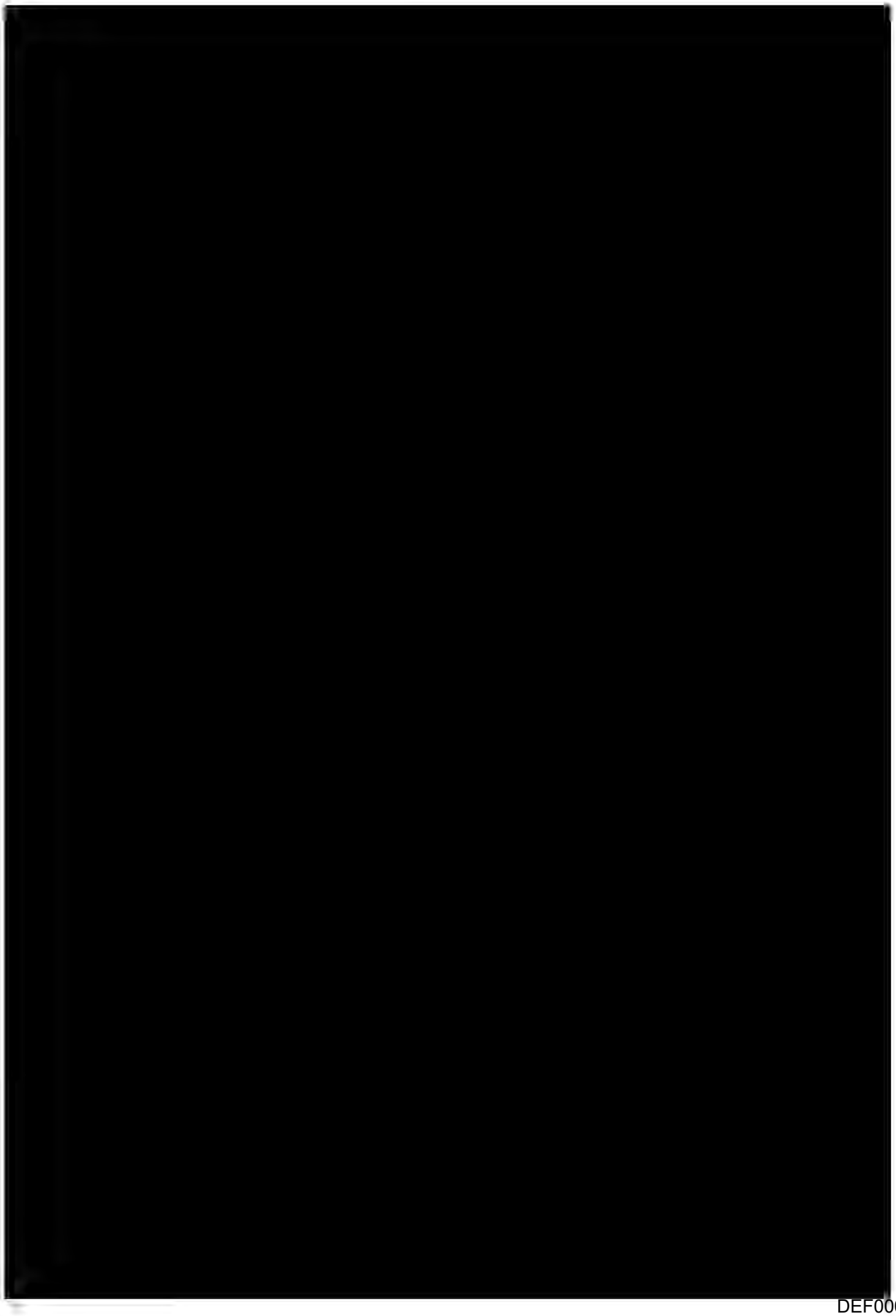


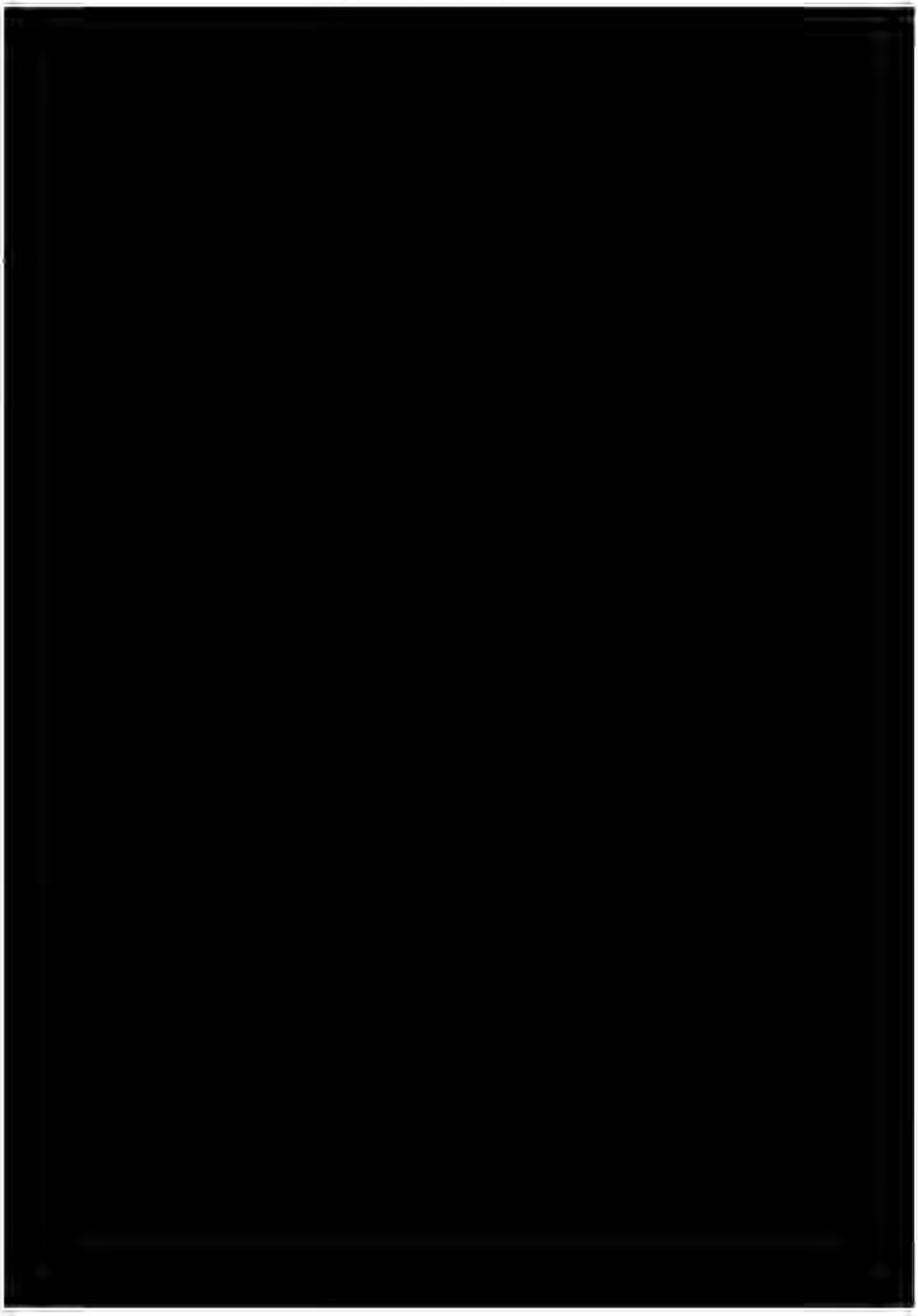


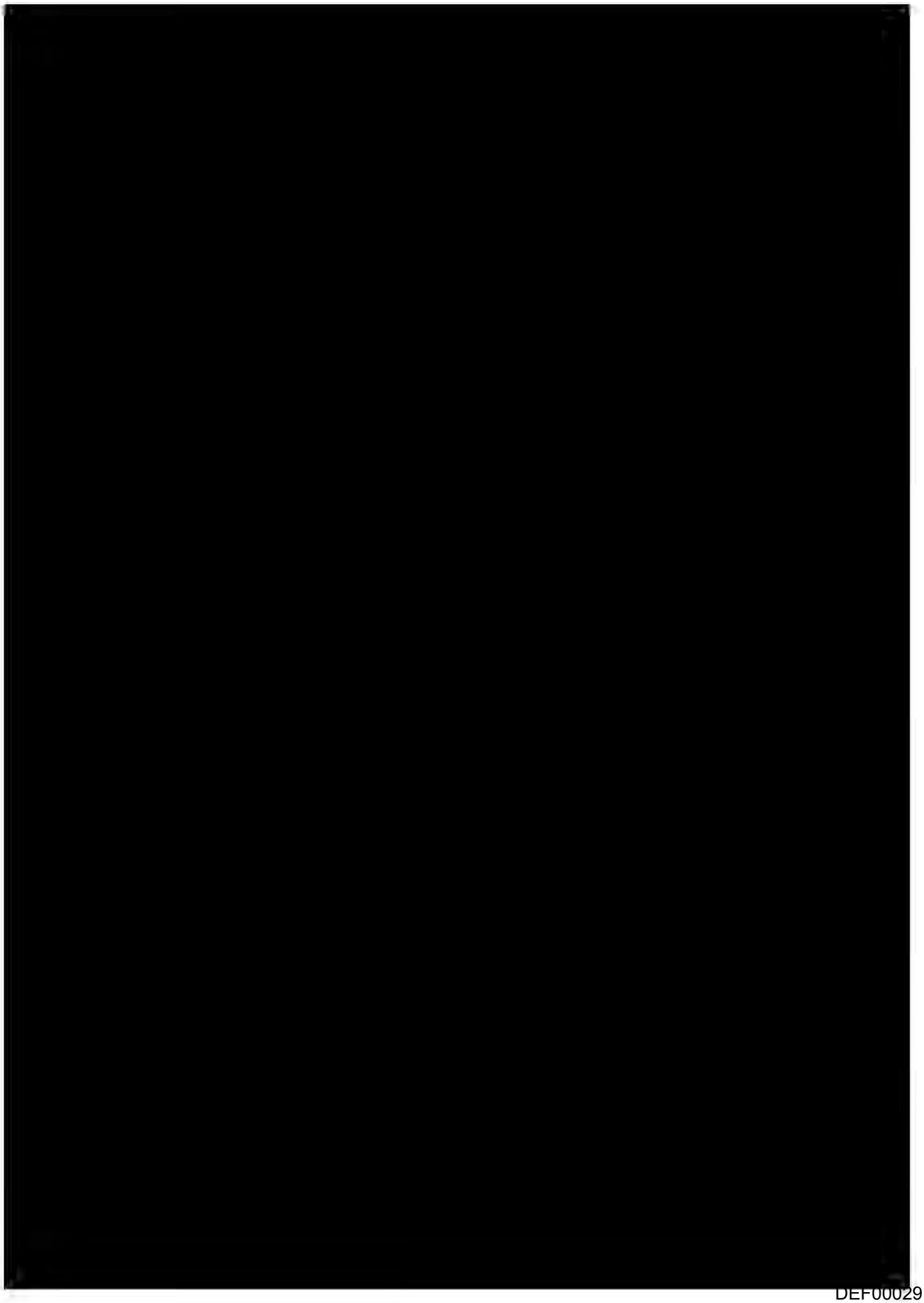


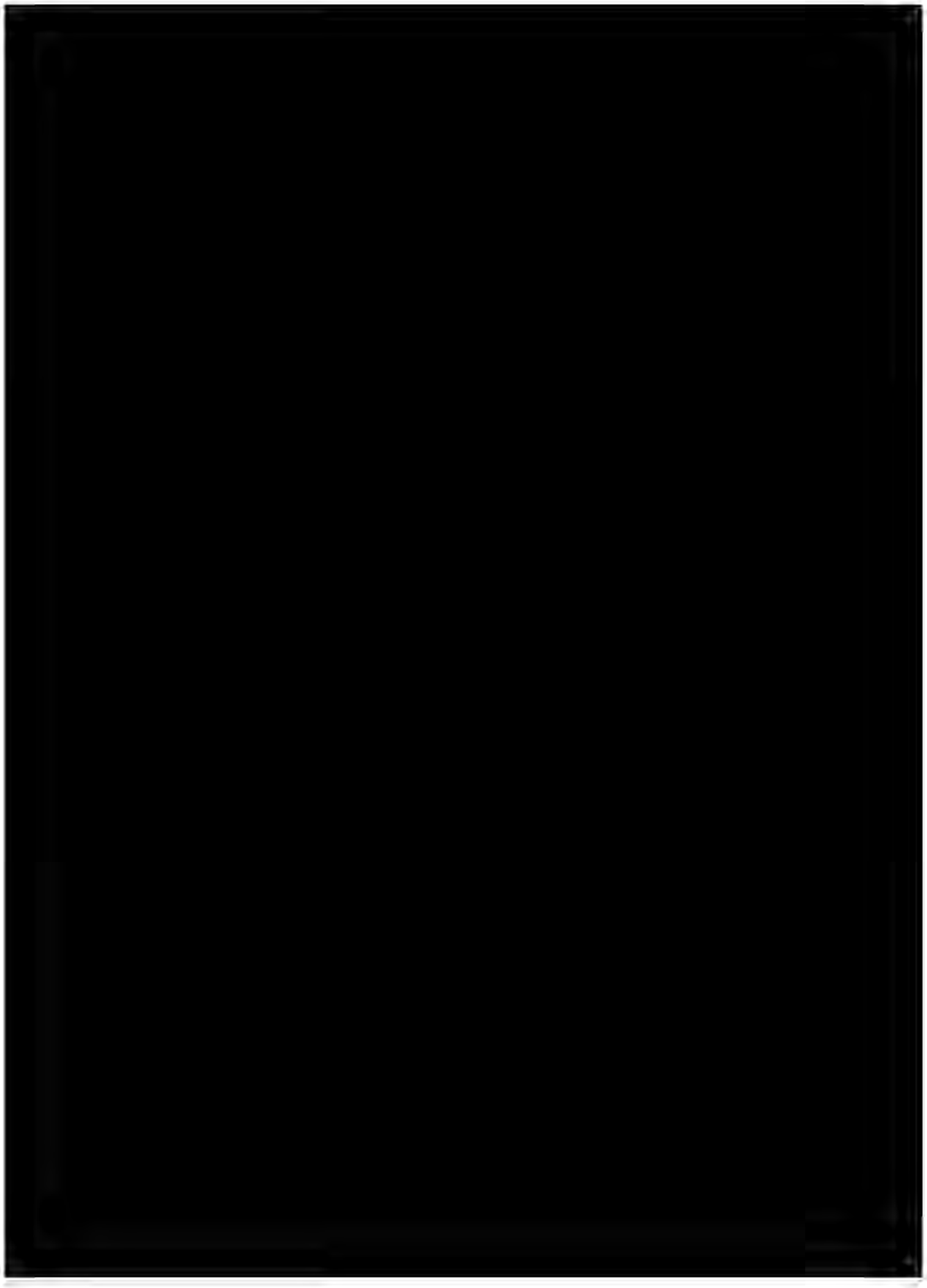


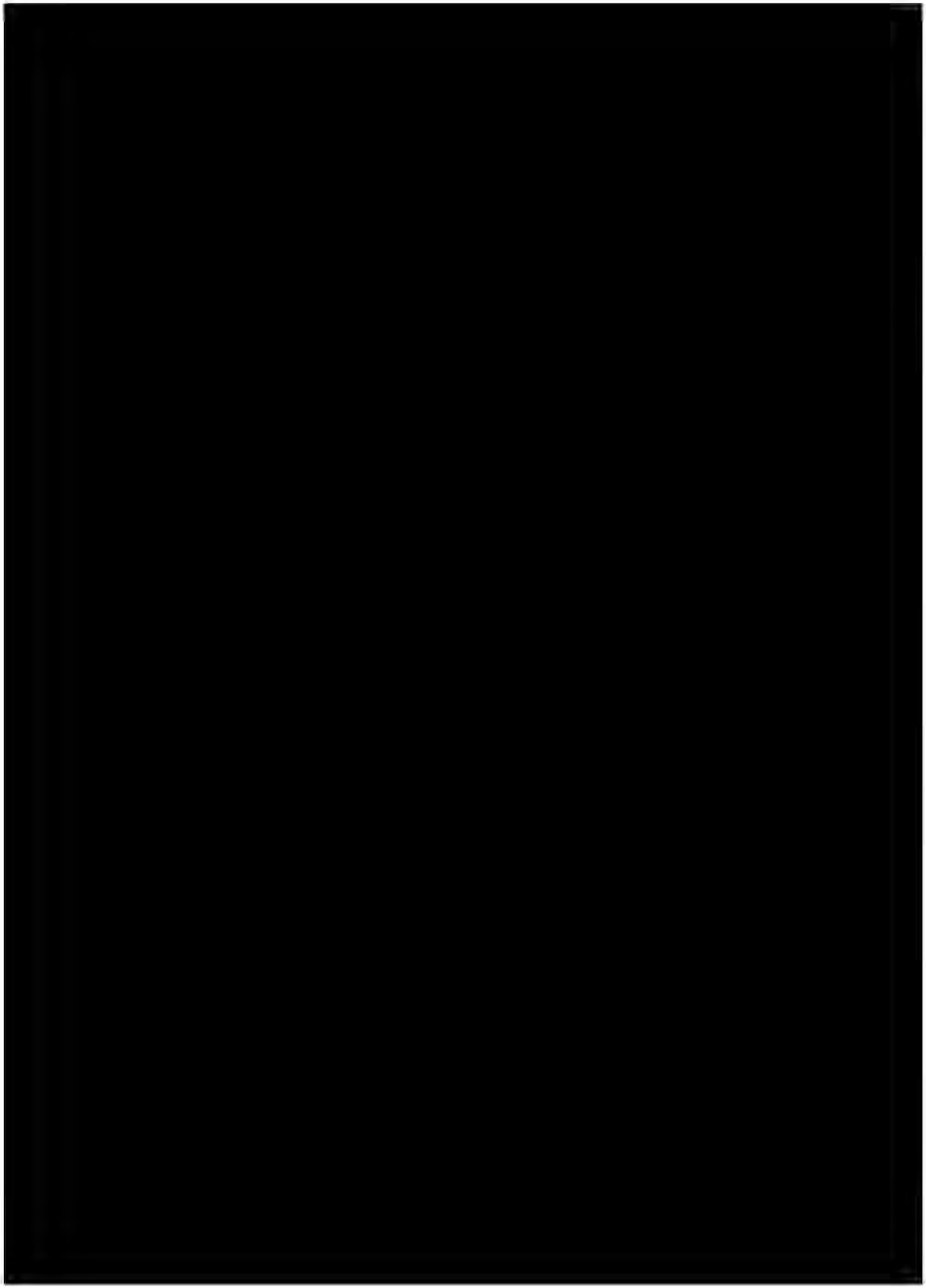












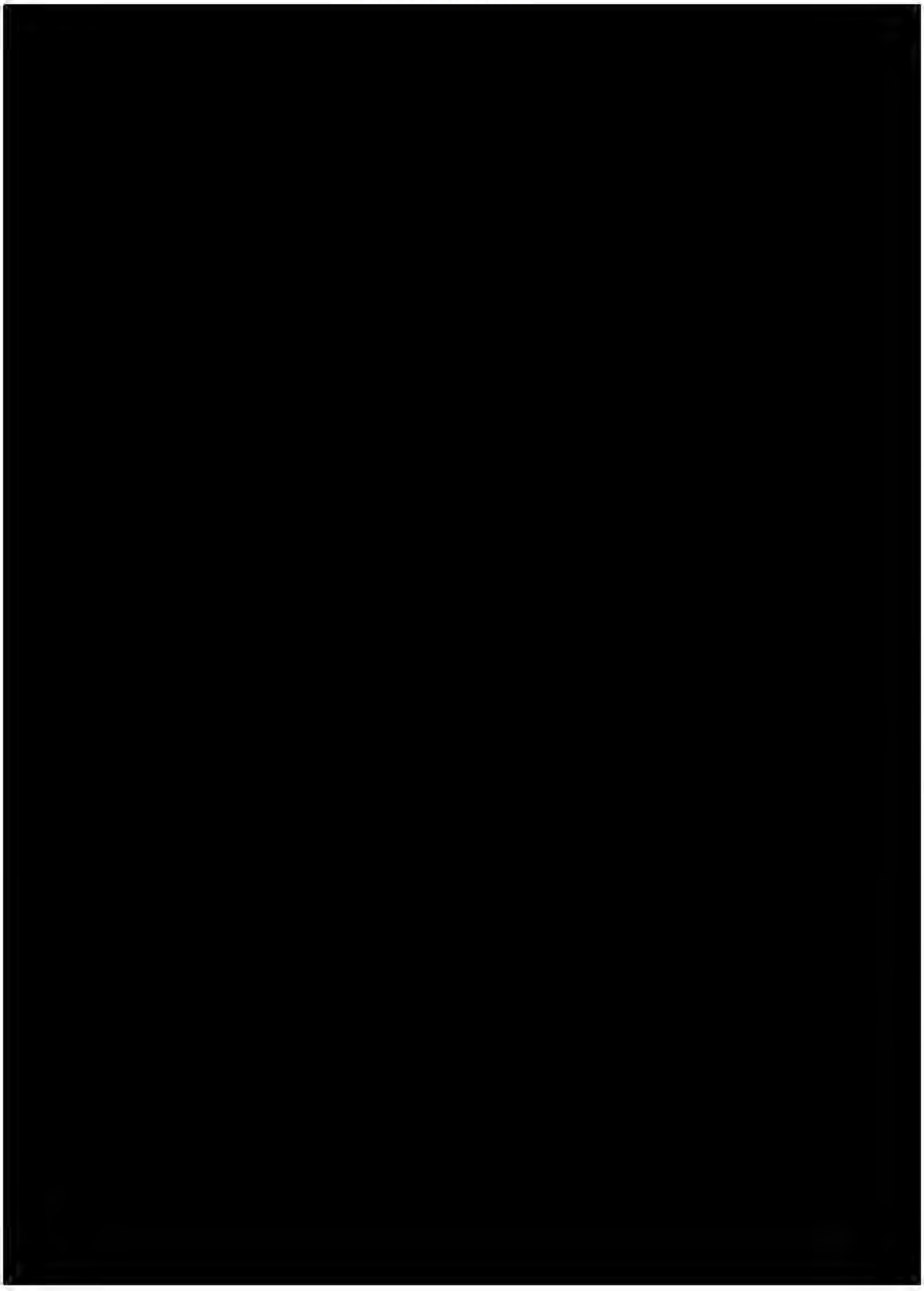


EXHIBIT 7

TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

DUKE ENERGY FLORIDA LLC.

AND

[redacted]

JANUARY 9, 2018

TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT

This **TELECOMMUNICATIONS POLE ATTACHMENT LICENSE AGREEMENT** ("Agreement") is made and entered into this 9th day of January, 2018 ("Effective Date") by and between Duke Energy LLC. ("Licensor"), and [redacted] ("Licensee"). Licensor and Licensee may be referred to hereafter individually as a "Party" and collectively as the "Parties." The attached Terms and Conditions and all associated Exhibits are incorporated herein and made a part of this Agreement by this reference.

Purpose. The purpose of this Agreement is to establish terms and conditions for Licensee to install and maintain Attachments (except for Wireless Attachments) in accordance with this Agreement on Licensor's electric Distribution and Transmission Poles and Drop/Lift Poles within Licensor's Florida Service Area for the sole and limited purpose of providing telecommunications services, either standing alone or in conjunction with other communications services.

THIS AGREEMENT APPLIES ONLY TO DISTRIBUTION POLES, AND DOES NOT PERMIT ACCESS TO OR AFFIXING OF ATTACHMENTS TO TRANSMISSION TOWERS, STRUCTURES OR OTHER TRANSMISSION FACILITIES OR ANY OTHER PROPERTY OR FACILITIES OF LICENSOR.

Term of Agreement. The initial term of this Agreement is five (5) years from the Effective Date (if not terminated pursuant to the terms of this Agreement sooner) ("Initial Term"), and thereafter shall automatically be renewed from year to year ("Renewal Periods), unless terminated by either Party by giving written notice of its intention to terminate at least sixty (60) days prior to the end of the Initial Term or any Renewal Period. Upon termination of this Agreement, Licensee's Attachments shall be removed in accordance with Section 17.

Schedule of Fees.[1]

Pole Attachment License Fee (Dist.)	$5.37 per Attachment per year.
Pole Attachment License Fee (Trans.)	$104.14 per Attachment per year
Safety Violation Fee.	$50.00 per Attachment.
Unauthorized Attachment Fee.	$70.00 per Unauthorized Attachment.

[1] As used in this Schedule of Fees, Attachment has the same meaning as that appearing in the Terms and Conditions, Definitions, at Paragraph 1.2.

Notices. The mailing addresses and, telephone numbers, and electronic addresses of the Parties are as follows:

Licensor:

Duke Energy Florida, LLC.
3300 Exchange Place NP4B
Lake Mary, FL 32746

Telephone : 407-942-9673
E-Mail :
Bret.gordon@duke-energy.com

[redacted]

IN WITNESS WHEREOF, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; *provided, however*, that this Agreement shall not become effective as to either Party until executed by both Parties.

LICENSOR

By: _____
(Signature)

Title: GM Operational Services

Print Name: Brian T. Liggett

Date: 2-1-18

LICENSEE

[redacted]

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TERMS AND CONDITIONS

1. DEFINITIONS

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement.

1.1 Application. In Licensor's discretion, either the Pole Attachment Request Form attached hereto as Exhibit A, or the Pole Attachment application spreadsheet used as part of the Joint Use Request (JUR) electronic notification system. An Application must be completed by Licensee and approved by Licensor in writing in order for Licensee to attach to or make use of any of Licensor's Poles under this Agreement. Licensor may revise either Application from time to time in its sole discretion.

1.2 Attached Pole. A Pole owned or maintained by Licensor that contains at least one Attachment by Licensee.

1.3 Attachment. Attachment shall mean: (a) any contact on a pole to accommodate a single messenger strand (support wire) system, with or without communication cable(s) lashed to it (any additional contact(s) required for additional messenger strand systems shall be considered as separate Attachments); (b) any service drop affixed to a pole with a j-hook or other similar hardware (except that (i) multiple service drops attached to a single lift (drop) pole and positioned in close proximity to one another shall be considered as one Attachment for billing purposes, and (ii) a service drop affixed to a pole within six inches (6") above or below a through bolt shall not count as an additional Attachment for billing purposes); and (c) any other appurtenance affixed to a pole not herein defined, with the exception of guy and ground wires.

1.4 Authorization. Licensor's grant of nonexclusive authority to Licensee to affix its Attachments to Licensor's Poles in accordance with the terms of this Agreement.

1.5 Authorized Attachment. An Attachment for which Authorization has been obtained.

1.6 Business Day. All days except Saturday, Sunday and officially recognized Federal legal holidays.

1.7 Capital Tree Trimming. Any clearing or re-clearing of new or existing rights-of-way or easements recorded as a capital expenditure by Licensor in accordance with the classification of accounts as required by the Federal Energy Regulatory Commission or the state utility commission.

1.8 Control. With respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise.

1.9 Default. When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.

1.10 Distribution Pole. A pole owned by Licensor and bearing electric lines that have a voltage rating no higher than 34.5 kV but not including any pole, post or standard used exclusively for street or outdoor lighting.

1.11 Drop/Lift Pole. An ancillary pole owned by Licensor and necessary to provide clearance or to extend service from a Distribution Pole (or from Licensee's facilities attached to a Distribution Pole) to an individual customer(s).

1.12 Licensee's Service Area. The area within the state authorized in this Agreement in which Licensee does or plans to provide its Services.

1.13 Licensor Practices. Licensor's rules and practices for Attachments as set forth in Exhibit D attached hereto.

1.14 Make Ready Costs. All costs necessary for Licensor to perform the Make Ready Work and prepare its Poles for Licensee's Attachments, including but not limited to the costs of materials and equipment, fully loaded direct and indirect labor, engineering, supervision, and overhead. Engineering includes design, pole loading studies, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 3.4 hereto. Also included are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of Capital Tree Trimming associated with the Make Ready Work required hereunder, installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 3.4.

1.15 Make Ready Estimate. The estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Licensor's Poles for attachment by Licensee.

1.16 Make Ready Work. All work required by Licensor to prepare Licensor's Poles for attachment by Licensee, except for any necessary rearrangement of third party facilities.

1.17 Overlashing. The practice whereby an entity, whether the Licensee or a third party, physically ties or otherwise connects or attaches new wiring or facilities to wiring or to support strands or hardware that already has been affixed to a Pole.

1.18 Pole. Any Distribution Pole or Drop/Lift Pole, which does not include any post, pole or standard used primarily for lighting.

1.19 Pole Attachment License Fee. The annual amount per Attachment that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Poles.

1.20 Required Authorizations. All legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties to install, erect, operate or maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, rights-of-way, and certificates of convenience and necessity.

1.21 Safety Violation. Any Attachment that fails to comply with the technical requirements and specifications listed in Section 3.4.

1.22 Security Instrument. A cash deposit or irrevocable letter of credit to be used by Licensee to guarantee Licensee's payment in full of all Attachment Fees and other amounts payable to Licensor under this Agreement, including potential costs incurred by Licensor to remove Licensee's Attachments. The Security Instrument shall be in an amount to be determined and in the form shown in accordance

with Exhibit C attached hereto, as the same may be modified from time to time by Licensor in its sole discretion.

1.23 Services. The telecommunications services and other communications services provided by Licensee.

1.24 Term. The period during which this Agreement remains in effect.

1.25 Transmission Pole. A pole owned by Licensor and bearing electric lines that have a voltage rating no higher than 50 kV but not including any pole, post or standard used exclusively for street or outdoor lighting.

1.26 Unauthorized Attachment. Any affixation of any Licensee facility of any nature to any property of Licensor wherever located, including Poles, and Licensee-owned facilities overlashed or attached to the attachments of any other attaching entity that has not been authorized by Licensor as required by this Agreement or any predecessor agreement.

1.27 Unauthorized Attachment Fee. The fee to be paid by Licensee for each Unauthorized Attachment.

2. LICENSOR OBLIGATIONS

2.1 Diligence and Good Faith. Licensor shall in good faith diligently pursue all reasonable measures to accommodate Licensee's Authorized Attachments. Notwithstanding the foregoing, Licensor specifically reserves the right in its sole judgment, to deny access to any Distribution Pole, facility, property, conduit or right of way where there is or may be insufficient capacity, and for reasons of safety, reliability and generally applicable engineering purposes. Licensor reserves the right to deny access to any Transmission Pole for any reason, or no reason at all.

2.2 Non Disturbance. Provided that Licensee is performing in accordance with all terms and conditions of this Agreement, Licensor shall not intentionally disturb Licensee's Authorized Attachments, except as such disturbance may be necessary in a safety, emergency or natural disaster situation, as determined in Licensor's sole judgment. Licensor shall make commercially reasonable efforts to notify Licensee prior to any planned or intentional disturbance of Licensee's facilities.

2.3 Maintenance of Attached Poles. At its expense, Licensor shall maintain the Attached Poles and replace, reinforce or repair such poles as necessary, in Licensor's sole judgment.

3. LICENSEE OBLIGATIONS

3.1 Use of Attachments. Licensee shall use each of the Attachments solely to provide telecommunications services, either standing alone or in conjunction with other communication services, and not for any other purpose. This Agreement does not authorize Licensee to make Wireless Attachments or to make or use an Attachment or Licensor's Poles, rights of way, property or facilities for any wireless device or equipment including: any transmitter, receiver, antenna, camera, optical emitter or sensor or listening device. Except as expressly provided in this Agreement, Licensee shall not acquire attachment rights for or on behalf of any third party. Licensee shall not authorize any third party to affix any cables, strand, wires, or other facilities, or antennas, transmitters, receivers and/or associated equipment on the Poles. Licensee shall not allow any third party to lease, Overlash, or otherwise use any Attachments or Poles that Licensee itself is not using to provide the Services.

3.2 Licensee's Service Area. Licensee agrees to maintain accurate, up-to-date location maps and records of all its Attachments on Licensor's Poles. Licensor shall have the right to inspect, and upon request, obtain a copy of said location maps and records at any time during the regular business hours with reasonable notice.

3.3 Compliance with Applicable Rules. Licensee shall comply with all federal, state, and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to Licensor's Poles, including any local zoning restrictions.

3.4 Technical Requirements and Specifications.

(a) At its own expense, Licensee shall erect, install, maintain, and relocate when necessary the Attachments in a workmanlike manner that is not unsightly and is in safe condition and good repair, all as determined by Licensor, in accordance with all applicable technical requirements and specifications, including, but not limited to:

(i) requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), the federal Occupational Safety and Health Act ("Federal OSHA"), the applicable state Occupational Safety and Health Act ("State OSHA"), and the applicable state Department of Transportation ("DOT"), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, Federal OSHA, State OSHA or DOT requirements and specifications;

(ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, Federal OSHA, State OSHA and DOT;

(iii) Exhibit D including current requirements of Licensor, and as may be amended or revised. *Drawings 10.02-01, 10.02-03, 10.07-03, 10.07-05, 10.07-07, 10.07-11 and 10.07-15* are incorporated herein, and unless otherwise specified by Licensor, describe minimum construction requirements for Attachments.

(iv) any safety precautions specified by Licensor;

(v) any current or future rules or orders of any federal, state or local authority having jurisdiction;

(vi) Telcordia's Blue Book Manual of Construction Procedures; and

(vii) any requirements that applicable property owners may prescribe.

(b) Licensee shall bring into conformity as soon as practical following notice by Licensor, and no later than any reasonable date set by Licensor, any existing Authorized Attachments of Licensee that do not conform to the technical requirements and specifications listed in this section. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall promptly reimburse Licensor for all costs related thereto, plus an additional 50% of such costs. Failure by Licensor to inspect or determine Licensee's conformance to the technical requirements and specifications listed in this section or to take action on its own to bring such Attachments into compliance shall not cause Licensor to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Licensee of its obligations of indemnification hereunder.

(c) The Licensor Practices may be amended, with a copy of such amendments being provided to Licensee, from time to time by Licensor as necessary in its sole discretion to promote the safe and efficient operation of its electric distribution system, including Poles, without resort to the provisions of Section 19 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit D, Licensee shall make all required modifications within thirty (30) days after receipt of notice thereof from Licensor or within such other period of time that Licensor may specify.

3.5 Assumption of Risk. Licensee expressly assumes responsibility for determining the condition of all Poles to be accessed or climbed by its employees, agents, contractors or subcontractors or upon which Licensee's attachments are to be affixed, and shall notify Licensor within five (5) days of any dangerous conditions determined to be existing on any such Poles. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, including exposure to any radiofrequency or electromagnetic fields.

3.6 Safety Precautions. Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee's Attachments, and to avoid interference to other attaching entities and Licensor's safe, reliable and efficient operation of its electric distribution system. Should any such injury, damage or interference occur despite such steps, Licensee shall promptly notify Licensor within twenty-four (24) hours of such injury, damage or interference. At Licensor's option, Licensee shall either: (i) repair such damage and/or resolve such interference within the time specified by Licensor; or (ii) compensate Licensor for the cost of repairing any such damage and/or resolving such interference. Licensee also shall indemnify Licensor for such injury, damage or interference as provided in Section 12.1.

3.7 Qualifications of Employees, Agents and Contractors. Licensee shall ensure that all employees, agents and contractors of Licensee used to install, maintain or operate the Attachments have received all required training with respect to work on Poles with energized electric systems and wired and wireless communications systems. Such training shall include, but not be limited to, electrical and radiofrequency emissions safety and fall protection. Licensee shall produce proof of such training upon request by Licensor.

3.8 Identification Markers.

(a) Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to Licensor's Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Pole, and must:

(i) be non-conductive;
(ii) be of a distinctive and uniform design, approved in advance by Licensor
(iii) not be mounted directly to the pole;
(iv) provide Licensee contact information that includes a phone number that Licensee monitors 24 hours per day, seven days per week;
(v) be legible, clearly visible and recognizable by color or other distinction from the ground; and
(vi) show Licensee's name or insignia while making clear that Licensee is not the owner of the pole.

Licensor reserves the right to specify the type, color and nature of such identification markers to comport with a local or regional plan for identifying attaching entities.

(b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can otherwise identify the Attachments as belonging to Licensee. Licensee shall have thirty (30) days from the date of notice to place such permanent identification markers on those Attachments. In the event that Licensee fails to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall promptly reimburse Licensor for all costs related thereto, plus an additional 50%.

3.9 Notification of Attachments. When requested by Licensor, Licensee shall provide Licensor with the precise location, routes, and total number of Licensee's Attachments.

4. MUTUAL OBLIGATIONS

4.1 Prevention of Damage. Each Party shall take all reasonable precautions to avoid damaging the facilities of the other.

4.2 Easements; Access to Poles. Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY, EASEMENTS, ENCROACHMENTS, OTHER PROPERTY RIGHTS, OR PERMISSIVE USE OR ACCESS ENTITLE LICENSEE TO: (I) ACCESS THE PROPERTY UNDERLYING LICENSOR'S POLES; (II) INSTALL, OPERATE OR MAINTAIN LICENSEE'S FACILITIES OR ATTACHMENTS; OR (III) PROVIDE LICENSEE'S SERVICES. This Agreement does not license or assign the use of any Licensor real property rights to Licensee, including but not limited to easements and rights-of-way. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Poles because Licensee failed to obtain appropriate rights-of-way or easements. Consistent with Section 11.2, Licensor may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Licensor to respond to Licensee's Application shall be tolled pending Licensee's response. If otherwise consistent with the terms and conditions of this Agreement, Licensor shall permit Licensee to access Licensor's Poles, to the extent it may lawfully do so. Further, Licensee's use of Licensor's Poles and its overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Licensor and other entities, and under federal, state and local laws and regulations.

5. ESTABLISHING ATTACHMENT TO POLES

5.1 Pole Attachment Application. Before Licensee may affix any Attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall: (a) submit to Licensor an Application requesting Licensor's permission to attach to or make use of each such pole; (b) receive written approval from Licensor authorizing the Attachment(s) to or use of each such pole; (c) pay the Make Ready Costs specified in this Section 5; and (d) (e) comply with all procedures set forth in this Section 5. An Application is required anytime Licensee seeks to add new Attachments, or expand or otherwise modify existing Attachments. A maximum of 40 Licensor's poles identified for proposed attachment per application. No more than 300 poles shall be submitted in any calendar month. Any Attachment for which Licensee has not complied with these procedures shall be deemed an Unauthorized Attachment. Licensee shall not acquire attachment rights for or on behalf of any Affiliate or other third party and, shall not authorize any Affiliate or third party to affix any cables, strand, wires, or other facilities on the

Poles. Licensee shall not allow any Affiliate or third party to lease, or otherwise use any Attachment or Poles that Licensee itself is not using to provide the Services.

5.2 Decision Regarding Application. Licensor may reject all or part of an Application or limit the number and character of Attachments on any Pole if, in the sole judgment of Licensor, any Attachment proposed in the Application is undesirable or impracticable because of capacity, safety, reliability or engineering concerns. Such concerns may include, without limitation: (i) overloading of Licensor's structures; (ii) interference with Licensor's facilities and the facilities of other attaching entities; (iii) any compromise of safety or reliability; and (iv) any violation of engineering standards. Within forty-five (45) days after the receipt of such Application, Licensor shall notify Licensee in writing whether the Application is approved, approved with modifications, or rejected. If Licensor rejects all or part of Licensee's Application because of capacity concerns, Licensee may request Licensor to replace, at Licensee's sole expense, any affected Pole(s) with a taller or stronger pole(s) that will accommodate Licensee's attachment(s). Licensor, in its sole discretion, may replace any affected Poles to accommodate Licensee's attachments.

5.3 Make Ready Procedures.

(a) Make Ready Costs include, without limitation, the cost of performing an engineering survey of Licensor's Poles to determine if the Poles are suitable for attachment ("Engineering Survey"). Licensor may bill Licensee the greater of the costs of conducting the Engineering Survey or a minimum fee of $70.00 per Application.

(b) If additional Make Ready Work is required, Licensor may in its sole discretion, on the basis of the Application and associated construction plans and drawings, submit to Licensee a Make Ready Estimate for all Make Ready Work which may be required for each Pole. The Make Ready Estimate shall be based on Licensor's standard work estimating methods, which shall follow generally accepted estimating principles and include items such as materials less salvage, labor, engineering, supervision, quality assurance and overhead. The Make Ready Estimate shall be provided using the applicable Application Form identified in Exhibit A.

(c) Upon notice pursuant to Exhibit A that the Make Ready Estimate has been accepted and paid by Licensee, Licensor shall proceed with the additional Make Ready Work covered by the Make Ready Estimate, except to the extent that Licensee is permitted or required to contract directly with an approved contractor or engineering firm for Make Ready Work as provided in this Section 5.3. Licensor shall undertake commercially reasonable efforts to complete such Make Ready Work by the estimated completion date but does not guarantee completion by such date.

(d) All Make Ready Work shall be performed by Licensor or one of Licensor's contractors, except that Licensor may, in its sole discretion, permit or require Licensee to contract directly with a high voltage electrical contractor and/or engineering design firm approved by Licensor. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work.

(e) In the event Licensor tracks the actual cost of the Make Ready Work associated with the Make Ready Estimate, then upon completion of the associated Make Ready Work, Licensor shall send to Licensee an invoice for the Make Ready Costs less any amount of the Make Ready Estimate previously paid by Licensee. Licensee must reimburse

Licensor for any unpaid Make Ready Costs within thirty (30) days of the receipt of Licensor's invoice. Licensee's continuing Authorization to use the Poles is contingent upon timely payment of Make Ready Costs. If the tracked, actual Make Ready Costs are less than the Make Ready Estimate, Licensor shall refund the difference to Licensee within thirty (30) days after the total cost of the project has been determined.

5.4 Coordination with Third Parties.

(a) If rearrangement or relocation of third party facilities is necessary to accommodate Licensee's Attachments, Licensee must negotiate separately with each third party for such rearrangement or relocation. Licensee shall notify each third party attached to the affected Poles of Licensee's proposed Attachments and, if necessary, negotiate with such third party(ies) to establish clearances between its facilities and those of Licensor and such other party(ies). Licensee shall reimburse the third party(ies) for any expense incurred by them in transferring or rearranging facilities to accommodate Licensee's Attachments.

(b) Licensee shall negotiate with third parties with respect to any relocation or modification of Licensee's facilities that may be required by third party attachments requested subsequent to Licensee's Attachments. Licensor shall not be liable for any costs for the relocation or modification of Licensee's Attachments or facilities that may be required by any third party.

(c) Licensee shall use the applicable notification system designated by Licensor to notify, monitor, and update the status of work associated with Licensee's relocation needs. Licensee shall respond timely to all notifications of work to be done by Licensee.

5.5 Drop/Lift Poles. Unless Licensor otherwise consents in writing, Licensee may not attach to Drop/Lift Poles without prior written approval from Licensor. If Licensor so consents, then Licensee may attach to Drop/Lift Poles without prior written approval subject to the following conditions:

(a) The Drop/Lift Pole Attachments do not require Make Ready Work to be performed;

(b) Within ten (10) days from the date of such Drop/Lift Pole Attachment, Licensee shall submit an Application for such Attachment;

(c) Except as otherwise specified in this Section 5.5, Licensee's Drop/Lift Pole Attachments shall be subject to all other covenants, representations and warranties in this Agreement applicable to Attachments; and

(d) Any Drop/Lift Pole Attachment for which Licensee fails to follow these procedures shall be deemed an Unauthorized Attachment.

5.6 Overlashing. Licensee may Overlash existing Authorized Attachments under the following conditions:

(a) Licensee shall provide advance notification, by use of Exhibit A, of each proposed overlash consisting of a list of pole numbers and accompanying map. Licensor shall have fifteen (15) days after receipt of such notice to perform any required engineering analysis and notify Licensee if any Make Ready Work and/or third-party rearrangement is required for the proposed overlash. Licensee shall not proceed with overlash until any

necessary Make Ready Work and/or third-party rearrangement is completed. In the event a proposed overlash requires Make Ready work, Licensor will exercise reasonable diligence to complete any necessary Make Ready Work within sixty (60) days;

(b) Any third party Overlashing shall be installed, operated and maintained by Licensee or its agents, contractors or subcontractors. For all purposes under this Agreement, any third party Overlashing shall be treated as the Overlashing of Licensee;

(c) Licensee shall not allow the third party on whose behalf any third party Overlashing is to be performed to access the Poles unless the third party has obtained Licensor's written permission for such access;

(d) Except as otherwise specified in this Section 5.6, Licensee's Overlashing shall be subject to all other covenants, representations and warranties in this Agreement applicable to Attachments; and,

(d) Any Overlashing for which Licensee fails to follow these procedures shall be deemed to be an Unauthorized Attachment.

6. PAYMENT PROVISIONS

6.1. Pole Attachment License Fee. Licensee shall pay to Licensor, for each Attachment under this Agreement, the Pole Attachment License Fee. Beginning January 1, 2018 the Pole Attachment License Fee shall be the amount specified in the Schedule of Fees to this Agreement. Thereafter, Licensor may modify the Pole Attachment License Fee no more than once every twelve (12) months to reflect any Pole Attachment License Fee: (i) allowable under federal statutes and the rules and regulations of the FCC; (ii) allowable by any state regulatory commission with pole attachment jurisdiction; or (iii) that are negotiated by the Parties.

6.2. Payment of Pole Attachment License Fee. The Pole Attachment License Fees shall be paid in advance in semiannual payments as of (i) January 1, based upon the number of Attachments of Licensee as of the immediately preceding December 1, and (ii) July 1, based upon the number of Attachments of Licensee as of the immediately preceding June 1. To calculate each semiannual payment, the relevant number of Attachments shall be multiplied by one half the applicable Pole Attachment License Fee. Licensor shall invoice Licensee for the Pole Attachment License Fee applicable to those Attachments within thirty (30) days of the first day of January or July, as the case may be. Licensor's failure to timely invoice Licensee shall not relieve Licensee of the obligation to pay the Pole Attachment License Fee. For Attachments that are authorized during any part of the semiannual rental period, the Pole Attachment License Fee will be prorated based on the current billing cycle. Prorated license fees will be invoiced and paid with the next semiannual rental period. Any removals will be reflected on the next billing invoice, but no refund of Pole Attachment Licensee Fees will be made on account of a removal request.

6.3 Payment Period. Unless otherwise specified in this Agreement, all amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate of one and one half percent (1.5%), or the maximum amount allowed by law if less than 1.5%, on the unpaid balance of delinquent bills for each month or part thereof until paid. Partial payment shall be applied first to payment of accrued late fees. Licensee shall be entitled to take all steps necessary to cure any Defaults in non-payment of any amounts due from Licensee for a period of ten (10) days following receipt of written notice from Licensor. If such amounts are not paid within such cure period the provisions of Section 16.1 shall apply.

6.4 Fee Disputes. Licensee shall continue payment of all fees and charges when due and performance of all obligations under this Agreement during any period of controversy or claim arising out of, or relating to, this Agreement or its breach. Upon the resolution of any controversy or claim not subject to further appeal, which resolution requires the refund of any fees and charges paid by Licensee during the period of controversy, Licensor shall promptly refund such amounts with an interest rate of one and one half percent (1.5%), or the maximum amount allowed by law if less than 1.5%.

6.5 Fee Increases. Licensor, in its sole discretion, may increase all fees that are due and payable under this Agreement, except the Pole Attachment License Fee, no more than once every 12 months to reflect increases in the "Consumer Price Index for All Urban Consumers" that have occurred since the Effective Date. Licensor shall provide at least sixty (60) days notice to Licensee before the effective date of any such increase in fees.

6.6 Security. Licensee shall furnish a Security Instrument pursuant to Section 1.21 of this Agreement. No Authorization for any Attachments will be granted to Licensee until the Security Instrument required by this section is received by Licensor.

6.7 Power Supplies. Any electricity that Licensee requires to power its system shall be supplied by Licensor in accordance with rates on file with the state regulatory authority and Licensor's application process.

7. INSPECTIONS

7.1 Right to Conduct. Licensor may conduct inspections from time to time as necessary in Licensor's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 3.4, provided that such inspections shall not damage or otherwise interfere with Licensee's equipment or operations. Licensor. If practicable, as reasonably determined in Licensor's sole judgment, Licensor will (i) provide ten (10) days' notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections, and (ii) Licensee's entire system is inspected no more frequently than once per year unless, in Licensor's sole determination, more frequent inspections are necessary for reasons involving safety of persons or protection of property. Inspections may be conducted, in Licensor's discretion, either by Licensor or an independent agent approved by Licensor.

7.2 Safety Violations. If during inspection or otherwise Licensor determines that a Safety Violation exists with respect to any of Licensee's Attachments, Licensee shall, upon notice by Licensor, correct such Safety Violation within thirty (30) days of notification, unless in Licensor's sole judgment, safety considerations require Licensee to take corrective action within a shorter period. If multiple Safety Violations are identified in the notice, Licensor may establish a schedule specifying the dates by which Licensee must correct those violations. Should Licensee fail to correct one or more such Safety Violations within the time specified, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for the costs incurred by Licensor plus an additional 50% of such costs. Licensor shall not be liable for any loss or damage to Licensee's facilities that may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements. If one or more Safety Violations are not corrected by Licensor or Licensee within the time specified, Licensee shall pay a Safety Violation Fee for each such Safety Violation. A single Attachment with multiple Safety Violations will be assessed as one Safety Violation for the purpose of determining the Safety Violation Fee. An additional Safety Violation Fee may be assessed on any Safety Violation for each additional sixty (60) day period or portion thereof

during which the Safety Violation remains uncorrected following the date such Safety Violation is to be corrected according to this Section.

8. INVENTORY

8.1 Right to Conduct Inventory. Licensor may conduct an inventory of Licensee's Attachments to verify the number of Licensee's Attachments. Licensor shall provide thirty (30) days notice of any such inventory so that Licensee may be present and observe such inventory. Inventories may be conducted, in Licensor's discretion, either by Licensor or an independent agent approved by Licensor as specified in such notice. Any such inventory may be conducted no more than once every five (5) years, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, in which case Licensor may inventory as frequently as is necessary in its sole discretion. Licensee shall reimburse Licensor for all costs and expenses of conducting inventories to the extent that such expenses are attributable to Licensee's Attachments, including Unauthorized Attachments. Licensee shall make available to Licensor all of its relevant maps and records for any such inventory. This inventory shall not relieve Licensee of any responsibility, obligation or liability under this Agreement.

8.2 Field Inventory True-Up. If Licensor obtains a field inventory of the facilities of Licensee in accordance with Section 8.1 and finds that the total number of Attachments is greater than the number of Authorized Attachments, then upon completion of such inventory, Licensor's attachment record will be adjusted accordingly and subsequent billing will be based on the actual number of Attachments. Retroactive billing will be prorated from the date of the previous field inventory or the effective date of this Agreement, whichever is more recent, based on the current Pole Attachment License Fee plus interest at the rate charged by the IRS for underpayment of Income Taxes. In no event will retroactive billing be for a period of more than five (5) years. In addition, should the field inventory reveal that the Licensee has made Unauthorized Attachments, Licensee will be charged an Unauthorized Attachment Fee as specified in Section 9.1 The payment by Licensee of the Unauthorized Attachment Fee shall not serve to waive Licensor's right to terminate this Agreement under Section 17.

9. UNAUTHORIZED ATTACHMENTS

9.1 Unauthorized Attachment Fee. Within thirty (30) days of notification of each Unauthorized Attachment, Licensee shall pay to Licensor the one-time Unauthorized Attachment Fee as stated in Schedule of Fees for each Unauthorized Attachment. Within such 30-day period, Licensee either must submit documentation that the Attachment had been approved, remove the Unauthorized Attachment or submit an Application for approval of the Attachment. The Unauthorized Attachment Fee shall be in addition to the Attachment Fees due and payable for the Unauthorized Period (as in hereafter defined). The Parties shall attempt to mutually determine the length of time the Unauthorized Attachment existed ("Unauthorized Period"), but if the parties cannot agree to the length of time that the Unauthorized Attachment existed, the Unauthorized Period shall be the shorter of: (i) time period since the last inventory of Licensee's Attachments; or (ii) five (5) years . Should Licensee fail to comply with any of these requirements, Licensor may demand that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability and Licensee shall be liable to Licensor for the cost associated with the removal, plus 50%. Nothing herein shall act to limit any other applicable remedies, including a remedy for trespass, that may be available to Licensor as a result of any Unauthorized Attachment.

9.2 Licensor Failure to Act. No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify, approve or license the Unauthorized Attachment. If an Application for such Attachment is subsequently approved, such approval shall not operate retroactively

to constitute a waiver by Licensor of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

10. REPLACEMENT, RELOCATION, REMOVAL AND ABANDONMENT OF POLES; REARRANGEMENT AND REMOVAL OF FACILITIES

10.1 Notice. Except in cases of an emergency involving safety of persons or protection of property, i Licensor shall provide sixty (60) days written notice to Licensee whenever Licensor intends to replace, relocate, abandon or remove an Attached Pole, provided that in cases of emergency, Licensor shall provide such notice to Licensee as soon as commercially practicable. Notwithstanding the foregoing, if a federal, state, county or municipal authority or private landowner requires discontinuance of the Attached Pole in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly. In instances for which notice is provided, Licensor shall specify the Poles involved and the time of such proposed replacement, relocation, abandonment or removal.

10.2 Licensee Obligations. If Licensor replaces or relocates an Attached Pole, Licensee shall transfer its Attachments to the new or relocated Attached Pole within the time so specified by Licensor. If Licensor wishes to abandon or remove an Attached Pole, Licensee shall, at the time specified, remove its Attachments from the Attached Pole. Should Licensee fail to transfer or remove its Attachments at the time specified for such transfer or removal, Licensor may elect to: (i) transfer Licensee's Attachments; (ii) remove Licensee's Attachments; (iii) charge Licensee an additional fee for the continuing Attachments at the rate of $25.00 per Pole per month for each month or portion thereof that the Attachments remain on the Poles. If Licensor elects to transfer or remove Licensee's Attachments, Licensee shall reimburse Licensor for the costs of such transfer or removal, plus an additional 50% of such costs, and Licensor shall not be liable for any loss or damage to Licensee's facilities that may result.

10.3 Emergency Rearranging, Transfer or Removal. Notwithstanding the foregoing, Licensor may replace, relocate, remove, or abandon Poles in an emergency if required, as determined by Licensor, and rearrange, transfer or remove Licensee's Attachments. If Licensor elects to rearrange, transfer or remove Licensee's Attachments in an emergency, Licensee shall reimburse Licensor for all costs of such rearrangement, transfer or removal. Licensor service restoration in an emergency shall take priority over the restoration of Licensee's service.

10.4 Replacement and Relocation Costs. Licensor shall replace or relocate Poles at its own expense, except as otherwise provided in this Section 10 and in Sections 3 and 5.

10.5 Reservation of Space. Licensor may reserve space on the Poles for (i) future expansion of its core utility service, and (ii) the provision of emergency service. Licensee may not occupy any utility space or space on the Poles that is reserved for the provision of emergency service. If Licensor has reserved space on any Pole for future expansion, Licensee may make Authorized Attachments in that reserved space until such space is required by Licensor, at which point Licensee shall, upon receipt of sixty (60) days' notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) request that Licensor replace such Pole with a taller or stronger pole that will accommodate Licensee's attachment(s). Should Licensee fail within the 60-day notice period to vacate the space or request Licensor to replace the Pole, Licensor may remove Licensee's Attachments without liability and Licensee shall reimburse Licensor for the cost associated with the removal.

10.6 Costs for Installation, Rearrangement, Removal and Transfer of Licensee's Attachments. Licensee shall be solely responsible for all costs of installation, rearrangement, removal or transfer of its

Attachments on, from or to Licensor's Poles, including, as appropriate, the recovery of its costs from any other attaching entity. Licensee expressly agrees and understands that it shall not, at any time, seek reimbursement from Licensor of the costs incurred by or on behalf of Licensee to remove, relocate, re-arrange, transfer, or replace Licensee's Authorized Attachments.

10.7 Costs for Rearrangement of Other Facilities. In any case where the facilities of Licensor or any other attacher(s) are required to be rearranged on the poles of Licensor in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) for the total reasonable costs incurred by Licensor, and Licensee shall be solely responsible for the notification to, coordination with and the payment of any cost incurred for the installation, rearrangement, removal or transfer of the facilities by any other attacher(s).

10.8 Removal of Attachments by Licensee. Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Poles and, except as provided in Section 17 (Termination of Agreement), Licensee shall remove any unused Attachments within thirty (30) days of discontinuance. All work to repair or replace poles used for Attachments shall be performed by Licensor at Licensee's expense. Licensee shall provide at least ten (10) days prior written notice of any such removal to Licensor in the form of Exhibit B. Such notice shall fully identify the location of the Poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment License Fee payments shall continue until: (i) Licensor receives such notice; (ii) Licensee actually removes its Attachments;; and (iii) Licensee advises Licensor of the date on which such Attachments were removed and affected Poles repaired. No refund of any rental fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Common Representations. Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no additional consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement.

11.2 Required Authorizations. Licensee represents and warrants that it has obtained all Required Authorizations, and covenants that it will maintain and comply with the Required Authorizations throughout the Term. Upon written request, Licensee shall provide Licensor with reasonable evidence that it has obtained any or all Required Authorizations.

11.3 LIMITATIONS ON WARRANTIES. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. THE PARTIES SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION REGARDING THE CONDITION AND SAFETY OF LICENSOR'S POLES OR THE SCOPE OF THE EASEMENTS OR RIGHTS-OF-WAY NECESSARY FOR LICENSEE TO PROVIDE THE SERVICES.

11.4 No Waiver of Licensee Obligations. No actions or omissions of Licensor pursuant to this Agreement shall be construed as a warranty or representation by Licensor that Licensee has fulfilled any of its obligations pursuant to this Agreement and shall not relieve Licensee of its covenant to fulfill such obligation.

12. INDEMNIFICATION

12.1 Licensee Indemnification. Licensee shall indemnify, defend, protect, save harmless and insure Licensor and its directors, officers, shareholders, affiliates, employees, agents, representatives, insurers, lenders, invitees, contractors and subcontractors (each hereinafter referred to as "Indemnitee") from and against any and all claims and demands for, or litigation with respect to, any damages whatsoever that are (i) caused by Licensee, its directors, officers, managers, employees, agents, contractors, subcontractors, suppliers, licensees, grantees, invitees or persons or entities under the direct or indirect control or authority of Licensee (collectively, "Licensee Entities"), (ii) caused by the negligence of one or more Indemnitees; or (iii) related to the initiation, provision, continuation or termination of the Services, the Services themselves, the Attachments, or the proximity of Licensee Entities on or in the vicinity of Licensor's Poles, including but not limited to: violation of property rights, service interruptions, damages to property, injury or death to persons, payments made under any workers compensation law or under any plan for employee disability and death benefits, and including all expenses incurred in defending against any such claims or demands, except to the extent arising out of or caused by the gross negligence or malicious conduct of one or more Indemnitees. Licensee expressly and specifically waives any constitutional or statutory immunity relating to workers compensation that may be available under applicable state law.

12.2 Notice. In the event of any claim, demand or litigation specified in this section, the Indemnitee(s) shall give reasonable, prompt notice to Licensee of such claim, demand or litigation. Licensee shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that Licensee may not make any non-monetary settlement or compromise without the Indemnitee(s)'s consent, which consent shall not be unreasonably withheld. The Indemnitee(s) shall cooperate with Licensee in the defense and/or settlement of any claim, demand or litigation at Licensee's expense. Nothing herein shall be deemed to prevent the Indemnitee(s) from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnitee(s)'s own counsel at the Indemnitee(s)'s own expense. No Indemnitee shall take any action to settle, to compromise or otherwise to make any payment, admission, or statement to or for the benefit of any third party claimant without Licensee's written consent.

13. LIMITATIONS ON DAMAGES

(A) UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED.

(B) NOTWITHSTANDING ANY PROVISION OR IMPLICATION TO THE CONTRARY, IN NO EVENT (EXCEPT AS MAY BE OTHERWISE REQUIRED BY ANY APPLICABLE STATUTE, LAW, RULE OR THE APPLICATION OF

COMMON LAW REQUIREMENTS REGARDING LIABILITY AS TO GROSS NEGLIGENCE AND/OR MALICIOUS CONDUCT) SHALL THE LIABILITY OF LICENSOR PURSUANT TO THIS AGREEMENT EXCEED THE ATTACHMENT FEES THERETOFORE PAID BY LICENSEE TO LICENSOR DURING ANY BILLING PERIOD PURSUANT TO THIS AGREEMENT.

14. INSURANCE

14.1 Insurance Requirement. Licensee shall carry insurance in such form and issued by such companies with a minimum A.M. Best rating of A-VII or higher to protect the Parties from and against claims, demands, actions, judgments, costs, expenses and liabilities or by reason of any loss, injury, death, or damage involving any Attachment which may arise out of or result directly from the use and occupancy of the premises and the operations conducted thereon. Throughout the Term of this Agreement, Licensee shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and maintain substantially the same insurance with substantially the same limits as required of Licensee, the following insurance:

(a) Workers' compensation in compliance with the statutory requirements of the state of operation and employer's liability insurance, with limits of One Million Dollars ($1,000,000) each accident/disease/policy limit, covering all employees who perform any of Licensee's obligations under this Agreement,

(b) Commercial General Liability Insurance having an available limit of $5,000,000 per occurrence for bodily injury (incluidng death) and property dmage and $5,000,000 general aggregate including contractual liability, personal and advertising injury, products and com[pleted operatinos liability (which shall continue for a least one (1) year after completion), premises and operations liability, contractual liabiltiy railroads (if work within 50 feet of any) and explosion, collapse, and udnerground hazard coverage.

(c) Commercial automobile liability insurance with a combined single limit of Five Million Dollars ($5,000,000) each accident for bodily injury and property damage covering all owned, hired and non-owned automobiles, including contractual liability.

(d) Umbrella/Excess Liability insurance with limits of $1,000,000 per occurrence providng coverage above the underlying Employer's, Commercial General and Auto Liability Insurance, and provide at least the same scope of coverages thereunder.

(e) Such other insurance as may be necessary to protect Licensor from and against any and all insurable claims, demands, suits, actions, causes of action, proceedings, judgments, awards, losses, fees, costs, expenses and liabilities or by reason of any injury, loss or death which may arise out of or result from the use and occupancy of the premises and the operations conducted thereon.

14.2 Additional Insureds. The policies required by Sections 14.1(b)-(d) shall include Licensor and its directors, officers, members and employees as additional insureds as their interest may appear under this Agreement (except for workers' compensation and employer liability) and shall stipulate that the insurance afforded for Licensee, its directors, officers, members and employees shall be primary insurance and that any insurance carried by Licensor, its directors, officers, members or employees shall be excess and not contributory insurance.

14.3 Waiver of Subrogation. Licensee and its insurers providing the required coverage shall waive all rights of subrogation against Licensor and its directors, officers, employees and agents.

14.4 Certificate of Insurance. Before Licensee may affix any Attachments to or make use of any of Licensor's Poles under this Agreement, Licensee shall furnish Licensor with certificates of insurance as evidence that policies providing the required coverage, conditions and limits are in full force and effect. The certificates shall identify this Agreement. Upon receipt of notice from its insurer, Licensee will use its best efforts to provide Licensor with thirty (30) days' prior notice of cancellation. In the event of the Licensee's failure to maintain any insurance required in 14.1, the Licensor shall have the right to cancel this Agreement. Licensor shall not be obligated to review any of Licensee's certificates of insurance, and/or endorsements or advise Licensee of any deficiencies in such documents, and any receipts of certificates or review by Licensor shall not relieve Licensee from or be deemed a waiver of Licensor's right to insist on strict fulfillment of Licensee's obligations.

All such notices will be sent directly to Licensor at the following address (or other address as may be specified by Licensor):

Duke Energy Florida LLC.
Joint Use – Tower Leasing Contract Management
Joint Use Administration
Mail Code : NP4B
3300 Exchange Place
Lake Mary, FL 32746

14.5 Responsibility for Contractors. Licensee shall bear full responsibility for ensuring that its agents, contractors and subcontractors obtain and maintain substantially the same insurance with substantially the same limits as required of Licensee before they perform any work for Licensee in connection with this Agreement, and shall demonstrate such full compliance upon request of Licensor.

14.6 No Limitation on Indemnities. Failure of LICENSEE to maintain adequate insurance coverage shall not relieve LICENSEE of any contractual responsibility or obligation. The requirement, provided herein as to type, limits, and coverages to be maintained by LICENSEE is not intended to, and shall not in any manner, limit or quantify the liabilities and obligations assumed by LICENSEE. The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Section 12. The contractual liability coverage shall insure the performance of all obligations assumed hereunder, including specifically, but without limitation, the indemnity provisions in this Agreement.

14.7 Modification of Insurance Requirements. Licensor may periodically amend the insurance requirements in this Section 14 to require additional insurance coverage or other changes, as deemed necessary by Licensor but only after providing the Licensee with ninety (90) days' notice of such change.

15. DISCHARGE OF LIENS

15.1 Waiver. Licensee waives, and shall require all of its contractors, subcontractors and suppliers to waive, any and all liens and claims of liens, and the right to file and enforce and otherwise assert any such liens and claims of liens, against Licensor, Licensor's Pole(s), and any other Licensor property and facilities in connection with Licensee's Attachments or in connection with work done by or on behalf of Licensee. Licensee shall include, and shall require its contractors, subcontractors and suppliers to include this lien waiver provision in all agreements with contractors, subcontractors and suppliers.

15.2 Discharge. If any liens or claims of liens are filed or asserted against Licensor, Licensor's Pole(s), or any other property or facilities of Licensor pursuant to work performed by Licensee or in connection with work done by or on behalf of Licensee, Licensee shall, within thirty (30) days after written notice of such lien, discharge or remove any such lien or claim by bonding, payment or otherwise. Notwithstanding the foregoing, Licensee may contest any such lien, in good faith, in an appropriate proceeding, and shall notify Licensor promptly when such lien or claim has been discharged or removed. Without limiting the generality of any other provision of this Agreement, Licensee assumes all liability for, and shall indemnify, protect and save harmless Licensor and Licensor's directors, officers, shareholders, affiliates, employees, agents, representatives, insurers, lenders, invitees, contractors and subcontractors from and against all liens and claims of liens filed pursuant to work performed by Licensee or in connection with work done by or on behalf of Licensee.

16. DEFAULTS

16.1 Licensee Default. If Licensee is in Default under this Agreement and fails to correct such Default within the cure periods specified in Sections 6.3 and 16.2 below, Licensor may, in addition to all other remedies available by contract, law and equity, at its option and without further notice:

(a) terminate this Agreement;
(b) terminate the Authorization covering the Pole(s) with respect to which such Default shall have occurred;
(c) decline to authorize additional attachments under this Agreement until such Default is cured;
(d) suspend Licensee's access to or work on any or all of Licensor's Poles;
(e) perform work necessary to correct such Default; and/or
(f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction; and/or
(g) file a lien on Licensee's Attachments for the amounts due and owing at that time (which Licensor may foreclose upon immediately), and Licensor will be deemed to have a security interest in Licensee's Attachments for such amount.

16.2 Licensee Cure Period. Licensee shall be entitled to take all steps necessary to cure any Defaults for a period of thirty (30) days following receipt of written notice from Licensor or other mutually agreed time period that may be required for Licensee to diligently work to cure any Default The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement; however, the 10 day cure period set out in Section 6.3 shall apply to Defaults in payment.

16.3 Termination Because of Licensee Default. If Licensor terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Pole Attachment License Fees.

16.4 Reimbursement for Licensor Work. If Licensee fails to cure a Default within the cure periods in Section 16.2 above with respect to the performance of any work that Licensee is obligated to perform under this Agreement, Licensor may elect to perform such work, and Licensee shall reimburse Licensor for all cost associated with the removal plus 50%.

16.5 Licensor Default. If Licensor is in Default under this Agreement, Licensor shall have thirty (30) days following receipt of written notice from Licensee within which to correct such Default. If Licensor does not cure its Default within the allotted time period, Licensee may, at its sole discretion terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction. If Licensor is in Default and Licensee elects to terminate the Agreement,

Licensor shall within thirty (30) days' refund to Licensee on a pro rata basis any Pole Attachment License Fees paid for the current billing period.

16.6 Attorney's Fees and Court Costs. If either Party fails to cure a Default with respect to any of its obligations under this Agreement and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this Agreement, the defaulting Party agrees to pay all reasonable attorney's fees and court costs of litigation incurred by the other Party, should that Party prevail in a formal enforcement action.

17. TERMINATION OF AGREEMENT

Upon termination of this Agreement, Licensee shall, within sixty (60) days: (i) remove all of its Attachments from Licensor's Poles; and (ii) advise Licensor of the date on which such Attachments were removed and affected Poles repaired. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to: (a) remove Licensee's Attachments without liability, and Licensee shall reimburse Licensor for the associated costs plus an additional 50% of such costs; and (b) seek the payment of holdover fees, on a monthly basis, at the Pole Attachment License Fee rate. All work to repair or replace poles used for Attachments shall be performed by Licensor at Licensee's expense. All of Licensee's pre-termination obligations with respect to Attachments shall remain in full force and effect until such time as all the Attachments have been removed from Licensor's Poles.

18. WAIVER OF TERMS OR CONDITIONS

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

19. MODIFICATIONS

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibits may be modified by Licensor pursuant to this Agreement upon thirty (30) days notice to Licensee. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

20. PAYMENT OF TAXES

Each Party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

21. NOTICES

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), electronic mail transmission, or certified U.S. mail return receipt requested to the person(s) identified on pages 1-2 of this Agreement, except that any notice, request, consent, demand, designation, approval, or statement that could affect or create: (1) either Party's ability to provide service over its facilities; (2) a monetary obligation under this agreement; (3) commencement of a cure period; (4) a legal obligation, such as an obligation to indemnify or right to pursue legal action; or (5) a termination under this Agreement, shall be sent by personal

delivery, overnight delivery or certified U.S. mail return receipt requested as provided above. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery or certified U.S. mail shall be effective upon receipt.

22. CONFIDENTIALITY

Neither Party shall at any time disclose, provide, demonstrate or otherwise make available to any third party any of the terms or conditions of this Agreement nor any materials provided by either Party specifically marked as confidential, except upon written consent of the other Party, or as may be required by applicable law or governmental authorities. Notwithstanding the foregoing, nothing in this section shall prevent disclosure to a Party's authorized legal counsel or contractors performing work for Licensee hereunder who shall be subject to this confidentiality section, nor shall it preclude the use of this Agreement by the Parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the Party called upon to make such disclosure shall provide notice to the other Party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure. Notwithstanding the foregoing, Licensor may, without notice to Licensee: (i) negotiate or enter into any agreement with any other person(s) or entity(ies) that is identical or similar to this Agreement; and (ii) provide the text of all or part of this Agreement to any other party, so long as Licensor shall expurgate therefrom all references to Licensee and shall not associate such text with Licensee or identify Licensee as having agreed to such text or terms.

23. FORCE MAJEURE

(a) Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

(b) If any Pole or other Licensor facility is damaged or destroyed by a force majeure event so that, in Licensor's sole discretion, the Pole is rendered materially unfit for the purposes described in this Agreement, and Licensor opts not to repair or replace the Pole or other facility, then the Authorization for the Pole shall terminate as of the date of such damage or destruction.

24. GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the state in which the Poles that are the subject of this Agreement are located, excepting only that state's conflict of law principles. Any action at law or judicial proceeding shall be instituted only in the state or federal courts of the state in which said Poles are located.

25. CONSTRUCTION OF AGREEMENT

This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms. Section headings are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

26. OWNERSHIP RIGHTS

All Attached Poles under this Agreement shall remain the property of Licensor, and Licensee's rights in Licensor's Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to compel Licensor to maintain any of its poles for a longer period than is required by Licensor's own service requirements. All facilities of Licensee attached to the Poles under this Agreement shall remain the property of Licensee, except as otherwise provided herein.

27. THIRD PARTY BENEFICIARIES

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the Parties and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as provided herein.

28. PRIOR AGREEMENTS SUPERSEDED

This Agreement embodies the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee, written or unwritten, with respect to that subject matter. Such agreements are shown but not limited to those as shown on Exhibit E. Any licenses issued under prior agreements shall be transferred to and governed by this Agreement.

29. ASSIGNMENT AND TRANSFER

Licensee may assign this Agreement and any Authorization to any entity which acquires all of Licensee's assets in the market defined by the FCC in which the Pole is located by reason of a merger, acquisition or other business reorganization without approval or consent of Licensor, but such assignment is voidable at Licensor's option unless the assignee has complied with the insurance requirements in Section 14 of this Agreement and the security requirement in Section 6.6 of this Agreement. Excepting the foregoing, Licensee shall not assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of Licensor. No such consent granted by Licensor shall be effective until Licensee's assignee or other transferee has agreed, on an enforceable separate document signed and delivered to Licensor, to assume all obligations and liabilities of Licensee under this Agreement. Licensor may condition such consent upon the assignee's or transferee's agreement to reasonable additional or modified terms or conditions. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

30. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS

This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

31. SURVIVAL; LIMITATIONS ON ACTIONS

Notwithstanding the termination of this Agreement for any reason, Sections 12, 13, 15, 17, 18, 21, 22, and 24 through 28 inclusive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

32. TIME OF ESSENCE

Time is of the essence in this Agreement.

33. DISPUTE RESOLUTION

In the event any dispute arises between the Parties under this Agreement, the Party seeking resolution of the dispute must submit written notice to the other describing the dispute and such Party's desire to resolve the dispute in accordance with the provisions of this Section 33, unless the Parties at any time mutually agree in writing to dispense with the dispute resolution process under this Section 33 for a particular dispute. If the Parties are then unable to resolve such dispute in the normal course of business within fifteen (15) days after delivery of the written notice as provided herein, each of the Parties shall promptly appoint a designated representative who has authority to settle the dispute. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to the dispute within forty-five (45) days after the Parties' appointment of the designated representatives, then either Party may submit the dispute to nonbinding mediation before the regulatory authority having proper jurisdiction pursuant to such regulatory authority's rules and practices for handling such disputes. Each Party shall bear its own costs and expenses in seeking resolution of any dispute under this Agreement pursuant to this Section 33. The dispute resolution procedures in this section shall not preclude either Party from exercising Default remedies while the dispute is being resolved. Neither Party shall pursue any other rights or remedies under law or equity until that Party has first exhausted its administrative remedies under this Section 33, unless no regulatory authority has proper jurisdiction, in which case exhaustion of administrative remedies hereunder is not required.

[END OF TERMS AND CONDITIONS]

Exhibit A

DUKE ENERGY.

☐ EXHIBIT A Attachment Request
- ☐ New
- ☐ Rebuild
- ☐ Service Drop
- ☐ Overlash 3rd Party
- ◉ Overlash Self

☐ EXHIBIT B Removal Request

JOINT USE

Permit # _____

Op Center _____

COMPANY NAME: _____ Acct. # _____

Reference # _____ Location (County, City, State) _____

Map # _____ Node _____ Project Address _____

EXHIBIT A: In accordance with the terms and conditions of the existing Attachment Agreement, application is made for a permit to attach facilities to Duke Energy's poles as indicated below and on construction drawing(s) attached. Applicant represents it has secured all necessary permits under its franchise and easements or licenses from owners of private property. Applicant is responsible for coordinating the transfer or rearrangement of another attacher's facilities due to the applicant's proposed attachments and for reimbursement of expenses due to those entities. Such work must be completed before applicant commences construction of its attachments.

EXHIBIT B: In accordance with the terms and conditions of the existing Attachment Agreement, Duke Energy will remove from its records the attachment(s) from the poles listed below. Applicant represents that it has removed all communication facilities previously attached to the below referenced poles.

Duke Energy Pole No.	✓ for Transmission	House and Street Address *and / or* Comments

Duke Energy Pole No.	✓ for Transmission	House and Street Address *and / or* Comments

ATTACHMENTS REQUESTED / REMOVED:

_____ Distribution _____ Transmission _____ Telecommunications

SUBMITTED BY:

Name _____

Address _____

_____

Phone No. _____

CABLE DETAILS

☐ Coaxial

☐ Fiber Optic

_____ Cable Size

_____ Messenger Size

_____

EXHIBIT B

NOTICE OF TERMINATION

EXHIBIT B (Cont'd)

LOCATION OF ATTACHMENTS TO BE REMOVED

(use additional sheets as necessary)

EXHIBIT C

SCHEDULE OF LETTER OF CREDIT OR CASH DEPOSIT

DUKE ENERGY Florida, LLC

NUMBER OF ATTACHMENTS			AMOUNT OF COVERAGE
0	THROUGH	1,000	$50,000
1,001	THROUGH	2,000	$100,000
2,001	THROUGH	3,000	$150,000
3,001	THROUGH	4,000	$200,000
4,001	THROUGH	5,000	$250,000
5,001	THROUGH	6,000	$300,000
6,001	THROUGH	7,000	$350,000
7,001	THROUGH	8,000	$400,000
8,001	THROUGH	9,000	$450,000
9,001	THROUGH	10,000	$500,000

For any attachments in excess of 10,000, the required cash deposit or letter of credit shall be $50,000 per each 1,000 attachments (or any portion thereof).

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:
[Duke Energy legal entity name]_____
550 South Tryon Street, DEC40C
Charlotte, NC 28202
Attention: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

_____
_____
_____

We hereby issue in your favor our irrevocable letter of credit No.: _____ ("Letter of Credit") for the account of _____ (the "Applicant") for an amount or amounts not to exceed _____ US Dollars in the aggregate (US$_____) available by your drafts at sight drawn on [Issuing Bank] effective _____ and expiring at our office on _____ (which date, as may be extended in the manner provided herein is referred to as the "Expiration Date"). This Letter of Credit shall be automatically extended, without amendment, for successive one (1) year periods unless we provide Beneficiary with not less than sixty (60) days' prior written notice by overnight courier to the address set forth above that we elect not to renew this Letter of Credit. Upon receipt by the Beneficiary of any such notice not to renew this Letter of Credit and notwithstanding anything in this Letter of Credit to the contrary, the Beneficiary may draw any or the entire amount available hereunder by presenting drawing documents in compliance with the terms and conditions of this Letter of Credit.

Funds under this Letter of Credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this Letter of Credit. Partial drawings under this Letter of Credit are permitted.

We hereby undertake to promptly honor your drawing(s) presented in compliance with the terms of this Letter of Credit, up to the amount then available herein, in no event will payment exceed the amount then available to be drawn under this Letter of Credit.

We engage with you that drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this Letter of Credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed two (2) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this Letter of Credit to [Issuing Bank's contact information], specifically referring to the number of this Letter of Credit.

All banking charges are for the account of the Applicant.

This Letter of Credit may not be amended, changed or modified without our express written consent and the consent of the Applicant and the Beneficiary.

Very truly yours
[Issuing Bank]

_____ _____

Authorized Signer Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of _____ by wire transfer of immediately available funds to the following account:

[name of account]
[account number]
[name and address of bank at which account is maintained]
[aba number]
[reference]

The following amount:

[insert number of dollars in writing] United States Dollars
(US$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

[Beneficiary]

By: _____
Title: _____

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

Duke Energy_____ (the "Beneficiary") is drawing the funds requested under this draft based on the below specified draw condition:

[check appropriate draw condition]

[_____] An event of default has occurred with respect to [Name of contracting entity] under that certain [Name of Agreement] between [Insert Beneficiary's name] and [Name of contracting entity] dated as of _____ (the "Agreement") and such default has not been cured within the applicable cure period, if any, provided for in the Agreement

Or

[_____] Applicant has failed to renew or replace the Letter of Credit and/or provide other acceptable replacement collateral as required in the Agreement, and less than thirty (30) days remain prior to the expiration of the Letter of Credit, wherefore Beneficiary hereby demands payment of US$_____ to be held as collateral until Beneficiary is provided with a replacement letter of credit or other acceptable collateral.

Duke Energy _____

By: _____

Title:_____

EXHIBIT D

NATURE OF SURFACE UNDERNEATH WIRES, CONDUCTORS OR CABLES	INSULATED COMMUNICATION CONDUCTORS AND CABLES, MESSENGERS, GROUNDED GUYS, NEUTRAL CONDUCTORS, (FT.)	TRIPLEX AND QUADRUPLEX CABLES, 0 TO 750 V, AND NON-INSULATED COMMUNICATIONS CONDUCTORS (FT.)	OPEN WIRE SERVICE / SECONDARY CONDUCTORS, 0 TO 750 V (FT.)	OVERHEAD PRIMARY CONDUCTORS, OVER 750V TO 22kV (FT.)
	NESC MINIMUM REQUIRED	NESC MINIMUM REQUIRED	NESC MINIMUM REQUIRED	NESC MINIMUM REQUIRED
1. ROADS, STREETS, AND OTHER AREAS SUBJECT TO TRUCK TRAFFIC.	15.5 (SEE NOTE 4)	16 (SEE NOTE 4)	16.5 (SEE NOTE 4)	18.9
2. DRIVEWAYS, PARKING LOTS, AND ALLEYS	15.5 (SEE NOTE 3)	16 (SEE NOTE 3)	16.5 (SEE NOTE 3)	18.5
3. OTHER LAND TRAVERSED BY VEHICLES, SUCH AS CULTIVATED, GRAZING, FOREST, ORCHARD, ETC. (SEE NOTE 5)	15.5	16	16.5	18.5
4. SPACES AND WAYS SUBJECT TO PEDESTRIANS OR RESTRICTED TRAFFIC ONLY	8.5	12.0 (SEE NOTE 3)	12.5 (SEE NOTE 3)	14.5
5. WATER AREAS NOT SUITABLE FOR SAILBOATING OR WHERE SAILBOATING IS PROHIBITED	14.0	14.5	15.0	17.0
6. WATERWAYS / BODIES OF WATER SUITABLE FOR SAILBOATING	SEE DWG. 10.02-07 FOR CLEARANCES			
7. PUBLIC OR PRIVATE LAND AND WATER AREAS POSTED FOR RIGGING OR LAUNCHING SAILBOATS	CLEARANCE ABOVE GROUND SHALL BE 5 FT. GREATER THAN ON DWG. 10.02 07			
WHERE WIRES, CONDUCTORS, OR CABLES RUN ALONG AND WITHIN THE LIMITS OF HIGHWAYS OR OTHER ROAD RIGHT-OF-WAY BUT DO NOT OVERHANG THE ROADWAY				
8. ROADS, STREETS, OR ALLEYS	15.5	16.0	16.5	18.5
9. ROADS IN RURAL DISTRICTS WHERE IT IS UNLIKELY THAT VEHICLES WILL BE CROSSING UNDER THE LINE	13.5	14.0	14.5	16.5

NOTES:

1. THE ABOVE MINIMUM CLEARANCES IN THE TABLE MUST BE MET USING THE FOLLOWING ICE AND WIND CONDUCTOR LOADING. THE VALUES CAN BE FOUND IN THE SAG AND TENSION TABLES. USE THE FOLLOWING LOADING CONDITION THAT PRODUCES THE GREATEST SAG:
   - CONDUCTOR TEMPERATURE 120°F AND NO WIND DISPLACEMENT, OR
   - MAXIMUM CONDUCTOR TEMPERATURE FOR WHICH THE LINE IS DESIGNED TO OPERATE AND NO WIND DISPLACEMENT, OR
   - 32°F WITH RADIAL ICE THICKNESS SPECIFIED ON DWG. 10.00-05, NO WIND DISPLACEMENT.
2. REFER TO NATIONAL ELECTRICAL SAFETY CODE (NESC) RULE 232 FOR MINOR EXCEPTIONS AND REFINEMENTS.
3. WHERE HEIGHT OF ATTACHMENT TO BUILDING DOES NOT PERMIT TRIPLEX SERVICE DROPS TO MEET THIS VALUE, THE CLEARANCE MAY BE REDUCED TO THOSE VALUES IN NESC TABLE 232-1, FOOTNOTES 7 AND 8.
4. THE MINIMUM VERTICAL CLEARANCE OF ALL CONDUCTORS, CABLES, GUYS, ETC. MAY BE GREATER FOR DOT MAINTAINED HIGHWAYS OR LIMITED ACCESS HIGHWAYS. SEE DWG. 10.02-03.
5. WHEN DESIGNING A LINE TO ACCOMMODATE OVERSIZED VEHICLES, THESE CLEARANCE VALUES SHALL BE INCREASED BY THE DIFFERENCE BETWEEN THE KNOWN HEIGHT OF THE VEHICLE AND 14 FT.

DUKE ENERGY.

REVISED	BY	CK'D	APPR.
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2			
1			
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VERTICAL FINAL SAG CLEARANCES ABOVE GROUND
ADAPTED FROM NESC TABLE 232-1

DEC	DEM	DEP	DEF
X	X	X	X

10.02-01

STATE	REQUIRED CLEARANCE OVER STATE MAINTAINED D.O.T. ROADS (FT.)	REQUIRED CLEARANCE OVER LIMITED ACCESS HIGHWAYS (FT.)	REFERENCE MANUAL
FLORIDA	18	24	UTILITIES ACCOMMODATION MANUAL, 4.2A AND 4.8.2
INDIANA	18	18	UTILITY ACCOMMODATION POLICY, 6.0 (2)
KENTUCKY	18	24	PERMITS GUIDANCE MANUAL 202-2 AND 202-3
NORTH CAROLINA	18	18	POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS OF WAY, P41
OHIO	18.5	16.5	POLICY FOR ACCOMMODATION OF UTILITIES, 2108.01.C
SOUTH CAROLINA	NESC MINIMUMS	NESC MINIMUMS	UTILITIES ACCOMMODATION MANUAL, 6.3.1

NOTES:

1. THE VALUES IN THE ABOVE TABLE APPLY TO ALL UTILITY LINES, NOT JUST THOSE OWNED BY DUKE ENERGY. THE DESIGNER SHOULD ENSURE ENOUGH HEIGHT IS OBTAINED AT THE SUPPORTING STRUCTURE TO PROVIDE ADEQUATE VERTICAL CLEARANCE FOR THE LOWEST ATTACHING UTILITY WHILE ALSO MAINTAINING THE APPROPRIATE MID-SPAN CLEARANCES BETWEEN UTILITIES.
2. AT NO TIME SHALL DUKE ENERGY LINES BE LESS THAN THE MINIMUM VALUES REQUIRED BY THE NESC.
3. THE VALUES IN THE ABOVE TABLE ARE BASED ON WHICHEVER OF THE FOLLOWING CONDITIONS PRODUCES THE MAXIMUM SAG OR MINIMUM CLEARANCE VALUE WITH NO WIND DISPLACEMENT:
   A. CONDUCTORS AT 120°F, FINAL SAG (USED FOR PRIMARY CONDUCTORS IF NO OTHER MAXIMUM TEMPERATURE IS KNOWN AND FOR NEUTRAL CONDUCTORS) OR
   B. CONDUCTORS AT THE MAXIMUM OPERATING TEMPERATURE FOR WHICH THE LINE IS DESIGNED TO OPERATE, FINAL SAG OR
   C. CONDUCTORS AT 32°F, WITH THE RADIAL THICKNESS OF ICE REQUIRED BY DWG. 10.00-05, FINAL SAG.

DUKE ENERGY.

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2			
1			
0			

D.O.T. CLEARANCES OVER STATE MAINTAINED ROADS AND LIMITED ACCESS HIGHWAYS

DEC	DEM	DEP	DEF
X	X	X	X

10.02-03

GENERAL

1. ANYONE REQUESTING TO INSTALL AND MAINTAIN ATTACHMENTS ON DUKE ENERGY POLES SHALL SUBMIT THE APPROPRIATE AUTHORIZATION TO THE JOINT USE UNIT BEFORE ANY FACILITIES CHANGES ARE MADE. A PERMIT IS REQUIRED IN ORDER TO MAINTAIN ACCURATE ATTACHMENT INVENTORIES AND TO OBTAIN TECHNICAL DATA NECESSARY TO REVIEW THE ADEQUACY OF EXISTING DISTRIBUTION AND/OR TRANSMISSION SYSTEM FACILITIES. POLE UTILIZATION REQUIRING PERMITS INCLUDE: INSTALLATION OF NEW ATTACHMENTS, REMOVAL OF EXISTING ATTACHMENTS, UPGRADE TO LARGER CABLE, LASHING OF NEW CABLES TO EXISTING MESSENGERS, REBUILDS OF CABLE SYSTEMS, LARGE SCALE RELOCATIONS FOR ROAD WIDENING, ETC. AND INSTALLATION OF SERVICE DROPS ON LIFT POLES.

2. ALL PERMITTED ATTACHMENTS SHALL BE ON THE SAME SIDE OF THE POLE AS THE SECONDARY OR NEUTRAL, EXCEPT WHEN APPROVED IN WRITING BY DUKE ENERGY. DUKE ENERGY SHALL MAKE EVERY ATTEMPT TO INSTALL REPLACEMENT POLES ON THE FIELD SIDE OF EXISTING FOREIGN ATTACHMENTS.

3. NO PERMANENT CLIMBING AIDS ARE ALLOWED ON DUKE ENERGY POLES.

4. MESSENGER CABLE(S) SHALL BE BONDED WITH APPROPRIATE ELECTRICALLY RATED CONNECTORS TO THE ELECTRIC COMPANY'S VERTICAL GROUND WIRE, WHERE ONE EXISTS. PROTECTIVE HOLDING IF IN PLACE MAY BE CUT TO FACILITATE BONDING; HOWEVER, UNDER NO CIRCUMSTANCE, SHALL THE VERTICAL GROUND WIRE BE CUT.

5. ALL NEW POWER SUPPLIES AND NEW METERING EQUIPMENT SHALL BE MOUNTED ONLY ON CUSTOMER OWNED FACILITIES. ALL POWER SUPPLY INSTALLATIONS MUST HAVE APPROPRIATE DISCONNECT DEVICES. NEW STRAND MOUNTED POWER SUPPLIES WILL BE BILLED ON A METERED ACCOUNT BASIS. EXISTING INSTALLATIONS WHERE POWER SUPPLIES AND METERING EQUIPMENT ARE LOCATED ON COMPANY OWNED FACILITIES CAN REMAIN AS CURRENTLY INSTALLED. ANY UPGRADE, RELOCATION, POLE CHANGEOUT (EXCEPT IN THE CASE OF UNPLANNED EMERGENCY WORK OR OUTAGE RELATED INCIDENT) OR OTHER CHANGE TO THE FACILITIES WILL ADHERE TO THE CURRENT POLICY. IN DENSELY POPULATED DOWNTOWN AREAS OR OTHER INSTANCES WHERE EXISTING AGREEMENTS ARE IN PLACE WITH THE RIGHT-OF-WAY OWNER, POWER SUPPLIES AND METERING EQUIPMENT MAY BE ALLOWED ON COMPANY OWNED FACILITIES. THE CUSTOMER MUST PROVIDE WRITTEN VERIFICATION FROM THE RIGHT-OF-WAY OWNER THAT ADDITIONAL FACILITIES OF ANY KIND (POLE, PEDESTAL, ETC) CANNOT BE ADDED WITHIN THE RIGHT-OF-WAY. THESE REQUESTS WILL BE HANDLED ON A CASE BY CASE BASIS, AND THE COST OF ANY ENGINEERING LABOR AND MAKE-READY WORK WILL BE BORNE IN FULL BY THE CUSTOMER.

6. ONLY DEVICES SUCH AS ANTENNAS AND THEIR RELATED CABLING ARE PERMITTED ON COMPANY FACILITIES AS DESCRIBED ON THE ACCOMPANYING PAGES. CRITERIA SURROUNDING DISCONNECTS, WARNING SIGNS, ETC THAT ADDRESS PROPER WORK PRACTICES AROUND RF EMITTING DEVICES MUST BE FOLLOWED AT ALL TIMES. THESE INSTALLATIONS ARE EVALUATED INDIVIDUALLY, AND REGARDLESS OF OTHER CIRCUMSTANCES CAN BE DENIED AT THE COMPANY'S DISCRETION.

7. WHERE REQUESTS FOR INSTALLATIONS INVOLVE WOODEN STREET LIGHT ONLY POLES AND MEET THE ABOVE CRITERIA FOR INSTALLATION ON THE POLE, THE ENGINEERING ANALYSIS MUST ACCOUNT FOR THE CAPACITY AND VOLTAGE DROP OF EXISTING STREET LIGHTING CABLE AND THE STRENGTH OF THE POLE TO ACCEPT THE PROPOSED EQUIPMENT. FOR DECORATIVE, NON-WOODEN INSTALLATIONS, SPECIALLY DESIGNED POLES MAY BE RECOMMENDED IN THESE INSTANCES THAT PLACE THE CABLING AND OTHER CONDUITS WITHIN THE POLE. LEAD TIMES FOR THESE SPECIAL ORDER ITEMS SHOULD BE ACCOUNTED FOR IN ANY DISCUSSIONS WITH THE CUSTOMER.

8. UNMETERED EQUIPMENT IS NOT PERMITTED EXCEPT IN THOSE JURISDICTIONS WHERE ALLOWED BY EXISTING TARIFFS.

9. NEW AIR DRYERS, NITROGEN BOTTLES, LOAD COILS, ETC. SHALL NOT BE ATTACHED TO DUKE ENERGY POLES.

10. CLEARANCES FROM GROUND AND OTHER FACILITIES SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE NESC, OR THE REQUIREMENTS SHOWN IN THIS MANUAL, WHICHEVER IS GREATER. EXISTING INSTALLATIONS WHICH WERE IN COMPLIANCE WITH THE NESC AT THE TIME OF THEIR ORIGINAL CONSTRUCTION NEED NOT BE MODIFIED UNLESS SPECIFIED BY LATEST EDITION OF NESC CODE HANDBOOK OR DUKE ENERGY SPECIFICATIONS.

11. ATTACHMENT LOCATIONS MAY BE ASSIGNED BY DUKE ENERGY AT SPECIFIC HEIGHTS. UNDER NO CIRCUMSTANCES WILL PROPER CLEARANCES FROM DUKE ENERGY FACILITIES BE VIOLATED.

12. ALL ATTACHMENTS ON DUKE ENERGY POLES SHALL BE TAGGED IN ACCORDANCE WITH THE LATEST DUKE ENERGY REQUIREMENTS.

13. REQUESTS FOR EXCEPTIONS TO THIS DESIGN GUIDE SHALL BE REFERRED TO THE JOINT USE UNIT. ANY EXCEPTIONS APPROVED WILL BE DISTRIBUTED TO THE REGIONS FOR UNIFORM APPLICATION ON A SYSTEMWIDE BASIS.

DUKE ENERGY.

3					
2					
1					
0	[illegible]	[illegible]	[illegible]	[illegible]	
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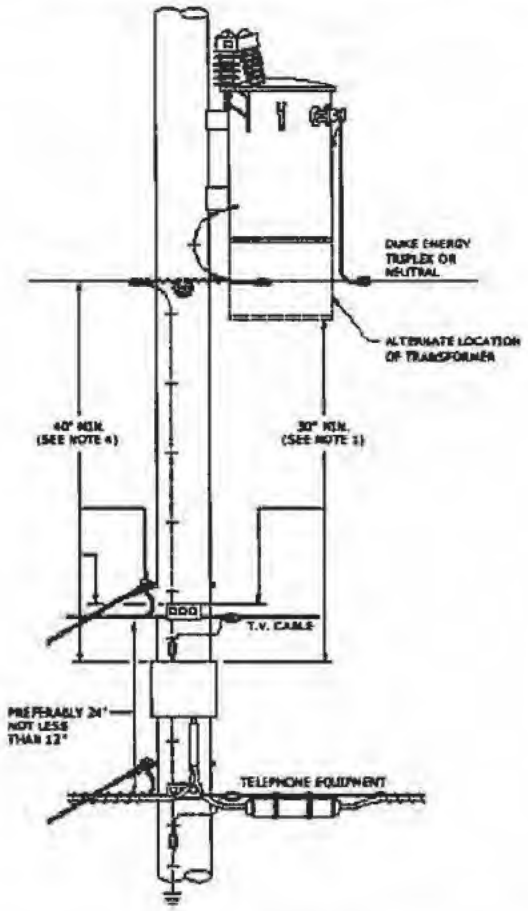
JOINT USE ATTACHMENT AND CLEARANCES

DEC	DEM	DEP	DEF
X	X	X	X

10.07-03



NOTES:

1. THIS DIMENSION OF NOT LESS THAN 30" APPLIES BETWEEN CONDUCTORS AND NON-CURRENT CARRYING PARTS OF EQUIPMENT THAT ARE EFFECTIVELY GROUNDED.
2. MINIMUM DIMENSIONS APPLY TO UPPERMOST ATTACHMENT.
3. CLEARANCES BETWEEN POWER AND COMMUNICATION LINES AT THE POLE MUST BE INCREASED IF THE PROPER MIDSPAN CLEARANCES DESCRIBED ON DWG. 10.07-07 CANNOT BE MAINTAINED.
4. A 40" MINIMUM CLEARANCE IS REQUIRED BETWEEN CLOSEST METAL PARTS OF COMMUNICATION AND UNGROUNDED POWER EQUIPMENT.
5. THE CLEARANCES ON THIS DRAWING APPLY TO BOTH GROUNDED METALLIC COMMUNICATION CABLES AND DIELECTRIC FIBER OPTIC CABLES.
6. JOINT USER SHALL BOND MESSENGER WIRES TO GROUND WIRE PER NESC REQUIREMENTS.

DUKE ENERGY.

3				
2				
1				
0	[illegible]	[illegible]	[illegible]	[illegible]
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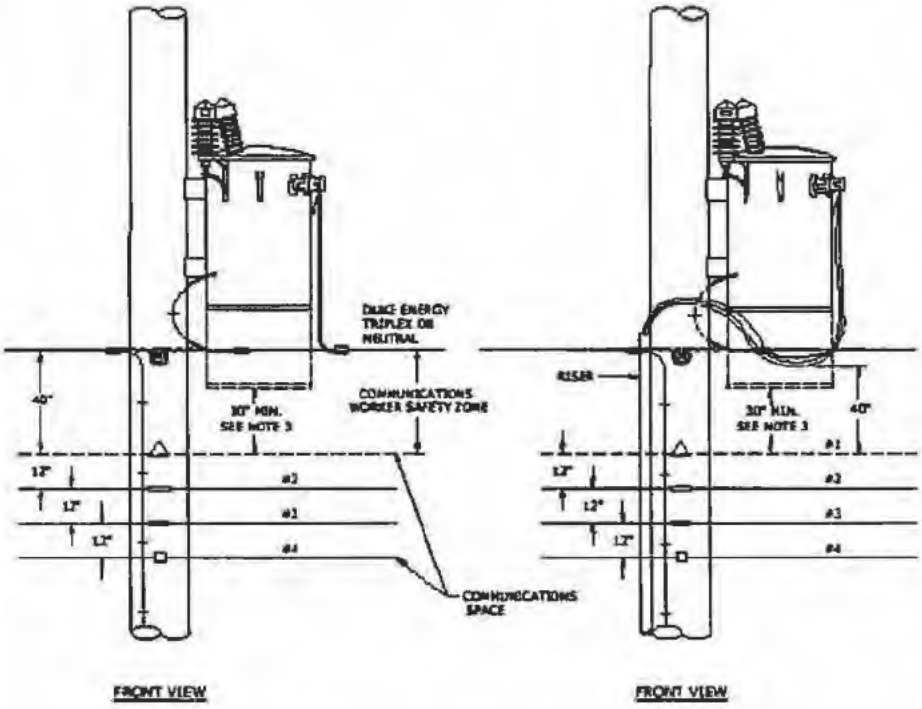
JOINT USE CONSTRUCTION CLEARANCES

DEC	DEM	DEP	DEF
X	X	X	X

10.07-05



FRONT VIEW

FRONT VIEW

MINIMUM CLEARANCES MIDSPAN (IN.)	
PRIMARY	30
NEUTRAL	12
SECONDARY	30
SERVICE DROP	12
SPAN GUY	12

NOTES:

1. DUKE ENERGY FIBER OPTIC CABLE LOCATED AT THE BOTTOM OF THE SUPPLY SPACE (i.e. LESS THAN 40" FROM POWER) MUST HAVE A MINIMUM CLEARANCE OF 40" BETWEEN THE FIBER OPTIC CABLE AND THE TOP COMMUNICATIONS CABLE TO ENSURE THE 40" COMMUNICATION WORKER SAFETY ZONE IS NOT VIOLATED.
2. CLEARANCES SHOWN FROM ELECTRICAL FACILITIES TO JOINT USE FACILITIES ARE MINIMUM CLEARANCES.
3. THIS DIMENSION OF NOT LESS THAN 30" APPLIES BETWEEN CONDUCTORS AND NON-CURRENT CARRYING PARTS OF EQUIPMENT THAT ARE EFFECTIVELY GROUNDED.

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1			
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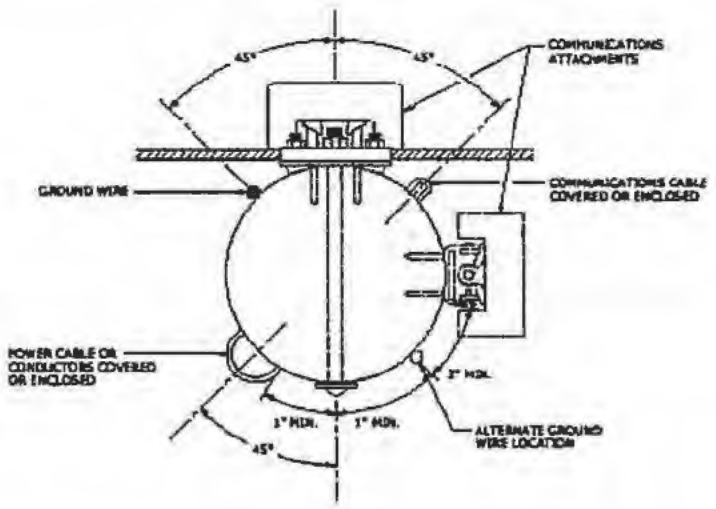
JOINT USE CONSTRUCTION CLEARANCES

DUKE ENERGY.

DEC	DEN	DEP	DEF
X	X	X	X

10.07-07

LOCATION OF VERTICAL RUNS

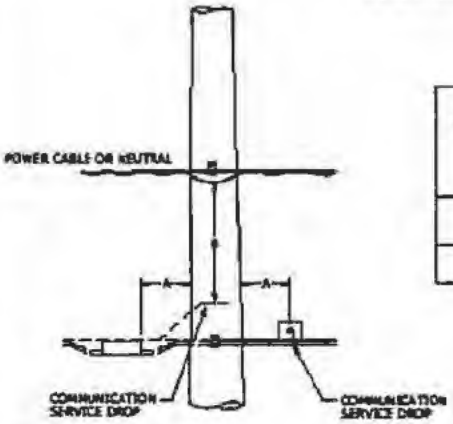


STREET SIDE

NOTES:

1. DO NOT LOCATE GROUNDED EQUIPMENT LESS THAN 1" FROM A BOLT OR STAPLE.
2. LOCATE U-GUARD ON SIDE OF POLE AWAY FROM TRAFFIC.

FOREIGN SERVICE DROPS



DIMENSION (LETTER)	NESC REQUIREMENT MINIMUM (IN.)	DUKE ENERGY PREFERRED MINIMUM (IN.)
A	ALLOWED ON POLE	12
B	40	40

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LOCATION OF VERTICAL RUNS AND JOINT USE SERVICE DROPS

DUKE ENERGY.

DEC	DEM	DEP	DEF
X	X	X	X

10.07-11

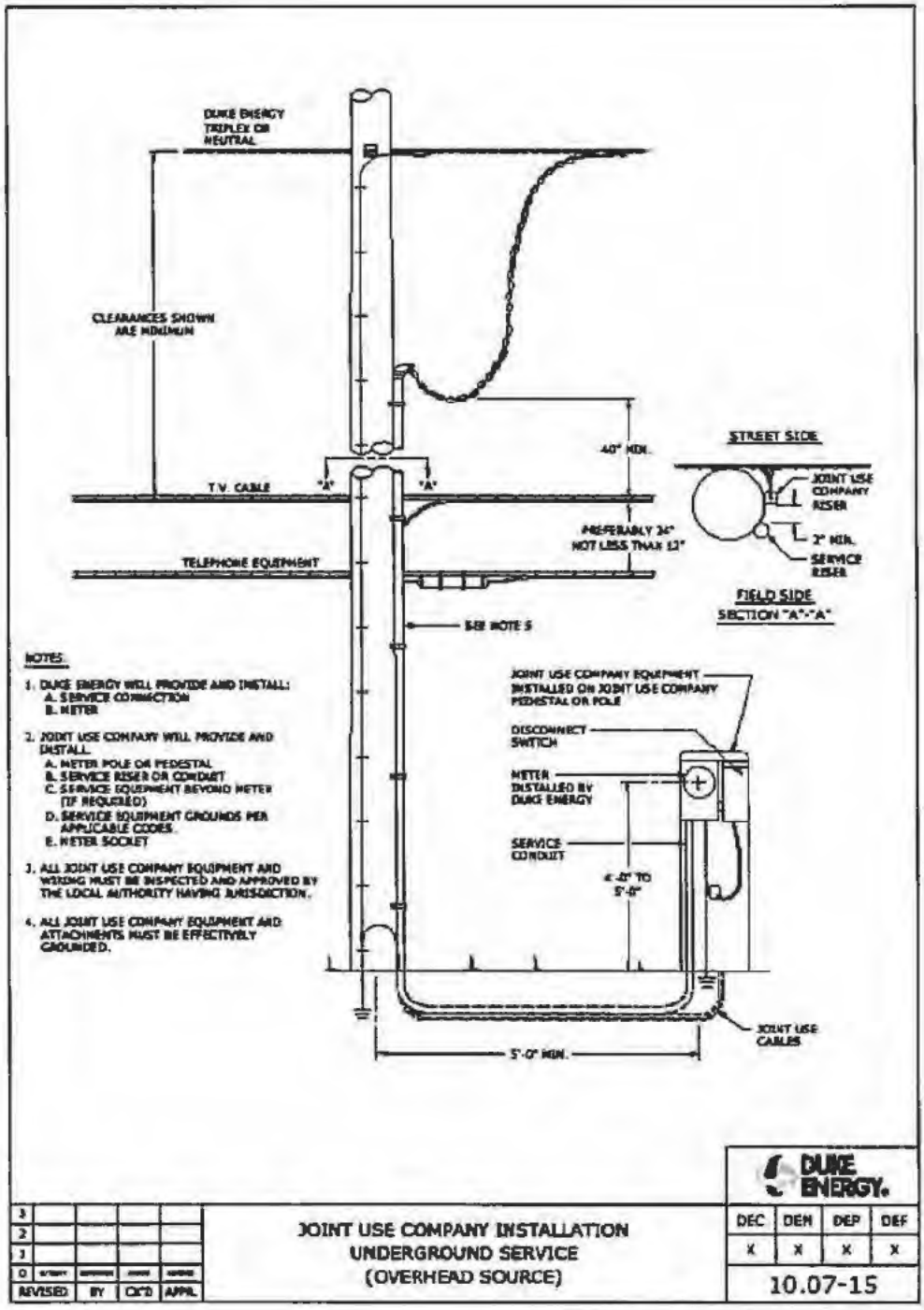
DUKE ENERGY TRIPLEX OR NEUTRAL
CLEARANCES SHOWN ARE MINIMUM
40" MIN.
T.V. CABLE
"A"
"A"
PREFERABLY 24" NOT LESS THAN 12"
TELEPHONE EQUIPMENT
STREET SIDE
JOINT USE COMPANY RISER
2" MIN.
SERVICE RISER
FIELD SIDE
SECTION "A"-"A"
SEE NOTE 5
NOTES:
1. DUKE ENERGY WILL PROVIDE AND INSTALL:
A. SERVICE CONNECTION
B. METER
2. JOINT USE COMPANY WILL PROVIDE AND INSTALL:
A. METER POLE OR PEDESTAL
B. SERVICE RISER OR CONDUIT
C. SERVICE EQUIPMENT BEYOND METER (IF REQUIRED)
D. SERVICE EQUIPMENT GROUNDS PER APPLICABLE CODES.
E. METER SOCKET
3. ALL JOINT USE COMPANY EQUIPMENT AND WIRING MUST BE INSPECTED AND APPROVED BY THE LOCAL AUTHORITY HAVING JURISDICTION.
4. ALL JOINT USE COMPANY EQUIPMENT AND ATTACHMENTS MUST BE EFFECTIVELY GROUNDED.
JOINT USE COMPANY EQUIPMENT INSTALLED ON JOINT USE COMPANY PEDESTAL OR POLE
DISCONNECT SWITCH
METER INSTALLED BY DUKE ENERGY
SERVICE CONDUIT
4'-0" TO 5'-0"
JOINT USE CABLES
5'-0" MIN.
DUKE ENERGY.
JOINT USE COMPANY INSTALLATION
UNDERGROUND SERVICE
(OVERHEAD SOURCE)
DEC
DEN
DEP
DEF
X
X
X
X
10.07-15
REVISED
BY
CK'D
APPR.

EXHIBIT E

[redacted]

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Created: [redacted]
By:
Status:
Transaction ID:

[redacted] History

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